Perkins Coie

Q4 | 2025

Food and CPG Legal Trends

Perkins Coie is pleased to publish its Q4 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 fourth quarter 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.

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Regulatory Developments

New food regulatory developments emerged at the federal and state levels during the fourth quarter of 2025. Many of these developments are detailed below:

- **Federal court strikes down West Virginia color additive ban.** On December 23, 2025, the U.S. District Court for the Southern District of West Virginia granted a preliminary injunction enjoining enforcement of a state color additive ban. *Int'l Ass'n of Color Manufacturers v. Singh*, No. 2:25-CV-00588, 2025 WL 3721864 (S.D.W. Va. Dec. 23, 2025). In March 2025, West Virginia enacted H.B. 2354, which, among other things, labeled seven color additives as "poisonous and injurious" adulterants and prohibited their sale within the state. The affected color additives included: butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6. The court held that the state's color additive ban was unconstitutionally vague as to what substances are "poisonous and injurious."

- **Executive order aims to expedite rescheduling of cannabis sales.** On December 18, 2025, President Donald Trump signed an executive order that requires the attorney general to "take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the [Controlled Substances Act] in the most expeditious manner in accordance with federal law."

- **FDA clarifies dietary supplement disclaimer requirement.** On December 11, 2025, FDA issued a letter detailing its intention to revise a dietary supplement disclaimer requirement. Under 21 C.F.R. § 101.93(d), dietary supplements may include certain claims if accompanied on each panel by the following statement: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease." In its letter, FDA clarified that it intends to remove the requirement for this disclaimer to appear on each panel of a product's labeling where claims are made. The agency also stated that it would exercise discretion in enforcing the requirement while the rulemaking process is ongoing.

- **New intoxicating hemp provisions enacted.** In the continuing resolution and appropriations package (H.R. 5371), enacted into law on November 12, 2025, Congress included several new provisions regarding intoxicating hemp products. The new provisions represent the most significant federal developments on hemp since the 2018 Farm Bill and will take effect in November 2026. H.R. 5371 established a broader hemp definition that now includes total tetrahydrocannabinol (THC), not just Delta-9-THC. New federal limits and exclusions target Delta-8-THC and other intoxicating hemp-derived cannabinoids. FDA guidance and compliance deadlines arrive in early 2026. Read Perkins Coie's Update on the topic here.

- **New law includes provisions regarding OTC drugs and sunscreens.** In another provision of H.R. 5371, Congress enacted new requirements for OTC and sunscreen products. By November 2026, FDA must issue new draft guidance on how sponsors can use nonclinical testing alternatives to animal testing, as appropriate, to meet safety and efficacy standards for non-prescription drugs intended for topical administration, like sunscreens with sun protection factor (SPF) ratings. The law also provides new structures for final administrative orders regarding active ingredients in sunscreens. Read Perkins Coie's Update on the topic here.

- **Ninth Circuit vacates certain bioengineered food disclosure rules.** On October 31, 2025, the U.S. Court of Appeals for the Ninth Circuit issued a ruling in *Natural Grocers v. Rollins* that has the potential to significantly alter the current landscape of bioengineered (BE) food disclosures. Among other things, the Ninth Circuit ruled that the U.S. Department of Agriculture acted contrary to law when it concluded that highly refined foods without detectable genetically modified material are exempt from BE disclosure. Read Perkins Coie's Update on the topic here.

- **California enacts new food allergen disclosure law.** On October 13, 2025, California Gov. Gavin Newsom signed S.B. 68 into law. S.B. 68 requires certain retail food establishments to disclose food allergens on the menu or via digital methods. The law's provisions take effect on July 1, 2026.

Food and Beverage

Serving Size

In the fourth quarter of 2025, courts saw a consistent flow of consumer class-action suits alleging deceptive serving size representations for foods and dietary supplements. For example, in *Sciarabba v. Post Consumer Brands LLC*, No. 7:25-cv-09315 (S.D.N.Y., filed Nov. 7, 2025), the plaintiff alleges that Post Consumer Brands misleads consumers by labeling its Honey Comb cereal as "Family Size," although the product contains fewer servings than advertised. The complaint points to the back label's claim of "about 13 servings," while independent testing allegedly found only about 12 servings per box. The plaintiff further asserts that the "Family Size" label was designed to attract consumers by overstating the product's value.

