MIDYEAR | 2026

FOOD AND CPG LEGAL TRENDS

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CONTENTS

Ashurst Perkins Coie is pleased to publish its **2026 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 2026, 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.

REGULATORY DEVELOPMENTS

New food regulatory developments emerged at the federal and state levels during the second quarter of 2026.

Many of these developments are detailed below:

CHANGES IN FDA LEADERSHIP

In May 2026, U.S. Food and Drug Administration (FDA) Commissioner Dr. Marty Makary resigned. Kyle Diamantas is now acting commissioner of the FDA, having most recently served as FDA's deputy commissioner for food. Acting Commissioner Diamantas is unique among FDA leaders, as he is a lawyer without a medical background. Prior to government service, Diamantas was a partner at a large law firm.

FDA UPDATES GUIDANCE AGENDA

On June 29, the FDA updated its 2026 guidance agenda for its Human Foods Program. The agency detailed topics on which it expects to publish guidance documents in draft or final form by the end of 2026. Among these topics are the use of fruit juice and vegetable juice as a color additive in food, the labeling of caffeine content in foods and beverages, and food labeling for online grocery shopping platforms.

SNAP FOOD WAIVERS VACATED IN FIVE STATES

The U.S. Department of Agriculture (USDA) has issued waivers amending the definition of foods that are eligible for purchase through the Supplemental Nutrition Assistance Program (SNAP) in more than 20 states. While the details of the waivers vary, the states sought to prohibit purchases with SNAP dollars of low- and no-calorie sodas, fruit and vegetable drinks with less than 50% juice, and candy. On June 22, 2026, a D.C. federal court vacated the waivers granted to Colorado, Iowa, Nebraska, Tennessee, and West Virginia. The court held that USDA had granted the waivers without appropriate notice procedures and had improperly amended the statutory definition of "food" eligible for purchase within SNAP. The court's ruling, on its face, is limited to the five states involved in that litigation. Read the Ashurst Perkins Coie update about this development here.

RECALL OF GEL NAIL POLISH CONTAINING METHYLENE CHLORIDE

In April 2026, the FDA issued a recall of certain gel nail polish products that contained methylene chloride and chloroform, each of which is prohibited in cosmetic formulations. Also in April 2026, the FDA's surveillance program identified 10 gel nail polish remover products containing high levels of methylene chloride. According to the FDA, these products often either failed to disclose methylene chloride on their labels or used alternative terminology that may obscure the ingredient's presence in online marketplaces. Read the Ashurst Perkins Coie update about this development here.

NEW YORK PASSES DATE LABELING BILL

On June 2, 2026, the New York State Legislature passed S7618/A7291, a law requiring uniform date labeling for food products. The law standardizes food date labeling with "use by" or "use by or freeze

by" to indicate the safety of the food product and the terms "best if used by" or "best if used or frozen by" to indicate food quality. The legislation also prohibits the use of the term "sell by" after July 1, 2028, unless the term is presented in a coded format.

NEW YORK STATE LEGISLATURE PASSES GRAS BILL

On April 21, 2026, the New York State Legislature passed the Food Safety and Chemical Disclosure Act. Among other things, the bill would prohibit the sale, distribution, or manufacture of foods containing any of the three food or color additives: FD&C Red No. 3, potassium bromate, and propylparaben. The legislation would also establish a state-level reporting regime for Generally Recognized As Safe (GRAS) ingredients in food products. Read the Ashurst Perkins Coie update about this development here.

MISSISSIPPI ENACTS LAW PROHIBITING CELL-CULTURED DAIRY

Effective July 1, 2026, the manufacturing, sale, and offering for sale of "cell-cultured dairy products" is prohibited within the state of Mississippi under HB 1153. The law defines such a product as one "intended to replicate or to substitute for milk and that is derived from animal cells cultured outside of a live animal," inclusive of those products "produced through the growth of mammary or other animal cells *in vitro*."

DELAWARE PASSES CAFFEINE WARNING BILL

On June 11, 2026, the Delaware House of Representatives passed a bill which would require the state's Division of Public Health to provide signage for retailers selling energy drinks or caffeinated dietary supplements. The bill proceeds to the state Senate for further consideration. The bill follows other caffeine safety proposals, including Pennsylvania's HB2377, introduced in April 2026, and HR 2511, which was introduced in the U.S. Congress in 2025 and would require certain caffeine-related disclosures.

DEFINITIONS OF SO-CALLED ULTRA-PROCESSED FOOD (UPF)

On August 10, 2026, HHS and USDA announced that the agencies' first proposed definition of so-called ultra-processed food (UPF) has been submitted for final administrative review. While no specific technical criteria or ingredient standards have been publicly released, this regulatory effort comes alongside competing legislative proposals at both the federal and state levels, including the Childhood Diabetes Reduction Act (S.5026), the Food Labeling Modernization Act (S.5166), and California's Real Food Healthy Kids Act (AB 1264), each of which takes a distinct approach to defining and regulating UPFs.

GRAS RULE UPDATE

On August 10, 2026, HHS and FDA proposed a major change to the generally recognized as safe (GRAS) framework governing food ingredients. The proposed rule would replace the current voluntary GRAS notification process with a mandatory notification procedure, create a public repository for GRAS-related information, and give FDA the ability to update or rescind prior "no questions" letters. Public comments on the proposed rule are due in early December 2026. Following the comment period, the agency will address comments received and finalize the rule. If finalized, FDA proposes that the rule become effective 60 days after publication of the final rule, with compliance required within 18 months. For more information, check out Ashurst Perkins Coie's Legal Development.

