Perkins Coie

MIDYEAR | 2025

Food and CPG Legal Trends

Perkins Coie is pleased to publish its 2025 Midyear Food and CPG Legal Trends Report.

This report is a bite-size version of our annual year in review, providing timely insights on trends. In the first half of 2025, the Consumer Packaged Goods (CPG) industry continued to face a meaningful threat of class-action activity, with continued filings against companies in the food, beverage, and personal care space. Recent months have also seen significant regulatory developments relevant to food, beverage, and CPG companies on both the federal and state levels.

Beyond our Food & Consumer Packaged Goods Litigation Blog and annual Year in Review, we also monitor filings on a daily basis and provide real-time information to clients and key contacts via our Food and Consumer Packaged Goods Litigation Update. To receive this daily email report about cases filed, Proposition 65 notices, and industry decisions, please email Kellie Hale at KHale@perkinscoie.com to inquire.

Table of Contents

Regulatory Developments

The first half of 2025 saw dramatic changes for food and CPG regulations at the federal and state levels. The new Trump Administration has ushered in significant change and unorthodox changes at the Department of Health & Human Service (HHS), the U.S. Department of Agriculture (USDA), and the Food & Drug Administration (FDA). State policies have also seen substantial changes, often in line with these new federal policy priorities.

1. **FDA Publishes Draft Guidance for Industry on Labeling of Plant-Based Alternatives to Animal-Derived Foods.** On January 6, 2025, the U.S. Food and Drug Administration (FDA) published draft guidance on the labeling of plant-based alternatives to animal-derived foods. This draft guidance outlines recommended best practices for naming plant-based alternatives to eggs, seafood, poultry, meat, and dairy products. In its draft guidance, FDA recommended the statement of identity for plant-based alternatives should clearly identify the specific plant source(s) of the food and should not imply that any animal source(s) are present or have been used as ingredients. Read more here.
2. **Make America Healthy Again Commission Created.** On February 13, 2025, immediately after Robert F. Kennedy Jr. was sworn in as HHS Secretary, an executive order was signed establishing the Make America Healthy Again Commission. Chaired by the HHS secretary, the Commission includes several high-level officials, such as the U.S. Secretary of Agriculture Brooke Rollins. Read more here.
3. **HHS and FDA Announce Measures to Phase Out All Petroleum-Based Synthetic Dyes from Food.** On April 22, 2025, HHS and FDA announced a series of new measures to phase out all petroleum-based synthetic dyes from the food supply. These actions include initiating the process to revoke authorization for the synthetic colorings Citrus Red No. 2 and Orange B; collaborating with industry to eliminate remaining synthetic dyes; authorizing four new natural color additives; and urging food companies to remove FD&C Red No. 3 ahead of the 2027-2028 deadline.
4. **FDA Approves Three Food Colors from Natural Sources.** On May 9, 2025, FDA announced the approval of three new color additive petitions, expanding the range of natural-source colors that manufacturers can safely use in food. The newly approved color additives are (i) *Galdieria* extract

Following state bans on the sale and manufacture of lab-grown meat in Florida and Alabama in 2024, Montana and Indiana have enacted similar laws.

blue, a blue color derived from the unicellular red algae *Galdieria sulphuraria*; (ii) butterfly pea flower extract, a blue color that can be used to achieve a variety of shades, including blues, purples, and greens; and (iii) calcium phosphate, a white color approved for use in ready-to-eat chicken products, white candy melts, doughnut sugar, and sugar for coated candies.

5. **Texas Approves the "Make Texas Healthy Again" Bill.** On May 26, 2025, the Texas House passed SB 25. Texas Governor Greg Abbott signed the bill into law on June 21. The bill requires food manufacturers to add a warning label to food products sold in the state when the products contain certain ingredients banned in Canada, the European Union, or the United Kingdom. Read more here.

6. **Make America Healthy Again Commission Releases "Make Our Children Healthy Again" Report.** On May 22, 2025, the "Make Our Children Healthy Again" report was released. According to its authors, the controversial report aims to examine the purported root causes of deteriorating child health, including exposure to environmental chemicals and the overuse of technology. Subsequent to the report's release, media outlets have identified that the report appeared to contain many citations to non-existent studies and citations that were otherwise inaccurate.

7. **FDA Unveils Enhanced Post-Market Chemical Review Program for Food Safety.** On May 15, 2025, the FDA announced a plan for post-market review of chemicals used in food products. According to the agency's announcement, elements of the plan include (1) a modern, evidence-based system for prioritizing chemical reviews, (2) a finalized, systematic post-market review process shaped by stakeholder input, and (3) an updated list of chemicals under review.

8. **States Continue to Ban Lab-Grown Meats.** Following state bans on the sale and manufacture of lab-grown meat in Florida and Alabama in 2024, Montana and Indiana have enacted similar laws. On May 1, 2025, Montana Governor Greg Gianforte signed HB401, prohibiting the sale, distribution, and manufacture of "cell-cultured edible products," defined as meat and related components produced via cell culture rather than from slaughtered animals. On May 6, 2025, Indiana Governor Mike Braun signed HB1425, imposing a two-year moratorium on the sale and manufacture of "cultivated meat products," defined as animal protein grown from extracted animal stem cells to replicate the sensory and nutritional qualities of conventional meat.