Similarly, *Oneika Johnson v. Garden of Life LLC*, No. 736883/2025 (N.Y. Sup. Ct., Queens Cty., filed Dec. 10, 2025), targets the labeling of Triple Action Fiber Plus gummies. The plaintiff claims the product's "72 Gummies" and "5g Plant Based Prebiotic Fiber" statements are misleading, as three gummies are required per serving to achieve the advertised fiber content.

However, a recent appellate decision may temper the pace of new serving size filings. In *Marcia Sorin, et al. v. The Folger Coffee Co.*, No. 24-2830 (8th Cir., Nov. 26, 2025), the U.S. Court of Appeals for the Eighth Circuit reversed class certification in a case alleging that Folger deceptively overstated the number of cups its ground coffee could brew. The court found that individual issues predominated, as not all class members may have read or relied on the serving size representations.

Recyclability and Sustainability

We also observed litigation targeting recyclability and sustainability claims, so-called "greenwashing" claims. For example, in *Castillo v. Safeway Inc., et al.*, No. ECU004383 (Cal. Super. Ct., Imperial Cnty.), plaintiff alleges that the defendants falsely advertised products such as coffee pods and household items as recyclable, although these items are not accepted at many California recycling facilities.

Allegedly Artificial Ingredients

Our team has also seen a continued wave of litigation challenging alleged artificial ingredients, with plaintiffs broadening their theories to include substances such as sodium ascorbate, sodium phosphate, and lactic acid. See, for example, *Michael Dotson v. Post Holdings, Inc.*, No. 25STCV33161 (Cal. Super. Ct., Los Angeles Cnty., Nov. 12, 2025).

Kratom Powder (Supplements)

There has been an influx of lawsuits involving products made with kratom and kratom-derivatives. The lawsuits generally allege that: (1) kratom is harmful because it has addictive qualities and affects the brain in a way that is similar to opioids, and (2) the companies selling and/or manufacturing the products are aware of kratom's addictive nature and fail to adequately warn its consumers (or do not warn them at all).

For example, in *Louis Cuneo v. Numbz LLC*, No. 2:25-cv-11013 (C.D. Cal. Nov. 17, 2025), which involved a chewable tablet made with kratom, the plaintiff alleges that the products were deceptively packaged and marketed as safe, natural supplements when they cause consumers to unwittingly develop an addiction to the product, and as a result suffer physical, financial, and psychological harm. Additionally, the plaintiff alleges that the tablets are marketed as "playful," describing it as "reminiscent of a sport's vitamin," which allegedly disguises the dangerousness of the product. Further, the plaintiff alleges that while the label contains a disclaimer about the product's potential "addictive properties," the disclaimer is nevertheless insufficient because it appears in a small, inconspicuous font.

FDA posted to its website in December 2025 in December 2025 about kratom, noting that limited scientific information is currently available and that further research is necessary. FDA stated it "will continue to warn the public against the use of kratom for medical treatment" until its "agency scientists can evaluate the safety and effectiveness of kratom." FDA emphasized that there are not currently FDA-approved over-the-counter drugs containing kratom or kratom drug products.

Slack Fill

While the first half of 2025 saw numerous lawsuits involving slack fill-related claims, there was a decrease in filings of such lawsuits by the end of 2025. One notable trend was the emergence of slack fill cases targeting beauty products, such as hair care products, instead of packaged foods. At least one of those cases has since been resolved in the defendant's favor through a motion to dismiss.

In December 2025, the U.S. District Court for the Central District of California granted a motion to dismiss a plaintiff's slack fill claims involving the defendant's shampoo products. *Garcia v. Zuru*, No. 5:25-cv-01908 (C.D. Cal., filed July 27, 2025). The plaintiff alleged that the defendant's opaque shampoo bottles contained nonfunctional slack fill and misled the reasonable consumer into believing there was more shampoo than was contained in the bottle.

The court differentiated this slack fill claim from food-related slack fill claims by highlighting that the defendant "sells its liquid shampoo by volume, not weight, unlike most products at issue in slack fill cases," and the volume of the product was disclosed on the label (i.e., "12 fluid ounces").

Specifically, the court noted that "volume is a measure of the three-dimensional space an object or substance occupies," so disclosing the volume on the label "necessarily communicates the physical dimensions of the commodity in its packaging—and, by implication, how much slack fill the packaging might have relative to the commodity therein." Thus, the court found the plaintiff's allegations implausible.

