



Texas Issues Final Rule on SB 25 Ingredient Warning Labeling Law

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The Texas Department of State Health Services (DSHS) recently released its final rule implementing Texas SB 25,¹ which requires foods containing any of 44 specified ingredients to display the following warning label: **“WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom.”**² The warning requirement applies to food product labels developed or copyrighted on or after January 1, 2027. However, in *American Beverage Association et al. v. Paxton*³, a federal district court in the Western District of Texas recently granted a preliminary injunction temporarily halting enforcement of the warning requirement against Plaintiff food and beverage trade associations and their members while the lawsuit is ongoing.

Notably, the final rule removed the federal preemption section included in the proposed rule, and instead simply refers to the statutory preemption provision. DSHS states in the preamble:

DSHS has also determined ingredients considered generally recognized as safe or determined to be safe by the FDA or USDA are not subject to the rule requirements.

Considering that most of the ingredients listed in SB 25 are approved color additives, approved food additives, the subject of a generally recognized as safe (GRAS) regulation, or have been banned/ are not authorized for use in foods and therefore would not be used, this is a significant development that could largely nullify the effect of the law by limiting the warning requirements to those listed ingredients that have not been authorized for use by the U.S. Food and Drug Administration (FDA).

DSHS also explains that the date the label is developed or copyrighted refers to the date the label is “created,” without elaborating on the meaning of “created.” The final rule otherwise largely adopts the provisions in the proposed rule.⁴ more details follow.

¹ 51 Tex. Reg. 1156 (Feb. 20, 2026) available at <https://www.sos.state.tx.us/texreg/pdf/backview/0220/0220is.pdf>.

² See HL Update, *Texas and Louisiana Enact Laws Requiring Warning Labels and QR Code Notices for Food Ingredients* (June 30, 2025), available at <https://www.hoganlovells.com/en/publications/texas-and-louisiana-enact-laws-requiring-warning-labels-and-qr-code-notices-for-food-ingredients>.

³ No. 6:25-cv-00566 (W.D. Tex. Feb. 11, 2026). See also HL Update, *Court temporarily blocks enforcement of Texas SB 25’s warning label requirement* (Feb. 16, 2026), available at <https://www.hoganlovells.com/en/publications/court-temporarily-blocks-enforcement-of-texas-sb-25s-warning-label-requirement>.

⁴ See HL Update, *Texas Issues Proposed Rule on SB25 Ingredient Warning Labeling Law* (Oct. 3, 2025), available at <https://www.hoganlovells.com/en/publications/texas-issues-proposed-rule-on-sb25-ingredient-warning-labeling-law>.

Background: Texas SB 25 Statutory Requirements

Texas SB 25, enacted in June 2025, imposes a warning requirement for a list of 44 ingredients including certain color additives (e.g., Blue 1 & 2, Green 3, Red 3, 4, & 40, Yellow 5 & 6, titanium dioxide), certain preservatives (e.g., BHA, propylparaben), certain emulsifiers (e.g., DATEM), lye, and bleached flour, among others. The warning requirement applies to food product labels “developed or copyrighted” on or after January 1, 2027.

Texas SB 25 also includes a preemption clause, Section 431.0817, which states,

On and after September 1, 2025, and the effective date of a federal law or regulation issued by the United States Food and Drug Administration or the United States Department of Agriculture, Section 431.0815 has no effect if:

(1) for a specific ingredient, including a food additive and color additive, listed under Section 431.0815(a), the law or regulation:

(A) prohibits the use of the ingredient;

(B) imposes conditions on the use of the ingredient, including a condition requiring a warning or disclosure statement; or

(C) determines an ingredient or class of ingredients is safe for human consumption;
or

(2) the law or regulation requires a labeling statement relating to ultra-processed or processed foods.

