

# An Update on Warnings on Texas Food Labels: Administrative Rule Finalized Amid Ongoing Litigation and Injunction

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**PRACTICES** FDA Regulatory and Compliance, Food, Beverage and Restaurant

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On February 20, 2026, the Texas Department of State Health Services (DSHS), finalized rules (the Rule) for implementation of the Texas law that requires the following warning label on food products containing any of 44 listed ingredients (SB 25 or the Act):

“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.”

DSHS first proposed a version of these rules in September ahead of the Act’s December 2025 deadline for these rules to be adopted (see our [summary of SB 25 on HB At The Counter](#)).

The Rule was finalized just nine days after the U.S. District Court for the Western District of Texas granted a preliminary injunction preventing the Texas Attorney General from enforcing SB 25 against the Plaintiff organizations and their members while the lawsuit regarding the constitutionality of the Act continues (see our [earlier update on the injunction on HB At The Counter](#)).

## **What did DSHS clarify with this final Rule or in its responses to comments on the proposed rule?**

### *Product Label Development or Copyright Date*

Several comments requested clarity on the compliance deadline stated in both SB 25 and the proposed rule—the warning label requirement only applies to food “labels developed or copyrighted on or after January 1, 2027.” DSHS declined to revise this language or define “developed” or “copyrighted,” instead referencing The Copyright Act, which “refers to the date the label was created.” However, DSHS expressly agreed with a commentor’s interpretation of this language “that **any change to an existing label after January 1, 2027, would be considered a ‘label developed,’ thereby triggering the new warning label requirements.**”

### *Federal Preemption*

DSHS declined to settle the debate over how to interpret the preemption provision in SB 25 and instead removed the section from the Rule with the intention of simply referring to this language in the Act when needed. This preemption language is argued to be unclear about whether federal laws and FDA/USDA regulations that were already in effect before September 1, 2025 have preemptive power, or if only laws and regulations adopted after that date can preempt this warning label requirement. Despite DSHS’s reluctance to directly address this confusion, its commentary about substances that are not covered by the rule effectively clarifies DSHS’s position (more below).

## *Ingredients That Are Not Subject to the Rule*

Although DSHS did not revise the list of substances or provide clearer preemption language, it stated that “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 [R]ule requirements.**” In response to a comment specifically asking about bleached flour and bleaching agents, DSHS said 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 the [USDA] are not subject to the [R]ule requirements.” This means that federal laws and FDA/USDA regulations that were already in effect before September 1, 2025 do have preemptive power as far as DSHS is concerned.

However, DSHS also stated that it “considers **all certified colors**, including the certified colors listed separately in the list of ingredients, **subject to the warning label requirements.** Colors that are exempt from certification are not subject to the warning label requirements unless the ingredient is explicitly listed in the statute.”

Assuming DSHS will stay true to this position when it comes time to enforce the Rule, this could significantly reduce the practical impact of the Rule, since most of the 44 ingredients are GRAS, determined safe by FDA/USDA, or prohibited for use in food and irrelevant. **However, it is important to note that SB 25 gives enforcement power directly to the attorney general, who may not be bound by DSHS’s interpretation.** Possible penalties under the Act, as enforced by the attorney general, include injunctive relief and civil penalties up to \$50,000 per day per product, as well as reimbursement for the state’s enforcement costs.

## **What is going on with the lawsuit?**

In early December 2025, The American Beverage Association, Consumer Brands Association, National Confectioners Association, and FMI The Food Industry Association together sued Texas Attorney General Ken Paxton, alleging that SB 25 is an unconstitutional infringement on free speech and is preempted. On February 11, 2026, the U.S. District Court for the Western District of Texas granted the plaintiffs’ motion for a preliminary injunction, meaning the attorney general cannot enforce the warning label requirement against Plaintiffs or their members as long as the lawsuit is ongoing. The first step of analysis for whether to grant a preliminary injunction is whether the court believes the plaintiff is likely to ultimately win the lawsuit. The court decided the plaintiffs were likely to prevail and provided a few key points of analysis.

- The warning label required by SB 25 is a content-based regulation because it compels government scripted speech, which means it is subject to the highest level of judicial review, known as strict scrutiny. The court found that Paxton did not provide an argument for why the law withstands strict scrutiny, and therefore it necessarily fails.
- Even if the applicable standard of review is, as Paxton argues, intermediate scrutiny, SB 25 still fails the constitutionality test. The court was not convinced by Paxton’s argument that this law directly advances the State’s legitimate interest in promoting health and wellness, nor was it convinced that the law was appropriately narrowly tailored (i.e., only infringing on First Amendment rights as much as necessary to achieve a legitimate goal).
- The court was not convinced by the plaintiffs’ arguments that the federal preemption language of SB 25 is unconstitutionally vague, that SB 25 is preempted by the FDCA’s prohibition on false or misleading labels, or that it is preempted by the Nutrition Labeling and Education Act. However, the court also noted that it was not deciding whether the warning is false or misleading at this stage.

On March 5, 2026, Paxton filed an appeal of this injunction with the Fifth Circuit, which we will be watching closely to see if the Fifth Circuit agrees or disagrees with any of the points above.

## **Back to the final Rule, did DSHS change or clarify anything else?**

### *Digital Product Listings*

- Food manufacturers and retailers selling products online can still satisfy the warning requirements by posting a photo of the food label as described at 229.1004(b), but now the requirement can be satisfied with only a photo of the panel containing the warning label rather than the entire label.
- DSHS stated that “posting information through a link, pop-up window or secondary tab with a clear label like ‘nutrition and ingredients’” would be one of the “other ways” to provide information to the consumer and satisfy the warning label requirement in compliance with 229.1004(c).
- “DSHS has determined that the statute does not address digital shelf copyright,” meaning that digital disclosures are only required for “food product labels that are subject to the [R]ule.”
- “DSHS does not intend to hold manufacturers or retailers accountable for websites that they do not control.”

### *Parties Subject to the Rule*

- “To the extent the brand owner or private label brand lists their name and address on the food product label, they bear responsibility for the purity and proper labeling of the food,” and this is included in the Rule’s definition of “manufacturer.”
- “[F]ood distributors’ or ‘food wholesalers’ as defined in other department rules that are not engaged in manufacturing activities or retail sales are ... exempt from the requirements of the [R]ule.”

### *Products That Are Not Subject to the Rule*

- “DSHS agrees federal regulations preempt requirements from the [R]ule” for certain products that are “out of the scope of the [R]ule[,]” such as medical food, foods for special dietary use and infant formula.
- “DSHS agrees food made in store at a retail food establishment is exempt from the warning label requirements.”
- “DSHS agrees” that “food prepared for immediate consumption by restaurants, including food served on-site, packaged for takeout or prepared for catering” are “restaurant activities and exempt from the requirements of the [R]ule.”

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[1] Prepared by Suzie Trigg, Kristi Weisner, and Carleigh Lenz as of March 6, 2026, based on the February 20, 2026, issue of the Texas Register and to the Final Rule of Title 25, Part 1, Sections 229.1001 through 229.1005 of the Texas Administrative Code, as amended. Please refer to the text of the Final Rule (available at <https://www.sos.state.tx.us/texreg/pdf/backview/0220/0220adop.pdf#page=114>) and to amended Sections 229.1001 through 229.1005 of the Texas Administrative Code (available at [https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=229&interface=VIEW\\_TAC&part=1&title=25](https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=229&interface=VIEW_TAC&part=1&title=25)).