

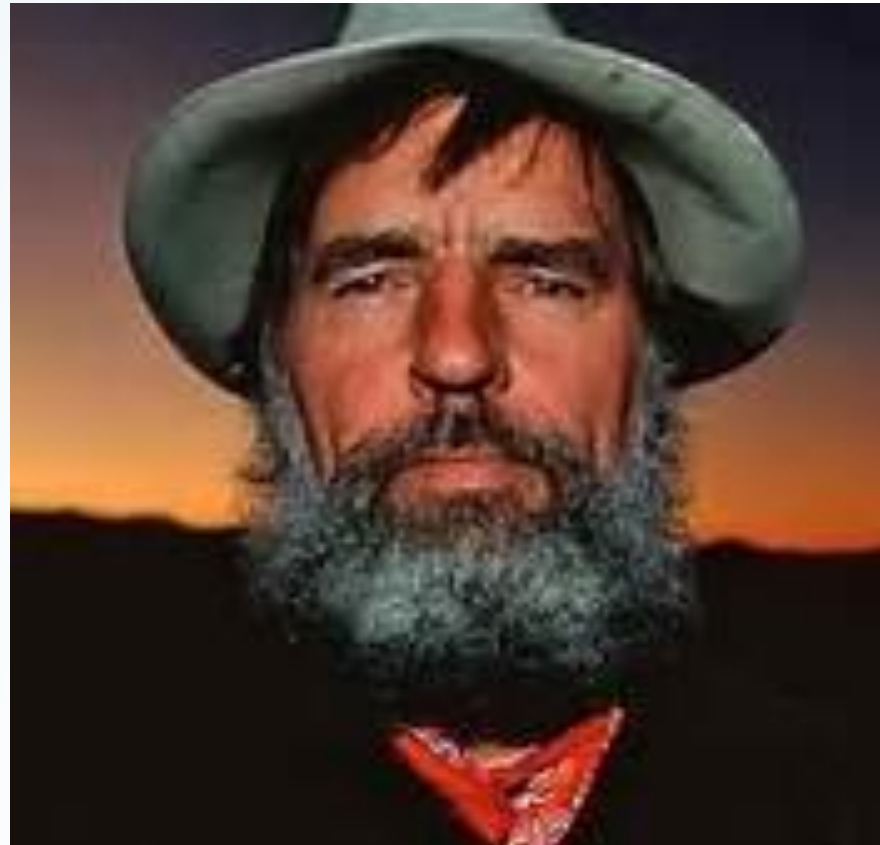
# California Proposition 65

## A quick update...

Anne Stone, PPAI

“There is science, logic, reason; there is thought verified by experience. And then there is California.”  
--Edward Abbey

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# California Proposition 65

- CA Prop 65, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986, was voted into law in November 1986 by a 63-37 percent margin.
- Purpose is to give consumers a chance to make an “informed decision” to protect themselves from exposure to certain chemicals that are known to the state of California to cause cancer, birth defects or other reproductive harm.

## The basics

- California's Office of Environmental Health Hazard Assessment (OEHHA) must annually publish a list of chemicals known to cause cancer, birth defects or other reproductive harm.
- In 1986 that list included 30 chemicals
- It now includes 900+ chemicals
- Once a chemical is listed by OEHHA, companies have 12 months to comply with warning requirements under the regulation

## What types of chemicals trigger the warning?

- The list contains a wide range of naturally occurring and synthetic chemicals that include additives or ingredients in pesticides, household products, foods, drugs, dyes or solvents. They may be used in manufacturing and construction or they may be byproducts of chemical processes, such as motor vehicle exhaust.