9. **FDA Seeks Input on a New Method for Ranking Chemicals in Food for Post-Market Assessments.** On June 18, 2025, the FDA released a proposed method for ranking chemicals in the food supply and invited public comment. The new approach aims to provide a systematic process for prioritizing chemicals for post-market assessment under the agency's chemical review program.

10. **House Bill Proposes "High Caffeine" Warning for Beverages.** On March 31, 2025, a bipartisan group of legislators introduced H.R. 2511, also known as the Sarah Katz Caffeine Safety Act. The bill would require warnings on beverages that contain more than 150 milligrams of caffeine. The bill would amend Section 403 of the Food, Drug, and Cosmetic Act to classify foods and supplements with over 10 mg of caffeine as misbranded unless labels disclose the caffeine content, its source (natural or added), and an advisory on FDA's recommended daily caffeine limit for healthy adults. The bill also directs the FDA to define "added caffeine" and review whether caffeine and other stimulants are generally recognized as safe (GRAS).

11. **House Introduces SAFE Sunscreen Standards Act.** On June 3, 2025, Congress introduced H.R. 3686, the SAFE Sunscreen Standard Act. The bill would modernize the Food, Drug, and Cosmetic Act to improve the regulatory review process for active ingredients in nonprescription sunscreen. The act directs the FDA to establish clearer, more flexible standards for evaluating sunscreen ingredients and incorporates nonanimal testing alternatives. Proponents of the bill said that it would allow the FDA to embrace new advancements in skin care and expand access to the most advanced sunscreens for Americans. Read more here.

12. **SNAP Food Waivers Granted in Select States.** U.S. Secretary of Agriculture Brooke Rollins approved new waivers amending the definition of foods eligible for purchase through SNAP in states such as Arkansas, Idaho, and Utah. While the details of the waivers vary, the states sought to prohibit purchases with SNAP dollars for soda, low- and no-calorie sodas, fruit and vegetable drinks with less than 50% juice, and candy. As of June 23, 2025, USDA has approved SNAP waivers from the following states: Arkansas, Idaho, Utah, Indiana, Iowa, and Nebraska.

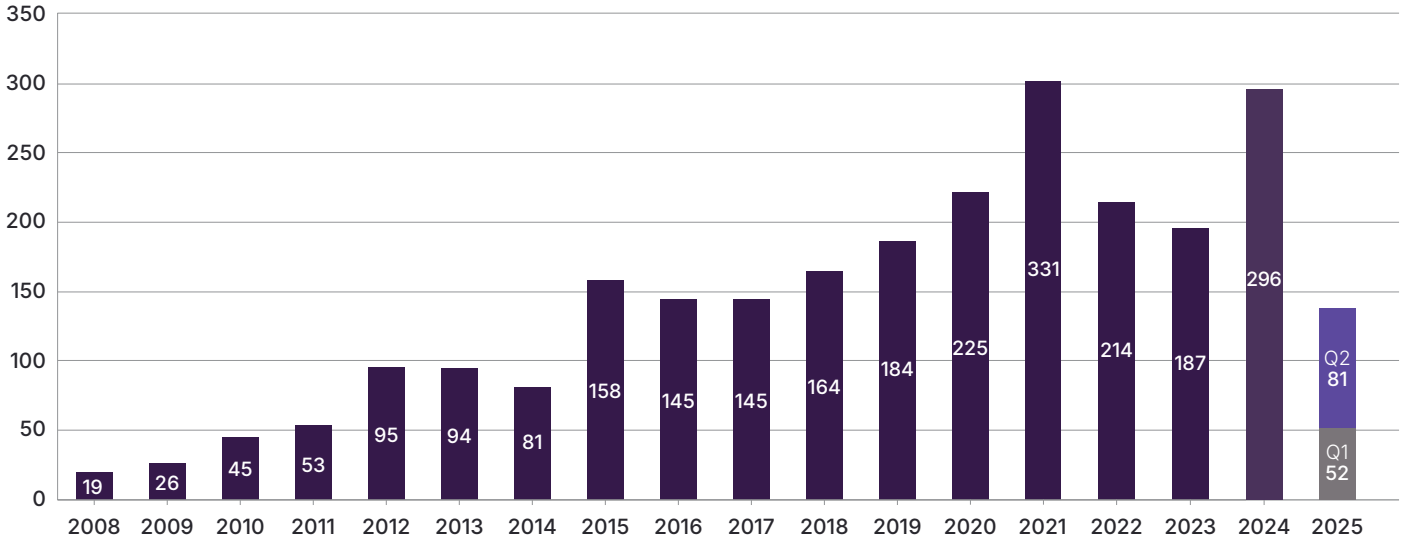
Food and Beverage

Midyear Trends in Food & Beverage

Trace Substances Litigation

Class actions for allegedly undisclosed heavy metals persist in early 2025. For example, a proposed class action lawsuit filed in New York federal court in June alleged that Badia Spices sold ground ginger and cinnamon containing elevated levels of lead, allegedly confirmed by both state food safety regulators and independent laboratory testing. *Enya Kolker v. Badia Spices Inc.*, No. 1:25-cv-03099 (E.D.N.Y.). Plaintiff Enya Kolker claims she purchased and tested Badia's ground ginger, finding lead levels near one part per million. The suit accuses Badia of allegedly deceptive violations of New York General Business Law, breach of warranty, and unjust enrichment

Food and Beverage Class Actions (Figure 1)



Representations about preservatives—particularly "no artificial preservatives" and "no preservatives"—continue to be among the most popular food and litigation theories advanced by plaintiffs.

and seeks monetary and statutory damages for affected consumers.