FOOD, BEVERAGE, AND SUPPLEMENTS

Predominant Ingredients

In the first half of 2026, plaintiffs continued to target products that emphasize a "premium" ingredient, such as honey or wheat, as allegedly misleading when that ingredient is not the predominant sweetener or grain component.

For example, in ***Britta Harbour v. Acme Markets, Inc.***, Index No. 56892/2026 (N.Y. Sup. Ct., Westchester Cnty.), the plaintiff brought a putative class action alleging that the labeling of O Organics "Stone Ground Wheat Crackers" is misleading because the product does not contain predominantly whole grains, despite what consumers allegedly would expect from the "Stone Ground Wheat" representation and accompanying imagery of light brown crackers.

Similarly, in ***Kathyann McLendon v. Ken's Foods, Inc.***, Index No. 700920/2026 (N.Y. Sup. Ct., Queens Cnty.), the plaintiff alleges violations of New York GBL §§ 349 and 350, contending that the company's "Honey Balsamic Dressing" is deceptively labeled and marketed to suggest that it is sweetened exclusively with honey, when it is in fact primarily sweetened with refined sugar.

This "predominant ingredient" theory is not new, but it appears to be gaining traction with the plaintiffs' bar as a theory of allegedly misleading marketing. Notably, these claims are not limited to express "made with" statements. Plaintiffs are also challenging product names themselves, such as "Honey Balsamic Dressing" or "Stone Ground Wheat Crackers," as conveying a misleading message about ingredient composition. The first half of 2026 suggests a broader expansion of this theory, and we expect that plaintiffs may continue advancing it throughout 2026.

Testori v. Nestle Health Science, 2026 WL 1282540 (E.D. Cal. May 11, 2026), provides an important counterpoint. There, the plaintiff challenged a breakfast drink marketed as "nutritional" and labeled as containing 10 grams of protein per serving, alleging that those representations were misleading because the product's primary ingredients were water and sugar, with 11 grams of sugar per serving. The court rejected the theory, concluding that the protein and "nutritional" statements did not imply that protein was the predominant ingredient, that the product was low in sugar, or that it was "healthy" overall. For the first half of 2026, ***Testori*** thus illustrates an important limit on predominant-ingredient claims: Although plaintiffs continue to challenge labels that highlight purportedly desirable ingredients while allegedly relying on less desirable ones, ***Testori*** demonstrates that courts may dismiss those claims where the challenged statements do not plausibly convey that the highlighted ingredient predominates or that other ingredients are absent.

ARTIFICIAL INGREDIENTS

As expected, the first half of 2026 also brought continued focus on allegedly artificial ingredients.

For example, in ***Gabriella Proxmire v. Craftmix, Inc.***, No. 3:26-cv-01874 (S.D. Cal.), the plaintiff alleges that the company mislabeled its drink mixes as "All

In the first half of 2026, plaintiffs continued to bring lawsuits targeting products making front-of-pack protein claims, building on the 2025 trend.

Natural" despite the presence of artificial ingredients. The complaint asserts claims under California's Unfair Competition Law (UCL), False Advertising Law (FAL), and California Consumer Legal Remedies Act (CLRA), along with warranty, misrepresentation, fraud, and unjust enrichment claims.

Likewise, in ***Michelle Garza v. Positive Beverage, LLC***, No. 8:26-cv-00722 (C.D. Cal.), the plaintiff alleges that Positive Hydration beverages were deceptively marketed as containing no artificial preservatives even though the products allegedly contain manufactured citric acid. The complaint asserts claims under the CLRA and UCL, as well as for breach of express warranty.

Fogelson v. Snapple Beverage Corp., No. 1:25-cv-00033 (E.D.N.Y. March. 27, 2026), may signal an important limit. There, the court dismissed the case in full after rejecting allegations that malic acid was artificial where the plaintiff relied on hypothetical testing and conclusory assertions, rather than concrete facts tied to the product at issue.

The Ninth Circuit recently weighed in on similar allegations in ***Trammell v. KLN Enterprises, Inc.***, 2026 WL 1356403, No. 24-6097 (9th Cir. May 15, 2026), reversing dismissal of claims that Wiley Wallaby licorice was falsely labeled as free of artificial flavors despite allegedly containing dl-malic acid. The court held that the plaintiff's lab-testing allegations were sufficient to satisfy Rule 9(b) and that a reasonable consumer could plausibly be misled by a "free of artificial flavors" claim if the product allegedly contained an artificial flavoring ingredient.

PROTEIN LITIGATION

In the first half of 2026, plaintiffs continued to bring lawsuits targeting products making front-of-pack protein claims, building on the 2025 trend. Specifically, consumers continue to allege that companies violated applicable regulations by failing to provide the Protein Digestibility-Corrected Amino Acid Score (PDCAAS)-corrected percent of Daily Value (%DV) on the Nutritional Facts Panel (NFP). Pursuant to 21 C.F.R. § 101.9, a product that makes a front-of-pack statement about the amount of protein in the product must also list the PDCAAS-corrected %DV on the NFP. The %DV informs the consumer of the digestibility of the protein, which is the amount of protein that is actually being absorbed by the body.

