

2026 Product Liability & Complex Torts Practice Group Seminar

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**Staying Ahead of (And Bending) The Ever-Changing Curve
Effective Monitoring and Compliance Programs**

Steve Getzoff

LESTER SCHWAB KATZ & DWYER, LLP
New York, New York
sgetzoff@lskdnylaw.com

Matthew D. Jacobson

WHITFIELD & EDDY, P.L.C.
Des Moines, Iowa
Jacobson@whitfieldlaw.com

Staying Ahead Of (And Bending) The Ever-Changing Curve Effective Monitoring and Compliance Programs

Potential Areas for Compliance Programs

- Product Safety
- Regulatory Compliance
 - CPSC
 - FDA
 - FTC
 - State Agencies
- Workplace Safety
 - o OSHA
 - o State OSHA
- Advertising and Promotion (FTC and states)
- Interacting with Competitors/Trade Associations
 - o Sherman and Clayton Act
 - o Robinson Act
 - Section 5: Unfair Competition
- Employment Practices
 - o Harassment
 - o Discrimination
 - o Non-Compete and Non-Solicitation Agreements
- Responding/Reacting to Whistleblowers
- Ability to Control Employee Communications: Policies and Communications
 - Policies regarding use of platforms not controlled by the company and use of company servers for company-related matters (WhatsApp, texting from personal devices, etc.)
- Document Retention Policies

Consumer Product Safety Commission (CPSC)

Consumer Product Safety Act (CPSA) and Consumer Product Safety Improvement Act (CPSIA)

- Children's toys
- Children's Products
- Furniture (tipover)
- Clothing
- Off Road Vehicles
- Household Appliances

Recent Changes

- Commissioners fired,
 - Brien Lorenze Karen Sessions confirmed in August.
- Moratorium on rulemaking
- BUT continued and even aggressive pursuit of recalls.
- New Electronic Filing Requirements for CoCs
 - identification of the finished product (certificates for each product are required);
 - party certifying compliance;
 - each consumer product safety rule to which the finished product has been certified;
 - date and place the finished product was manufactured;
 - date and place the finished product was most recently tested for compliance; and
 - contact information for the person maintaining test records.

Obligation to Self Report

Most Penalties are Imposed for Failure to Report

- Obligated to report when a product:
 - (1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under Section 2058 of this title;
 - (2) fails to comply with any other rule, regulation, standard, or ban under this chapter or any other Act enforced by the Commission;
 - (3) contains a defect which could create a substantial product hazard described in subsection (a)(2); or
 - (4) creates an unreasonable risk of serious injury or death
- Report required within 24 hours of learning of any of the above."
- "If a particular model of a consumer product is the subject of at least 3 civil actions that have been filed in Federal or State court for death or grievous bodily injury which in each of the 24-month periods defined in subsection (b) result in either a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer of such product shall, in accordance with subsection (c), report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third

of such civil actions, and, within 30 days after any subsequent settlement or judgment in that 24-month period, any other such action."

CPSC Can Impose Fines For Failure to Report

- Recent examples
 - o \$19.065 million civil penalty against a fitness company related to potentially lethal defects in its treadmill.
 - o \$15.8 million penalty against a generator manufacturer for amputation and crushing hazards posed by its portable generators.
 - o Appliance manufacturer was hit with a \$11.5 million penalty for burn and fire hazards associated with electric cooktops.
 - o \$16 million penalty for consumer injuries caused by hot water leaking from defective clothing steamers.
- In each case a significant portion of the penalty in each instance was due to the company's failure to timely report the product's hazard to the CPSC

Corrective Actions

- Typically voluntary, but CPSC does have authority to compel corrective action
- Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:
 - (A) To cease distribution of the product.
 - (B) To notify all persons that transport, store, distribute, or otherwise handle the product, or to which the product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product.
 - (C) To notify appropriate State and local public health officials.
 - (D) To give public notice of the defect or failure to comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third-party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice.
 - (E) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.
 - (F) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold
- Manufacturer or distributor may also be criminally prosecuted
 - o In November 2023, a jury in Los Angeles, CA convicted two corporate executives of conspiracy to defraud the CPSC and failure to report information related to defective residential dehumidifiers that had been linked to multiple fires. Simon Chu, 68, of Chino Hills, California, and Charley Loh, 65, of Arcadia, California, were convicted of conspiracy to defraud the CPSC and failure to furnish information as required by the CPSA. The defective humidifiers sold by Chu and Loh's companies were included in multiple recalls of dehumidifiers manufactured by Gree Electric Appliances, Inc. of Zhuhani (Gree Zhuhani) in China. According to the recall notices, more than 450 reported fires and millions of dollars of property damages have been linked to the recalled dehumidifiers.
 - o Gree USA was sentenced to pay a \$500,000 criminal fine after pleading guilty to failing to notify the CPSC about the problems with the dehumidifiers. That fine, along with provisions requiring payment