Similarly, on April 2, 2025, Plaintiff Caryn Hart and others filed a putative class action lawsuit alleging that Sprouts Farmers Market falsely markets its sunflower butter spreads as safe and high in protein while concealing that the products contain dangerous levels of cadmium far above California's legal limits. *See Caryn Hart et al. v. Sprouts Farmers Market, Inc.*, Case No. 3:25-cv-00792 (S.D. Cal.). The suit claims Sprouts' labeling allegedly misleads consumers about both protein content and safety, violating state consumer protection laws, and seeks damages, restitution, and corrective advertising for affected purchasers.

Consumer Reports continues to play a significant role in prompting litigation. For instance, on May 7, 2025, Consumer Reports published an article titled "Cassava Flour, Chips, Bread and More Contain High Levels of Lead," which claimed that more than two-thirds of the 27 products tested allegedly contained elevated lead levels. In addition, food bloggers are increasingly influential in this area. By publishing questionable third-party test results for trace substances like heavy metals, PFAS, and BPA, these bloggers are driving both media attention and litigation.

Artificial Preservatives

Representations about preservatives—particularly "no artificial preservatives" and "no preservatives"—continue to be among the most popular food and litigation theories advanced by plaintiffs. In such cases, plaintiffs allege that statements on preservatives, or the absence thereof, are false and misleading because of the presence of certain preservatives, including citric acid, sodium benzoate, ascorbic acid, dipotassium phosphate, and other purported preservatives. *See Deforest v. Target Corp.*, No. 25-0851 (C.D. Cal., filed April 23, 2025). As in the past, these cases hinge on whether the purported preservative functions as a preservative or is artificial. Sometimes, these cases also hinge on the reasonable consumer standard. In *Ward v. Pepperidge Farm, Inc.*, No. 1:24-cv-00078-ALC-RFT (S.D.N.Y. Mar. 26, 2025), the Southern District of New York held that a putative class plaintiff plausibly alleged that the claim "No Artificial Flavors or Preservatives" was false or misleading when the product contained citric acid. The defendant argued that the plaintiff included no factual basis for her claim that the acid acted as a preservative or was artificial and that the claim itself was preempted by FDA requirements, which state that a product label must

identify a preservative as an ingredient *if it is being used as a preservative*. The court rejected those arguments in part, relying on *Mantikas v. Kellogg Co*. Other similar cases have been filed, with varied or to-be-determined outcomes. *See Deforest v. Target Corp.*, No. 8:25-cv-00851 (C.D. Cal., April 23, 2025); *Flexer v. Kraft Heinz Food Co.*, No. 1:25-cv-00414 (E.D.N.Y. Jan. 24, 2025) (voluntarily dismissed).

So Called "Ultra-Processed Foods"

On May 22, 2025, the White House released its Make America Healthy Again (MAHA) report. Among other things, the MAHA report made wide-ranging claims regarding so-called Ultra-Processed Foods ("UPFs"). There remains no clear scientific or regulatory consensus regarding the definition of so-called UPFs. On July 23, 2025, the USDA and FDA jointly issued a Request for Information (RFI), seeking public input on the definition of alleged UPFs. The so-called category of UPFs encompasses an extremely broad and inconsistent range of products, from whole-grain breads and plant-based meat alternatives to breakfast cereals and yogurts. The criteria for what qualifies as a purported UPF are vague, often relying on subjective judgments about ingredients or manufacturing processes rather than clear, evidence-based standards. This ambiguity risks stigmatizing a vast array of foods that are not only safe but also play a critical role in food security, convenience, and nutrition for millions of Americans.

Beauty, Cosmetics, and Personal Care

Federal Regulatory Landscape for Cosmetics and Personal Care Products in Early 2025: MoCRA Takes Center Stage Amidst Shifting Political Winds

Federal regulations governing cosmetics and personal care products in the United States have continued to evolve in 2025, with ongoing—though sometimes uncertain—developments. The Modernization of Cosmetics Regulation Act of 2022 (MoCRA) continues to be the driving force behind most of these changes, ushering in a new era of oversight for the industry. However, the change in presidential administrations has introduced a layer of complexity, with some anticipated regulatory actions facing potential delays.

MoCRA's Continued Implementation: Key Deadlines and Requirements

MoCRA, signed into law in late 2022, represents the most substantial update to federal cosmetic law in over 80 years. The first half of 2025 saw several key provisions of MoCRA take firm root, placing new responsibilities on manufacturers, packers, and distributors:

- **Facility Registration and Product Listing:** As of July 1, 2024, cosmetic manufacturers were required to have registered their facilities with the FDA and submitted listings for their products. The FDA reported a substantial number of active registrations and product listings as of early 2025, indicating widespread industry efforts to comply with these foundational requirements. These registrations and listings are crucial for the FDA to gain a comprehensive understanding of the cosmetic market and enhance its ability to oversee product safety.
- **Safety Substantiation:** By December 2023, a key deadline was reached requiring all cosmetic products on the market to have documented scientific evidence proving their safety when used as intended. Companies must now implement thorough internal procedures to ensure and maintain records that support the safety of their products. MoCRA defines the term "adequate substantiation of safety" as "tests or studies,

research, analyses or other evidence or information that is considered, among experts qualified by scientific training and experience to evaluate the safety of cosmetic products and their ingredients, sufficient to support a reasonable certainty that a cosmetic product is safe." MoCRA further defines the term "safe" as meaning "that the cosmetic product, including any ingredient thereof, is not injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual." FDA can review cosmetic safety substantiation documentation if it has a "reasonable belief that the cosmetic product is likely to be a threat of serious adverse health consequences or death."

