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FOOD, BEVERAGE, AND CONSUMER PRODUCTS ISSUES TO WATCH FOR 2026

In 2026, regulatory and litigation risk across the food, beverage, supplement, and consumer-products sectors will be driven less by new rulemaking and more by implementation and enforcement of changes already on the books. Agencies and courts alike are signaling reduced tolerance for gray-area compliance strategies.

Consumer fraud litigation remains active, with plaintiffs shifting focus toward **functional and physiologic claims**, heavy-metal content, sustainability and "clean" marketing, and emerging theories tied to ultra-processed foods. While many cases continue to survive early motion practice, defendants are seeing improved dismissal outcomes where FDA guidance provides clear boundaries and courts apply a disciplined "reasonable consumer" standard.

At the federal level, the FDA's **Human Foods Program** is expected to be fully operational by mid-2026. Updated labeling compliance programs and sanitation guidance—particularly for low-moisture, ready-to-eat foods—are likely to be used as inspectional benchmarks, shortening timelines between inspections and enforcement action and increasing consistency across regions.

International compliance obligations will also accelerate. Canada's **front-of-package nutrition symbol** requirements become mandatory in 2026, and the EU will begin phased implementation of **Digital Product Passports** under its sustainability framework. Export-oriented companies should prepare now for labeling, documentation, and traceability impacts.

The FDA's ongoing **revocation and modernization of Standards of Identity** will continue to reduce prescriptive formulation rules, shifting regulatory analysis toward misbranding and consumer-perception standards. This increased flexibility comes with heightened compliance and litigation risk where product names or claims imply traditional formulations that no longer apply.

There is an expectation of enhanced enforcement from the **FTC around price transparency, origin claims, and influencer marketing**. Although the "junk fee" rule is limited in scope, its emphasis on upfront pricing is already influencing broader enforcement and litigation trends. Aggressive policing of unqualified "Made in USA" claims and wellness-related endorsements remains a key risk area.

Finally, Congress has enacted a **revised federal definition of hemp**, closing the

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Farm Bill loophole for intoxicating hemp-derived products effective November 2026. Although enforcement may phase in unevenly, the statutory change is settled law, and companies should treat the coming year as a compliance runway rather than a period of uncertainty.

CONSUMER FRAUD LITIGATION

Class actions targeting promoted ingredients and "all natural" claims never seem to fade for the plaintiffs' bar, but the 2025–2026 hot spots have shifted for food, beverages, and supplements. There has been a surge of activity around functional/physiologic claims (e.g., "prebiotic," "gut healthy," nootropic/adaptogen benefits) where plaintiffs argue dose-insufficiency or offsetting sugars make the claims misleading. Notable settlements and media-visible cases have kept this theory in the headlines. Heavy-metal theories also persist, especially for infant/toddler foods, rice products, chocolate, and even cookies. Outcomes have been mixed, with some courts allowing arsenic-based labeling claims to proceed where thresholds exist, while others have dismissed or granted summary judgment in chocolate cases. In the coming year, we expect green/"clean" and PFAS-adjacent suits to keep testing "non-toxic," "organic," and sustainability claims (often paired with packaging allegations), with new theories concerning the marketing for "ultra-processed foods" as not only deceptive, but presenting a heightened public-nuisance angle to the usual UCL/UDAP playbook.

The practical calculus for these lawsuits has not changed: A demand letter over a labeling/claims theory can often survive the pleadings long enough to force expensive discovery. However, there has been an uptick in early wins for cases where FDA policy creates clear safe harbors (e.g., "zero sugar" where allulose treatment is squarely addressed) and where courts apply a sharper "reasonable consumer" standard to health-halo or "implied equivalence" arguments. As a result, while clarified federal standards for terms like "natural," "healthy," and sustainability claims would still help, it may be just as impactful if the Second and Ninth Circuits continue dismissing overreaches early and reinforcing a common-sense consumer standard, particularly in suits that stretch sparse science, ignore disclosed sweetener treatment, or rely on speculative injury theories.