of restitution to victims, was part of a \$91 million resolution of criminal charges against Gree USA, Gree Zhuhai and several related companies.

- o "Companies and their employees should immediately report known dangerous consumer products to the Consumer Product Safety Commission so the products can be recalled as soon as possible," said Principal Deputy Assistant Attorney General Brian M. Boynton, head of the Justice Department's Civil Division. "The Justice Department will prosecute companies and their employees when they willfully put the public in harm's way by failing to report known dangerous products."
- o "It is critical to hold corporate executives accountable for misconduct," said U.S. Attorney Martin Estrada for the Central District of California. "The importation and sale of defective consumer products can lead to injury and death, and this verdict sends a clear message that putting profits over safety will not be tolerated."
- o "The safety of the American public is the top priority for HSI, and products like these can turn an ordinary purchase into deadly consequences," said Special Agent in Charge Eddy Wang for Homeland Security Investigations (HSI) Los Angeles. "HSI Los Angeles will continue to work diligently to ensure our supply chain is safe from products that can harm consumers."

National Highway Transportation Safety Administration (NHTSA)

- Typically voluntary
- NHTSA does have the authority to pursue recalls
 - When a motor vehicle or item of motor vehicle equipment (including tires) does not comply with a Federal Motor Vehicle Safety Standard
 - When there is a safety-related defect in the vehicle or equipment
 - The United States Code for Motor Vehicle Safety (Title 49, Chapter 301) defines motor vehicle safety as "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle."

Examples of Defects Considered Safety-Related:

- Steering components that break suddenly, causing partial or complete loss of vehicle control
- Problems with fuel system components, particularly in their susceptibility to crash damage, which result in leakage of fuel and may cause vehicle fires
- Accelerator controls that break or stick
- Wheels that crack or break, which may result in loss of vehicle control
- Engine cooling fan blades that break unexpectedly, causing injury to people working on a vehicle
- Windshield wiper assemblies that fail to operate properly
- Seats and/or seat backs that fail unexpectedly during normal use
- Critical vehicle components that break, fall apart, or separate from the vehicle, causing potential loss of vehicle control or injury to people inside or outside the vehicle
- Wiring system problems that result in a fire or loss of lighting
- Car ramps or jacks that may collapse and cause injury to someone working on a vehicle
- Air bags that deploy under conditions for which they are not intended to deploy
- Car seats and booster seats that contain defective safety belts, buckles, or components that create a risk of injury not only in a vehicle crash, but also in the nonoperational safety of a motor vehicle

Reporting Obligations

- "Each manufacturer shall furnish a report to the NHTSA for each defect in his vehicles or in his items of original or replacement equipment that he or the Administrator determines to be related to motor vehicle safety, and for each noncompliance with a motor vehicle safety standard in such vehicles or items of equipment which either he or the Administrator determines to exist."
- "Each report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist."

