

Consumed Food Regulation Updates

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Dealmaking in the Food Industry: Navigating State and Federal Food Regulations

Executive Summary

- **What's new:** Recent state legislation and federal demands are introducing stricter requirements for removal of food additives, increased ingredient disclosures and bans on ultraprocessed foods, creating a complex and evolving regulatory landscape for food industry M&A transactions.
- **Why it matters:** These changes increase legal and financial risks for food manufacturers and retailers, especially those considering M&A activity, as they must navigate a patchwork of state and federal requirements and heightened litigation exposure.
- **What to do next:** If planning an M&A transaction in this environment, companies can conduct thorough due diligence on regulatory compliance, review supplier and customer agreements for indemnity risks, and ensure robust quality control and supply chain management to mitigate potential liabilities.

In the current regulatory environment, both buyers and sellers of companies within the food industry face significant challenges navigating regulatory requirements. In this article, we discuss how to assess and quantify related business challenges for a transaction where the buyer or seller is subject to a patchwork — and often times inconsistent — set of state and federal food safety regulations.

In our experience, adequately understanding the potential risks may require additional effort and diligence. However, we believe with the appropriate guidance, a successful transaction can still be consummated.

State Food Laws and Federal Actions on Food Additives

California's Real Food, Healthy Kids Act (AB 1264) serves as a prime example of a recently passed law that introduces uncertainty into the dealmaking process. The law assumes the herculean task of defining ultraprocessed foods.

In developing the definition of ultraprocessed foods, the law takes into account multiple factors, including:

- Credible scientific evidence linking specific ingredients or processing methods to adverse health outcomes.
- Whether a product is engineered for hyperpalatability or overconsumption.
- Whether a product contains high levels of saturated fat, sodium, added sugars or nonsugar sweeteners, as well as industrial additives such as colors, flavorings or emulsifiers not commonly found in home kitchens.

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The law also mandates that any food companies supplying foods to the California public school system must remove ultraprocessed foods if such companies desire to remain in the school lunch program. California is aiming to establish a science-based framework that distinguishes foods according to their degree of processing and potential health risks, rather than by nutrient content alone.

This is not the first time that California has passed legislation to remove or address food additives in advance of the Food and Drug Administration (FDA). Other examples of California's food regulatory efforts include requiring that:

- Brominated vegetable oil, potassium bromate, propylparaben and Red Dye No. 3 be removed from all foods (effective 2027).
- Six synthetic food dyes be removed from school meals (effective at the end of 2027).

California has also introduced testing and transparency requirements for heavy metals in baby food.

The state's laws often act as de facto national bans, influencing national practices for food companies, because for many companies, the cost of having separate formulations for California would be too high and impractical.

The current regulatory landscape is further complicated by the fact that many other states have or proposed laws restricting synthetic food dyes and additives in school meals or foods sold at retail. Food manufacturers must navigate this patchwork of state laws while also complying with federal requirements.

- **Utah** prohibits the sale of any foods in schools that contain a broad list of dyes and additives, bromates and parabens.
- **West Virginia** classifies foods with certain synthetic dyes and preservatives as "adulterated," banning their use in school lunch programs with immediate effect and imposing a statewide ban effective in 2028.
- **Arizona** has also moved to ban ultraprocessed foods (defined by a list of ingredients) from school lunches beginning in 2026-27.
- **Texas, Louisiana, Tennessee and Delaware** have introduced or passed bills limiting additives in school food or requiring warnings.
- More broadly, **over 20 states** have introduced nearly 40 unique bills targeting dyes or additives.

Additionally, **FDA has issued a voluntary mandate to companies to remove petroleum-based dyes from their products** within the next two years, leading to a wave of commitments from major manufacturers and retailers. However, because FDA is asking for voluntary compliance, there is no uniform approach or set of deadlines.

Food Label Disclosures

Beyond additive bans, some states are also requiring new disclosure obligations on food labels. For example, **a 2025 Texas law mandates on-pack warning labels** for products containing any of 44 specified food dyes or additives, flagging that those ingredients are not recommended for human consumption in certain countries.

