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## FOOD AND BEVERAGE LITIGATION AND REGULATORY UPDATE

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### LEGISLATION, REGULATIONS & STANDARDS

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#### FDA Releases Guidance for Voluntary Qualified Importer Program

The U.S. Food and Drug Administration (FDA) has released [guidance](#) with revisions to the Food Safety Modernization Act Voluntary Qualified Importer Program (VQIP). FDA indicated it is implementing a new inspection approach designed to increase efficiency through leveraging other oversight activities, which may reduce user fees. VQIP participants also may now add foreign suppliers and foods to their existing program throughout the fiscal year. The updates are intended to streamline processes, enhance flexibility and elevate the program's overall efficiency.

Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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#### FDA Seeks Information on PFAS in Seafood

The U.S. Food and Drug Administration (FDA) has issued a [request for information](#) on per- and polyfluoroalkyl substances (PFAS) in seafood as part of its efforts to understand potential PFAS exposure from seafood and reduce dietary PFAS exposure. FDA seeks scientific data and information from the seafood industry, academia, state and federal agencies and other



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interested entities on PFAS concentrations in seafood, the surrounding environment and processing water, as well as mitigation strategies for reducing exposure.

“Addressing potential effects of Americans’ PFAS exposure is a national priority and is coordinated across several federal agencies,” FDA stated. “Through these interagency collaborations, we are working to identify routes of PFAS exposure, understand associated health risks, and reduce the public’s dietary exposure to PFAS that may pose health concerns.”

## Smithfield Settles Child Labor Compliance Matter for \$2 Million

Smithfield Packaged Meats Corp. has agreed to pay a \$2 million administrative penalty to resolve a child labor compliance order issued by the Minnesota Department of Labor and Industry (DLI). In a [news release](#), DLI said its investigation covering a two-year period found Smithfield employed at least 11 minors between the ages of 14 and 17. Nine of the 11 worked outside of the hours children are allowed to work in Minnesota, while all 11 performed hazardous work, DLI said. “DLI’s resolution with Smithfield sends a strong message to employers, including in the meat processing industry, that child labor violations will not be tolerated in Minnesota,” DLI Commissioner Nicole Blissenbach said.

DLI said the penalty is the largest the agency has recovered in a child labor enforcement action. The consent order additionally requires the company to conduct industry research related to child labor compliance, contractually require child labor compliance with its labor staffing agencies and sanitation contractors; and take other steps to ensure future compliance.



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### ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



## Court Denies Bid to Dismiss Cookie Allergen Suit Against Daiso

A California federal court has denied Daiso California's motion to dismiss allegations that the company mislabeled cookies made with nuts. *Fukaya v. Daiso California LLC*, No. 23-0099 (N.D. Cal., filed November 12, 2024). The plaintiff alleged that she experienced a “violent allergic reaction” to consuming the company’s Tiramisu Twist Cookie, prompting a worldwide recall of the product. She alleged the product failed to identify any tree nuts on its English-language packaging, but did so on its Japanese-language packaging.

The court denied the defendants’ motion to dismiss, holding that the plaintiff has plausibly alleged she is likely to go back to purchase more food from the store, but she is hesitant to purchase any packaged food with an English language sticker covering the pre-printed Japanese label. The court said that the plaintiff does not need to plead a specific intent to repurchase the same allegedly mislabeled products she’d previously bought, because she’d sufficiently alleged a desire to purchase more Daiso food products. Additionally, the court said the plaintiff plausibly alleged she cannot rely on other food labeling.

“Even after Daiso was allegedly on notice that one of their food product’s English-language label mistranslated the original ingredient list in Japanese by failing to identify tree nuts, [the plaintiff] alleges she subsequently encountered the same issue on a different food product,” the court said. “Those allegations support the plausible inference of a systemic failure in Daiso’s process of translating and labeling its English-language ingredient lists, such that other Daiso food products are also likely mislabeled.”

## Dispute Arising From Recalled Trader Joe’s Chicken Burgers Settles for \$3M

Part of a supply chain dispute arising from Trader Joe's Chile Lime Chicken Burgers has resolved with Houlihan Trading Co., Inc. agreeing to pay \$3 million to the company that made the product, Innovative Solutions International, Inc. *Innovative Solutions Int'l, Inc., v. Houlihan Trading Co., Inc.*, No. 22-0296 (W.D. Wash., filed November 13, 2024). According to the parties' notice of settlement, the dispute stemmed from another defendant in the suit processing chicken that "indisputably contained bone." The company sold the chicken as "breast trim," which passed through numerous intermediaries including Houlihan. Houlihan offered to sell the chicken to Innovative, a food products manufacturer, describing the chicken as "B/S," or boneless and skinless, and "breast trim," and Innovative made the burgers using the product and sold them to Trader Joe's exclusively. When customers complained about bones in the chicken burgers, Innovative recalled the product and Trader Joe's terminated its business relationship with the company, prompting the company to sue Houlihan.

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