- **Adverse Event Reporting:** The requirement for responsible persons to report "serious adverse events" to the FDA within 15 business days continued to be a major focus. The term "serious adverse event" is defined in MoCRA as "an adverse event that:

1. Results in death; life threatening experience; inpatient hospitalization; a persistent or significant disability or incapacity; a congenital anomaly or birth defect; an infection; significant disfigurement (including serious and persistent rashes, second- or third-degree burns, significant hair loss, or persistent or significant alteration of appearance), other than as intended, under conditions of use that are customary or usual; or
2. Requires, based on reasonable medical judgment, a medical or surgical intervention to prevent an outcome described" above.

Companies are also mandated to maintain records of all adverse events for six years, emphasizing a proactive approach to consumer safety and complaint management.

- **Labeling Updates:** As of December 29, 2024, new general labeling requirements for cosmetic products took effect. Cosmetic product labels must now include specific contact information—such as a domestic address, phone number, or electronic contact details (which may include a website)—that enables consumers to report adverse events directly to the responsible person for the product. Companies needed to ensure that all products on

The first half of 2025 saw a Regulatory Freeze and a broader "Deregulatory Initiative," primarily impacting the pace of new rulemaking under MoCRA rather than its already-effective provisions.

the market met these requirements by the deadline, providing consumers with a clear and accessible way to report any adverse reactions. This change strengthens product safety oversight and regulatory compliance.

Lingering MoCRA Provisions and the Impact of the New Administration

While many MoCRA provisions are now in effect, several key aspects are still undergoing the rulemaking process and have faced potential delays due to the change in administration:

- **Good Manufacturing Practices (GMP):** MoCRA mandated the FDA to establish comprehensive GMP regulations for cosmetic facilities. While a proposed rule was initially anticipated earlier, the new administration's "Regulatory Freeze Pending Review" has likely pushed the release of a proposed GMP rule to later in 2025, with a final rule not expected until 2026. Given these continued delays, companies should proactively implement robust internal GMPs, aligning with national and international standards, even as the official regulations are finalized.

- **Talc-Containing Cosmetic Testing:** A proposed rule for standardized testing methods to detect asbestos in talc-containing cosmetic products was published in late 2024; the public comment period closed in March 2025. The finalization of this rule, which will require specific testing methodologies (e.g., PLM and TEM), remains subject to the new administration's review process.

- **Fragrance Allergen Labeling:** The requirement for clearer labeling of fragrance allergens is also awaiting a final rule from the FDA. This, too, could see delays due to the regulatory freeze.

- **PFAS Assessment and Potential Restrictions:** MoCRA directed the FDA to assess the use of per- and polyfluoroalkyl substances (PFAS) in cosmetic products and report on their safety by December 2025. This assessment is expected to pave the way for potential restrictions on PFAS in cosmetics, aligning with growing state-level bans. Companies are already working on phase-out plans and seeking alternatives.

The Trump administration in the first half of 2025 has introduced a "Regulatory Freeze Pending Review" and a broader "Deregulatory Initiative," primarily impacting the pace of new rulemaking under MoCRA rather than its already-effective provisions. This freeze has likely contributed to a delay of the finalization of crucial regulations such as GMPs, standardized talc testing methods, and clearer fragrance allergen labeling, requiring companies to

proactively maintain robust internal safety protocols while awaiting official guidance. Additionally, a federal hiring freeze could further strain the FDA's capacity for implementing and enforcing new regulations, and the Administration's "America First" trade policies may lead to increased scrutiny of foreign manufacturing facilities and a re-evaluation of supply chains. Despite these shifts, MoCRA's core requirements, including facility registration, product listing, and adverse event reporting, remain fully in effect, with the FDA continuing to monitor for compliance.

Companies are advised to remain proactive in their compliance efforts and closely monitor FDA announcements for further clarity on future regulatory timelines.

States' Regulations

A Patchwork of Progress: State-Level Cosmetic Regulations in Early 2025

While federal regulatory updates for cosmetics are largely dominated by MoCRA's rollout, the first half of 2025 has seen states continue to be active in pushing for stricter ingredient safety and transparency. This has resulted in a dynamic and increasingly complex patchwork of regulations that companies must navigate, often exceeding federal requirements.

Key Trends in State-Level Action:

- **PFAS Bans Leading the Charge:** The most prominent and widespread state-level regulatory trend in early 2025 has been the continued aggressive push to ban intentionally added PFAS, often dubbed "forever chemicals," from cosmetics. New Mexico notably joined California, Colorado, Maryland and Washington in adopting a ban on intentionally added PFAS in cosmetic products, with its prohibition taking effect by January 1, 2028. Several other states considered, introduced, or passed similar legislation in the first quarter of 2025, signaling a clear trajectory toward a national phase-out of these chemicals in beauty products. While the effective dates vary, manufacturers are actively reformulating to remove PFAS from their products to ensure market access across these states.

