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## FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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Updates on state and municipal food legislation, complaints targeting the use of cheaper oils in place of avocado oil, a dispute over bunny marshmallows, and more.

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LEGISLATION, REGULATIONS & STANDARDS

## **Alabama Rep. Proposes Bill Nullifying President's Beef Proclamation**

U.S. Rep. Shomari Figures (D-Ala.) has introduced the [Protecting American Beef Producers Act](#) (H.R. 10229) seeking to nullify the Trump Administration's August 26, 2026, [Presidential Proclamation 11059](#), which temporarily expands the amount of imported beef eligible for lower tariff rates. In a [news release](#), Figures said his bill would ensure any beef or beef product imported into the United States shall be subject to the full amount of all applicable tariffs, taxes and fees and prohibit the president or any other official from waiving, suspending or otherwise reducing any such tariff, duty or fee on beef or beef product imports unless Congress enacts a law or declares a state of emergency regarding domestic beef supply capabilities.

## **Texas Adopts State Dietary Guidelines**

The Texas Nutrition Advisory Committee (TNAC) has [published](#) the state's first nutritional guidelines. According to a news release from the Texas Department of State Health Services, the guidelines follow TNAC's creation in 2025 to review scientific findings on nutrition and ultraprocessed foods and provide recommendations on improving dietary nutrition. The guidelines include recommendations such as filling half of a plate with vegetables and fruit at every meal, eating three or more servings of healthy proteins daily and including healthy fats every day. “These new nutritional guidelines translate the science into practical steps Texans can use to support their health and well-being,” a spokesperson said.

## **New York City Council Approves Sodium, Sugar Warning Label Bills**

The New York City Council unanimously passed a [bill](#) requiring the city's Department of Health and Mental Hygiene (DOHMH) to mandate a high-sodium warning on menus, menu boards or display tags at designated food service establishments for any item containing 2,300 mg or more of sodium. The bill also creates civil penalties; the first violation will result in a warning, followed by a \$100 fine for a second violation and a \$200 fine for a third and subsequent violations.

The council also unanimously passed a companion bill amending the icon for added sugar warning labels and civil penalty amounts, requiring DOHMH to designate updated icons and warning statements for food items meeting or exceeding 100% of the U.S. Food and Drug Administration's daily value for added sugar. The bill also amends the existing civil penalty scheme. The bills were sent to the mayor's desk for approval on September 10, 2026.

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## AGENCY UPDATES

- "[United States Standards for Grades of Carcass Beef](#)," U.S. Department of Agriculture, September 8, 2026
- "[Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses](#)," U.S. Codex Office, Public Meeting to be held October 5, 2026
- "[Agricultural Diseases And Pests: Nationwide Assessment and Strategy Needed to Enhance the Climate Resilience of Farms and Forests](#)," U.S. Government Accountability Office, September 2, 2026

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## LITIGATION

## **Plaintiffs Cite Avocado Oil Study In Chips Putative Class Actions**

A [study](#) from the University of California, Davis purportedly finding that many avocado-oil products were adulterated with cheaper oils has prompted litigation against food manufacturers. The study, published in *Applied Food Research*, reportedly found that 48 of 54 products labeled as containing only avocado oil also contained cheaper oils. "Consumers are increasingly paying a premium for products made with avocado oil or olive oil," lead author Selina Wang said in an announcement. "They deserve to get what they pay for and food manufacturers deserve confidence that the ingredients they purchase from suppliers are authentic."

Putative class actions against PepsiCo and Utz cite the UC Davis Study. [Golden v. PepsiCo, Inc.](#), No. 26-7389 (S.D.N.Y., filed August 31, 2026); [Klappa-Cales v. Utz Brands, Inc.](#), No. 26-10514 (N.D. Ill., filed August 31, 2026). The plaintiffs in the Utz lawsuit assert that they relied on assurances on the Boulder Canyon potato chips product packaging that avocado oil was the only oil used to make the products. Plaintiffs make similar allegations in the PepsiCo case, alleging Siete Kettle Cooked Sea Salt Potato Chips, Siete Maíz Sea Salt Corn Tortilla Chips and Simply Tostitos Sea Salt & Avocado Oil Tortilla Chips are misleadingly labeled.

## **Advocacy Group Sues HHS, USDA over Dietary Guidelines**

The Physicians Committee for Responsible Medicine has filed an Administrative Procedure Act lawsuit alleging the U.S. Department of Health and Human Services (HHS) and U.S. Department of Agriculture (USDA) unlawfully disregarded Federal Advisory Committee Act (FACA) requirements in implementing new Dietary Guidelines. [Physicians Comm. for Responsible Med. v. HHS](#), No. 26-2911 (D.D.C., filed August 19, 2026).

The committee alleges that the agencies, without oversight or public input, “hastily assembled a handpicked panel of meat, dairy, and fad diet industry insiders” to attack the findings of the Dietary Guidelines Advisory Committee. “Although Defendants had previously vowed to ‘toss out the people who were writing the guidelines with conflicts of interest,’ Defendants assembled a Secret Panel that was rife with conflicts of interest, as demonstrated in the ‘Disclosure of Nutrition-Related Private Interests’ section of the Foundation for the Dietary Guidelines,” the committee asserts.