Lastly, the court relied on *Argueta v. Henkel Corp.*, 793 F. Supp. 3d 1192 (C.D. Cal. 2024), which also involved slack fill allegations about a shampoo bottle, and held that a reasonable consumer would likely understand that shampoo bottles generally contain at least some slack fill space, especially since the bottles have been "mass produced, packaged, and shipped, and thus subject to circumstances that countenance against a completely full bottle of liquid, such as spillage, jostling, and/or various air pressure environments."

Beauty, Cosmetics, and Personal Care

Federal Updates

FDA continues to implement the Modernization of Cosmetics Regulation Act of 2022 (MoCRA), despite ongoing uncertainty related to the 2025 regulatory freeze. While the freeze has introduced delays and ambiguity around the timing of new rulemakings, FDA remains active in overseeing the cosmetics industry.

Delayed GMP Rulemaking

FDA's anticipated rulemaking for good manufacturing practices (GMP) under MoCRA has been delayed. The Unified Agenda of Regulatory and Deregulatory Actions indicates that the timeline for issuing proposed rules has shifted beyond earlier expectations, extending the process before binding requirements are finalized. MoCRA directs FDA to establish GMP regulations for cosmetics, but the agency has not yet issued a proposed rule. This status reflects broader administrative uncertainty related to the 2025 regulatory freeze and ongoing prioritization decisions.

During this interim period, FDA continues to enforce existing authorities, including actions against adulterated or misbranded cosmetics under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and scrutiny of manufacturing controls during inspections, while MoCRA's statutory obligations—such as safety substantiation, records availability, and adverse event reporting—remain in effect even without finalized cosmetic GMPs.

Draft Guidance on Mandatory Cosmetic Recalls

On December 18, 2025, FDA released a draft guidance document titled "Questions and Answers Regarding Mandatory Cosmetics Recalls: Guidance for Industry." This draft guidance is intended to clarify FDA's authority to mandate recalls of cosmetic products under FDA's expanded authority pursuant to MoCRA. The document outlines the criteria FDA will use to determine when a mandatory recall may be warranted, including situations where there is a reasonable probability that a cosmetic product is adulterated or misbranded, and where its use or exposure could result in serious adverse health consequences or death.

In such cases, FDA will first provide the responsible party with an opportunity to voluntarily cease distribution and recall the product. If voluntary action is not taken within the specified timeframe, FDA may issue an order requiring an immediate halt to distribution. The responsible party will also be given an opportunity for an informal hearing, which, if granted, will be held within 10 days to assess whether the order is justified. The draft guidance further describes the process FDA will follow in implementing a mandatory recall and sets expectations for industry compliance. FDA encourages stakeholders to review the draft guidance and submit comments, noting that feedback will help shape the final guidance document and ensure it best serves the needs of the cosmetics industry and public health.

Report on the Use of PFAS

On December 29, 2025, FDA published its congressionally mandated report on the use of PFAS in cosmetic products and associated risks, as required by MoCRA. This report provides an assessment of the use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in cosmetic products, and examines the available scientific evidence regarding their safety and potential risks.

FDA's analysis draws on mandatory cosmetic product listing data, which indicates that 51 distinct PFAS are used in 1,744 cosmetic formulations. To evaluate safety, the agency focused on the 25 most frequently used PFAS, accounting for approximately 96% of intentionally added PFAS in cosmetics. The report highlights that toxicological data for most of these substances is either incomplete or unavailable, which significantly limits FDA's ability to reach definitive conclusions about their safety. While five PFAS were identified as presenting low safety concerns under their intended conditions of use, the safety profile for the majority remains uncertain, and one PFAS was flagged for a potential safety concern with substantial data gaps.

Currently, there are no federal regulations that specifically prohibit the intentional addition of PFAS to cosmetic products. FDA notes that, consistent with its enforcement policies, it will take appropriate action if safety concerns arise. The agency also emphasizes its ongoing commitment to monitoring emerging scientific data and addressing data gaps, in alignment with broader Department of Health and Human Services initiatives to reduce PFAS exposure across the food and consumer product supply chain through expanded testing, monitoring, and surveillance.

In response to evolving federal regulatory priorities, FDA has substantially delayed the timeline for its anticipated fragrance allergen labeling rule.