# Prop 65 requirements

- Prop 65 applies to
  - Any person in the course of doing business
  - Business that employs 10 or more employees
  - Environments and products

## Warnings only

Provide a “**clear and reasonable warning**” before purchase and before knowingly and intentionally exposing anyone to a listed chemical

# Who enforces Prop 65?

- OEHHA administers the program
- The California Attorney General's Office, district and city attorneys enforces Prop 65
- **Private enforcers aka Bounty Hunters**



# What's the process?

- A 60-day notice of the alleged violation is provided to the alleged violator
- After that notice, the private enforcer can initiate litigation

# Penalties

- Failure to comply is enforceable by penalties up to **\$2500 per incident per day**
- Private enforcers enter into settlements and split the money with the state
- Court approves and enters judgement against business owner
  - Example:  
**Shipment of 500 mugs @ \$2500 per mug=  
\$1,250,000 per day**

## Who wins?

- 2018: 829 settlements = \$35 million
- 2017: 688 settlements = \$26 million
- 2016: 760 settlements = \$30 million
- 2015: 582 settlements = \$26 million
- 2014: 663 settlements = \$29 million

## Who wins?

- 2018: 829 settlements = \$35 million
  - \$27 million went to attorneys for their fees and costs
    - That is 77% to attorneys

## Prop 65 is an exposure regulation

- Methods of exposure
  - Oral
  - Inhalation
  - Transdermal
  - Hand-to-mouth
- In most cases, exposure is measured in micrograms per day, based on average use of the product
  - Very difficult and expensive to defend a claim, since burden is on the maker

## Example of enforcement

- California recently added BPA to the Prop 65 list as a reproductive toxicant
- Hazard based on exposure
- California adopted a limit for BPA dermal exposures of 3  $\mu\text{g}/\text{day}$ 
  - FDA daily intake limit from food is about 2700  $\mu\text{g}/\text{day}$
- Prop 65 bounty hunters only have to show your product **contains** BPA
- You must prove the exposure is below the 3  $\mu\text{g}/\text{day}$  limit

# How are you compliant with Prop 65?

- Eliminate the chemicals that trigger the need to warn or
- Apply a warning label consistent with OEHHA's safe harbor standard

# Prop 65 warnings

- The warning must include the name of the listed chemical that prompted the obligation to warn
  - This must be the full name of the chemical
- The warning must include the corresponding risk of harm
  - Cancer
  - Birth defects and/or reproductive harm
  - Cancer and reproductive harm



## Prop 65 warnings

- Include a triangular yellow warning symbol with an exclamation point and must be as large as the “Warning”



- Directions to the OEHHA Prop 65 warning website [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)
- The warning must be in languages other than English if those languages are used on the product or packaging

# Prop 65 warnings



**WARNING:** This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).



**WARNING:** This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)



**WARNING:** Cancer- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)



**WARNING:** Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

## Short form warnings

- This warning eliminates the need to identify the specific chemical that triggers the warning
- This warning must be in a type size no smaller than the largest type size used for other consumer information and in no case in a type size smaller than 6-point type



“WARNING: Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”



“WARNING: Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”



“WARNING: Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

# Internet warnings

## Warnings must be provided to **consumers** prior to or during purchase

- Internet sellers must provide separate warnings for products sold online, even if the products themselves contain a Prop 65 warning
- Automatically provide the warning to the purchaser prior to or during the purchase of the product
- The warning must be prominently displayed prior to the completion of purchase
- If you use the short form warning on the website, you must use the short form warning on the product