Food and Drug Administration

Recent Developments

- Movement away from science-based decision making
- Qualifications of decision makers
- Frequent review and reversals by Courts (and on appeal)
- Revised guidelines on vaccinations
- Revised dietary guidelines
- Focus on ultra processed
- New Proposed Rule of GRAS
 - The proposed rule would apply to human and animal food and would reach both food Ingredients and food contact substances.
 - Notification of self-determined GRAS conclusions mandatory
 - Does not establish a premarket approval framework.
 - Companies may continue to market a substance before submitting a GRAS notice and while FDA reviews it.
 - Current voluntary GRAS notification framework will remain in place unless and until FDA issues a final rule.
 - If finalized, the rule would take effect 60 days after publication, and companies would have 18 months from the effective date to comply with the mandatory GRAS notification requirements.
 - Companies would have one year from the effective date to submit qualifying streamlined submissions for existing uses.
 - COMMENTS DUE BY DECEMBER 9, 2026
 -
- Issuance of several thousand letters challenging drug advertisements
 - *FROM FDA site*
 - *A 2024 review in the Journal of Pharmaceutical Health Services Research reveals that while 100% of pharmaceutical social media posts highlight drug benefits, only 33% mention potential harms. Moreover, 88% of advertisements for top-selling drugs are posted by individuals and organizations that fail to adhere to the FDA fair balance guidelines.*
 - *The Bad Ad Program | FDA*
 - *Possible first amendment challenges*
- FDA announced its intention to conduct rulemaking that would require broadcast advertisements for prescription drugs and biologics to present a “brief summary” of information relating to a drug’s side effects, contraindications, and effectiveness.
- Under current FDA guidance, a “major statement” conveying a drug’s most important safety risks and instructions for viewers to access a drug’s full prescribing information — the “adequate provision loophole,” as FDA describes it — are sufficient to meet disclosure obligations.
- A rulemaking could take a year or more to finalize and interested parties will have the opportunity to provide comment. Any final agency action will likely be challenged on First Amendment grounds for impermissibly burdening commercial speech
- Publication of Complete Response Letters (CRLs)

Food Safety Modernization Act

Traceability

- The Food Traceability Rule mandates that businesses involved in manufacturing, processing, packing, or holding foods on the Food Traceability List (FTL) maintain records with key data elements (KDEs) for specific supply chain activities, which the FDA has defined as critical tracking events (CTEs). This information must be captured, stored and maintained for 24 months, and event data must be made available to the FDA within 24 hours upon request. Additionally, shipping events must be shared with supply chain partners.
- Compliance date: January 20, 2026

The Food Traceability List

Food	Description
Cheeses, other than hard cheeses, specifically:	
Cheese (made from pasteurized milk), fresh soft or soft unripened	Includes soft unripened/fresh soft cheeses. Examples include, but are not limited to, cottage, chevre, cream cheese, mascarpone, ricotta, queso blanco, queso fresco, queso de crema, and queso de puna. Does not include cheeses that are frozen, shelf stable at ambient temperature, or aseptically processed and packaged.
Cheese (made from pasteurized milk), soft ripened or semi-soft	Includes soft ripened/semi-soft cheeses. Examples include, but are not limited to, brie, camembert, feta, mozzarella, taleggio, blue, brick, fontina, Monterey jack, and muenster. Does not include cheeses that are frozen, shelf stable at ambient temperature, or aseptically processed and packaged.
Shell eggs	Shell egg means the egg of the domesticated chicken.
Nut butters	Includes all types of tree nut and peanut butters. Includes all forms of nut butters, including shelf stable, refrigerated, and frozen products. Examples include, but are not limited to, almond, cashew, chestnut, coconut, hazelnut, peanut, pistachio, and walnut butters. Does not include soy or seed butters.
Cucumbers (fresh)	Includes all varieties of fresh cucumbers.
Herbs (fresh)	Includes all types of fresh herbs. Examples include, but are not limited to, parsley, cilantro, and basil.

	Herbs listed in 21 CFR 112.2(a)(1), such as dill, are exempt from the requirements of the rule under 21 CFR 1.1305€.
Leafy greens (fresh)	Includes all types of fresh leafy greens. Examples include, but are not limited to, arugula, baby leaf, butter lettuce, chard, chicory, endive, escarole, green leaf, iceberg lettuce, kale, red leaf, pak choi/bok choi, Romaine, sorrel, spinach, and watercress. Does not include whole head cabbages such as green cabbage, red cabbage, or savoy cabbage. Does not include banana leaf, grape leaf, and leaves that are grown on trees. Leafy greens listed in § 112.2(a)(1), such as collards, are exempt from the requirements of the rule under § 1.1305€.
Leafy greens (fresh-cut)	Includes all types of fresh-cut leafy greens, including single and mixed greens.
Melons (fresh)	Includes all types of fresh melons. Examples include, but are not limited to, cantaloupe, honeydew, muskmelon, and watermelon.
Peppers (fresh)	Includes all varieties of fresh peppers.
Sprouts (fresh)	Includes all varieties of fresh sprouts (irrespective of seed source), including single and mixed sprouts. Examples include, but are not limited to, alfalfa sprouts, allium sprouts, bean sprouts, broccoli sprouts, clover sprouts, radish sprouts, alfalfa & radish sprouts, and other fresh sprouted grains, nuts, and seeds.
Tomatoes (fresh)	Includes all varieties of fresh tomatoes.
Tropical tree fruits (fresh)	Includes all types of fresh tropical tree fruit. Examples include, but are not limited to, mango, papaya, mamey, guava, lychee, jackfruit, and starfruit. Does not include non-tree fruits such as bananas, pineapple, dates, soursop, jujube, passionfruit, Loquat, pomegranate, sapodilla, and figs. Does not include tree nuts such as coconut. Does not include pit fruits such as avocado. Does not include citrus, such as orange, clementine, tangerine, mandarins, lemon, lime, citron, grapefruit, kumquat, and pomelo.