Likewise, **Louisiana enacted a law in 2025 requiring QR codes on packaging** that link to ingredient disclosures and FDA resources. These laws represent a shift from merely banning ingredients in certain settings (like schools) toward compelling manufacturers to disclose potentially harmful substances at retail.

Some food suppliers to major retailers may find themselves navigating a rolling set of compliance dates and commitments based on different retailers' requirements. The unpredictable nature of these commitments introduces a higher level of risk for the larger ecosystem of companies in the food supply chain.

Considerations for M&A

To minimize potential liability in the context of an M&A transaction, **buyers must first understand the indemnification provisions** in any supplier agreements or similar contracts, especially those with customers such as retailers. If a manufacturer is indemnifying its customers, especially for losses in connection with a failure to meet regulatory requirements, such indemnities can lead to significant exposure.

In addition, many food manufacturers take on all responsibility for the costs of recalls or product removals. For example, in *Pacific International Vegetable Marketing, Inc. v. Wendy's International, LLC*, 2:23-cv-03894 (S.D. Ohio Nov. 21, 2023), the lettuce supplier sued the retailer to get out of indemnifying them against an E. coli outbreak suspected to be from romaine lettuce.

This case is an example of the type of dispute that can arise between a supplier and a retailer when indemnification is expected for all failures to meet regulatory requirements. In a world of ever-changing regulations, the costs associated with removing products from the market may rise due to increased frequency of recalls.

Second, buyers must assess potential activity from the plaintiffs' bar, which has been spurred by state laws enabling a basis for economic-based damages. While these types of lawsuits used to be rare, we now regularly see the plaintiffs' bar seeking a refund and damages on behalf of consumers who, had they known it was allegedly noncompliant with state regulation, may not have purchased the product.

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Some state laws also include a private right of action that is triggered by an alleged violation of federal law, such as an FDA warning letter, or state law, such as a determination that a product does not meet state health standards.

California's most recent law directly ties ultraprocessed food to adverse health consequences, a conclusion that will, no doubt, embolden its already active plaintiffs' bar. FDA has also made public statements linking petroleum-based food dyes to a long list of negative health effects.

We have already seen significant litigation around heavy metals in baby food, food additives and labeling claims.

Finally, buyers must also evaluate and fully understand the supply chain in question, including whether suppliers can obtain sufficient quantities of the ingredients needed to replace ultraprocessed ingredients in food. Food industry trade associations have indicated that natural dyes can be difficult to source and can change the taste and allergen profile of foods. Reformulating food products quickly and without ultraprocessed ingredients is often challenging, given that those processed ingredients are typically what makes food taste good.

If a customer has made voluntary commitments to remove food dyes, it's critical to understand whether suppliers can meet those commitments. And, if the supplier can't, what may happen? For example, could the supplier be in breach of its supply agreements? If a manufacturer cannot support meeting its customer's voluntary commitments, it may lead, at worst, to a lawsuit or, at the very least, to a significant loss of revenue.

Conversely, on the sell-side where the target is a food manufacturer, the manufacturer should be prepared to answer myriad questions about its supply chain. Manufacturers should consider taking due diligence steps that include:

- Reviewing internal and external audits to identify weaknesses.
- Ensuring a robust quality control system (including standard operating procedures) is in place.
- Following up on execution of any corrective or preventive actions.
- Ensuring that facilities are not currently cited by a regulator for deficiencies.

Internal organization can also be helpful in securing a deal. Presenting an organized leadership team, establishing clear internal reporting processes, setting very clear timelines and encouraging employees to identify risks goes a long way to assuring a buyer that regulatory issues will be timely addressed.

Getting ahead of the questions and being prepared with clear answers and airtight processes reduces legal risk and increases predictability for both buyers and sellers.

Final Thoughts

The key to navigating the federal versus state regulatory schemes is to clearly assess the long-term business plan and how the companies involved intend to work together to meet requirements or voluntary commitments. Buyers do not need to fear this patchwork regulatory framework so long as they are aware of it and seek out the appropriate advice and guidance.

An accurate and thoughtful analysis of how the regulatory environment impacts deals in this space may ultimately lead to better valuations and greater likelihood of completing the transaction.