FDA'S HUMAN FOODS PROGRAM

The FDA launched its Human Foods Program (HFP) on Oct. 1, 2024, consolidating the Center for Food Safety and Applied Nutrition (CFSAN), the Office of Food Policy and Response (OFPR), and field operations in the Office of Regulatory Affairs (ORA) under a single program reporting to the Deputy Commissioner for Human Foods. The HFP's organization is designed to centralize leadership and expertise to improve the FDA's ability to prevent and respond to food safety issues with a focus on microbiological food safety,

chemical safety, and nutrition. It is expected to be fully operational in mid-2026. Broadly, the reorganization is intended to streamline decision-making and data integration while reducing siloing and is expected to result in more consistent policy interpretation, swifter decision-making, and centralized compliance and enforcement. **For regulated entities, this consolidation is likely to translate into shorter timelines between inspectional findings and follow-up enforcement action, as well as greater consistency in how similar issues are treated across regions.**

During 2025, the FDA, through the work of the HFP, updated its general food labeling compliance program, which outlines guidelines and procedures used by FDA personnel when evaluating food labeling compliance for both domestic and imported products. Although the program does not create new labeling requirements, it updates the FDA's inspection guidelines and procedures to comply with current labeling standards, including the addition of sesame allergen declarations and updated nutrition facts labeling. **In 2026, companies should expect this updated compliance program to be used as the primary reference during routine inspections, increasing the likelihood that legacy labels, private-label specifications, and transitional SKUs will be cited where they do not reflect current requirements.**

In January 2025, the HFP also proposed updated sanitation guidance for manufacturing and processing of low-moisture, ready-to-eat (LMRTE) food. The draft guidance establishes routine sanitation programs and outlines the FDA's position as to identifying affected food, applying sanitizing treatments, and conducting root-cause investigations following contamination events. Notably, the FDA's draft LMRTE guidance emphasizes that finished-product testing alone is not adequate to confirm pathogens are under control. **As the HFP becomes fully operational in 2026, FDA investigators are expected to use this guidance as an inspectional benchmark, with particular focus on environmental monitoring, validation of preventive controls, and documentation of corrective actions.**

In addition to updated guidance, entities subject to the FDA's human food regulations should expect continued efforts to improve alignment between inspections and enforcement activities through the HFP's Office of Compliance & Enforcement. For entities with repeat or serious control failures, the HFP's new consolidation may result in an increased potential for repeat issues being identified across inspections and more timely escalation of regulatory action (including warning letters, import alerts, and recall recommendations) going forward.

PENDING EXPORT ISSUES FOR DOMESTIC PRODUCERS

Canada: Beginning Jan. 1, 2026, Canada will require food industry companies to include a front-of-package nutrition symbol on foods that are high in saturated fat, sugars, and/or sodium. The symbol is mandatory for prepackaged foods

that meet or exceed predetermined threshold levels of the three nutrients. Some foods will be exempt from this rule, including those that are exempt for technical reasons (packaged individual portions intended only to be served by restaurant/commercial enterprise to accompany meals, milk and cream in refillable glass containers, food in very small packages, and raw, single ingredient whole cuts of meat, poultry, and fish that do not carry nutrition facts labels); foods with protective effect on health (fruits, vegetables, etc.); some dairy products (e.g., plain milk, plain yogurt, and cheese); raw, single ingredient ground meats and poultry; and butter, sugar, and salt and other products used for the same purpose. The symbol must abide by specific size (determined by size of package), location (for most packages, in the upper half of the package), and language (both French and English) requirements.

EU: On July 18, 2024, the European Commission entered into force the Ecodesign for Sustainable Products Regulation (ESPR). The ESPR aims to improve the sustainability of products on the EU market. The ESPR introduces Digital Product Passport (DPP), a digital record that provides detailed information about the environmental impact of various products. To implement the ESPR, the Commission has issued a Working Plan that details a phased introduction across the EU from 2026 to 2030. The Plan specifies that iron and steel DPPs will be implemented in 2026, followed by aluminum, textiles/apparel, and tires in 2027, furniture in 2028, and mattresses in 2029.