## **Bunny Marshmallow Trade Dress Dispute to Continue**

A New Jersey federal court has declined to dismiss Just Born Inc.'s lawsuit alleging Maillo Confections LLC infringed its trade dress rights in Peeps marshmallow candy's bunny shape. [\*Just Born Inc. v. Maillo Confections LLC\*](#), No. 26-4606 (D.N.J., entered August 27, 2026). Just Born alleged that Maillo Confections' Mallow Bunnies product and packaging too closely resembled its Peeps product, which "consists of a simplified rounded silhouette of a front-facing bunny with a face formed of three dots and a v-shaped pair of rounded ears centrally placed on the head" sold in "groups of four within a rectangular white paper tray wrapped in pastel-colored plastic packaging with a repeating bunny-shaped print and a transparent window on the right side or top."

The court held that Just Born had adequately pleaded trade dress infringement, finding that the question of whether the bunny shape is functional to the product design requires a fact-intensive inquiry not available for consideration at the motion-to-dismiss stage. In a separate order, however, the court declined to grant a motion for preliminary injunction, holding that Just Born failed to establish a likelihood of success on the merits of its claims.

## **Wild Planet Foods Targeted in Prop 65 Complaint**

A consumer has alleged that Wild Planet Foods Inc. sells food unfit for consumption because the amount of arsenic in its Wild Sardines is above the safe exposure level set in California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65). [\*Moore v. Wild Planet Foods Inc.\*](#), No. 26-8569 (N.D. Cal., filed August 18, 2026). The plaintiff asserts that he hired ConsumerLab to test the products and purportedly found 221 µg of arsenic per 85 g of sardines, exceeding Prop. 65's limit of 10 µg per day. "No reasonable consumer would expect that their sardines would pose a risk to health, safety, and well-being by containing arsenic linked to harmful health effects, especially any level of inorganic arsenic," the plaintiff alleges.

## More Food Companies Face Allulose-Related Claims

Following a July 27, 2026, ruling in the U.S. Court of Appeals for the Seventh Circuit in *Franco v. Chobani* holding that allulose qualifies as a “sugar” under food labeling regulations, more food companies are facing proposed class action litigation related to products that use “zero sugar” labeling but contain allulose.

- A California plaintiff has filed suit alleging WK Kellogg Co.'s zero-sugar representations on its Special K cereals are misleading to consumers. [\*Bender-Long v. WK Kellogg Co.\*](#), No. 26-9438 (C.D. Cal., filed August 24, 2026).
- Trader Joe's faces two proposed class actions in Illinois related to its Sweet & Sour Gummy Worms and dark chocolate chips. [\*Parker v. Trader Joe's Co.\*](#), No. 26-11360 (N.D. Ill., filed September 16, 2026); [\*Alexander v. Trader Joe's Co.\*](#), No. 26-11329 (N.D. Ill., filed September 16, 2026).
- Magic Spoon faces a proposed class action in Illinois for its Magic Spoon Protein Cereal. [\*Royal v. Magic Spoon Inc.\*](#), No. 26-10993 (N.D. Ill., filed September 10, 2026).

## Plaintiffs Allege Qdoba Jalapeños Caused Illness

Two Qdoba customers have filed a lawsuit alleging that they became ill after consuming contaminated jalapeños used in Qdoba products. [\*Trujillo v. Qdoba Rest. Corp.\*](#), No. 26-5137 (S.D. California, filed September 10, 2026). The lawsuit follows August 2026 warnings from the U.S. Centers for Disease Control and Prevention and U.S. Food and Drug Administration about a multistate outbreak of *Salmonella Javiana* infections linked to jalapeño peppers from Sinaloa, Mexico. Both plaintiffs allegedly experienced diarrhea, with one also experiencing nausea and abdominal pain, after consuming Qdoba's food. They allege that had they known the products contained contaminated produce, they would not have bought food from the restaurant.

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## More to Explore

- Associate [\*\*Nisha Albert\*\*](#) detailed Alaska's hazardous waste program in an issue of the [\*\*\*Environmental Client Alert\*\*\*](#) and an episode of [\*\*\*For That Matter\*\*\*](#).
- Shook has welcomed our [\*\*largest class of fall associates to date\*\*](#) in 12 of the firm's offices.
- The previous issue of the [\*\*\*Food and Beverage Litigation and Regulatory Update\*\*\*](#) focused on lawsuits challenging "zero sugar" representations of products with allulose, "greenwashing" allegations about seafood products, a price-fixing complaint against refined sugar producers, and more.

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As the food and beverage industries become more complex, they require effective legal representation that can quickly evaluate potential liability and craft the most appropriate responses to suspected product adulteration, alleged foodborne outbreaks or environmental contamination claims. For decades, manufacturers, distributors and retailers at every link in the food chain have come to Shook, Hardy & Bacon to partner with a legal team that understands the issues they face in today's evolving food production industry. Shook attorneys work with 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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