For example, in ***Swartz v. Dave's Killer Bread, Inc. et al.***, Case No. 26CV163250 (January 7, 2026), filed in California state court, the plaintiff alleges that the products were prominently labeled with "5g PROTEIN" on the front of the package but did not include the required PDCAAS-corrected %DV in the NFP as mandated by 21 C.F.R. § 101.9(c)(7). Additionally, the complaint alleges that the primary sources of protein in the products (wheat and oats) are low-quality proteins and have low PDCAAS scores, resulting in 2.5 grams or less of usable protein, even though the products advertise 5 grams of protein.

A couple newer theories of liability appear to be emerging as well. For example, in ***Caldera v. Laird Superfood, Inc.***, Case No. 26STCV02688 (January 26, 2026), also filed in California state court, the plaintiff alleges that the defendant's protein bars are mislabeled because carbohydrates and sugar are the predominant macronutrient in the protein bars, not protein.

Additionally, in ***Knox v. Chobani, LLC***, Case No. 1:26-cv-05093-VEC (June 16, 2026), filed in the Southern District of New York, the plaintiff alleged that the protein content on Greek yogurt products is exaggerated and misleading because the serving size is improperly inflated. Specifically, the plaintiff alleged that the defendant inflated the serving size from ½ cup to ¾ cup in order to claim 20 grams of protein per serving when the products allegedly contain approximately 17.78 grams per serving when calculated properly. Plaintiff alleges this conduct violates New York GBL §§ 349 and 350 and asserts an additional claim for unjust enrichment.

Products with “compostable” or “biodegradable” claims are facing increasing litigation as consumers seek out products that can be sustainably disposed.

In Q1 and Q2 of 2026, product labels purporting that a product is “compostable” or “biodegradable” are facing increased scrutiny in litigation across state and federal courts. Notably, these claims are concentrated within state and federal courts in New York and California and mainly challenge label statements that tout a product’s biodegradability and/or compostability.

Specifically, plaintiffs are primarily utilizing state law consumer protection statutes to claim that certain consumer products, particularly single-use disposable items, are deceptively marketed and labeled with environmental certifications or green claims, while allegedly containing nondegradable plastics or biopolymers that are not fully biodegradable or compostable.

RECENT LITIGATION AGAINST “COMPOSTABLE” AND “BIODEGRADABLE” CLAIMS

In Q1, a plaintiff filed a putative class action asserting violations of CLRA, FAL, and UCL, as well as claims for breach of express warranty, unjust enrichment, and fraud. Plaintiffs alleged that a company had falsely labeled and marketed its Cling Wrap products as “100% home compostable,” alleging that the products contain certain substances that degrade into microplastics and toxic chemicals that inhibit plant growth and render compost unusable. ***Smet v. Compostic Limited***, No. 2:26-cv-00694-DC-AC (E.D. Cal., filed on March 4, 2026). In Q2, a putative class action filed in Los Angeles Superior Court alleges CLRA, UCL, and FAL claims against a skincare brand for its “clean,” “sustainable,” and “planet friendly” product labels. Plaintiffs allege that the products are falsely marketed because they contain numerous synthetic, nonbiodegradable, and environmentally persistent ingredients. ***Robertson v. Sunday Riley Modern Skincare, LLC***, Case No. 26STCV11996 (April 14, 2026).

In New York, several putative class actions challenge “compostable” or “biodegradable” claims on personal care wipes. For example, in ***Santiago v. Burt’s Bees, Inc.***, Case No. 702281/2026 (Queens Cty Sup Ct 11th JD, filed on January 26, 2026) and ***Smith v. The Honest Company, Inc.***, 702337/2026 (Queens Cty Sup Ct 11th JD, filed on January 27, 2026), plaintiffs brought claims under New York GBL § 349 and § 350 alleging that the respective wipes and towelettes at issue contain decylglucoside crosspolymer—a crosslinked biopolymer that is not fully biodegradable or compostable in a home composting environment.

ESG LABELING LITIGATION CONTINUES

Courts continue to apply the "reasonable consumer standard" and review relevant state law and federal guidance on environmental, social, and governance (ESG) claims. Recently, the district court in ***Lieber v. Igloo Prods. Corp.***, No. 25-CV-488, 2026 WL 266301 (E.D.N.Y. Feb. 2, 2026), allowed a class action to move forward on the plaintiff's misleading biodegradability and recyclability claims while dismissing the breach of express warranty and unjust enrichment claims. The court heavily relied on the definitions set forth in the Federal Trade Commission's (FTC) "Guides for the Use of Environmental Marketing Claims" (henceforth the "Green Guides") to find that the plaintiffs adequately pled that the defendant made misleading and/or deceptive claims of recyclability and biodegradability.

The FTC Green Guides remain as key standard guidance for companies' use of product certifications and ESG claims. The Green Guides were first issued in 1992 and were revised in 1996, 1998, and 2012. In 2022, the FTC sought public comment on potential updates to the Green Guides; however, no revisions have been finalized since, and the 2012 version remains the most current edition. The Green Guides address general principles that apply to all environmental marketing claims, including how consumers are likely to interpret particular claims, how marketers can substantiate these claims, and how marketers can qualify their claims.

Although not legally binding *per se*, the Green Guides remain an important tool for companies as helpful benchmarks for compliance while also serving as an important safe harbor in litigation.

In Q2, plaintiffs are increasingly relying on the Green Guides at the outset. For example, a class of plaintiffs in the Southern District of California are relying upon the FTC Green Guides to support claims related to allegedly deceptive "recyclable" claims for single-serve coffee pods. ***Dixon v. Keurig Dr Pepper, Inc.***, 3:26-cv-02172-GPC-BJW (S.D. Cal., amended complaint filed on July 6, 2026).