- **Broadening Chemical Restrictions:** Beyond PFAS, states are expanding their lists of banned or restricted chemicals.

  - **California's Toxic-Free Cosmetics Act,** which took effect on January 1, 2025, now prohibits 24 ingredients (including formaldehyde, certain phthalates, and mercury) from being manufactured, sold, or offered for sale in the state. These bans are similar to those of the

European Union, demonstrating a "leading from the front" approach.

- Similarly, **Washington's Toxic-Free Cosmetics Act**, effective January 1, 2025, restricts nine chemicals or chemical classes, including formaldehyde, lead and lead compounds, and triclosan. Retailers in Washington have until January 1, 2026, to sell existing stock of non-compliant products.

- States like **New York** are actively pursuing broader "Beauty Justice" acts (e.g., Senate Bill S2057) that aim to regulate a wider range of ingredients in personal care products and cosmetics. While some of these initiatives have later effective dates (e.g., January 1, 2029 for intentionally added restricted substances), they signal a legislative intent to significantly limit potentially harmful chemicals, including heavy metals, phthalates, and formaldehyde-releasing substances.

- **Transparency and Reporting Requirements:** Several state initiatives are not just about outright bans but also increasing transparency. While MoCRA addresses federal product listing, some states like Oregon are moving toward requiring manufacturers to include notices of certain chemicals on their websites, complementing federal efforts.

- **Support for Small Businesses and Safer Alternatives:** Recognizing the burden of these new regulations, some states, like Washington, are offering support to small businesses and cosmetologists through programs such as the Safer Salons Partnership and subsidies for product reformulation and certification. This acknowledges the practical challenges of transitioning to new ingredients.

In essence, the first half of 2025 has solidified the trend of states acting as laboratories for cosmetic regulation, often moving more swiftly and comprehensively than federal agencies. This proactive stance, driven by consumer safety concerns and environmental considerations, means that cosmetic and personal care product companies must maintain a vigilant eye on legislative developments in individual states, as compliance requires navigating a complex and evolving mosaic of regional requirements in addition to federal mandates.

Litigation Review (January 2025-June 2025)

A Surge in Scrutiny: Litigation Trends in Cosmetics and Personal Care Products in Early 2025

The first half of 2025 witnessed an uptick in litigation across the cosmetics and personal care product industry, driven by both the implementation of MoCRA at the federal level and continued aggressive state-level regulations. Companies are facing a growing array of lawsuits, primarily in the form of class actions, alleging everything from misleading advertising to product safety concerns. Critically, while MoCRA's initial rollout has created new avenues for litigation, the industry is also still contending with established types of lawsuits based on long-standing consumer protection principles and previous regulatory frameworks.

Federal Litigation: MoCRA's Early Impact and Preemption Debates

While MoCRA is designed to enhance FDA's oversight, its initial rollout has created new avenues for litigation alongside the continuation of existing types of claims:

- **Adverse Event Reporting and Safety Substantiation:** With MoCRA's requirements for serious adverse event reporting and safety substantiation now in full effect, companies are under increased scrutiny. While direct enforcement by the FDA is still ramping up, the transparency generated by these requirements could indirectly fuel civil litigation. Plaintiffs' attorneys are closely monitoring adverse event reports, and any perceived failure by a "responsible person" to adequately substantiate product safety could become a basis for lawsuits alleging negligence or deceptive practices.

- **Continued Challenges to Drug-like Claims:** Making drug-like claims for cosmetic products—such as asserting that a product can "treat," "cure," "prevent," or "mitigate" disease or affect the structure or function of the body—poses significant litigation and regulatory risks for manufacturers and marketers. Under the U.S. Federal Food, Drug, and Cosmetic Act (FDCA), products making such claims may be classified as drugs rather than cosmetics, subjecting them to stringent premarket approval, labeling, and testing requirements enforced by the FDA. If a cosmetic is marketed with unauthorized drug claims, the FDA may issue warning letters, seize products, or initiate injunctions and civil penalties. Additionally, plaintiffs' attorneys and state attorneys general have increasingly pursued

class action lawsuits and false advertising claims under state consumer protection laws, alleging that drug-like claims are misleading or deceptive when made for unapproved products. Recent years have seen a rise in such litigation, with settlements and judgments sometimes reaching millions of dollars. To mitigate these risks, companies should ensure that all marketing and labeling strictly comply with the legal definition of a cosmetic and avoid any language that could be interpreted as a drug claim.

- **"Made in USA" Claims:** Federal Trade Commission (FTC) enforcement and class action lawsuits targeting allegedly misleading "Made in USA" claims have surged in 2025. Cosmetic and personal care companies, including prominent beauty and haircare brands, have faced legal challenges for using imported ingredients while marketing their products as American-made. These lawsuits often allege that consumers paid premium prices based on deceptive origin claims, highlighting the FTC's "all or virtually all" standard and the legal risks associated with evocative "American quality" imagery.

- **"Hypoallergenic" Claims:** Cosmetic companies advertising their products as "hypoallergenic" have faced renewed scrutiny. In June of 2025, the Eastern District of California denied a motion to dismiss a putative class action in which the plaintiff alleged that the defendant had deceptively labeled and marketed its petroleum jelly product as "hypoallergenic" when it contains fragrance, a known allergen. The court concluded that the term "hypoallergenic" could be misleading to a reasonable consumer, and it was not appropriate to dismiss the claims at that stage.