FDA Withdraws Proposed Rule Regarding Standardized Testing Methods for Detecting Asbestos in Talc-Containing Cosmetics

On November 28, 2025, FDA announced the withdrawal of its proposed rule on standardized testing methods for detecting asbestos in talc-containing cosmetic products. The withdrawal followed nearly a year of public comment and industry feedback since the rule's initial proposal in December 2024. While the agency is withdrawing the proposed rule, FDA will issue a proposed rule to meet its statutory obligations under MoCRA. In its Federal Register notice, FDA cited alignment with the "Make America Healthy Again" (MAHA) initiative and the need to further evaluate the complex scientific and technical issues raised during the comment period.

Industry stakeholders voiced concerns that the proposed dual-microscopy approach—using both polarized light microscopy and transmission electron microscopy—could result in costly false positives and unintended regulatory consequences, particularly for products classified as both cosmetics and drugs.

For now, the withdrawal leaves the cosmetics industry without a federal standard for asbestos testing in talc-containing products, even as other jurisdictions, such as the European Union (EU), move toward a complete ban on talc by 2027. FDA's decision underscores the ongoing complexity of regulating cosmetic safety and the evolving landscape of global regulatory approaches.

Fragrance Allergens

In response to evolving federal regulatory priorities, FDA has substantially delayed the timeline for its anticipated fragrance allergen labeling rule. Although MoCRA initially required FDA to issue a proposed rule by June 2024, the agency's Unified Agenda for Fall 2025 now projects the Notice of Proposed Rulemaking will be released in May 2026. This forthcoming rule is expected to specify a list of fragrance allergens—potentially aligning with the EU's expanded list of more than 80 substances—that must be individually identified on cosmetic product labels, rather than being grouped under generic terms such as "fragrance" or "parfum." The delay reflects both the complexity of harmonizing international standards and FDA's ongoing efforts to enhance transparency and consumer safety in cosmetic labeling.

Possible Formaldehyde Ban

FDA did not meet its December 31, 2025, target for proposing a ban on formaldehyde and formaldehyde-releasing chemicals in hair-straightening products. While the agency continues to identify this rulemaking as a high priority, the timeline for the proposed rule—titled "Use of Formaldehyde and

Formaldehyde-Releasing Chemicals as an Ingredient in Hair Smoothing Products or Hair Straightening Products"—has been extended several times since its initial action date in October 2023.

FDA's ongoing review reflects the complexity of balancing consumer safety, evolving scientific evidence, and the practical considerations of industry stakeholders. The agency has stated it will provide periodic updates on the status of this and other proposed rules through FDA's Unified Agenda, which is typically updated in the spring and fall.

As FDA continues its evaluation, the industry remains without a finalized federal regulation on the use of formaldehyde and formaldehyde-releasing chemicals in hair-smoothing and straightening products. The agency's commitment to transparency and stakeholder engagement is expected to guide the next steps in this important regulatory process.

State Action

In the final quarter of 2025, state-level regulatory activity reached a fever pitch as the one-year "sell-through" grace periods for several landmark laws officially ended. Most notably, the Washington Toxic-Free Cosmetics Act reached its final enforcement milestone on December 31, 2025. While the law's manufacturing ban took effect earlier in the year, this Q4 deadline ended the period in which in-state retailers and salons could exhaust their existing stocks of non-compliant inventory. As of January 1, 2026, it is now strictly prohibited to sell, use in professional services, or even donate any cosmetic product in Washington that contains intentionally added PFAS, lead, mercury, or certain ortho-phthalates and formaldehyde releasers.

Simultaneously, states with broad PFAS prohibitions—including California, Colorado, Maryland, and Minnesota—spent the end of 2025 transitioning from initial rollouts to aggressive market surveillance. The Minnesota Pollution Control Agency (MPCA) finalized its "PFAS in Products" reporting rule on December 8, 2025. While the absolute ban on intentionally added PFAS in cosmetics has been in effect since January 2025, this new year-end rulemaking established the specific fee structures and technical reporting requirements that manufacturers must follow. Although the MPCA extended the first major reporting deadline from January to July 1, 2026, the final months of 2025 were a critical window for companies to finalize their currently unavoidable use claims to protect certain specialized formulations from future phases of the state's total PFAS phase-out.

