



YOUR EYES IN THE SUPPLY CHAIN

## California Proposition 65 Monthly Update – January 2019

This summary is not intended to be exhaustive nor should it be construed as legal advice. It is intended primarily as a general overview for introductory purposes.

### 1. News Stories

- **OEHHA Proposes Amendments to Article 6 Clear and Reasonable Warnings Requirements in Proposition 65**

On November 16, 2018, the Office of Environmental Health Hazard Assessment (OEHHA) published a proposal to clarify supply chain responsibility to provide “clear and reasonable” warnings under Proposition 65. Currently, Proposition 65 places primary responsibility on manufacturers, producers, packagers, importers, suppliers, and distributors to provide consumer product warnings - a requirement that was intended, in part, to reduce the burden on retailers. The proposed amendments clarify that these intermediate businesses may satisfy their obligation to provide a warning by placing a warning directly on the product or through a written notice to an authorized agent, who may be another business along the supply chain who receives the product before a retailer. In addition, OEHHA has proposed a clarification of when a retailer has “actual knowledge” of consumer product exposure by stipulating that the information must be of “sufficient specificity for the retail seller to readily identify the product” that requires a warning. The proposed amendments were under a comment period through December 31, 2018

## 2. Cal Prop 65 Chemical List Updates

Date added	Chemicals	Hazards	Safe Harbor Limits	Implementation Date	Status
Oct 26, 2018	Nickel (soluble)	Male Reproductive Toxicity, Developmental Toxicity	N/A	Oct 26, 2019	New Chemical
Nov 23, 2018	Gentian violet (Crystal violet)	Carcinogenic	N/A	Nov 23, 2019	New Chemical
Nov 23, 2018	N-Nitrosohexamethylethylenimine	Carcinogenic	N/A	Nov 23, 2019	New Chemical
Nov 23, 2018	p-Chloro- $\alpha,\alpha,\alpha$ -trifluorotoluene	Carcinogenic	N/A	N/A	Proposed

## 3. Recent 60 Day Notices

Chemical	Product Type	No. of Notice
Acrylamide, Lead	Food	4
Bisphenol A	Thermal Paper	1
Cadmium (Cd)	Food Jewellery / Jewellery Organizer / Keychains	2
Cadmium, Lead	Food	2
Cadmium, Lead and lead compounds	Supplements	3
Di(2-ethylhexyl)phthalate (DEHP)	Adapters / Electrical Wires / Extension Cords / Flashlights / HDMI Cables / Wires Strippers Backpack / Bags and Accessories Cloth / Pant / Cap / Hat / Eyewear Pouches / Sleeves Headphones Tool Pouches / Tool Grips / Brass Tools / Garden Tools / Cutting Tools / Fittings and Valves / Other Tools Wallet Umbrellas	18

Chemical	Product Type	No. of Notice
Di(2-ethylhexyl)phthalate (DEHP), Diisononyl phthalate (DINP)	Backpack / Bags and Accessories Portable Laptop Lock Vinyl-coated hooks	4
Diisononyl phthalate (DINP)	Fitness Balls / Fitness Foam Rollers / Dumbbells / Jumping Rope / Sports Reflective Journals Umbrellas Toto/ bag Vinyl luggage tag/ toggle clamps Repair kits Soft toys with suction cups Brushes	8
Di-n-butyl phthalate (DBP)	Hoses / Electrical Components and Accessories / Flashlights / Hand Tools / Household Hardware Accessories / Tape Measures Clutches	2
Furfuryl Alcohol	Food	1
Lead	Tool Pouches / Tool Grips / Brass Tools / Garden Tools / Cutting Tools / Fittings and Valves / Other Tools	4
Lead and lead compounds	Adapters / Electrical Wires / Extension Cords / Flashlights / HDMI Cables / Wires Strippers Artcraft Glue Gun / Hammers / Hangers / Hooks Stationary / Stickers / Non-slip Sticker Tool Pouches / Tool Grips / Brass Tools / Garden Tools / Cutting Tools / Fittings and Valves / Other Tools Wand Dietary supplement	14

