

THE INSIDE SCOOP ON HOW CR IS WORKING BEHIND THE SCENES FOR A SAFE AND HEALTHY FOOD SYSTEM

Speed Bumps in the Industry's Campaign to Block State Food Laws.

The multi-million-dollar campaign recently launched by the food industry to block important state laws on food chemicals has encountered some turbulence shortly after its launch last month. First, Consumer Reports noticed that certain companies and organizations were added to the Americans for Ingredient Transparency website, only to be subsequently removed within a few days. These organizations are likely still supportive of blocking these state laws, but did not wish to be part of the campaign for myriad reasons. These could include concerns over lack of transparency and engagement on tactics, strategy, and messaging within the coalition, and/or refusal to make a financial contribution to the effort.

Consumer Reports learned that three main groups are acting as a steering committee for the campaign:

- American Beverage Association, representing soft drink makers
- Consumer Brands Association, representing the packaged food industry
- FMI - The Food Industry Association, representing grocery retailers

These trade associations reportedly paid up to \$1 million each to lead and fund the campaign. Other companies and organizations became members of the coalition by reportedly chipping in \$50k each.

Another speed bump the industry has encountered involves legislation they have been working on with Sen. Roger Marshall (KS) that would address pre- and post-market processes for food chemicals and additives. An original draft of the bill that was circulated for feedback included a provision that would block state food chemical laws. A bipartisan group of over 150 state legislators responded by [writing](#) a letter urging Sen. Marshall to safeguard the ability of states to protect consumers from toxic food chemicals. Additionally, Consumer Reports joined a coalition of over 80

advocacy and public health groups in [sending](#) a similar letter. In response to these letters and, according to Sen. Marshall, significant [pushback](#) from "MAHA Moms," the version of the bill that was ultimately introduced did not include the provision that blocks state food laws.

Does this mean the industry's campaign to block state food laws is over? Absolutely not. The industry may attempt to attach similar bill language in other legislative vehicles, including government funding bills and the farm bill.

What Went Wrong with the ByHeart Infant Formula Botulism Recall



- **Initially, ByHeart minimized the problem.** ByHeart tried to limit the scope of its recall by recalling just two [batches](#) of its formula. But as the botulism outbreak investigation continued, three days later the company was compelled to [announce](#) that it was recalling all of its products.

A few days after the recall announcement, ByHeart convened a meeting of consumer groups, which included CR, in which they repeated a claim in their initial recall announcement that the number of botulism cases being investigated by the FDA was 83, and that 13 cases (at the time) were linked to ByHeart. However, the actual number of cases linked to infant formula was 36, which meant there was a greater percentage of cases linked to ByHeart and

that the company, [according](#) to Sarah Sorcher of CSPI, was trying to "downplay the evidence against them." On Nov. 19, the FDA [announced](#) that 31 of the 36 cases being investigated had confirmed exposure to ByHeart products. By Dec. 1, the case count had [increased](#) to 37 cases in 17 states.

- **ByHeart and FDA provided questionable early advice.** ByHeart and the FDA told consumers to keep recalled products for 30 days and throw out the formula if symptoms had not developed. CR and other food safety experts say this is not a recommended practice and would strongly advise anyone with recalled products to discard them or return them to the store where they were purchased.
- **ByHeart initially limited refunds.** After the recall was announced, ByHeart only [offered](#) a refund for up to two containers of product. Because much of their business is subscription-based, which provides recurring deliveries with different quantity options, it meant some consumers could be out several hundred dollars. Also, social media was filled with complaints that ByHeart was making it difficult to obtain refunds by requiring parents to provide lot numbers from the cans. As of Nov. 24, ByHeart is [providing](#) a full refund for all products purchased on their website on or after Aug. 1, 2025. Consumers who bought ByHeart products at retail are encouraged to return them to the store where they were purchased for a refund.
- **Recalled products were slow to be removed from stores.** On Nov. 19, eleven days after the initial recall announcement, the FDA [stated](#) that it received reports that recalled formula was still being found on store shelves in multiple states. The following day, the FDA [named](#) some of the stores, including "multiple Walmart, Target, and Kroger locations, and at one or more Sprouts Organic Market, Safeway, Jewel-Osco, Shaw's, and Star Market locations." Despite this, there are some retailers in a recall like this that proactively pull products from shelves in anticipation of a recall being expanded, but it can vary by store.
- **There were previous problems at ByHeart plants.** As part of the [reporting](#) on the recall, it was discovered through [records](#) that an FDA inspection of one of ByHeart's manufacturing facilities resulted in citations for unsanitary conditions, pest control, and the potential for contamination of raw materials. The

FDA also sent the company a warning letter in 2023 outlining similar concerns after ByHeart recalled its formula for another contaminant, Cronobacter sakazakii, in 2022. Additional documents [released](#) by the FDA showed systemic contamination issues at other ByHeart plants as well.

Is the Recent Turmoil at the FDA Impacting the Food Program?

Fortunately, not really. Amid [reports](#) of [turmoil](#) within FDA's drug program, in which the top official was forced to resign because of accusations of using the position to retaliate against a former business partner, the management of the food program remains stable and consistent with previous years. Career food safety experts at the agency have told CR that their input and expertise receive appropriate consideration, and they give good leadership marks to the Deputy Commissioner for Human Foods, Kyle Diamantas. However, the food side is [struggling](#) to maintain the frequency of inspections and other regulatory functions after significant cuts in resources and staffing over the past year.

USDA Signals a Lack of Interest in Food Safety

On the day before Thanksgiving, USDA seemingly announced that it does not intend to do anything meaningful to combat Salmonella illnesses over the next few years. This intention was made evident in a [constituent update](#) announcing a delay in the implementation of the rule that would declare Salmonella an adulterant in not-ready-to-eat (NRTE) breaded stuffed chicken products. In terms of the complexities of food safety rules, this one is not just low-hanging fruit, it is fruit in a bowl ready to be consumed.

The stated reason for the delay was to hold a public meeting to gather additional input on the rule. Convening public meetings, in some cases, is a tactic used by agencies to delay a proposal or prevent it from moving forward. After the public meeting, the agency may spend several years "reviewing comments" which can be code for "we don't intend to act on this rule."