

May 7, 2026

Meat and Poultry Industry Enforcement Outlook: Recalls, Investigations, and Regulatory Shifts

GIBSON DUNN

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INTRODUCTIONS

01

Our Speakers



Stuart F. Delery
Partner / Washington, D.C.

Stuart F. Delery is a partner in the Washington, D.C. office of Gibson Dunn, where he is a member of the firm's Litigation Department and Co-Chair of the Administrative Law and Regulatory Practice Group and the Crisis Management Practice Group. He is an experienced appellate and district court litigator who brings 30 years of experience at the highest levels of government and the private sector to help clients navigate major matters that present complex legal and reputational risks, particularly matters involving difficult statutory, regulatory and constitutional issues. His practice focuses on representing corporations and individuals in high-stake litigation and investigations that involve the federal government across the spectrum of regulatory litigation and enforcement.



Gustav W. Eyer
Partner / Washington, D.C.

Gustav W. Eyer is a partner in the Washington, D.C. office. He is Co-Chair of the firm's FDA and Health Care Practice Group and a member of the White Collar Defense and Privacy Practice Groups. An experienced litigator and a former Director of the U.S. Department of Justice's Consumer Protection Branch, he defends companies and individuals in government investigations and enforcement actions and counsels clients on the design and implementation of compliance programs.



Katlin McKelvie
Partner / Washington, D.C.

Katlin McKelvie is a partner in Gibson Dunn's Washington, D.C. office and a member of the firm's Food and Drug Administration (FDA) and Health Care Practice Group. With over two decades of experience in food and drug law, including as Deputy General Counsel of the Department of Health and Human Services (HHS), Katlin offers clients expansive knowledge of the complex legal and policy issues associated with FDA regulation of food, drugs, medical devices, and cosmetics. As Deputy General Counsel at HHS, Katlin was responsible for advising senior HHS officials on FDA-related regulatory, enforcement, and litigation matters.



Eric R. Womack
Of Counsel / Washington, D.C.

Eric R. Womack is of counsel in the Washington office of Gibson Dunn where he currently practices in the firm's Administrative Law and Regulatory Practice Group. Prior to joining Gibson Dunn, Eric served as Deputy General Counsel for the United States Department of Agriculture, where he oversaw litigation matters on behalf of the Department, and as associate counsel in the White House Counsel's Office. Eric also worked at the Federal Programs Branch of the Civil Division of the Department of Justice for over 18 years, where he litigated and supervised some of the most high-profile lawsuits brought against the federal government.

Our Expertise

- Team members have held **leadership positions in key government entities**, including:
 - U.S. Department of Agriculture (USDA)
 - Food and Drug Administration (FDA)
 - U.S. Department of Justice (DOJ), including Consumer Protection Branch, Criminal Fraud Section, and Federal Programs Branch
 - U.S. Department of Health and Human Services (HHS)
 - Federal Trade Commission (FTC)
 - White House Counsel's Office
 - Solicitor General's Office
- Our team **assists food industry clients across various contexts**:
 - Regulatory counseling
 - Recalls and investigations
 - Trade complaints
 - Internal audits and investigations
 - Regulatory support for transactional matters
 - Complex and high-stakes litigation, including antitrust
 - Public policy and Congressional oversight
 - Proactive agency engagement/coalition building

RECALLS AND OUTBREAKS

02

USDA vs. FDA: Jurisdiction

USDA

- Meat from cattle, sheep, pigs, and goats
- Poultry from certain domesticated birds, including chickens, turkeys, ducks, geese
- Meat and poultry broths
- Meat and poultry open-faced sandwiches, dinners containing a sandwich-type product (e.g., hamburgers, hotdogs)

FDA

- Meat and meat products from animals not primarily regulated by USDA, including bison, deer, elk
- Poultry and poultry products from birds not primarily regulated by USDA
- Less dilute meat and poultry broths
- Meat and poultry closed-face sandwiches

USDA vs. FDA: Recall Authority

USDA

- Federal Meat Inspection Act, Poultry Products Inspection Act, Egg Products Inspection Act
- Directive 8080.1
- Directive 8410.1
 - Public Health Alert
- Cooperation between USDA and FDA