- **Preemption as a Defense:** As MoCRA introduces more federal regulations, the question of whether these federal standards preempt stricter state-level requirements in product liability or false advertising lawsuits becomes increasingly relevant. While MoCRA generally aims to avoid broad preemption of state ingredient bans, the nuances of specific claims and the interpretation of federal law by courts will continue to be a hotly litigated issue, influencing the viability of certain state-based lawsuits.

While plaintiffs face hurdles in proving the presence and harm of specific PFAS compounds in cosmetic products, particularly regarding skin absorption, the sheer volume of new state bans is driving ongoing legal challenges.

State-Level Litigation: PFAS, Prop 65, and Health Risk Claims Dominate

State-level litigation continues to be a major battleground for the cosmetics industry, often driven by ingredient-specific concerns and consumer protection laws:

- **Continued Scrutiny of Sunscreens:** In recent years, sunscreens have come under increasing regulatory and legal scrutiny due to concerns about both human health and environmental impacts. Regulatory agencies and advocacy groups have raised questions about the safety of certain active ingredients, such as oxybenzone and octinoxate, which have been linked to potential hormone disruption in humans and coral reef damage in marine environments. This has led to state and local bans on specific sunscreen ingredients in places like Hawaii and Key West, Florida. More recently, the **Santa Clara County District Attorney's Office in California has taken action against sunscreen manufacturers making "reef friendly" or "reef safe" claims**, alleging that such marketing can be misleading if the products contain ingredients known or suspected to harm coral reefs. In May 2025, the Santa Clara County District Attorney announced a settlement with Sun Bum, in which the company was ordered by the court to pay $300,000 in civil penalties and to not advertise any of its chemical sunscreens as "reef friendly," "reef compliant," or any drawing, symbol, or photo of a coral reef. This trend reflects a broader movement toward stricter oversight of environmental marketing claims in the personal care industry, increasing litigation risk for companies that cannot substantiate "reef friendly" assertions with robust scientific evidence.

- **PFAS-Related Lawsuits:** Following the wave of state-level PFAS bans (e.g., California, Colorado, Maryland, New Mexico, and Washington), litigation related to "forever chemicals" in cosmetics has accelerated. Class action lawsuits frequently allege that consumers were misled into purchasing products containing undisclosed PFAS, often relying on consumer fraud and unfair trade practices statutes. While plaintiffs face hurdles in proving the presence and harm of specific PFAS compounds in cosmetic products, particularly regarding skin absorption, the sheer volume of new state bans is driving ongoing legal challenges. These cases often seek economic damages, arguing consumers would not have paid as much (or anything) for products had they known about PFAS content.

- **California's Proposition 65 (Prop 65) Enforcement:** Prop 65 continues to generate extensive "bounty hunter" enforcement actions against cosmetic manufacturers and retailers in California. The first half of 2025 saw a continuation of enforcement

actions primarily targeting titanium dioxide (TiO2) and diethanolamine (DEA). While some TiO2 litigation has seen dispositive motions and preliminary injunctions in favor of the industry, DEA enforcement is in early stages with numerous violation notices and new lawsuits.

- **"Health Risk" and Product Liability Claims:** Beyond specific ingredients, personal injury and class action lawsuits alleging broader health risks from cosmetic products remain a significant concern. Cases involving talc (alleging asbestos contamination), dry shampoos (benzene contamination), and hair relaxers (alleged endocrine disruptors such as phthalates and parabens) are actively proceeding. The "Hair Relaxer MDL," for instance, has moved past initial motions into discovery, with class certification briefing and bellwether trials anticipated. These lawsuits often involve complex scientific and causation arguments. These types of product liability and health risk claims have been a persistent challenge for the industry for years and continue unabated.

- **False Advertising and "Slack-Fill" Claims:** Consumer class actions alleging false advertising, particularly concerning product fill levels ("slack-fill"), continue to be filed. For example, a lawsuit against a prominent beauty brand in early 2025 alleged deceptive practices related to oversized containers that did not fully inform consumers about the actual product volume. These cases leverage state consumer protection laws to argue that consumers were duped into paying premium prices for "empty space."

- **Influencer Marketing Scrutiny:** Litigation has also emerged regarding influencer marketing, with class action plaintiffs alleging that influencers failed to clearly disclose material connections to brands they were promoting. These lawsuits often cite the FTC's guidance on endorsements and testimonials, arguing that inadequate disclosures lead consumers to pay more for products based on what they perceive as unbiased recommendations.

The federal and state litigation landscape for cosmetics in the first half of 2025 reflects a heightened environment of legal scrutiny. Companies are facing multi-faceted challenges, ranging from compliance with new federal mandates under MoCRA to defending against state-specific ingredient bans, broad health risk claims, and traditional false advertising allegations. Proactive risk management, meticulous safety substantiation, transparent labeling, and careful adherence to advertising guidelines are paramount for navigating this increasingly litigious environment.

Proposition 65

2025 by the Numbers

In the first half of 2025,[1] plaintiffs filed 2,019 Proposition 65 (Prop 65) pre-suit notices of violation. Of those, approximately 42% of the notices relate to exposures allegedly caused by foods, dietary supplements, or beverages as opposed to nonconsumable goods—a significantly higher percentage than we saw through the first half of 2024. As in prior months, a large number of the notices relating to food involve seafood products such as shrimp, shellfish, sardines, and seaweed, as well as dietary supplements and other dried goods. There has also been a significant rise in notices targeting canned food products containing bisphenol A (BPA).