On the legislative front, the New York Beauty Justice Act saw significant movement in Q4 2025 as it moved toward finalization for the 2026 session. This ambitious bill aims to ban a wide array of chemicals,

The Minnesota Pollution Control Agency (MPCA) finalized its "PFAS in Products" reporting rule on December 8, 2025.

including several heavy metals and formaldehyde-releasing agents, while specifically addressing products marketed to women of color. Furthermore, under the 2023 modernization of the Toxic-Free Kids Act, Oregon now requires manufacturers to disclose high-priority chemicals in children's cosmetics by specific brand name and product model—rather than broad categories—for all products sold during the 2024-2025 period, with the first detailed reports due by January 31, 2026.

Litigation Updates

Product Liability & Emerging Chemical Risks

In Q4 2025, record-breaking jury verdicts defined the litigation landscape for the cosmetics and personal care industry in legacy cases and a surge in new filings targeting emerging chemical concerns. The most significant development occurred in the talc litigation sector, where in December 2025, a Baltimore jury awarded more than $1.5 billion to a woman who alleged that exposure to asbestos through talc-containing personal care products caused her to develop peritoneal malignant mesothelioma. This followed a series of high-value verdicts throughout the year, including a Minnesota jury award of $65.5 million to a young mother diagnosed with mesothelioma, and a California jury award of $966 million to the family of a woman who died from the same disease.

At the same time, the Hair Relaxer Multidistrict Litigation continued its rapid expansion, exceeding 10,900 active lawsuits as of January 2026. Intensive discovery and procedural refinement marked the fourth quarter of 2025, as the court concentrated on general causation issues and scheduled a pivotal "Science Day" for early January 2026. This proceeding is designed to educate the court on the alleged connection between endocrine-disrupting chemicals found in hair straightening products and the development of reproductive cancers.

Environmental Marketing Claims

In the fourth quarter of 2025, consumer class action litigation in the cosmetics and personal care industry continued to shift toward issues of "greenwashing" and transparency in "clean beauty" marketing—trends that have been steadily intensifying for several years. A new wave of lawsuits targeted influencer marketing practices, alleging that brands and their social media affiliates failed to disclose material relationships while making unsubstantiated claims about product safety or "natural" attributes. While some class actions related to PFAS were dismissed due to plaintiffs' inability to demonstrate specific injury or actual contamination in their purchased items, other cases survived the motion to dismiss stage, particularly those involving products marketed as "all-natural" or "organic."

Ingredient Challenges & Efficacy Disputes

Throughout this period, companies faced a marked increase in lawsuits focused on factual allegations regarding product safety and marketing transparency. Most of these cases challenged allegedly misleading descriptions, with plaintiffs scrutinizing claims such as "100% mineral," "oil-free," "hypoallergenic," and "preservative-free," asserting that products contained undisclosed synthetics or allergens. Plaintiffs further alleged that manufacturers failed to deliver advertised benefits—especially for health-related claims like acne treatment or retinol efficacy—where formulations were allegedly unlikely to provide promised results due to insufficient concentrations or the nature of "rinse-off" products.

Microcontaminants & Trace Impurity Claims

Another significant trend involved allegations of nondisclosure concerning hazardous or contaminating ingredients. Plaintiffs claimed that manufacturers failed to warn about the presence of harmful substances, including heavy metals in menstrual products, endocrine-disrupting chemicals in hair relaxers, and bacterial contamination from water used in production. Some suits highlighted advertised claims of safety that were allegedly contradicted by adverse reactions, underscoring the litigation risk for brands that market products as "safe" without substantiated evidence.

"Made in USA" Origin & Labeling Claims

Origin-based marketing claims, such as "Made in USA," also faced scrutiny, particularly where foreign-sourced ingredients were purportedly present. For example, in *Benjamin Karter and Diego Ornelas v. Dude Products Inc.* (S.D. Cal. 2025), plaintiffs alleged that Dude Products misrepresented its hygiene items as "Made in the USA" or "Assembled in USA" without proper qualification. However, on October 1, 2025, the Southern District of California granted the defendant's motion to dismiss, finding that plaintiffs failed to plausibly allege the "Assembled in USA" claim was deceptive. The court clarified that "assembled" refers to the location of assembly, not the origin of the parts themselves, and held that a reasonable consumer would not interpret the claim to mean all components are domestic.