FDA

- Recall v. removal or correction
- Voluntary v. mandatory
- FDA's recall regulations: 21 CFR Part 7
 - Class I: "Reasonable probability" of "serious adverse health consequences or death"
 - Class II: "May cause temporary or medically reversible adverse health consequences" or "probability of serious adverse health consequences is remote"
 - Class III: "not likely to cause adverse health consequences"

USDA: Recall Trends and Developments

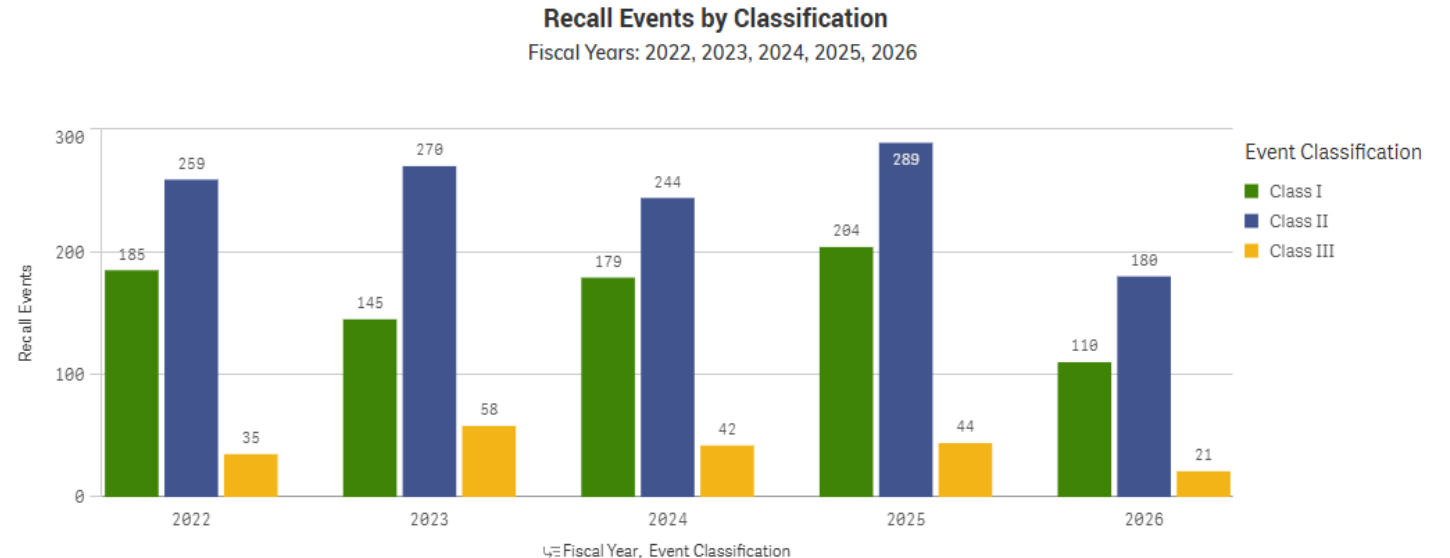
- Trump Administration and recalls
 - Dr. Mindy Brashears – Undersecretary for Food Safety
 - “Salmonella is still one of my primary priorities, if not the top one, as opposed to some of the regulatory agenda items we always have to stay on top of. Salmonella is very important. So, from one administration to the next, we will always focus on providing safe food for American families.” Food Safety News, April 26, 2026.
 - *FSIS Testing for Non-Listeria Monocytogenes Listeria Species* (Jan. 2026) (reissuing FSIS Notice 50-24)
 - Data bears out continued focus on food safety
 - 2024 – 34 recalls (32 Class I) (almost 20 million lbs)
 - 2025 – 42 recalls (38 Class I) (71 million lbs – largely driven by Hillshire recall)

USDA: Preventing Recalls at the Point of Processing

- USDA inspectors, as we know, are not a failsafe.
 - System built to work with industry to achieve compliance.
 - Voluntary not mandatory..
- Processing companies must therefore take independent steps to reduce the potential for outbreaks.
 - Noncompliance Reports
 - Directive 5000.1 (January 2025)
 - FSIS Notice 48-24 (January 2026), *Public Health Information System Physical Plant Modification Profile Questionnaire and Ready-To-Eat Questionnaire Task*
 - Boar's Head Report (January 2025)