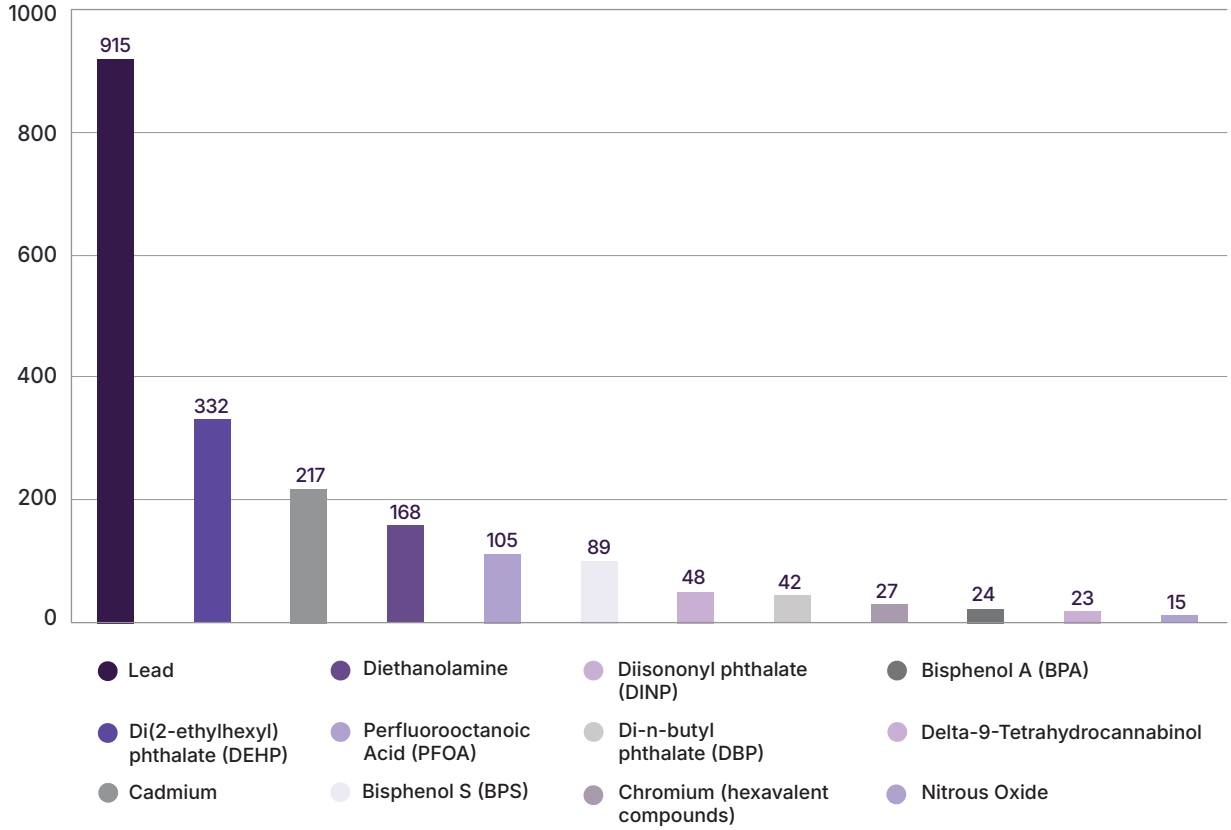
Of note, an enforcer named Zachary Stein, represented by KJC Law Group, has issued a series of notices for nitrous oxide in certain dairy creamer products. While enforcers have issued notices for nitrous oxide in the past—often for nitrous oxide cartridges—we have yet to see any settlements involving nitrous oxide in food. On that same note, we have also seen an increase in notices for PFAS (such as PFOA, PFOS, and PFNA) in a variety of food products such as seafood and protein powder.

[1] Data includes January 1 - June 25, 2025

As in prior months, a large number of the notices relating to food involve seafood products such as shrimp, shellfish, sardines, and seaweed, as well as dietary supplements and other dried goods.

See the chart below for a detailed breakdown of the top chemicals at issue in the first half of 2025:

Notices by Chemical (Figure 2)



Wave of Bisphenol S Notices Hits Brick & Mortar Retailers

As previously reported, California's Office of Environmental Health Hazard Assessment (OEHHA) added bisphenol S (BPS) to the Prop 65 list of reproductive toxicants in December 2023. The warning requirement took effect on December 29, 2024. To date, OEHHA has not established a safe harbor level for BPS exposure.

Since December 2024, nearly 100 Prop 65 notices have been issued—primarily targeting the use of BPS in thermal paper, including receipts, shipping labels, luggage tags, and UPC stickers. Most notices have focused on retail receipts collected from brick-and-mortar stores. The primary enforcers to date are Environmental Health Advocates (EHA) and the Center for Environmental Health (CEH).

On May 20, 2025, CEH filed the first Prop 65 lawsuit involving BPS: *CEH v. Aesop USA, Inc. et al.*, Case No. CGC-25-623997 (San Francisco Superior Court). The complaint alleges that several major retailers failed to provide warnings for BPS in thermal receipt paper, which CEH alleges is "intentionally added" and can be absorbed through the skin or via hand-to-mouth contact. CEH has also issued 60-day notices to nearly 50 additional retailers.

