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A Ninth Circuit decision on bioengineered foods labeling, a state AG inquiry into grocery prices, an agreement in a New York "greenwashing" investigation, a lawsuit challenging the number of servings in a "Family Size" box, and more.

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LEGISLATION, REGULATIONS & STANDARDS

Senators Introduce Better Food Disclosure Act

U.S. Sens. Roger Marshall (R-Kan.), Rick Scott (R-Fla.) and Katie Britt (R-Ala.) have introduced legislation they assert would improve U.S. Food and Drug Administration (FDA) oversight of ingredient disclosures and reviews by requiring food companies to report their products' ingredients to the agency. The [Better Food Disclosure Act](#) (Better FDA), reportedly a response to state-led efforts, also purportedly seeks to strengthen FDA's post-market review process, allowing state government officials and members of the public to petition FDA to review an ingredient's safety, according to a [press release](#).

Connecticut AG Expands Grocery Pricing Inquiry

Connecticut Attorney General William Tong has sent a letter to five of the state's top food distributors in an expansion of the state's inquiry into grocery prices. According to a [press release](#), Tong launched the 2024 inquiry at the request of state legislators who sought to understand the root causes of grocery price spikes. Tong requests meetings with executives of major food distributors to discuss (i) factors that may be causing “persistently high food prices” and (ii) “shrinkflation.”

In a letter to lawmakers, Tong said the inquiry has not produced evidence of illegal pricing at the retail level, indicating instead that the evidence reviewed suggested the need to expand the inquiry up the supply chain to better understand pricing pressures and assess whether any entity in those roles may have unfairly profited.

“No one needs a report to see that grocery prices are way too high and that Connecticut families are getting squeezed,” Tong said. “Our inquiry has found no obvious evidence to date of price gouging by Connecticut retail grocers, only that they are likely getting squeezed by the same unsustainable market forces hurting consumers.”

Lawmakers Introduce No Tricks on Treats Act

U.S. Reps. Sara Jacobs (D-Cal.) and Anna Paulina Luna (R-Fla.) have introduced the [No Tricks on Treats Act](#), a bill that would require food companies to prominently state the inclusion of synthetic dyes or any nonnutritive sweeteners on the principal display panel of product packaging. If enacted, the bill would (i) amend the Federal Food, Drug, and Cosmetics Act to include foods containing synthetic or nonnutritive sweeteners as misbranded if not prominently labeled and (ii) empower the U.S. Food and Drug Administration to enforce the act through warning letters, import alerts, recalls, debarments, civil money penalties, injunctions and seizures.

LITIGATION

Ninth Circuit Invalidates ‘Highly Refined’ Exemption to GMO Disclosure Rule

The Ninth Circuit has overturned part of a U.S. Department of Agriculture (USDA) rule requiring the disclosure of bioengineered ingredients in food that excluded highly refined foods from the definition of “bioengineered foods.”

[Natural Grocers v. Rollins](#), No. 22-16770 (9th Cir., entered October 31, 2025).

The plaintiffs, a group of grocery retailers and public interest organizations, challenged federal regulations establishing a national uniform disclosure standard for the use of genetically modified ingredients in food. The standard requires that packaging for covered foods disclose, through several prescribed formats, that the food is “bioengineered” or contains a “bioengineered” ingredient.

The plaintiffs brought three claims under the Administrative Procedure Act. First, they asserted that the Agricultural Marketing Service (AMS) erred in excluding from the disclosure requirement any food made with genetically

modified ingredients that was subsequently subject to a high level of processing that rendered any genetically modified material “undetectable.” They also asserted that AMS should have required or allowed the mandated disclosures to be made using more familiar terms such as “genetically engineered,” “genetically modified organism” or “GMO” rather than “bioengineered.” Lastly, they challenged two provisions governing the optional use of QR codes or text messaging for the disclosure instead of more conventional on-package statements or symbols.

The district court rejected the first two claims but granted the plaintiffs summary judgment on the third claim. However, the court remanded the challenged provisions to AMS without vacating them. The Ninth Circuit panel unanimously held that the district court erred in rejecting the plaintiffs’ claim that AMS committed legal error by generally excluding highly refined foods from the definition of “bioengineered foods,” which generally describes the foods that are subject to the disclosure requirement. The panel remanded the case to AMS for further consideration and to the district court to address whether vacatur is needed. The court also concluded that the district court abused its discretion in declining to vacate the two disclosure-format provisions that it held were invalid. The panel directed the lower court to vacate those rules after receiving input from the parties as to the proper form of vacatur. The court affirmed, however, the lower court’s ruling as to the use of “bioengineered.”