A key issue is whether the federal preemption clause is limited to regulations issued by FDA or the U.S. Department of Agriculture (USDA) with effective dates after September 1, 2025, or whether it applies to federal laws and regulations currently in effect on that date. DSHS did not explicitly address this issue in the preamble but, as discussed below, issued a number of preamble statements indicating that DSHS’s position is that federal preemption applies if FDA or USDA had a regulation in effect prior to September 1, 2025 that falls within the scope of 431.0817.

In February, a federal district court in the Western District of Texas granted a preliminary injunction temporarily halting enforcement of the warning requirement, finding that the Plaintiff food and beverage trade associations were substantially likely to succeed on the merits of their claim that the requirement violates the First Amendment by unconstitutionally compelling speech. Texas cannot enforce the warning label requirement against the Plaintiff associations and their members while the lawsuit is ongoing.

Key Provisions in the Final Rule

Federal Preemption

In the final rule, DSHS has removed the federal preemption provision that was included in the proposed rule and instead refers to the statutory preemption provision.⁵ Several commenters asked DSHS to revise the preemption language so that it was consistent with the statute. The agency responded by saying it was “unnecessary” to include preemption language in the regulations, and that it was therefore removing the language. One comment specifically asked DSHS to include the

⁵ See Tex. Health & Safety Code § 431.0817.

September 1, 2025 date in the final regulation stating, “the intent of that portion of the bill, as reflected in the bill’s language, is for only those federal laws and regulations enacted or issued after September 1, 2025, to be preemptive.” DSHS did not expressly address whether section 431.0817 applies to federal regulations in effect prior to September 1, 2025 and merely responded that it “has agreed to remove federal preemption from the adopted version of the rule.” Other comments issued in the preamble, however, suggest DSHS is interpreting the federal preemption provision as applying to federal regulations in effect prior to and after September 1, 2025.

- In response to a comment about whether the rule would apply to ingredients that are the subject of FDA regulations and have been determined to be safe for people to eat, DSHS responded, it has “determined ingredients considered generally recognized as safe or determined to be safe by FDA or USDA are not subject to the rule requirements.”
- As an example, DSHS states that it has “determined bleaching ingredients when used in accordance with existing federal regulations and that are considered generally recognized as safe or determined to be safe by the FDA or [USDA] are not subject to the rule requirements.”
- DSHS agreed federal regulations preempt medical foods and foods for special dietary uses, regulations in effect prior to September 1, 2025, and “an exemption is not needed since it is out of the scope of the rule.”

DSHS appears to be taking the position, therefore, that the statutory preemption provision applies to existing FDA regulations, rather than only applying to new ones with effective dates on or after September 1, 2025, the effective date of SB 25.

The DSHS preamble statements are significant because most of the ingredients listed under SB 25 are authorized by FDA as color additives, food additives, or in GRAS regulations, meaning they have been determined to be safe by FDA and would not be subject to the warning requirement under the DSHS statements. A number of ingredients on the list are not authorized or are banned in the U.S., including Dimethylamylamine (DMAA), Red No. 3 (as of January 15, 2027), Red No. 4, synthetic trans fatty acids, and partially hydrogenated oils (PHOs). But for these ingredients, the warning statement is already moot because they will not be used in food products.

Separately, we note that DSHS declined a commentor’s request to alter the list to remove ingredients deemed safe for use in foods by FDA (e.g. acetylated esters of mono- and diglycerides (acetic acid ester) and diacetyl tartaric and fatty acid esters of mono- and diglycerides (DATEM)) because the list was enacted by the Texas legislature and therefore cannot be modified by regulation. However, it would appear the agency’s position, as explained above, is that although these ingredients are listed under SB 25 and cannot be removed from the list, the warning statement would not apply to them because they are the subject of an FDA food additive and GRAS regulation, respectively.⁶ Additional dialogue with DSHS would seem prudent to seek clarification on this and other positions taken in the preamble with regard to the scope of federal preemption.