CEH is represented by Lexington Law Group, the same firm that handled prior Prop 65 litigation involving BPA in receipts. That wave of cases largely settled by 2020, prompting many retailers to shift away from BPA-containing thermal paper. However, BPS—commonly marketed as a "BPA-free" alternative—has since become a widespread substitute and is now found in a broad range of consumer products.

Given BPS's growing presence in commerce and the absence of an established safe harbor level, enforcement under Prop 65 is poised to expand well beyond the thermal paper context in the months ahead.

Litigation Updates

Federal Court Blocks California's Acrylamide Warning Requirement Under Prop 65

In a significant ruling with broad implications for food labeling and First Amendment jurisprudence, the U.S. District Court for the Eastern District of California has declared the Prop 65 warning requirement for dietary acrylamide unconstitutional. The decision, issued in *California Chamber of Commerce v. Bonta*, grants summary judgment in favor of the California Chamber of Commerce (CalChamber) and enjoins the state from enforcing Prop 65 warnings for acrylamide in food products.

Background: What Is Acrylamide?

Acrylamide is a chemical compound that forms in certain plant-based foods—like french fries, toast, and coffee—when cooked at high temperatures (e.g., baking or frying). Several health agencies, including the EPA and the World Health Organization's IARC, classified acrylamide as a "probable" or "likely" human carcinogen based on animal studies involving high doses of acrylamide. However, epidemiological studies in humans have been inconclusive, and

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agencies like the FDA and National Cancer Institute have urged caution in interpreting rodent data for human risk.

The Lawsuit and Legal Framework

CalChamber filed suit in 2019, arguing that Prop 65's mandatory warnings for acrylamide in food violate the First Amendment because they compel businesses to make misleading statements that are not supported by scientific consensus. In March 2021, the court issued a preliminary injunction, finding that there was unresolved scientific debate about acrylamide's carcinogenicity in humans. The Ninth Circuit affirmed.

The May 2025 Ruling

The court's May 2, 2025, final order reaffirms and expands upon its earlier reasoning. The court found that all versions of the acrylamide warnings remain "controversial" and "misleading." The court emphasized that although each sentence in the warning might be technically accurate, the overall message conveyed to consumers is that eating foods with acrylamide increases their personal cancer risk—a claim not supported by scientific consensus.

Importantly, the court held that such compelled speech fails under both the *Zauderer* standard (which permits factual, noncontroversial compelled disclosures) and the stricter *Central Hudson* standard for commercial speech regulation. Because the warnings do not clearly distinguish between hazard (theoretical carcinogenic potential) and risk (likelihood of cancer from real-world exposure), they mislead the public and infringe on businesses' constitutional rights.

This ruling marks a major development for food manufacturers and First Amendment advocates, potentially reshaping how chemical risks are communicated to consumers. On June 2, 2025, California Attorney General Rob Bonta appealed the decision to the Ninth Circuit.

California AG Secures Prop 65 Settlement; Appears Open to Argument That Cadmium Is Naturally Occurring in Certain Seafood

The California attorney general recently finalized a Prop 65 settlement with Clearwater Fine Foods USA Inc., resolving allegations that the company sold clams containing cadmium above the state's safe harbor level without providing the required warning. The agreement, recently approved by Judge Chatterjee of the Alameda County Superior Court, is notable not only for its rigorous cadmium monitoring and mitigation provisions but also for the state's acknowledgment that clams harvested from certain regions may qualify for a naturally occurring exemption.

Cadmium in Shellfish

Cadmium is a naturally occurring metal that can enter the ocean through natural processes like rock erosion, volcanic activity, and particles carried by wind and rain. It can accumulate in marine sediments and be taken up by sea-dwelling organisms such as clams and other seafood. However, cadmium levels in the ocean can also be elevated due to industrial contamination, including runoff from mining, smelting, and manufacturing activities. As a result, cadmium in seafood may originate from both natural sources and anthropogenic pollution, with concentrations varying significantly by region.

Key Terms of the Settlement

Clearwater is permitted to sell its clams without a Prop 65 warning as long as cadmium levels remain below 200 parts per million (ppm). The company must conduct annual cadmium testing of both its finished clam products and the waters from which they are harvested. It is also required to ensure that potable water and food-contact equipment at its processing facilities are free of cadmium.

To verify compliance, Clearwater must retain an independent food quality auditor for the first year, after which it may transition to internal audits. If the average cadmium level in its products exceeds 180 ppm, the company must investigate the source of the exceedance and take corrective action; if any product exceeds 200 ppm, a Prop 65 warning must be provided. Under the settlement, Clearwater will pay more than $110,000 in civil penalties and nearly $200,000 in attorney fees and costs to the state, along with $6,000 to Public Health & Safety Advocates, the private enforcer that filed the original notice of violation.

Notably, in its memorandum supporting the settlement, the attorney general's office emphasized that Clearwater's clams are harvested from "relatively pristine" waters and that the cadmium in the clams may thus be naturally occurring. This finding was in contrast to a parallel Prop 65 settlement with seafood distributors Jayone Foods and Seaquest Seafood, in which the AG noted that clam harvesting regions in the Pacific Ocean near South Asia have more heavy metal contamination due to industrial pollution—thus cadmium present in those clams is less likely to be naturally occurring. As such, unlike Clearwater, Jayone and Seaquest simply agreed to provide warnings for their products.

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