BEAUTY, COSMETICS, AND PERSONAL CARE

Regulatory Updates

Federal updates

The first half of 2026 saw FDA take further oversight of the cosmetics and personal care industry under the **Modernization of Cosmetics Regulation Act (MoCRA)**. The agency is normalizing compliance expectations, establishing that initial grace periods have concluded and active enforcement is now the standard baseline for doing business in the United States.

The first half of the year saw the official rollout of the biennial facility registration renewal cycle. In February 2026, the FDA updated its Cosmetics Direct electronic submission portal to integrate dedicated "Registration Status" and "Renewal Date" trackers. Facilities that registered during the initial mandatory wave in late 2023 and early 2024 are now hitting their first two-year deadlines, forcing manufacturers to implement strict data-maintenance protocols to report brand, ownership, or operational changes within the mandatory 60-day window. Notably, as of June 30, 2026, approximately 16,398 unique active facilities had been registered and 1,298,361 products had been listed under MoCRA.

The FDA also gave the industry further clarity by publishing a guidance explaining how and when it will use its new power to force mandatory product recalls. While the agency maintains that it will prioritize voluntary compliance, its draft guidance issued in December 2025 entitled "Questions and Answers Regarding Mandatory Cosmetics Recalls: Guidance for Industry" clarifies how it intends to leverage its power to halt distribution and mandate product withdrawals. The FDA is actively utilizing post-market surveillance data, third-party inspection reports, and serious adverse event tracking to evaluate whether cosmetic products pose a reasonable probability of causing serious adverse health consequences.

Registration and Listing Reports

The summary table below provides the number of the unique, active cosmetic product facilities registered and unique, active cosmetic products listed under MoCRA.

MoCRA Registration of Cosmetic Product Facilities and Cosmetic Product Listings (Since December 18, 2023)	
Number of unique, active facility registrations [1, 2, 3]	16,398
Number of unique, active product listings [1, 2, 4]	1,298,361

Additional information about the number of unique, active cosmetic product facilities that have registered with FDA under MoCRA can be downloaded here

[1] Data Sources = Cosmetics Direct, Electronic Submission Gateway (ESG), Structured Product Labeling (SPL) authoring software, and paper submissions
[2] Data as of June 30, 2026
[3] Unique, active facility registrations = the number of active cosmetic product facilities registered
[4] Unique, active product listings = the number of active cosmetic products listed

FDA is authorized to access and copy product and ingredient records from both responsible persons and manufacturing facilities if there is a 'reasonable belief' that a cosmetic product is adulterated and presents a threat of serious adverse health consequences or death.

Simultaneously, the FDA has intensified its focus on mandatory safety substantiation and records access readiness. Based on the FDA's draft guidance, "FDA Records Access Authority for Cosmetic Products," issued in January 2026, the agency has clarified its expanded authority to access and copy cosmetic product records during facility inspections. Under MoCRA, responsible persons must grant FDA access to all adverse event reports—including communications with individuals reporting the events, seriousness assessments, and subsequent medical updates—which must be retained as original documents or true copies for six years (or three years for certain qualified small businesses). Furthermore, under another provision of MoCRA, the FDA is authorized to access and copy product and ingredient records from both responsible persons and manufacturing facilities if there is a "reasonable belief" that a cosmetic product is adulterated and presents a threat of serious adverse health consequences or death (SAHCOD). To achieve records access readiness, industry members must establish recordkeeping protocols that ensure compliance files are properly maintained and readily available for retrieval upon inspection.

Finally, the federal regulatory pipeline saw a recalibration of highly anticipated rulemakings following the publication of the July 2026 Unified Agenda. The finalization of standardized cosmetic Good Manufacturing Practices (GMPs) has officially been categorized as a long-term action, though the FDA actively expects firms to align with general structured manufacturing controls drawing from established benchmarks like ISO 22716. Meanwhile, the regulatory timeline for the proposed rule on standardized asbestos testing methods in talc-containing cosmetics has undergone a significant reset. Following the FDA's withdrawal of its initial two-tiered testing proposal in late 2025 due to pushback regarding cross-industry impacts and definition alignment across federal agencies, the targeted timeline for a revised proposed framework has shifted further out in time, leaving immediate federal mandates paused. This delay keeps the near-term legal and compliance emphasis heavily placed on data hygiene, voluntary quality control, and post-market surveillance.

State of the states

The first half of 2026 witnessed a continuing shift in the state-level regulation of cosmetics and personal care products. While federal authorities remained focused on operationalizing the administrative and adverse-event reporting frameworks under MoCRA, state legislatures and environmental agencies accelerated their own enforcement timelines. This dynamic has created a patchwork of state-specific chemical bans and disclosure mandates, effectively forcing the beauty industry to formulate for the strictest local standard rather than waiting for a uniform federal baseline.