China: Earlier this year, in response to the United States' tariffs, China imposed reciprocal tariffs on U.S. agricultural products. Effective Nov. 10, 2025, per an agreement between the U.S. and China, China suspended its reciprocal tariffs on most U.S. agricultural products, including chicken, wheat, corn, cotton, sorghum, soybeans, pork, beef, aquatic products, fruits, vegetables, and dairy products. Further, the U.S. Department of Agriculture announced China will purchase 12 million metric tons of U.S. soybeans, potentially alleviating some of the economic strain many agriculture professionals around the country have felt. While this is overall good news, it is important to keep in mind the volatile climate between the two countries and to remain abreast of any further changes in the trade industry.

MODERNIZATION OF STANDARDS OF IDENTITY

In 2025, the FDA finalized the revocation of 52 standards of identity (SOIs) covering certain canned fruits, vegetables, and dairy products on the basis that they were obsolete and unnecessary. These standards were originally developed to specify what ingredients and component proportions certain food products like milk chocolate and bread must contain in order to help address economic adulteration occurring during the Great Depression. For example, prior to the implementation of SOIs, jams were often represented as containing fruit, even where they contained little or no fruit at all. SOIs were enacted to ensure that the production and processes of such foods are aligned with

consumer expectations (so that if a consumer was buying “jam” they were buying a product that qualified under a specific definition of “jam”).

Because economic adulteration has been downgraded as a concern for the time being, the FDA is expected to continue revoking SOIs into 2026. In addition to the revocation of certain SOIs, the FDA has also indicated that it intends to revise certain SOIs (such as those for yogurt and cheese) to allow for enhanced ingredient flexibility, including, but not limited to, the use of fluid ultrafiltered milk. **These changes reflect the FDA’s broader shift toward reducing prescriptive formulation requirements in favor of general labeling and misbranding standards.**

Although the FDA has not specified an enforcement deadline, once a standard is revoked, the FDA ceases to enforce previous compositional requirements and instead evaluates products under existing misbranding, labeling, and safety provisions. **In 2026, companies should expect FDA reviewers and inspectors to focus less on technical compliance with former SOI specifications and more on whether product names, statements of identity, and descriptive claims accurately convey the product’s composition and character to consumers.** This means that while revocation of these SOIs allows for greater formulation and innovation flexibility, it also places an increased burden on manufacturers to ensure that labeling accurately reflects the product’s composition. This shift is likely to increase compliance and litigation risk if product descriptions or claims are alleged to be misleading or to imply traditional formulations no longer required by regulation.

Based on these changes, manufacturers and private-label suppliers should revisit product specifications and label templates that reference legacy SOIs, confirm internal alignment between formulation and labeling, and assess whether existing product names or descriptors could be interpreted as implying a standardized product that no longer exists under FDA regulations.

FTC: FAIR PRICING, ORIGIN CLAIMS, AND INFLUENCER DISCLOSURES

Fair pricing and fee transparency (“junk fees”): On May 12, 2025, the Federal Trade Commission’s Rule on Unfair or Deceptive Fees, 16 C.F.R. Part 464 (also referred to as the “junk fee”), went into effect. While its formal scope is limited to live-event ticketing and short-term lodging, it reflects a broader enforcement priority that will carry into 2026. The Commission has made “total price up front” disclosure a central consumer-protection theme. The rule specifies the fees that must be included in the total price are: fees people are required to pay, fees people cannot reasonably avoid (e.g., credit card processing charges), charges for ancillary goods or services that people must buy to make the underlying good/service fit for its intended purpose (e.g., automatic credit card surcharge, resort fees, etc.), and fees people cannot effectively agree to because the business employs practices such as default billing and opt-out provisions (e.g., an automatic fee that is only removed if a

person notices and challenges it). The rule also prohibits including discounts and promotions in the final price if they are not available to everyone.