Black Rifle Coffee Faces 'Made in USA' Labeling Suit

Plaintiffs have filed a proposed class action alleging Black Rifle Coffee Co.’s labeling misleads consumers into believing its products are made in the United States. *Bakker v. Black Rifle Coffee Co.*, No. 25-3193 (E.D. Cal., filed November 3, 2025). The plaintiffs argue that product labels featuring terms such as “America’s Coffee” and American flags implies to purchasers that the coffee is made in the United States, but, they allege, all of the coffee's products are grown or produced outside of the country. “By labeling their coffee as ‘America’s Coffee’ and prominently displaying the American flag on the front of the bags,

Defendants are misleading and deceiving consumers in California and New York into believing that Defendants sell American coffee when in fact they do not,” the plaintiffs allege.

JBS to Pay \$1.1M to Resolve New York AG Investigation

JBS USA Food Co. has agreed to pay \$1.1 million to support "climate-smart agriculture" as part of an agreement to resolve an Office of the New York State Attorney General (OAG) investigation into the company's statements about its commitment to reducing its carbon footprint. [*New York v. JBS USA Food Co.*](#), No. 450682/2024 (entered October 31, 2025). The New York attorney general's office sued JBS in February 2024, alleging the company's statements regarding its commitment to achieving net zero greenhouse gas emissions by 2040 were false and misleading. The complaint was later dismissed by a state court, but OAG conducted further investigation by issuing a subpoena in February 2025. In October, OAG filed an assurance of discontinuance setting forth the office's findings and the agreement's terms.

According to the filing, when it announced its “Net Zero by 2040” commitment, JBS had not developed a detailed plan setting forth steps to achieve net zero emissions nor assessed whether such a commitment was economically or technologically feasible by 2040. The company did not admit or deny OAG's findings. To resolve the investigation, JBS agreed to make a \$1.1 million payment to Cornell University's College of Agriculture and Life Sciences' New York Soil Health and Resiliency Program.

Fruity Pebbles ‘Family Size’ Box Contains Fewer Servings Than Represented, Lawsuit Claims

A New York plaintiff has filed a putative class action alleging Post Consumer Brands LLC misrepresents how many servings are in its "family size" boxes of

Fruity Pebbles. [*Sweeney v. Post Consumer Brands, LLC*](#), No. 25-9263 (S.D.N.Y., filed November 5, 2025). The plaintiff argues that while the back label states the product contains approximately 15 servings, independent testing commissioned by plaintiffs' counsel allegedly shows the representations are false and misleading because the products contain at most 12.2 servings, or 18.74% fewer servings than represented on the packaging. The complaint also challenges representations of calorie, sodium and total sugar content contained in each serving—testing also purportedly showed that each one-cup serving contained at least 27% more calories, sodium and total sugars than represented on the front label of the products.

Bimbo Bakeries Worker Alleges Violations of Pennsylvania Minimum Wage Act

A Pennsylvania man has brought a proposed class action against Bimbo Bakeries USA Inc. alleging violations of the Pennsylvania Minimum Wage Act (PMWA). [*Fenstermaker v. Bimbo Bakeries USA Inc.*](#), No. 25-27001 (Montgomery Cty. Ct. Common Pleas, filed November 3, 2025). The plaintiff alleges that Bimbo Bakeries violated the PMWA by failing to pay overtime wages for time associated with mandatory donning and doffing activities arising at the beginning and end of workdays at the defendant's location in Breinigsville, Pennsylvania.

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- Shook [Food and Beverage Practice](#) Co-Chair [Lindsey Heinz](#) was named to the 2025 edition of [Missouri & Kansas Super Lawyers](#).
- Partner [Stuart Risch](#), who served as the Judge Advocate General of the U.S. Army before joining Shook, traces his career path in the first installment of our [Life Before Law](#) video series.

- The previous issue of the **Food and Beverage Litigation and Regulatory Update** focused on the dismissal of a lawsuit challenging "climate neutral" labeling claims, a European ban on "meat" names for plant-based foods, a letter urging FDA to allow states authority to regulate food safety, and more.

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some of the world's largest food and beverage companies to establish preventative measures, conduct internal audits, develop public relations strategies, and advance tort reform initiatives.

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