NORTHEAST AND MID-ATLANTIC RESTRUCTURE CHEMICAL THRESHOLDS

New England saw a wave of state-level enforcement with major statutory changes taking effect early in the year:

- **Maine and Vermont:** On January 1, 2026, both states enacted strict prohibitions on the manufacture, sale, and distribution of cosmetics containing intentionally added per- and polyfluoroalkyl substances (PFAS). In Vermont, if cosmetic and menstrual products are made through "manufacturing processes intended to comply with" the PFAS ban, it would not violate the law if they contain a "technically unavoidable trace quantity" of PFAS if the trace quantity is caused by impurities of "(1) natural or synthetic ingredients; (2) the manufacturing process; (3) storage; or (4) migration from packaging." 9 V.S.A. § 2494b(b).
- **Connecticut:** Transitioning the landscape further, Connecticut initiated a phased regulatory approach on July 1, 2026. Public Act 24-59 requires manufacturers selling cosmetics with intentionally added PFAS to provide prior written disclosures to the state government and include prominent, state-approved warning labels on packaging. This disclosure mandate serves as a compliance bridge toward a total state ban scheduled for January 1, 2028.
- New York: New York is building upon established environmental laws to enforce much stricter boundaries on personal care formulations. Under existing state law enacted in late 2022, New York has already implemented a full ban on the sale of cosmetics and personal care items containing intentionally added mercury. Furthermore, the state passed the Ban on PFAS and Toxic Chemicals in Menstrual Products Bill, which officially takes effect on December 19, 2026. This enacted law prohibits the sale of tampons, pads, and other intimate care items formulated with intentionally added PFAS, heavy metals, and carcinogens like formaldehyde.

  To expand these protections to all cosmetics, New York lawmakers are currently debating the proposed Beauty Justice Act (Assembly Bill A2054B/Senate Bill S2057B). If passed into law, the bill will prohibit the sale of any cosmetic or beauty product formulated with intentionally added formaldehydes, formaldehyde releasers, lead, specific parabens, asbestos, or the broader class of so-called PFAS "forever chemicals" while legally exempting unintentional manufacturing trace elements.

WEST COAST LAUNCHES ENFORCEMENT

On the West Coast long-standing compliance grace periods officially expired and new compliance trends emerged:

- **Washington State:** The Department of Ecology began full retail enforcement of the landmark Toxic-Free Cosmetics Act (TFCA) on January

1, 2026. The expiration of the statutory retail sell-through window officially ended the ability of in-state retailers and beauty salons to sell or utilize existing noncompliant inventory. The law restricts the sale, distribution, or professional salon use of cosmetics containing ortho-phthalates, mercury, or intentionally added PFAS. While the statutory limit for lead impurities is set at 1 parts per million (ppm), the state is currently exercising enforcement discretion under an active interim policy through 2026, granting qualified manufacturers alternative compliance paths up to 5 ppm while permanent lead rulemaking is finalized.

- **California:** The state expanded its enforcement boundaries on multiple fronts. Under the original Toxic-Free Cosmetics Act (AB 2762) and the PFAS-Free Cosmetics Act (AB 2771)—both of which went into full effect in 2025—regulators transitioned from initial rollout to active market surveillance throughout 2026. Compliance is monitored via the California Safe Cosmetics Program, with regulators pulling inventory that exceeds technically unavoidable trace allowances. Concurrently, the state is preparing for a major expansion of the statutory framework under AB 496. This expansion establishes a January 1, 2027, deadline that outlaws 26 additional intentionally added toxic ingredients—including lily aldehyde (lilial), vinyl acetate, styrene, and various boron substances—that would eliminate any multiyear retail sell-through grace periods for the expanded list.

MID-SOUTH AND MIDWEST PIPELINE SIGNALS NEXT COMPLIANCE WAVE

The spring legislative cycle demonstrated that PFAS restrictions are no longer confined to coastal states, signaling a major shift into the Midwest and South. Lawmakers in Kansas (HB 2674), Missouri (HB 2400), and Ohio (HB 743) have introduced sweeping legislative packages aiming to codify retail prohibitions on intentionally added PFAS by 2027 and 2028. Meanwhile, Kentucky has recently enacted HB 196 into law, establishing a mandatory PFAS reporting framework that requires manufacturers selling products in the state to disclose intentional chemical footprints starting January 1, 2027.

MIDYEAR 2026 COSMETIC AND PERSONAL CARE LITIGATION TRENDS

The first half of 2026 has witnessed a continuing surge in litigation targeting the cosmetic and personal care industry, reflecting evolving consumer expectations, regulatory scrutiny, and aggressive plaintiff strategies. From California and New York to nationwide class actions, courts have addressed a broad spectrum of issues including labeling accuracy, ingredient safety, environmental marketing, and efficacy claims. Companies are increasingly challenged to substantiate representations such as "natural," "hypoallergenic," "unscented," and "clinically proven," while regulatory frameworks like California's Proposition 65 and assorted state consumer protection laws continue to fuel both new filings and significant rulings.

HYPOALLERGENIC AND SENSITIVE SKIN CLAIMS

A clear 2026 trend is class actions challenging "hypoallergenic" and "sensitive skin" claims when products contain potential allergens or sensitizers. In *Mills, et al. v. Conopco, Inc.,* No. 3:26-cv-04286-SK (N.D. Cal. May 8, 2026), Dove Body Wash was accused of being deceptively labeled as hypoallergenic despite containing d-Limonene, a common scent allergen. Similarly, in ***Beyer, et al. v. Kenvue Brands, LLC***, No. 2:25-cv-12180-SDW-AME (D.N.J. May 19, 2026), plaintiffs challenged "sensitive skin" and "hypoallergenic" branding for children's skincare products after allegedly experiencing allergic reactions, asserting warranty, unjust enrichment, and consumer-protection statutory claims. However, the court dismissed the ***Kenvue*** action for lack of standing, ruling that the plaintiffs failed to plead specific factual allegations regarding contaminant levels to support their "premium price" theory and failed to prove reliance on other label advertisements.