This framework is already influencing enforcement, state AG actions, and private litigation outside the rule's narrow coverage. Food and beverage companies that offer ticketed tastings, brand experiences, lodging partnerships, or bundled experiential marketing (i.e., any add-ons or "experiences") should confirm that advertised prices and checkout flows clearly disclose the total price consumers will pay, including any mandatory fees, before purchase. The rule applies to any type of advertising—including online, physical locations, and mobile apps). The rule covers both business-to-business and business-to consumer transactions.

Origin claims and "Made in USA": The FTC continues aggressive enforcement of unqualified "Made in USA" claims under its Made in USA Labeling Rule, which authorizes civil penalties for noncompliant labels, including online and catalog claims. In July 2025, the FTC issued warning letters emphasizing the "all or virtually all" standard and specifically contacted Amazon and Walmart regarding third-party marketplace listings—signaling that origin-claim enforcement extends beyond manufacturers to the broader marketing ecosystem. For food, beverage, supplement, and consumer-product companies, 2026 compliance risks include ensuring origin claims are supported by component-level substantiation and avoiding inconsistency between FTC-facing marketing claims and FDA- or USDA-regulated origin statements such as "Made in USA with imported ingredients," "Packed in USA," or "Product of USA."

Influencer disclosures and wellness advertising: The FTC's Endorsement Guides and related guidance continue to require that material connections—including payments, free product, and affiliate relationships—be disclosed clearly and conspicuously. Enforcement risk is highest for wellness, functional food, and dietary supplement brands, where influencer content often blends lifestyle messaging with implied health or efficacy claims. The FTC's Health Products Compliance Guidance reinforces that health-related claims must be supported by competent and reliable scientific evidence, calibrated to the strength of the claim. FTC–FDA coordination on supplement and wellness advertising remains an established enforcement tool, and companies should assume that social-media and influencer content is fully in scope for both agencies in 2026. From a compliance perspective, this elevates the importance of pre-clearing influencer content, standardizing disclosure language and placement, and maintaining substantiation files aligned with the strongest express or implied claims being made.

HEMP PRODUCTS

In November 2025, Congress enacted significant changes to the federal definition of legal hemp as part of the FY2026 Continuing Resolution and

appropriations package (H.R. 5371). The new statutory definition is set to take effect on Nov. 12, 2026 and fundamentally alters the universe of lawful hemp products and closes the long-debated “Farm Bill loophole” that enabled the sale of intoxicating hemp-derived cannabinoids.

Under the revised law:

- “Hemp” is defined by total THC content: Total THC is now measured by the sum of delta-9 THC, tetrahydrocannabinolic acid (THCA), and any other cannabinoids marketed or shown to have similar effects on humans or animals, as determined by the Secretary of Health and Human Services.
- Low milligram cap: A strict limit of 0.4 milligrams of total THC per container applies to consumer products. Products exceeding this limit will not qualify as legal hemp.
- Synthetic or chemically converted cannabinoids are excluded: Cannabinoids that are not naturally occurring in the plant or are synthesized outside the plant (e.g., lab-modified delta-8 or delta-10 THC) are excluded from the hemp definition and may be treated as controlled substances, and the FDA has been directed to publish lists of naturally occurring cannabinoids.

These changes represent the most significant federal redefinition of hemp products since the 2018 Farm Bill and will pull many existing ingestible products (edibles, beverages, gummies) outside of the statutory hemp category. Although the new definition does not become effective until November 2026, market participants should treat the statutory shift as law on the books today. Planning timelines should consider inventory and formulation adjustments, labeling and marketing risks, and alignment with state law. Companies selling or formulating consumable hemp products should begin compliance assessments now rather than await federal enforcement actions, particularly given the risk from state-level regulatory bodies.

If you have questions specific to your business regarding these issues, please contact your regular AT attorney or one of the listed authors.