Fruits (fresh-cut)	Includes all types of fresh-cut fruits. Fruits listed in § 112.2(a)(1) are exempt from the requirements of the rule under § 1.1305€.
Vegetables other than leafy greens (fresh-cut)	Includes all types of fresh-cut vegetables other than leafy greens. Vegetables listed in § 112.2(a)(1) are exempt from the requirements of the rule under § 1.1305€.
Finfish (fresh and frozen), specifically:	
Finfish, histamine-producing species	Includes all histamine-producing species of finfish. Examples include, but are not limited to, tuna, mahi mahi, mackerel, amberjack, jack, swordfish, and yellowtail.
Finfish, species potentially contaminated with ciguatoxin	Includes all finfish species potentially contaminated with ciguatoxin. Examples include, but are not limited to, grouper, barracuda, and snapper.
Finfish, species not associated with histamine or ciguatoxin	Includes all species of finfish not associated with histamine or ciguatoxin. Examples include, but are not limited to, cod, haddock, Alaska pollock, salmon, tilapia, and trout. Siluriformes fish, such as catfish, are not included.
Smoked finfish (refrigerated and frozen)	Includes all types of smoked finfish, including cold smoked finfish and hot smoked finfish.
Crustaceans (fresh and frozen)	Includes all crustacean species. Examples include but are not limited to shrimp, crab, lobster, and crayfish.
Molluscan shellfish, bivalves (fresh and frozen)	Includes all species of bivalve mollusks. Examples include, but are not limited to, oysters, clams, and mussels. Does not include scallop adductor muscle. Raw bivalve molluscan shellfish that are (1) covered by the requirements of the National Shellfish Sanitation Program; (2) subject to the requirements of 21 CFR part 123, subpart C, and 21 CFR 1240.60; or (3) covered by a final equivalence determination by FDA for raw bivalve molluscan shellfish are exempt from the requirements of the rule under § 1.1305(f).

Modernization of Cosmetics Regulation Act of 2022 (MoCRA)

- Requires that a "responsible person" must report serious adverse events associated with the use of cosmetic products in the United States to the FDA within 15 business days, and include a copy of the label on or within the retail packaging of such cosmetic product.
- Reauthorizes FDA authority to collect certain fees related to drugs, medical devices, and biosimilar biological products and modifies such fees, including the base fee amounts.
- Establishes that certain requirements related to obtaining market approval for a new drug or a biosimilar may be satisfied using alternatives to animal testing, such as in vitro tests.
- Authorizes the FDA to require that certain drugs be dispensed with a safe disposal system even if the system does not render a drug nonretrievable (current law requires such a system to render the drug nonretrievable).
- Establishes timelines for the FDA to respond to requests to determine whether a drug is a therapeutic equivalent to an approved drug.
- Modifies the accelerated process for approving products for a serious or life-threatening disease or condition and establishes an intra-agency coordinating council to ensure consistent and appropriate use of the process.
- Requires additional regulation of cosmetics, including by requiring manufacturers to register manufacturing facilities and each cosmetic product with the FDA.
- Requires dietary supplement manufacturers to provide to the FDA certain information, including a list of all ingredients, about each dietary supplement that it markets.
- Requires an in vitro clinical test to receive FDA premarket approval or a technology certification (or be otherwise exempted) before being introduced into interstate commerce.
- Requires the FDA to temporarily relax certain premarket requirements for a manufacturer that intends to market a new infant formula.