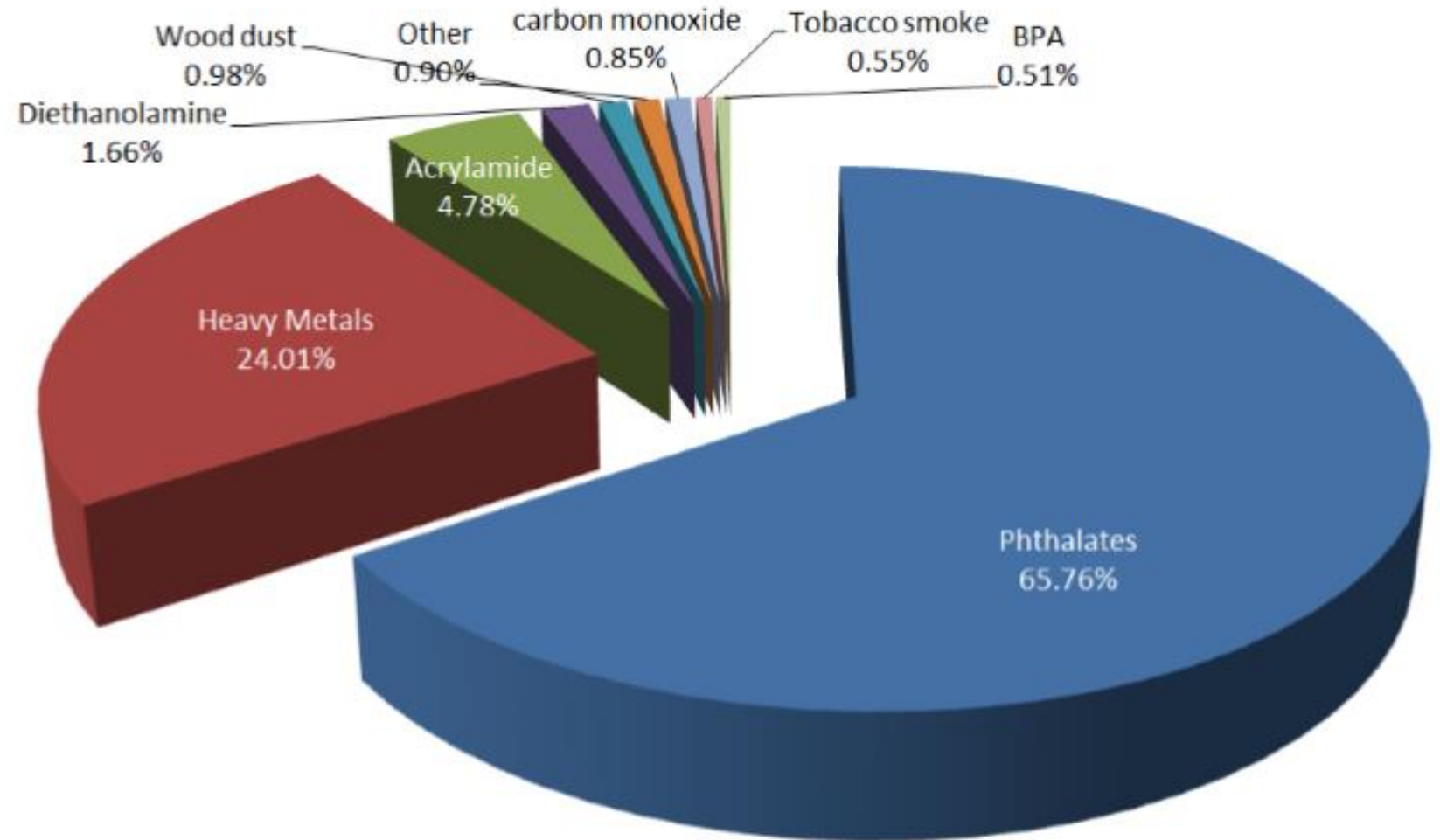
# Catalog warnings

- Catalog sellers must provide warnings for products sold in a catalog
  - If you use the short form warning on the product, you must use the short form warning on the internet

# Litigation Trends

Lead  
Phthalates  
(DEHP and DINP)

