

FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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A report arguing for raising taxes on alcohol and sugar-sweetened beverages, a law requiring labels to disclose if an animal was harmed during production, a lawsuit calling grain alcohol "inherently dangerous," and more.

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SPOTLIGHT

Proposition 12 in the Crosshairs—Again: With Cert Denied in IPPA and a New Federal Lawsuit Filed, the Legal Battle Continues

By Associates [Robert McClendon](#) and [Caitlin C. Robb](#)

It has been just over a year since the U.S. Supreme Court rebuffed a challenge to California's controversial Proposition 12, which prohibits the sale of certain meat products within the state unless the animals were raised according to certain conditions. [Nat'l Pork Producers Council v. Ross](#), 598 U.S. 356 (2023).

Nevertheless, the long-term viability of the law remains unclear, as illustrated by two recent developments: the Supreme Court's denial of certiorari in *Iowa Pork*

Producers Association v. Bonta, No. 24-728, (U.S., June 30, 2025) and the Department of Justice’s (perhaps unsurprising) decision to file its own challenge to the law in *U.S. v. State of California*, No. 25-cv-6230 (C.D. Cal., filed July 9, 2025).

Before addressing these developments, it is worth noting that, although the Court upheld Prop. 12 in *NPPC*, the case was decided without a clear majority opinion. In an opinion joined by Justices Samuel Alito, Brett Kavanaugh and Ketanji Brown Jackson, Chief Justice John Roberts held that the case should have been allowed to move past the pleading stage. He reasoned that, under the facts as alleged, additional factual development might show that Prop. 12, although nondiscriminatory on its face, nevertheless violated the Dormant Commerce Clause by establishing burdens on interstate commerce that clearly outweighed the law’s benefits. Justice Kavanaugh took it a step further, holding not only that further factual development might show Prop. 12 violated the Dormant Commerce Clause, but also hinting that the law might violate other constitutional provisions such as the Import-Export Clause.

The Court might have had an opportunity to clarify things in *IPPA*, where the petitioners attempted to repackage a similar Dormant Commerce Clause argument. Unlike *NPPC*, which focused on extraterritoriality and incidental burden, *IPPA* advanced a theory of intentional discrimination, which the Ninth Circuit rejected. The justices apparently had no appetite to revisit the issue, declining certiorari without comment. Notably, however, Justice Kavanaugh said he would have granted, once again signaling some skepticism about Prop. 12, and perhaps toward attempts by states to dictate economic terms more generally.

Enter the federal government. On July 9, the U.S. Department of Justice filed a lawsuit in the Central District of California that challenges Prop. 12 on the grounds that it is preempted under the Egg Products Inspection Act (EPIA). Only time will tell whether that challenge is viable. The government’s challenge rests on that statute’s express preemption provisions, which limit the ability of states to impose regulations that (i) conflict with federal standards governing egg “quality” and “condition,” or (ii) purport to impose labeling requirements for egg products “in addition to or different from” those required under EPIA or other

federal laws. The first position seems like a stretch, given that Prop. 12 does not, at least on its face, seem to impose any standards regarding the quality and condition of the eggs themselves, only the manner in which the eggs are grown. The second may have some legs—Prop. 12’s regulations include a rule regarding use of the term “cage free” that is different from the one used by the USDA.

It is unlikely that the government’s preemption challenge will take down Prop. 12’s egg provisions entirely, but it may limit their reach when it comes to egg products. Regardless, it is all but certain that the government or industry groups will eventually take up Justice Kavanaugh’s invitation to test Prop. 12 on other grounds.

LEGISLATION, REGULATIONS & STANDARDS

FDA Announces Plans to Revoke 52 Standards of Identity for Food Products

The U.S. Food and Drug Administration (FDA) has announced the revocation or proposed revocation of 52 food standards after determining them to be obsolete. The standards include those for canned fruits and vegetables, dairy products, baked goods, and macaroni and cheese. FDA said in a [news release](#) that the move is the first in response to the agency’s ongoing analysis to ensure its portfolio of more 250 food Standards of Identity are “useful, relevant and serve consumers in the best possible way.”

U.S. Lawmakers Reintroduce Food Additives Bill

U.S. Reps. Jan Schakowsky (D-Ill.) and Rosa DeLauro (D-Conn.) have reintroduced the [Food Chemical Reassessment Act of 2025](#), which would require the Food and Drug Administration (FDA) to research "at least ten chemicals

added to our nation's food or food packaging" every three years. "Consumers deserve to know that the foods they are eating are safe, but right now, thousands of harmful chemicals in our food are going unchecked and the food industry is regulating itself," Schakowsky is quoted as saying in a July 10, 2025, [press release](#).

If passed, FDA's research would start with a list provided by the lawmakers: Tert-butylhydroquinone (TBHQ), titanium dioxide, red dye 40, yellow dye 5, blue dye 1, blue dye 2, green dye 3, perchlorate, butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), trichloroethylene, methylene chloride, benzene, ethylene chloride, propyl gallate, sodium nitrite and sodium benzoate.