NEW RCA WEBPAGE

- FDA's new RCA webpage defines an RCA as "a structured analytical approach used to identify the underlying cause of a food safety incident" and describes RCAs as helping to "understand why an incident occurred so that targeted interventions can be developed to prevent similar problems in the future." FDA provides that the following steps are involved in executing an effective RCA:
 1. Establish a Qualified Team. To include subject matter experts and relevant cross-functional personnel.
 2. Describe the Problem. To include gathering any relevant data (e.g., traceback information, production records, environmental monitoring records, sanitation records, etc.).
 3. Analyze the Data. To include the use of appropriate analytical tools (e.g., flow charts, process maps, cause-and-effect diagrams, etc.).
 4. Identify the Root Cause or Causes. To include each identified possible cause.

Take Action and Verify Effectiveness. To include immediate corrective actions and long-term preventive actions.

Federal Trade Commission

Recent Developments

1. Right to repair

Recent large settlement with Deere

The FTC's settlement requires Deere—for the next 10 years and under the supervision of the FTC and plaintiff states—to provide farmers and independent repair providers with the same equipment repair resources, including applicable software capabilities, that it currently provides to authorized Deere dealer.

Under the terms of the stipulated order settling the lawsuit, Deere will be required to:

Make available to farmers and independent repair providers, on fair and reasonable terms, repair resources equivalent to those Deere now makes available to Deere dealers including:

- Reading, clearing and resetting electronic fault codes;
- Reprogramming of electronic components (including “pairing” newly installed electronic parts with equipment);
- Restarting a machine following an emissions-related shutdown (commonly referred to as “limp mode”); and
- Viewing and searching technical manuals, troubleshooting solutions (including so-called “product improvement programs” and “DTAC solutions”) and other guidance and information useful for equipment diagnosis, maintenance, repair or upgrade.

2. 2024 Click to cancel rule

would require that consumers know what they were agreeing to before signing up

Relevant information must be simple, clear and easy to find on site/e mail

Cancelling must be as easy as signing up (Similar to CCPA and GDPR)

Current NPR

Considering further revisions

Seeking information regarding

Marketplace for Negative Option Programs. The Commission seeks information on the extent to which businesses market products and services using negative options and how these negative option programs operate;

Negative Option Practices. The Commission seeks information on practices that 1) prevent consumers from understanding the terms of a negative option program, 2) result in consumers being enrolled without their express informed consent, or 3) deter consumers from canceling their enrollments, and whether such practices are prevalent in the marketplace;

Addressing Unlawful Practices. The Commission seeks information on specific ways to address unfair or deceptive negative option practices, including retaining the current Rule, adopting provisions of the vacated 2024 Rule or some other provisions, or implementing alternatives to regulation (such as educating consumers and businesses on how to avoid unlawful negative option practices), and the costs and benefits of each of these measures; and

Supporting Studies and Data. The Commission encourages commenters to submit supporting market studies, economic data, or other empirical evidence.

Recent Enforcement Focus

- a. FTC intends to increase focus on personalized pricing.
- b. Unfair Competition: FTC believes this extends far beyond reach of Sherman or Clayton Antitrust acts False or misleading advertising.
- c. Made in USA
 - o \$2,000,000 settlement with tractor maker Kubota North America Corporation
 - Unqualified U.S. origin claims should be substantiated by evidence that the product is all or virtually all made in the United States
 - Complying with the Made in USA Standard | Federal Trade Commission (2024)

Greenwashing

Right to repair under Magnuson Moss Act

o The statute's "anti-tying" prohibition - makes it illegal for a company to condition a warranty "on the consumer's using, in connection with such product, any article or service (other than an article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name." In other words, companies can't tell customers they will void a customer's warranty or deny warranty coverage if the customer uses a part made by someone else or has someone other than the dealer repair the product.

o There are two narrow instances where that prohibition doesn't apply:

- If the company has received a waiver in advance from the FTC after proving that the product will work properly only if a specific branded part is used.
- If the warranty states that the company will provide the identified parts and services for free.

o A manufacturer can't avoid liability by providing free parts or services to repair or replace defective parts if its warranty conveys that customers must use a specific brand of parts or specific service providers in other situations. Put another way, if a company will replace certain parts for free - but will still void a consumer's warranty for using another maker's parts for other purposes - the company has violated the law.