FDA: Recall Trends and Developments

- FDA recalls of products containing meat and poultry
 - Of the ~8500 products recalled between FY 2021 and FY 2026, ~500 products contain meat or poultry
 - Products include: prepared sandwiches (e.g., turkey paninis), salads, meals (e.g., sausage, egg, & cheese muffin; chicken pot pie), meal kits (e.g., chicken taco kit), and soup (e.g., chicken bone broth)
 - Recalling entities include: grocery stores, food packagers, food distributors
 - Reasons for recall include: microbial contamination (e.g., listeria), undeclared allergens or other ingredients, presence of foreign material (e.g., packaging debris)
- FY 2026 on track to match number and class of recall events in recent years



FDA: Recall Trends and Developments

- Recall process modernization
- Focus on reach and clarity of recall communications
- Outreach to food industry on recall compliance

FDA Calls on Food Industry Leaders to Strengthen Recall Compliance and Ensure Recall Effectiveness

December 15, 2025

Dear Industry Leaders,

This letter is directed to manufacturers, packers, distributors, exporters, importers, and retailers involved in the manufacturing and distribution of human foods.

The U.S. Food and Drug Administration (FDA or we) is issuing this letter to remind industry of their legal responsibilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act) with respect to food recalls. This letter also outlines best practices for ensuring effective recall compliance across the food supply chain.

FDA Encourages Food Industry Leaders to Streamline, Enhance Product Recall Communications With Public and Agency

Stronger, More Transparent Notices Increase Public Safety

July 9, 2025

Dear Industry Leaders:

This letter is directed to manufacturers, packers, distributors, exporters, importers, and retailers involved in the manufacturing and distribution of infant formula, baby foods, and foods intended for children.

DOJ Enforcement: Continued Enforcement Activity

Federal consumer protection agencies **generally are less active** as resources are reduced and priorities shifted

Enforcement action has been **quick, aggressive, and process-loose** on products and services of concern to the Administration.

- Agencies are willing to **stretch legal authorities** to take regulatory and enforcement actions
- Embrace of **podium policymaking** to shift consumer and industry behavior; and
- Use of reports to **promote findings supportive of policy positions**

AND states and civil litigants are **seeking to fill regulatory and enforcement gaps** through new legislation and enforcement actions

Companies need to **stay informed** about enforcement risks and **prepared to respond** to these new enforcement dynamics

DOJ Enforcement: Responding to Enforcement Action

If an enforcement action develops, companies should coordinate a multi-faceted response:

- Have a **plan**
- Preserve **information**
- Manage internal and external **communications**
- Anticipate criminal, civil, and congressional **investigations** when engaging with a regulator
- Understand **securities obligations**
- Consider **potential self-disclosure benefits**; and
- Remember **FOIA** and **discovery disclosure risks**

REGULATORY SHIFTS

03

USDA: Recent Regulatory Developments Impacting Meat and Poultry Processing

FSIS Regulatory Actions

- Maximum Line Speed Rates for NSIS and NPIS establishments (NPRM)
 - Comment closed on April 20
- Revising Establishment Size Definitions (ANPRM)
 - Comment closes May 26
- USDA Reorganization
 - National Food Safety Center in Urbandale Iowa
 - FSIS staff will be in DC (1/3rd of staff), GA, IA, and CO

FDA: Key Human Foods Program Regulatory Priorities

2026 Human Foods Program Priority Deliverables

- Food Chemical Safety
- Reducing Chronic Disease Through Better Nutrition
- Microbiological Food Safety
 - Recall Process Modernization

CHALLENGING REGULATORY ACTIONS

04

Challenging Regulatory Actions

- **Regulated Entities** must comment on proposed agency actions in order to help shape the agency's decision and preserve their arguments for potential litigation. Those comments should consider including:
 - **Constitutional or statutory arguments**, depending on the agency at issue; and
 - **Challenges to rulemaking process**, including arbitrary-and-capricious challenges
- USDA and FDA continue to regulate, identifying numerous proposed rules on the Spring 2026 regulatory agenda for each agency.

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