## 4. Recent Settlements

Date	Docket no.	Product Type	Chemical (Limit)
Oct 29, 2018	Out of Court - Ecological Alliance, LLC. V. IDEAL Industries Inc.	Pliers	DEHP (ND)
Oct 29, 2018	Out of Court - CAG V. MARKLYN GROUP, INC.	Vehicle Lights with Plastic Suction Cups	DEHP (0.1%)
Oct 29, 2018	Out of Court - SARA Hammond v. RIAH Fashion Inc	Waterproof Phone Cover Bags	DEHP (0.1%)
Nov 02, 2018	Out of Court - CAPA V. Mizco International, Inc.	Stereo Ear buds	DEHP (0.1%) DINP (0.1%)
Nov 08, 2018	Out of Court Ecological Alliance, LLC. v. D.M. Merchandising Inc	Flyswatter	DEHP (0.1%)
Nov 08, 2018	Out of Court Ecological Alliance, LLC. v. Do it Best Corp.	Bike hangers	DEHP (ND)
Nov 09, 2018	Out of Court Ecological Alliance, LLC v. Nyam LLC	Wristlet	DINP (0.1%)
Nov 09, 2018	Out of Court Ecological Alliance, LLC v. Osmartech Inc	HDMI cable	DINP (0.1%)
Nov 09, 2018	Out of Court Kim Embry v. Lucky eShop Inc	Cruise Luggage tag Holder	DINP (ND)
Nov 11, 2018	Out of Court Ecological Alliance, LLC. v. Charming Charlie LLC	Hat	DINP (ND)
Nov 12, 2018	CGC-18-570587 Erika McCartney v. Champlain Chocolate company	Organic Cocoa Powder, Dark Organic Chocolate	< 65% cacao content: Lead (0.1 ppm) 65% - 95% cacao content: Lead (0.15 ppm) > 95% cacao content: Lead (0.225 ppm) <65% cacao content: Cadmium (0.4 ppm) 65% - 95% cacao content: Cadmium (0.45 ppm) > 95% cacao content: Cadmium (0.96 ppm)

Date	Docket no.	Product Type	Chemical (Limit)
Nov 13, 2018	Out of Court Ecological Alliance, LLC. v. Absolute Fashion Co.	Belts	DEHP (ND)
Nov 14, 2018	Out of Court Center for Advanced Public Awareness Inc v. GBG Beauty LLC-	Beauty Emergency Kits	DEHP (0.1%)
Nov 15, 2018	Out of Court Ema Bell v. Shakespeare Company	Stik fishing bag	DEHP (0.1%)
Nov 15, 2018	Out of Court Gabriel Espinosa v. ABG Accessories Inc.	Wallets	DEHP (0.1%)
Nov 19, 2018	Out of Court Shefa LMV Inc. v. American Textile Company Inc	Packaging	DEHP (0.1%)
Nov 20, 2018	Out of Court Ecological Alliance, LLC. v. A.J. Wholesale Distributor Inc.	Pincer	DEHP (ND)
Nov 26, 2018	Out of Court SARA Hammond v. Mystic Apparel LLC	PVC backpacks	DEHP (0.1%)
Nov 26, 2018	Out of Court Ecological Alliance, LLC. v. Petkin Inc.	Pet dental kits	DINP (ND)
Nov 27, 2018	Out of Court Shefa LMV Inc. v. Dean Street Group Inc	Plastic sandal	DBP (0.1%)
Nov 29, 2018	Out of Court Safe Products for Californians LLC. v. Chimex Seeds Roots	Seed	Cadmium (ND) Lead and lead compound (ND)



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## 5. My product contains nickel – Help!

The recent addition of Nickel (soluble) to the California Proposition 65 Chemical List has many companies concerned about their products that contain nickel. Nickel and nickel alloys can be found in a wide range of consumer products: toys, drinkware and other food contact products, jewelry, products that have buttons, zippers, grommets, plating.... the list goes on and on. With an enforcement date of October 26, 2019 and no safe harbor limit in place, no one knows exactly which product categories will be targeted and how exposure concerns to nickel will be enforced.

Just because a product contains nickel or nickel alloys does not mean that there is a definite Cal Prop exposure risk to nickel. We do know that this new chemical listing is for soluble Nickel and there are existing regulations in the U.S. and other countries that address this hazard. A reasonable course of action to see if your product may require a warning statement is to test according to an established test method and regulation that would be most applicable to your product category such as:

- For Jewelry and all other metal components with prolonged skin contact: Conduct Nickel release testing and apply limits per ASTM F2923 Standard Specification for Consumer Product Safety for Children's Jewelry (or its adult jewelry counterpart ASTM F2999).
- For Toys and Children's products: Recommend testing according to EN 71-3 test method and limit for Nickel (which is a Soluble Limit).
- Food Contact products: Conduct testing according to the European Guideline for Metal and Alloy Food Contact materials which has an extractable limit for Nickel.

For miscellaneous products with metal components you may consider screening the components using a Nickel Spot test. It is likely that bounty hunters will use this test as an indicator for the presence of soluble nickel.



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## 6. References

- a. California Proposition 65 Chemical List:  
[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html)
- b. California Proposition 65 Safe Harbor Levels:  
<http://www.oehha.ca.gov/prop65/getNSRLs.html>
- c. Title 27 California Code of Regulations Article 6, Clear and Reasonable Warnings:  
[http://www.oehha.ca.gov/prop65/law/pdf\\_zip/RegsArt6.pdf](http://www.oehha.ca.gov/prop65/law/pdf_zip/RegsArt6.pdf)
- d. New Proposition 65 Warnings:  
<https://www.p65warnings.ca.gov/new-proposition-65-warnings>
- e. Warning Translation for Business:  
<https://www.p65warnings.ca.gov/warning-translations-businesses>