Employment Practices

- o Non-compete agreement
 - focus is more selective, case by case analysis
- o Anti-poaching agreements (criminal prosecutions)

Misleading customer reviews

* recent actions against paid reviews

Use of influencers-FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising ("the Guides")

- o Filtering poor reviews

- o Ability to moderate content

- o Obligation to monitor paid influencers for compliance

Manipulated or distorted reviews

Paying for positive reviews (even if payment is disclosed)

Ability to Impose Fines and Penalties

AMG Capital Management, FTC can no longer obtain equitable monetary relief, such as restitution or disgorgement, in federal courts under Section 13(b) of the FTC Act — a provision the Commission had frequently employed to seek monetary and injunctive relief.

Regulations allow for civil penalties under Telemarketing Sales Rule (TSR), the Restore Online Shoppers' Confidence Act (ROSCA), the Children's Online Privacy Protection Rule (COPPA) and the Made in USA Labeling Rule.

On November 21, 2023, the Federal Trade Commission ("the FTC") announced its approval of an omnibus resolution authorizing the use of compulsory process for nonpublic investigations concerning products or services that use artificial intelligence ("AI"). Compulsory process refers to information or document requests, such as subpoenas or civil investigative demands, for which compliance is enforceable by courts.

- o Recipients who fail to comply with compulsory process may face contempt charges.
- o Before issuing compulsory requests, FTC Staff ("Staff") must typically seek a resolution from the Commission.

This omnibus resolution streamlines Staff's ability to issue compulsory requests to companies offering products or services involving AI and will be in effect for ten years. By reducing the administrative "red tape" associated with issuing a compulsory request broadly related to AI, this omnibus resolution appears to allow the FTC to more easily issue compulsory process to companies using or offering AI that it believes have information of interest to its competition or consumer protection investigations.

FTC Guidelines for Use of Influencers

What triggers investigation

- o Whistle blowers
- o Statutory protection

Dodd Frank

Other federal protections

State examples

New York Labor Law 740

Prohibitions. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:

- o (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
- o (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
- o (c) objects to, or refuses to participate in any such activity, policy or practice

More whistle blowers are going straight to hot lines and social media

DEPARTMENT OF JUSTICE

In 2025, the Department of Justice (DOJ) announced the launch of a new unit within the Criminal Division's Fraud Section, called the Health & Safety Unit (HSU) for two main purposes: (i) protecting the food and drug supply for consumers and (ii) enforcing consumer product safety laws.

First, the HSU will function as the criminal enforcement arm of the federal Food, Drug and Cosmetic Act. In that vein, the HSU will partner closely with the Food and Drug Administration and other similar federal agencies. According to the DOJ, the HSU will focus its cases on adulterated, misbranded or counterfeit food, drugs and devices; transportation safety; dangerous consumer product defects; and other threats related to consumer goods.

Second, the HSU will bring criminal enforcement actions under the Consumer Product Safety Act, the Federal Hazardous Substances Act and related statutes. These cases will involve companies and individuals who fail to report known defects in hazardous products. The HSU will also partner with the Department of Transportation and the National Highway Transportation Safety Administration to bring criminal actions against companies and individuals who conceal dangerous vehicle defects.

In its first few months of operation, the HSU brought four corporate enforcement actions and charged and convicted four individuals in 2025. The corporate matters included cases involving the sale of adulterated surgical crowns and the forging of FDA approval to market surgical and sterilization devices. Three of the four corporate matters involved FDA-regulated products.

STATE REGULATION

California

Prop 65 California

As of January, 2025 Enhanced “short form” warning. Must reference at least one substance.

New proposed rules

- would limit exceptions for “naturally occurring”
 - To establish the exemption, businesses typically must develop extensive scientific evidence, including laboratory testing, sourcing information, agricultural and environmental data, and expert testimony to prove the chemical is naturally occurring and not attributable to human activity.
- require warnings to be visible for on line sales prior to point of purchase
- OEHHA will host an in-person and online workshop to discuss these potential amendments on **July 30, 2026**. Public comments are due by **September 7, 2026**.