Switzerland Adds Animal Welfare Labeling on Meat Products

As of July 1, 2025, companies selling [animal-derived food products](#) in Switzerland must note on the label if the animals underwent "painful procedures" during production. [Procedures](#) that trigger the requirement include (i) castration or dehorning of livestock without anesthesia; (ii) castration, tail docking or teeth clipping of pigs without anesthesia; (iii) beak clipping without pain relief of chickens producing meat or eggs; (iv) cutting frog legs without anesthesia; and (v) force feeding of geese and ducks in the production of foie gras.

Texas Becomes 7th State to Ban Lab-Grown Meat

Texas Gov. Greg Abbott has signed into law [SB 261](#), making the Texas the seventh state to adopt legislation banning the sale of cell-cultured meat. The law defines cell-cultured meat as “a food product derived from harvesting animal cells and artificially replicating those cells in a growth medium to produce tissue.” The law takes effect September 1 and expires in September 2027.

WHO Recommends Price Hikes on Alcohol, Sugar-Sweetened Beverages

The World Health Organization (WHO) has launched a ["3 by 35" initiative](#) urging countries to raise prices on alcohol and sugar-sweetened beverages "by at least 50% by 2035 through health taxes." The organization asserts that noncommunicable diseases such as cancer, heart disease and diabetes account for 75% of all deaths worldwide, and "a one-time 50% price increase on these products could prevent 50 million premature deaths over the next 50 years."

“Health taxes are one of the most efficient tools we have,” a WHO spokesperson is quoted as saying in a July 2, 2025, press release. “They cut the consumption of harmful products and create revenue governments can reinvest in health care, education, and social protection. It's time to act."

Senator Presses USDA for Action on Beef Mandatory Country-of-Origin Labeling

U.S. Sen. Mike Rounds (R-SD) has called on U.S. Department of Agriculture (USDA) Secretary Brooke Rollins to work with U.S. trade officials to develop a framework for reinstating Mandatory Country of Origin Labeling (MCOOL) for beef. In a [letter](#) to Rollins, Rounds said that Congress is preparing to address

MCOOL as part of the next Farm Bill, but USDA also has a role to play, including working with trade representatives and examining “the deceptive practices currently distorting our beef markets.”

FDA Calls on Makers of Foods for Infants, Children to Enhance Recall Communications

The U.S. Food and Drug Administration (FDA) has urged makers of foods for infants and children to improve their communication about product recalls to provide greater public awareness. In a [letter](#) to industry leaders, FDA said it will accept industry input as to how industry and the agency can communicate recalls faster and in ways that better leverage new technologies.

“Industry and government recall systems must evolve to meet the public's need for timely information,” the agency said. “We are proposing a strategic overhaul, leveraging communications best practices as well as cutting-edge technologies to revolutionize how we work together to collect, analyze, and disseminate crucial recall information.”

USDA Announces Public Meeting on Pesticide Residues

The U.S. Department of Agriculture (USDA) will hold a [public meeting](#) on August 13, 2025, to hear comments on U.S. positions for the Codex Committee on Pesticide Residues, which will meet September 8-13. The public meeting will cover maximum residue limits for pesticides in food and feed, milk and milkfat, and okra, along with discussions of pesticide storage, national pesticide registration and other issues.

FDA Approves Blue Color Additive

The U.S. Food and Drug Administration (FDA) has [approved](#) for use in food color additive gardenia (genipin) blue, "the fourth color derived from natural sources approved by the FDA for use in foods in the last two months." The additive is approved for use in "sports drinks, flavored or enhanced non-carbonated water, fruit drinks and ades, ready-to-drink teas, hard candy, and soft candy."

USDA Opens Call for NOSB Nominations

The U.S. Department of Agriculture (USDA) has opened [nominations](#) for five vacancies on the National Organic Standards Board (NOSB) for terms of January 2026-2031. Two spots are reserved for individuals in organic farming; another two are reserved for representatives of consumer interest groups; and a final spot is held for a USDA-accredited certifying agent. USDA will also accept nominations for a pool of candidates to fill unexpected vacancies. Nominations will be accepted until September 9, 2025.

LITIGATION

"Natural" Chobani Claims to Continue

A California federal court has denied most of Chobani LLC's motion to dismiss a putative class action alleging the company misleads consumers by selling yogurt labeled as made with "Only Natural Ingredients" but containing allegedly artificial ingredients. [*Albrigo v. Chobani, LLC*](#), No. 24-1418 (S.D. Cal., entered July 11, 2025). The plaintiff argued that the stevia leaf and monk fruit extracts used in formulating the product are artificial due to the processing they undergo.

"Although Defendant contends that the ingredients can be 'minimally processed' under U.S. Department of Agriculture [(USDA)] guidance for 'natural' labels, the

USDA guidance upon which Defendant relies refers to 'meats and poultry products,' not fruit or vegetable extracts," the court noted. "Therefore, the guidance misses the mark." The court reached a similar conclusion on the plaintiff's allegation about manufactured citric acid (MCA), holding, "Plaintiff has sufficiently alleged that Defendant used industrially manufactured MCA in some Products, resulting in the 'Only Natural Ingredients' label being misleading to consumers."

