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FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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LEGISLATION, REGULATIONS & STANDARDS

EPA Takes Emergency Action to Stop Use of Dacthal

For the first time in nearly 40 years, the U.S. Environmental Protection Agency (EPA) has [issued](#) an emergency order to suspend all registrations of the pesticide dimethyl tetrachloroterephthalate (also known as DCPA or Dacthal) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The agency said it took the action to protect unborn babies whose pregnant mothers were exposed to DCPA, noting they could experience changes to fetal thyroid hormone levels, which are generally linked to low birth weight, impaired brain development, decreased IQ and impaired motor skills later in life. “DCPA is so dangerous that it needs to be removed from the market immediately,” a spokesperson said in a statement.

If you have questions about the potential impact of this order, please contact Shook Environmental & Toxic Tort Litigation Practice Group Co-Chair [Dave Erickson](#).

Consumer Reports Purportedly Finds Perchlorate in Baby Food, Fresh Produce

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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.

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A *Consumer Reports* [study](#) has reportedly found that more than two-thirds of supermarket and fast-food item samples tested had measurable levels of perchlorate, a chemical used to make rocket fuel that has been linked to thyroid problems. While none of the 196 samples—from 63 supermarket products and 10 fast-food items—exceeded the U.S. Environmental Protection Agency’s official reference dose, the publication noted that eating more than a few servings of the foods per day could exceed the limit. *Consumer Reports* reportedly found the highest individual perchlorate levels in fast foods and produce items and the highest average levels in baby and children's foods.

USDA Releases NOSB 2025 Sunset Review Results

The U.S. Department of Agriculture (USDA) has [released](#) the results of the National Organic Standards Board's (NOSB's) review of substances on the National List of Allowed and Prohibited Substances. All of the 47 substances up for renewal on the list will remain until at least 2030, with one receiving a slightly shorter renewal period to bring its renewal schedule in line with the sunset dates of the other substances on the list. The renewed synthetic substances allowable in organic crop production include ethanol, isopropanol, recycled paper without glossy or colored inks, elemental sulfur and hydrated lime.

LITIGATION

Jury Awards \$495M in Abbott Baby Formula Bellwether Trial

A jury has [reportedly](#) awarded a plaintiff \$95 million in compensatory damages and \$400 million in punitive damages in her lawsuit alleging Abbott Laboratories' baby formula injured her premature infant. *Gill v. Abbott Labs.*, No. 2322-CC01251 (22nd Cir. Ct., decided July 26, 2024). According to *Law360*, the



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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.



plaintiff alleged that her child developed necrotizing enterocolitis after consuming Similac Special Care 24, which is often used in neonatal intensive care units. The plaintiff alleged her child had 75% of her intestine removed, must use a wheelchair, has brain damage and will need care for the rest of her life, *Law360* reported.

Federal Circuit Reverses TTAB ‘Cognac’ Mark Ruling

A federal appeals court has sided with two entities that own the trademark “cognac” in a dispute regarding a hip-hop label’s request to trademark its name, vacating a lower court ruling for the label and remanding for additional proceedings. *Bureau Nat’l Interprofessionnel Du Cognac v. Cologne & Cognac Enter.*, No. 23-1100 (Fed. Cir., entered August 6, 2024). When Cologne & Cognac Entertainment filed a trademark application for its name and a corresponding design mark, the holders of the certification mark “cognac,” the Bureau National Interprofessionnel du Cognac, a union of growers, producers and merchants of cognac spirits, and Institut National des Appellations d’Origine, a French administrative agency, opposed the application. The U.S. Patent and Trademark Office (USPTO) Trademark Trial and Appeal Board (TTAB) dismissed their opposition, finding that if the mark was used for hip-hop music and production services, it was not likely to cause confusion or dilute the “cognac” certification mark.

On appeal, the opponents argued in part that TTAB applied the incorrect legal standard for fame and that its finding that the “cognac” mark is not famous was not supported by substantial evidence. The Federal Circuit agreed, writing in the opinion that TTAB seems to have required “cognac” to be famous for its certification status rather than its geographic significance or other indicators. “We find that to be error,” the court held. “A certification mark may be famous for ‘regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person’s goods or services or that the

work or labor on the goods or services was performed by members of a union or other organization,' ... but it need not be famous for all of its indications, and it need not be famous for its certification function.”

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