Proposition 65

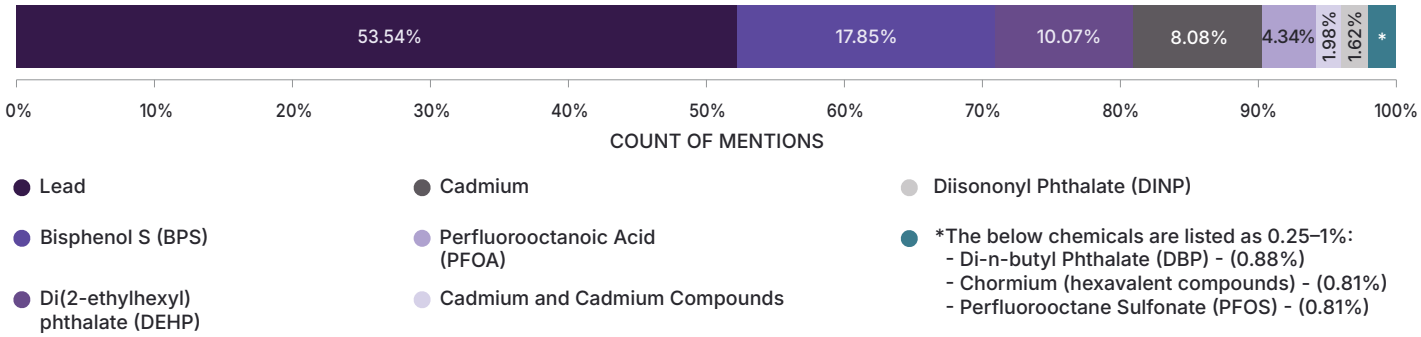
2025 by the Numbers

In Q4 2025[1] plaintiffs filed 1,308 pre-suit notices of violation relating to California's Proposition 65. Topping the list by far were bisphenol S and lead notices, continuing the trend we saw in Q3. Notices relating to exposures allegedly caused by foods, dietary supplements, or beverages outnumbered (by 25 notices) notices targeting nonconsumable goods—a surprising reversal of the usual trend wherein notices for nonconsumable goods far outstrip the notices targeting food. This may indicate plaintiffs are doubling down on targeting food companies. As in prior months, many of the notices relating to food involve seafood products such as shrimp, shellfish, sardines, and seaweed as well as dietary supplements—especially protein powders—and other dried goods. Recently there has been an increased focus on heavily spiced foods such as curry pastes, mole sauces, and seasoning blends.

On that same note, we have also seen an increase in notices for PFAS—such as perfluorooctanoic acid, perfluorooctane sulfonate, and perfluorononanoic acid—in a variety of food products, with plaintiffs Environmental Research Center, Inc. and Ecological Alliance, LLC, sending the most notices. Given the ubiquity of PFAS chemicals in the environment, we expect to see more notices like these over the next few months.

See the chart below for a detailed breakdown of the top 10 chemicals at issue in Q4 of 2025:

Percentage by Chemical



[1] Data includes October 1, 2025 – December 31, 2025

Litigation Update: Court Upholds OEHHA's Decision Not to List Processed Meats Under Proposition 65

A California state court rejected a challenge seeking to force the Office of Environmental Health Hazard Assessment (OEHHA) to list "processed meat" as a carcinogen under Proposition 65, holding that the agency acted within its discretion when it declined to do so.

The case arose after the Physicians Committee for Responsible Medicine (PCRM) petitioned OEHHA to add processed meat to the Proposition 65 list based on designation by the International Agency for Research on Cancer (IARC) of processed meat as a "Group 1" carcinogen—a classification that reflects the existence of some human evidence of carcinogenicity, but not a conclusion that all products fitting that label pose a clear or actionable risk to consumers. When OEHHA refused, PCRM sued, arguing that Proposition 65 imposes a mandatory duty to list any substance IARC has classified as carcinogenic under the statute's so-called "Labor Code listing mechanism."