"NATURAL," "CLEAN," AND "CHEMICAL-FREE" CLAIMS

Multiple filings in 2026 target alleged misrepresentation of "natural," "clean," "mineral," or "chemical free" claims. For example, ***Thomsen v. Blue Mistral, LLC dba Fekkai***, No. 26STCV09597 (Cal. Super. Ct., L.A. Cnty., Mar. 6, 2026), focused on Fekkai shampoos labeled as "natural" but containing synthetic ingredients. Likewise, ***Loh v. L'Oreal USA S/D Inc.***, Index No. 608421/2026 (N.Y. Sup. Ct., Nassau Cnty., June 5, 2026) challenged "chemical free" and preservatives-free claims, alleging the presence of non-natural or synthetic components.

PROPOSITION 65 AND CHEMICAL EXPOSURE WARNINGS

Failure to warn about chemical exposures triggered by California's Proposition 65 led to a flurry of complaints in early 2026, highlighted by actions like ***Balabbo v. Walgreen Co.***, No. CGC-26-633824 (Cal. Super. Ct., San Francisco Cnty., Feb. 11, 2026), which focused on unlabeled diethanolamine (DEA) in Halloween makeup kits alongside parallel claims against Xtreme Tools International and Strivectin Operating Company. However, the enforcement baseline for trace alkanolamines changed dramatically on June 24, 2026, when the U.S. District Court for the Eastern District of California issued a final judgment and permanent injunction in ***The Personal Care Products Council v. Bonta***, No. 2:26-cv-00682-DJC-CKD. Resolving a First Amendment challenge brought by the industry, the court barred the California attorney general and anyone acting in concert with the state from enforcing Prop 65's cancer-warning requirements for DEA in cosmetic and personal care products, finding that compelling such warnings is unconstitutional given the scientifically disputed nature of human carcinogenicity for the chemical. Consequently, while private plaintiffs historically relied on a strict exposure standard to drive settlements, this landmark injunction provides corporate defendants with an immediate constitutional shield to halt or dismiss ongoing enforcement actions targeting DEA.

A common thread across the 2026 docket is "free from" or "no [ingredient]" label litigation, particularly in the masking fragrance sector.

GREENWASHING AND ENVIRONMENTAL MARKETING CLAIMS

Environmental marketing also faces severe judicial scrutiny under emerging greenwashing theories. In ***Salgado v. L'Oreal USA S/D, Inc.***, Index No. 150152/2026 (N.Y. Sup. Ct., N.Y. Cnty., Mar. 26, 2026), the plaintiff cited CeraVe Biodegradable Wipes for a misleading "OK Compost Home" certification, pointing to potential microplastics that resist degradation. Furthermore, environmental claims were targeted alongside ingredient purity in ***Robertson v. Sunday Riley Modern Skincare, LLC***, Index No. 154789/2026 (N.Y. Sup. Ct., N.Y. Cnty., May 14, 2026), which alleged misleading environmental assurances, including claims of "no parabens or mineral oils," despite the alleged inclusion of chemical functional equivalents.

"FREE-FROM" AND "UNSCENTED" LABEL CLAIMS

A common thread across the 2026 docket is "free from" or "no [ingredient]" label litigation, particularly in the masking fragrance sector. For instance, ***Phaneuf v. The Procter & Gamble Company***, No. 1:26-cv-12251-WGY (D. Mass., May 18, 2026), alleged Secret Unscented Deodorant erroneously claimed to be unscented while containing performance fragrance components used to mask chemical odors. Similarly, ***Yuryeva v. The Procter & Gamble Company***, No. 2:26-cv-05821 (C.D. Cal., May 29, 2026), involves claims for fraud and unjust enrichment regarding the "unscented" label, signaling that "fragrance-free" and "unscented" are no longer legally interchangeable terms.

STANDING, PLEADING SPECIFICITY, AND ECONOMIC INJURY

A series of 2026 rulings demonstrate courts now demand plaintiffs plead with specificity regarding injury, including benefit-of-the-bargain, price premium, and reliance theories. In ***Aronstein, et al. v. Kenvue, Inc., et al.***, No. 3:24-cv-04665-MAS-RLS (D.N.J. Feb. 2, 2026), the court dismissed a putative class challenge involving Band-Aid PFAS content for failing to show economic harm or intent to repurchase, finding no actionable "benefit-of-the-bargain" injury where the product performed its core function safely.

CHEMICAL CONTAMINATION CLASS ACTIONS: BENZENE AND PFAS

Meanwhile, consumer class actions regarding chemical contamination from benzene and PFAS face severe headwinds regarding Article III standing and economic injury theories. In the aerosol contamination sector, the long-running dry shampoo litigation ***Little v. Unilever United States, Inc.***, No. 3:22-cv-01189-MPS (D. Conn. Feb. 17, 2026), saw a significant setback for plaintiffs when the federal court denied preliminary approval of a proposed class settlement. The court scrutinized the breadth of the proposed class definition, emphasizing that economic loss theories must tie specifically to product lots where benzene contamination was proven rather than sweeping in consumers who suffered no concrete injury.

PRODUCT EFFICACY

Courts are also showing a willingness to scrutinize the physical mechanics of how topical products are used, particularly regarding exposure times. In ***In re Retinol Rinse-Off Cleansers False Advertising Litigation***, No. 1:26-md-02871 (S.D.N.Y. Apr. 2, 2026), plaintiffs argued that "retinol" prominently featured on rinse-off cleanser labels misleads consumers due to insufficient skin contact time to deliver advertised benefits. The court permitted claims to proceed under New York's GBL §§ 349, 350, as well as similar state consumer laws, reinforcing that clinical evidence must substantiate advertised effects even within brief product exposure windows.