Click to cancel rules

(also in Virginia, and pending in New York and several other states.

Additional Made in USA requirements

California Business and Professions Code § 17533.7 permits products manufactured or produced in the United States with foreign components to use country-of-origin labeling if the foreign parts do not exceed 5% of the product’s wholesale value, or 10% if the manufacturer demonstrates that the foreign components are unavailable domestically and cannot be manufactured in the United States

- **April 2025:** A California jury found a tea company liable for \$2.36 million in damages in a class action alleging that consumers were misled by the “*Manufactured in USA*” packaging where the tea leaves were sourced outside the USA.

Department of Energy

The Department of Energy's most “recent” enforcement activity under the Energy Policy and Conservation Act (EPCA) has been active on two fronts recently – which seem to be diametrically opposed: (1) continued penalty actions against noncompliant manufacturers, and (2) a pullback and delay of certain standards. It is axiomatic that the Biden Administration and latest Trump Administration have pursued diametrically opposed approaches to enforcement activities under the EPCA.

“Recent” Penalty and Certification Enforcement Actions

- DOE's largest-ever civil penalty came from a case against Galanz Americas and its Chinese affiliate, which paid a civil penalty of over \$25.3 million after DOE testing showed a compact refrigerator-freezer model failed to meet applicable energy efficiency standards. Violations can carry penalties of up to \$575 per noncompliant unit sold.
- DOE's Compliance Certification Enforcement office has also settled a steady stream of smaller certification cases — for example, manufacturer Ohniyou paid \$20,000 for failing to properly certify certain ceiling fans, and Yitahome paid \$20,000 for a similar violation.

DOE's overall case volume rose sharply in 2023 when compared to 2022. The DOE settled over 46 EPCA cases in 2023, more than double the number of enforcement actions resolved in 2022, including 11 penalties for violating conservation standards and 35 for certification failures (versus just 5 certification penalties in 2022). Penalties can reach up to \$560 per unit sold or made available for sale, and DOE can also require manufacturers to pull noncompliant products from the market.

Shift Toward Delayed or Reduced Enforcement

2026 has seen DOE ease up on newer standards rather than crack down on them. For example,

- In April 2026, DOE issued an Enforcement Policy Statement saying it would not seek civil penalties for violations of thermal efficiency standards for gas-fired commercial water heaters manufactured between October 6, 2026 and October 6, 2027 — effectively a one-year enforcement pause tied to pending litigation. DOE noted it can rescind this policy at any time.

Notably, the DOE's Enforcement Policy Statement followed a petition from the several industry groups (American Gas Association, American Public Gas Association, and National Propane Gas Association) which advocated for relief from standards which they argued would essentially force manufacturers to switch to condensing water heater technology.

The Supreme Court agreed to review the underlying standard, and the U.S. Solicitor General's April 2026 brief argued the standard reflected an erroneous interpretation of the EPCA, and the DOE is reportedly considering new rulemaking to correct the interpretation.

In July 2026, the DOE proposed to “permanently end” home appliance and equipment efficiency mandates, for the purpose of helping “safeguard the American people's freedom to choose” appliances and promote manufacturing competition. This follows a May 2025 proposal to rescind or roll back standards and test procedures across well over a dozen product categories.

Legislatively, Senator Mike Lee introduced the Energy Efficiency Reform Act of 2026, which would require DOE to finalize a new “Process Rule” for how it develops standards and would remove the current six-year mandatory review requirement for existing standards, while raising the evidentiary bar for petitions to change standards.

Since the beginning of the Trump administration in 2025, there have been zero **new** enforcement actions initiated by the DOE. There has been one certification violation settlement and one federal court lawsuit (against Friedrich Air Conditioning, LLC) . . . however, both instances involved violations identified and/or penalties assessed during Biden’s administration.

ENVIRONMENTAL PROTECTION AGENCY

Similar to what is described in the efforts by the Department of Energy, the current administration's EPA's Office of Enforcement and Compliance Assurance has significantly shifted its enforcement priorities. A March 2025 internal memo directed staff to align enforcement with the administration's executive orders and the "Powering the Great American Comeback" initiative, generally protecting energy production from enforcement actions absent an imminent threat to health, and centralizing more enforcement discretion with the DOE agency headquarters and away from the DOE's ten regional offices.

