



LEGISLATION, REGULATIONS & STANDARDS

FDA Proposes Ban on Brominated Vegetable Oil

The U.S. Food and Drug Administration (FDA) has proposed banning the use of brominated vegetable oil (BVO) in food, concluding the intended use of BVO is no longer considered safe. The agency currently allows the use of BVO, a vegetable oil modified with bromine, in small amounts to help prevent citrus flavoring from separating and floating to the top of some beverages, but it notes that many beverage producers reformulated their products to replace BVO after its generally recognized as safe (GRAS) status was revoked several decades ago.

FDA pointed to studies conducted in collaboration with the National Institutes of Health, which found the potential for adverse health effects in humans, as well as California’s forthcoming law that will ban BVO. “The agency is continuously reviewing and reassessing the safety of a variety of chemicals in food to ensure the science and the law support their safe use in food, including all four ingredients that are part of the recent California law,” the agency said. FDA also indicated it is reviewing the color additive regulations authorizing the use of Red Dye No. 3, another additive banned under the California law.

FDA Warns Consumers About Lead in Fruit Puree Pouches

SHARE WITH [TWITTER](#) | [LINKEDIN](#)

SUBSCRIBE

PDF ARCHIVES

Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

For additional information about Shook’s capabilities, please contact



M. Katie Gates Calderon

816.559.2419

kgcalderon@shb.com

The U.S. Food and Drug Administration (FDA) is warning that some brands of fruit puree pouches for toddlers and young children may contain elevated levels of lead. The agency first issued a warning about WanaBana's fruit puree pouches before extending the warning to products from Schnucks and Weis as well. FDA indicated that the North Carolina Department of Health and Human Services (NCDHHS) and North Carolina Department of Agriculture & Consumer Services notified the federal agency regarding four children with elevated blood lead levels. NCDHHS's investigation determined WanaBana's fruit puree pouches as a potential shared source of exposure and found high concentrations of lead following an analysis of multiple lots.

“The FDA has reviewed and supports NCDHHS’s analytical findings and found that analytical results at this level could result in acute toxicity,” FDA stated. “The FDA has shared the results with the firm whose representatives are cooperating with the FDA and have agreed to voluntarily recall all WanaBana apple cinnamon fruit puree pouches regardless of expiration.” Since its first alert, FDA's investigation has been transferred to its Coordinated Outbreak Response & Evaluation (CORE) Network in coordination with the Centers for Disease Control and Prevention and state and local agencies.

NYC City Council Passes Bill Requiring Warning for Added Sugars

The New York City Council has approved a bill that would require chain restaurants with 15 or more locations to notify customers of menu items that contain more than a day’s worth of added sugars.

The law requires restaurants to post added sugar icons and factual warning statements on menus or menu boards next to menu items and on or near food items on display that exceed a specified level of added sugars, according to a City Council news release. The legislation builds on the Sweet Truth Act, a 2021 law requiring the same labels indicating added sugars above a certain level on all packaged foods at the same subset of restaurants.

The bill, which would take effect June 19, 2024, is headed to the mayor for final approval. Restaurants that fail to comply face a \$200-per-violation fine.

NOP Organic Livestock and Poultry Standards Updated

The U.S. Department of Agriculture (USDA) has amended the National Organic Program (NOP) standards on organic livestock



Lindsey Heinz

816.559.2681

lheinze@shb.com



James P. Muehlberger

816.559.2372

jmuehlberger@shb.com

ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



and poultry production in rules that will take effect January 2, 2024. The changes in the final rule address several topics related to organic livestock care, including health care practices, living conditions, transportation and slaughter.



According to the notice, the rule affects “[i]ndividuals or business entities that are considering organic certification for a new or existing livestock farm or slaughter facility”; “[e]xisting livestock farms and slaughter facilities that are currently certified organic under the USDA organic regulations”; and “[c]ertifying agents accredited by USDA to certify organic livestock operations and organic livestock handling operations.”

USDA to Hold Codex Meeting on Spices and Culinary Herbs

The U.S. Department of Agriculture (USDA) has announced that a public meeting to discuss policy positions for the 7th Session of the Codex Committee on Spices and Culinary Herbs will be held on December 6, 2023. Issues to be discussed include draft standards for small cardamom, allspice, juniper berry, star anise, vanilla and turmeric.

LITIGATION

Appeals Court Repeals EPA Ban on Chlorpyrifos

The Eighth Circuit has overturned the Environmental Protection Agency’s (EPA’s) ban on the use of the pesticide chlorpyrifos in food production, holding that the action was arbitrary and capricious. *Red River Valley Sugarbeet Growers Assn. v. Regan*, No. 22-1422 (8th Cir., entered November 2, 2023). The agency banned the use of the pesticide after a directive from the Ninth Circuit requiring it to issue a rule within 60 days as part of a lawsuit brought by advocacy groups seeking to revoke all uses of the product.

The court addressed the choices given to EPA by the Ninth Circuit: revoke all uses of chlorpyrifos or modify allowable uses to only those the agency could certify were safe. EPA “concluded it had only one real option: revoke all tolerances and ban chlorpyrifos,” the court found.

“[A] partial ban was a real alternative for the EPA,” the appeals court stated. “It could have cancelled some registrations and retained others that satisfied the statutory safety margin. [] The

agency might have needed to move more quickly than usual to confirm the safety findings and start the process of cancelling and adjusting registrations within the Ninth Circuit's deadline. [] But those are matters of policy and practicality, not statutory authority. The point is that the EPA should not have reflexively rejected an approach it had the power to adopt, even if it would have required more work."

The Eighth Circuit noted that the agency had found evidence that some uses could be allowable. "As the EPA itself acknowledged, it could safely retain some chlorpyrifos tolerances," it held. "In fact, before the Ninth Circuit declared that 'time [was] up,' [] it seemed headed toward that solution." The court granted the petitions for review and remanded for further proceedings. "But this time," the court held, EPA "must at least recognize the full scope of what it can do before announcing what it will not do."

Consumer Sues Ocean Spray Cranberries for 'No Preservatives' Labeling

A New York plaintiff has filed a proposed class action against Ocean Spray Cranberries, Inc., alleging the company misrepresents its products as having no artificial flavors or preservatives while containing ascorbic acid. *Bullock v. Ocean Spray Cranberries, Inc.*, No. 23-12557 (D. Mass., filed October 27, 2023).

The plaintiff alleged that she purchased Ocean Spray Original Cranberry Juice Cocktail in New York, relying on Ocean Spray's marketing that the product contained no artificial flavors or preservatives. She asserted that the product included ascorbic acid, a preservative, the use of which allegedly renders Ocean Spray's "no artificial flavors or preservatives" representation false and misleading.

"This is true even if Defendant's subjective intention was to add ascorbic acid to impart taste/tartness or vitamin supplement to the Products," she said in the complaint. "This conclusion is buttressed by the fact that ascorbic acid can function as a preservative even when it is used only in trace amounts."

The plaintiff alleges the defendant violated Sections 349 and 350 of the New York General Business Law and the Massachusetts Unfair and Deceptive Business Practices Act. She also asserts common law claims of breach of express warranty and unjust enrichment and seeks class certification, declaratory judgment, damages, prejudgment interest, restitution, injunctive relief and attorneys' fees.

SHB.COM

[ABOUT](#) | [CONTACT](#) | [SERVICES](#) | [LOCATIONS](#) | [CAREERS](#) | [PRIVACY](#)

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

© Shook, Hardy & Bacon L.L.P. All rights reserved.

[Unsubscribe](#) | [Forward to a Colleague](#) | [Privacy Notice](#)