PROPOSITION 65

PROP 65 BY THE NUMBERS

1,368 notices for foods vs. 557 for general consumer goods—a surprising reversal of the usual trend.

In the first half of 2026[1], plaintiffs filed 1,925 Proposition 65 pre-suit notices of violation. Topping the notices by far are lead and cadmium notices, while notices for Bisphenol S (BPS) have dropped dramatically since 2025.

The number of notices relating to exposures allegedly caused by foods, dietary supplements, or beverages was significantly higher than the number of notices targeting nonconsumable goods—1,368 notices for foods vs. 557 for general consumer goods—a surprising reversal of the usual trend wherein we see notices for nonconsumable goods far outstripping the notices targeting food. This trend began in Q4 of 2025 and has continued through 2026, indicating that plaintiffs are doubling down on targeting food companies. 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—especially plant-based protein powders—and other dried goods. There has also been a recent increased focus on collagen and spirulina powders, matcha tea, and sunflower seeds.

[1] Data includes January 1, 2026, to June 30, 2026.

See the chart below for a breakdown of the **Top 10 Chemicals at Issue in the First Half of 2026:**

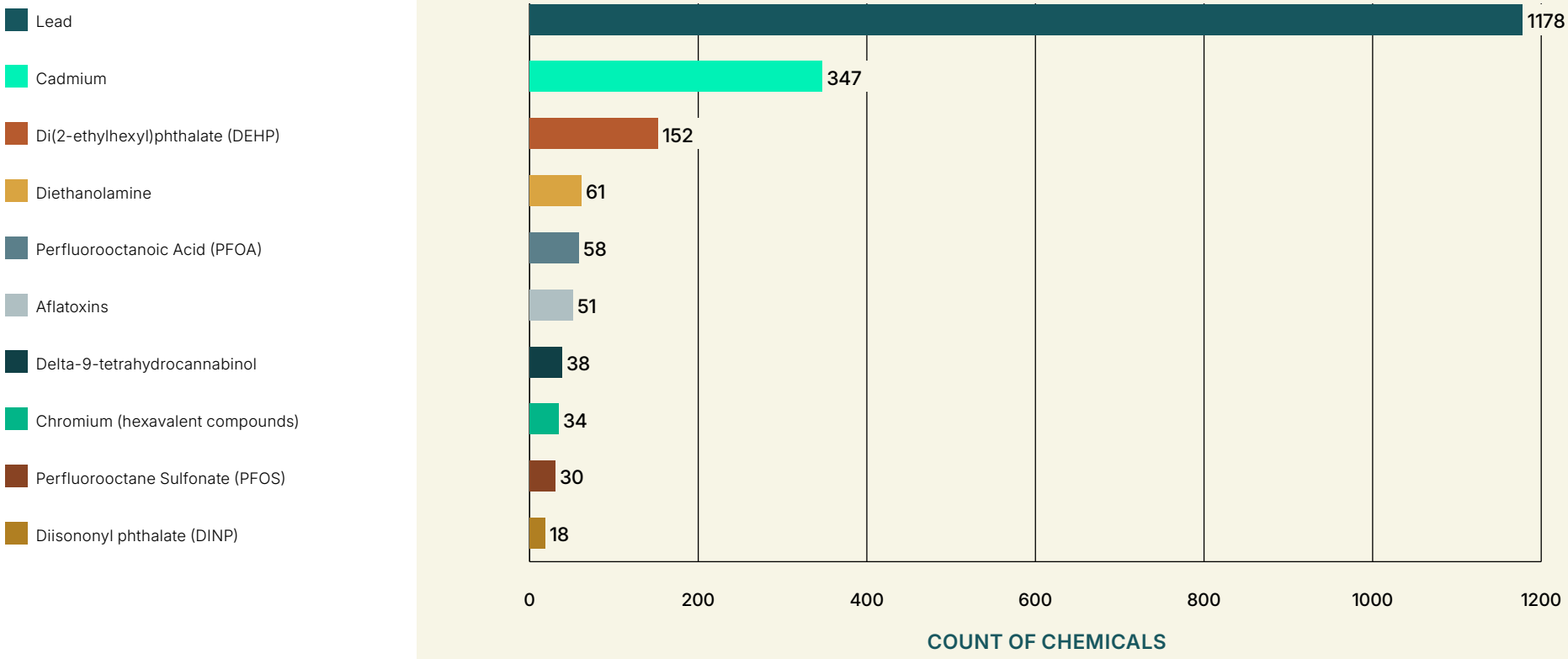

Fig 1: Top 10 Prop 65 Chemicals

Although these chemicals have been on the Proposition 65 list for decades, active private enforcement is a very recent development.

New chemicals of concern:

MYCOTOXINS

Environmental Health Advocates (EHA) has launched a major new wave of Proposition 65 60-day notices targeting naturally occurring mycotoxins—specifically aflatoxins, fumonisin B1, and ochratoxin A.

Mycotoxins are toxic byproducts produced by agricultural molds, and all three compounds are listed under Proposition 65 as potential carcinogens. Crucially, California's Office of Environmental Health Hazard Assessment (OEHHA) has not established official safe harbor levels for any of these mycotoxins.