That written, the EPA has pursued civil penalties against manufacturers, particularly in chemical reporting (TSCA), pesticide labeling (FIFRA), hazardous waste (RCRA), and PFAS contamination, even though while inspection activity and some initiatives (such as coal ash) have declined significantly compared to prior years.

Enforcement Volume and Penalties

Quarterly totals — Q4 2025: 74 settlement agreements finalized against manufacturers and other regulated entities.

Quarterly totals — Q1 2026: 91 settlements finalized, totaling roughly \$3.37 million in fines.

Quarterly totals — Q2 2026: 109 settlements finalized, totaling roughly \$7.07 million in fines.

Inspection activity down — TSCA inspections fell from about 1,430 in 2021 to 834 in 2025, and 87% of cases concluded in the administration's first year relied on inspections conducted before the change in administration.

Notable Actions Taken Against Manufacturers

Chemical Reporting (TSCA)

Wego Chemical Group — EPA filed an administrative complaint in June 2026 against Wego Chemical Group over alleged multi-year failures to report chemical imports and distribution; potential penalties could reach roughly \$34 million across 684 counts.

Wilbur-Ellis Company — Agreed in June 2026 to pay \$630,737 to resolve claims it failed to properly report chemical production at California and Washington facilities, returning the company to compliance with federal reporting rules.

RCRA hazardous-waste violations — A Pennsylvania manufacturer was fined \$126,152 for accumulating hazardous waste beyond allowed time limits and related recordkeeping failures across three facilities.

PFAS ('Forever Chemicals')

Chemours settlement — In June 2026, EPA, the Department of Justice, and West Virginia's environmental agency announced the first comprehensive federal settlement with a major PFAS manufacturer over releases into the Cape Fear, Delaware, and Ohio rivers, in some cases without required permits.

Continued priority status — PFOA and PFOS remain designated hazardous substances under CERCLA, and EPA named PFAS a top enforcement priority across all agency programs in February 2026, alongside nearly \$1 billion in new funding for state drinking-water treatment. Pesticide and Product Labeling (FIFRA)

Misbranded devices — A Florida-based HVAC manufacturer/distributor paid \$370,000 to resolve allegations it sold misbranded devices in violation of FIFRA.

Largest FIFRA fine (Q4 2025) An Oregon fertilizer and crop-protection company paid \$847,326 for 141 violations, including selling misbranded pesticides without required storage and disposal information.

Air Quality (Clean Air Act)

Largest CAA fine (Q1 2026) A Kansas insulation manufacturer was fined \$781,175 for violating its Class I operating permit and hazardous air pollutant standards and must now submit an emissions reduction plan.

Diesel "defeat device" policy shift — In January 2026, the Department of Justice announced it would no longer criminally prosecute manufacturers or distributors of "defeat devices" that disable vehicle emissions controls; EPA followed with guidance narrowing enforcement around emissions-system repairs, though civil enforcement authority remains in place.

Policy Shifts Under Current Administration

EPA proposed rescinding its 2009 greenhouse gas endangerment finding and repealed several amendments to the Mercury and Air Toxics Standards (MATS) rule in February 2026.

EPA deprioritized enforcement of a 2026 installation ban on certain higher-GWP HVAC refrigerant systems (410A systems) under the American Innovation and Manufacturing Act.

Coal ash enforcement has effectively paused at the federal level, with EPA reserving action for facilities posing imminent threats to health.

Keeping Up with Ever Changing Rules – Best Practices

Register with applicable agency.

- Consider Self-Regulation
- Form a Standards Development Committee
 - With ASTM/ANSI/OTHERS

Designate contact person

- CPSC: meet with Commissioners and Senior Staff
 - Cultivate relationships.
 - Rulemaking side
 - Enforcement side

Newsletters and Blogs

Keeping up with the News

- FDA: stay on top of CRLs
- Proper levels of review of advertisements

Supply Side Management

- Traceability
 - Internal
 - With multiple vendors/sources
 - Serial Numbers, Batch designations
 - Record keeping
- Vendor Agreements
 - Clear responsibilities
 - Indemnities
 - Understanding jurisdictional issues

Tariffs

- Designating point person(s) to monitor (by region if needed)
- Document sources and locations.
- Ability to map out (and prove) product route.
- Developing alternate/backup sources