The court granted Chobani's motion to dismiss a claim that the use of vegetable juice coloring misleads consumers, finding that "the front label 'Only Natural Ingredients' is not unambiguously deceptive" and the "back ingredient label clearly states that the product includes 'vegetable juice concentrate (for color).'

Therefore, a reasonable consumer is on notice about the source of the color and is not likely to be deceived by Defendant's 'Only Natural Ingredients' labeling on the Products."

Plaintiff Alleges Everclear Is "Inherently Dangerous"

A consumer has filed a lawsuit alleging Luxco, Inc.'s Everclear 190-proof grain alcohol is "inherently dangerous" after an incident involving the product and fire allegedly resulted in injury. [*Digan v. Luxco, Inc.*](#), No. 25-40091 (D. Mass., filed July 13, 2025). The plaintiff alleges that she sustained third-degree burns when a man "poured Everclear near or onto an open fire in the backyard of the fraternity house," resulting in flames that "may not have been visible due to the way ethanol burns." When Everclear came in contact with the flame, the plaintiff asserts, "an enormous fireball instantly erupted, enveloping Plaintiff who was nearby."

The plaintiff alleges that Luxco removed or downsized warnings about its flammability on the Everclear bottle in 2018. "Luxco drastically reduced the warning and relegated it to a small rectangle," the complaint asserts. "This represents an 85% reduction in warning content with the critical instruction about open flames completely eliminated." The plaintiff further argues that

Luxco "recklessly promoted Everclear for culinary and household uses where open flames from gas stoves, ovens, and candles are common."

Ninth Circuit Affirms Rule Allowing Grower Group Organic Certification

The U.S. Court of Appeals for the Ninth Circuit upheld the U.S. Department of Agriculture's (USDA's) "grower group" organic farming certification, finding an Oregon hazelnut farm that challenged the certification failed to put forth sufficient evidence of injury-in-fact because of the rule. [*Pratum Farm, LLC v. U.S. Dep't of Agric.*](#), No. 24-6160 (9th Cir., issued July 15, 2025). In its 2023 complaint, Pratum Farm LLC alleged USDA's rule allowing the "grower group" certification "uniquely favors foreign agribusinesses" because it allows "spot check" inspections of a small percentage of foreign farms in a group of independently owned and operated farms. The district court granted USDA summary judgment, which the Ninth Circuit has affirmed.

The appellate court determined that the plaintiff failed to show the rule caused it competitive injury. "To the extent Pratum argues that the Rule in fact enabled certain Turkish producer groups to sell organic hazelnut kernels at lower prices than Pratum, Pratum 'relies on a highly attenuated chain of possibilities' insufficient to show its competitors' conduct was fairly traceable to the Rule," the court said.

Consumer Group Sues Grocer for Lack of Prop. 65 Warnings

Consumer Advocacy Group Inc. has filed suit alleging Lazy Acres failed to identify that a product sold in its markets contained lead. [*Consumer Advocacy Grp. Inc. v. Bristol Farms*](#), No 25STCV20065 (Los Angeles Cty., Cal. Sup. Ct., filed July 8, 2025). The plaintiff asserted that the grocer knew or should have

known that lead present in La Barca Octopus in Olive Oil was subject to warning requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65).

SCIENTIFIC / TECHNICAL

Study Examines Microplastics in Dairy Products

A [study](#) has examined microplastics in dairy products, purportedly finding that ripened cheese had the highest microplastic concentration, followed by fresh cheese and milk. Visentin et al., "Assessing microplastic contamination in milk and dairy products," npj Science of Food (July 10, 2025). The researchers said the production process and packaging materials used may influence the level of microplastics content and recommended that specific mitigation strategies be developed accordingly. "Future research should be conducted at the plant level, encompassing all stages of the production process to identify specific sources of (microplastic) contamination and to support the development of effective mitigation strategies," the authors asserted.

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More to Explore

- Litigator [Matthew G. Ball](#) has [joined](#) Shook's [San Francisco](#) office. Ball has represented clients in the food and beverage industries and previously served on the Food and Drug Law Institute's Food Advertising, Labeling, and Litigation Conference.
- BTI Consulting Group [ranked](#) Shook among the Client Service Trailblazers in its latest A-Team report. The firm was listed as "Leading" and "Distinguished" in two categories and "Standout" in 11 categories, highlighting Shook's commitment to client service.

- The most recent issue of the ***Food and Beverage Litigation and Regulatory Update*** covered a corporate vow to remove artificial dyes from food products, a proposed 18-point scale to evaluate whether a food is "clean," a lawsuit on mislabeled "foreign fish," and more.

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As the food and beverage industries become more complex, they require effective legal representation that can quickly evaluate potential liability and craft the most appropriate responses to suspected product adulteration, alleged foodborne outbreaks or environmental contamination claims. For decades, manufacturers, distributors and retailers at every link in the food chain have come to Shook, Hardy & Bacon to partner with a legal team that understands the issues they face in today's evolving food production industry. Shook attorneys work with

some of the world's largest food and beverage companies to establish preventative measures, conduct internal audits, develop public relations strategies, and advance tort reform initiatives.

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