A. "Substances" vs. "Agents"

The court agreed with PCRM on one important point: In many cases, when IARC classifies a clearly identifiable chemical as carcinogenic, OEHHA's role in adding it to the Proposition 65 list is ministerial. But the court emphasized that the analysis does not end there. Proposition 65 is designed to regulate chemicals and substances, while IARC's monographs address a much broader universe of "agents," including behaviors, exposure scenarios, and categories that are not readily susceptible to listing or warning. That mismatch proved decisive. The court explained that OEHHA must first determine whether what IARC has classified is, in fact, a "substance" as that term is reasonably understood under Proposition 65. That determination, the court held, is a discretionary, quasi-legislative judgment entitled to deference.

Central to the ruling was the breadth of IARC's definition of processed meat. IARC defines the term to include "any meat that has been transformed through one or several processes," including salting, curing, fermentation, smoking, or other processes used to enhance flavor or preservation. The court found this definition "extremely broad" and noted that IARC itself acknowledged an inability to distinguish cancer risk among different types of processed meat products.

According to the court, that lack of clarity matters because Proposition 65's warning obligation is self-executing: Once a substance is listed, warnings are required one year later unless a statutory exemption applies. Listing an ill-defined category like processed meat, the court reasoned, would risk generating warnings for products that may not pose a cancer risk at all, thereby undermining Proposition 65's informational purpose.

Vinyl acetate is a high-production-volume synthetic chemical used primarily as a building block for polymers and copolymers—materials that appear throughout modern supply chains.

The court also rejected PCRM's argument that any definitional problems could be addressed later through OEHHA rulemaking, federal preemption challenges, or First Amendment litigation. Each of those safeguards, the court explained, presupposes a clear understanding of what products are covered—something missing from IARC's definition.

B. No Abuse of Discretion by OEHHA

Ultimately, the question before the court was not whether processed meat can cause cancer, but whether OEHHA acted arbitrarily or abused its discretion in declining to list it. The court concluded it did not. OEHHA reasonably determined that processed meat, as defined by IARC, was not a sufficiently identifiable substance to be listed under Proposition 65 without causing confusion and potentially misleading consumers.

The petition for writ of mandate and request for declaratory relief was therefore denied in full. PCRM filed a notice of appeal in November 2025.

The case is *Physicians Committee for Responsible Medicine, et al v. Newsom*, Cal. Super. Ct. (Sacramento Cnty.), No. 34-2020-80003354. The court's ruling is available here.

Regulatory Update: What Businesses Should Know About Vinyl Acetate After OEHHA's New Guidance

Vinyl acetate has officially entered the Proposition 65 landscape, and California regulators are already signaling how they expect enforcement to unfold.

Vinyl acetate is a high-production-volume synthetic chemical used primarily as a building block for polymers and copolymers—materials that appear throughout modern supply chains. These downstream materials are used in products ranging from adhesives, paints, coatings, plastics, inks, and packaging to textiles, building materials, and cosmetics. In late 2024, the Carcinogen Identification Committee within OEHHA voted unanimously to list vinyl acetate as a carcinogen under Proposition 65.

Against that backdrop, in December 2025, OEHHA issued an informational letter clarifying how Proposition 65 should be applied to vinyl acetate in consumer products. The agency emphasized a critical distinction: vinyl acetate itself is listed, but vinyl acetate–based polymers and copolymers are not. As OEHHA explained, vinyl acetate is generally consumed during polymerization, and any remaining unreacted monomer tends to be present—if at all—only at trace levels. That distinction has significant implications for enforcement. OEHHA cautioned that allegations based solely on the presence of a vinyl acetate–derived

polymer are insufficient to establish a Proposition 65 exposure. For a warning obligation to arise, there must be evidence of actual or reasonably anticipated exposure to vinyl acetate itself, not merely its use as a raw material earlier in the manufacturing process.

OEHHA also weighed in on testing methodology, advising that appropriate testing should reflect the amount of vinyl acetate released during foreseeable conditions of use, handling, storage, or maintenance. Laboratory techniques that artificially extract vinyl acetate by breaking down polymers in ways that would not occur in real-world conditions were expressly discouraged.

The immediate takeaway is that listing does not equal liability. While vinyl acetate is now on the Proposition 65 list, OEHHA's guidance reaffirms that the statute regulates exposures, not material content. Companies receiving notices that target products containing vinyl acetate-based polymers or copolymers should closely scrutinize whether the alleged exposures are supported by credible, real-world testing and foreseeable use scenarios. Where alleged exposures rely on methods that degrade polymers or otherwise do not reflect ordinary product use, the claims may be vulnerable to challenge.

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