Compliance Date

DSHS explains in the preamble that it interprets the compliance date, which applies to food labels “developed or copyrighted on or after January 1, 2027,” within the meaning of The Copyright Act, which defines “developed” or “copyrighted” as the date the label was created. DSHS does not elaborate on what it means to “create” a label (e.g., finalize graphics, print the label, etc.). As a reminder, in the preamble to the proposed rule, DSHS explained that “costs to businesses will only occur if labels are developed or copyrighted on or after January 1, 2027” and that “if labels are never changed, businesses are not required to comply.”⁷

⁶ See 21 C.F.R. §§ 172.828; 184.1101.

⁷ 50 Tex. Reg. 6302 (Sept. 26, 2025).

With respect to a sell-through period, the preamble states that products with labels developed before January 1, 2027 with shelf lives that extend past the compliance date may remain on retail shelves and that no “sell-through timeline” or “grace period” is needed for such products because it is only a change in labels developed after the compliance date for foods containing the covered ingredients that triggers the warning requirement. DSHS declined a commentor’s request to allow minor changes to food product labels on or after January 1, 2027, without triggering the warning label requirement, stating that doing so would be inconsistent with The Copyright Act’s definition of “developed or copyrighted.” Instead, any change to a food product label made on or after the compliance date, including “minor or minimal changes,” would trigger the warning requirement.

Enforcement

DSHS adopted, without amending, the enforcement provision included in the proposed rule.⁸ Texas SB 25 expressly states that a violation of the warning label requirements does not create a private right of action and grants the Texas Attorney General the authority to bring an action to enjoin the manufacturer from violating the statute, pursue civil penalties, and pursue reimbursement for costs of investigating a violation of the statute.⁹ In addition to these statutory penalties, the final rule’s enforcement provision states that existing law allows for two other enforcement tools for violations of SB 25: (1) criminal penalties for engaging in prohibited acts, found in Texas Health and Safety Code Section 431.059; and (2) DSHS’s existing authorities to impose administrative penalties, including emergency orders, found in Texas Health and Safety Code Sections 431.045, 431.055-58, and 229.261.

Other Key Clarifications

Other key clarifications in the preamble to the final rule include confirming that:

- “Food distributors” or “food wholesalers,” as defined in DSHS rules, that are not engaged in manufacturing activities or retail sales are exempt from the warning;
- Food made in-store at a retail food establishment is exempt from the warning label requirements; and
- DSHS does not intend to hold manufacturers or retailers accountable for websites they do not control.

Additionally, in response to a commentor’s request for clarification as to whether a website must be updated when the digital shelf is copyrighted or when the label is copyrighted, DSHS explains in the preamble that it has determined that Texas SB 25 does not address digital shelf copyright. The agency clarified that the warning requirements are applicable to the food product labels developed or copyrighted on or after the compliance date and that the final rules’ website disclosure requirements are applicable to food product labels that are subject to the rule.

Finally, DSHS amended one of the three options for food manufacturers and retailers that sell products with covered ingredients via the internet to comply with the warning label requirement. In the proposed rules, one of those three options was to post a picture of the “entire food product label, including the warning label on the website.” In the final rule, DSHS revised this option to read that the manufacturer only needs to “post[] pictures of the food product label in which the warning label appears on the website” – which we read to mean that the entire label need not be reproduced but only the panel bearing the warning statement.

Next Steps

Companies should review the safety status of SB 25-listed ingredients in their products to assess whether FDA has authorized the use of the ingredient and continue to monitor the ongoing litigation.

⁸ See 25 Tex. Admin Code § 229.1005.

⁹ Tex. Health & Safety Code §§ 431.0815(e); 431.0816.

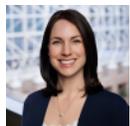
Note that Texas cannot enforce the warning label requirement against Plaintiff associations and their members in *American Beverage Association v. Paxton* while that lawsuit is ongoing.

We will continue to monitor regulatory and legislative developments on food ingredients and color additives. Please contact us if you have any questions.

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