Although these chemicals have been on the Proposition 65 list for decades, active private enforcement is a very recent development. The Center for Consumer Safety, LLC issued the initial notices for aflatoxins in late 2025, though none resulted in settlements. Since late May 2026, however, EHA has escalated enforcement dramatically by issuing more than 100 notices of violation targeting a broad range of foods. Affected product categories include corn-based items (such as chips, tortillas, cornmeal, and grain blends), nut products and nut butters (including peanut, almond, and cashew), spices and seasonings (such as paprika, chili powder, turmeric, and pepper), as well as dried fruits (figs, dates) and fruit-containing baked goods.

This is an area to watch closely, as these mycotoxins have been studied extensively and tolerable intake levels for many of them have already been established by other regulatory agencies.

LITIGATION UPDATE

Federal court enjoins Proposition 65 enforcement for diethanolamine (DEA) in cosmetic and personal care products.

On June 24, 2026, Judge Daniel J. Calabretta of the U.S. District Court for the Eastern District of California entered a final judgment and permanent injunction in ***The Personal Care Products Council (PCPC) v. Bonta***.

Under the terms of the injunction to which the California attorney general stipulated, the state and all private enforcers are permanently enjoined from bringing Proposition 65 enforcement actions or issuing 60-day notices for an alleged failure to warn regarding exposures to DEA in cosmetic and personal care products.

BACKGROUND ON DEA ENFORCEMENT

The OEHHA added DEA to the Proposition 65 list of carcinogens in 2012. The listing was mandated by the statutory Labor Code mechanism after the International Agency for Research on Cancer (IARC) classified the chemical as a Group 2B "possible human carcinogen." Although enforcement remained low for over a decade, 60-day notices targeting DEA experienced a sharp surge, rising from fewer than 100 notices in 2023 to more than 1,000 notices in 2024. These claims primarily focused on personal care items and cosmetics, such as shampoos, soaps, lotions, and makeup products.

THE CONSTITUTIONAL CHALLENGE

In response to the litigation spike, PCPC filed a federal lawsuit on March 3, 2026, alleging that the required Proposition 65 cancer warning for DEA violates the First Amendment. PCPC argued that forcing businesses to state that DEA is "known to cause cancer" compels misleading speech, as mainstream scientific organizations categorize the chemical only as a possible carcinogen, not a known human carcinogen. The attorney general ultimately stipulated to the permanent injunction rather than litigating the case to trial. Ashurst Perkins Coie's update on this lawsuit is available here.

This outcome aligns with a recent series of successful First Amendment challenges to Proposition 65 warning mandates. Specifically, the U.S. District Court for the Eastern District of California previously invalidated the warning requirement for glyphosate in ***National Association of Wheat Growers v. Bonta***. Federal district courts have similarly enjoined mandated warnings for acrylamide in food products (***California Chamber of Commerce v. Bonta***) and for titanium dioxide in cosmetics (***Personal Care Products Council v. Bonta***).

Practical takeaways

The state and private plaintiffs are immediately prohibited from filing Proposition 65 lawsuits or prosecuting existing claims involving DEA exposures.

This federal injunction provides an absolute defense against any legacy notices regarding DEA in cosmetic and personal care products.

California appellate courts shut down "notice defect" defenses

California appellate courts are making it clear that minor procedural technicalities will not get a Proposition 65 case thrown out. In a pair of recent decisions, state appellate courts rejected attempts by defendants to invalidate 60-day notices of violation based on procedural "notice defects"—specifically, when a private enforcer lists its outside legal counsel instead of an internal corporate representative or attaches an older version of OEHHA's official statutory summary.

THE RECENT RULINGS

The issue was first addressed by the Fourth District Court of Appeal in ***Environmental Health Advocates, Inc. v. Pancho Villa's, Inc.***, where the trial court had dismissed the lawsuit because the plaintiff listed its law firm as the primary contact and attached an outdated Prop 65 summary. The appellate court reversed, holding that strict compliance with these administrative rules is not required.

Shortly after, the Second District Court of Appeal adopted the same logic in ***The Chemical Toxin Working Group, Inc. v. The Kroger Co.*** (alleging cadmium in seafood), confirming that listing outside counsel fully satisfies notice requirements and establishing a clear statewide consensus.

THE LEGAL REASONING

The courts grounded their decisions on a straightforward distinction in administrative law:

- **Directory vs. mandatory rules:** The OEHHA regulation governing 60-day notices (27 CCR § 25903) is "directory" in nature. As a result, private enforcers only need to achieve substantial compliance rather than strict, literal adherence to every formal detail.
- **Fulfilling core objectives:** The main goals of a 60-day notice are to inform public prosecutors, give the business an opportunity to cure, and define the scope of potential claims. The courts noted that listing outside counsel actually facilitates pre-suit dialogue—since lawyers handle the certificate of merit and settlement negotiations anyway—and providing an older summary still fulfills the goal of basic statutory notice.
- **Policy challenges rejected:** Courts rejected defense arguments that strict contact rules are necessary to curb "bounty hunter" litigation, emphasizing that evaluating whether an action serves the public interest is a question for the trial judge during proceedings, not a procedural threshold before litigation even begins.

Practical takeaways

Procedural motions challenging technical notice defects are essentially dead on arrival. Moving forward, attempting to toss a 60-day notice because it identifies outside counsel or attaches an older summary document is not a viable strategy.

Defense efforts and client resources are far better directed toward substantive legal hurdles—such as calculating daily consumer exposure levels, demonstrating compliance with safe harbor limits, asserting "naturally occurring" trace substance defenses, or leveraging supply chain indemnities.

CONTACT US

To learn more about issues facing the Food and Consumer Packaged Goods industry, please contact:

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