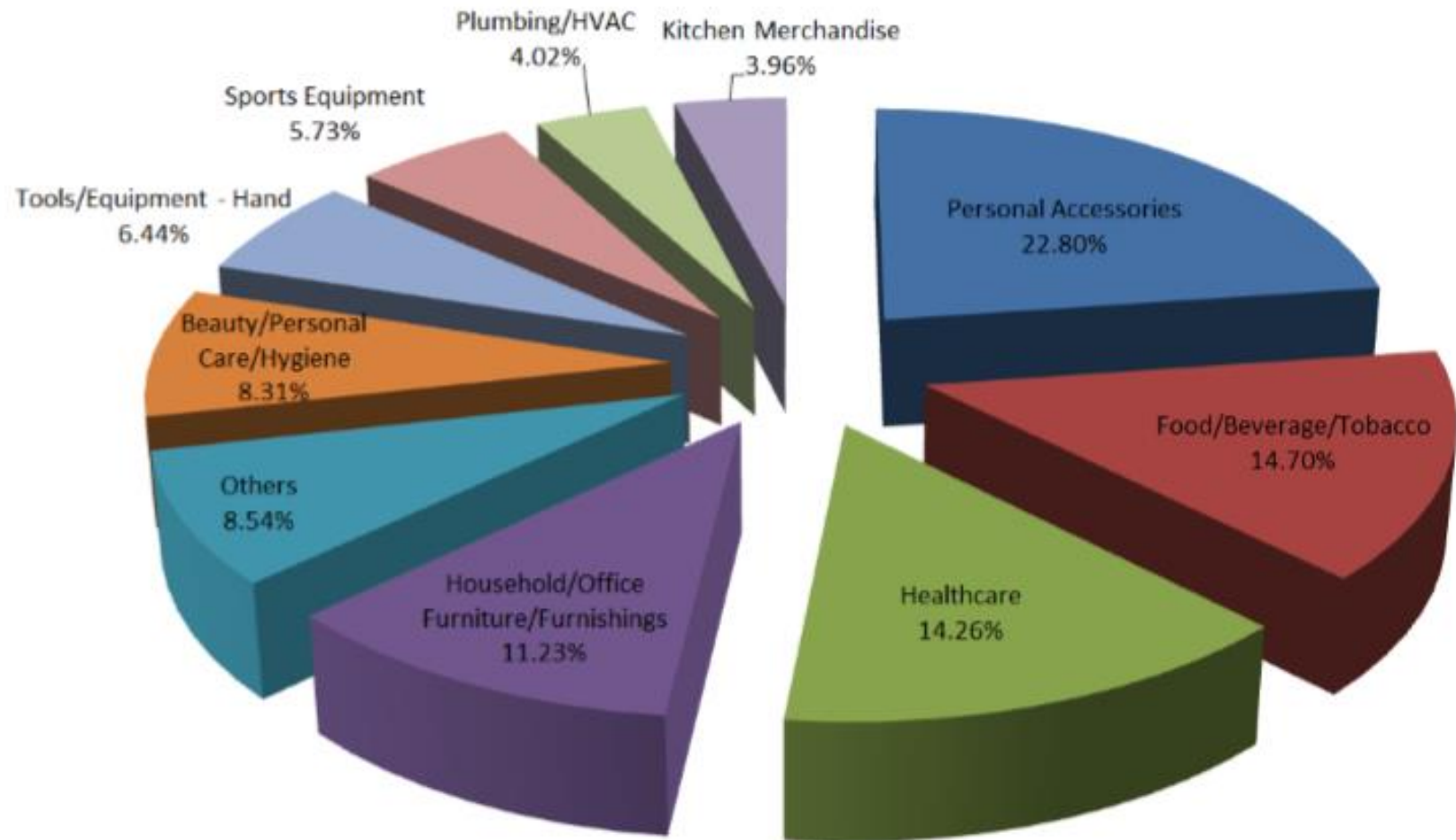
TOP TARGETED CHEMICALS IN 2018



Source: Bureau Veritas

# 2018 Summary of California Proposition 65 60 Day Notices

## TOP TARGETED PRODUCT CATEGORIES IN 2018



Trends

Source: Bureau Veritas

# Trends

- Leading product categories noticed for violation:
  - Personal accessories
  - Food and beverage
  - Healthcare
  - Household goods
  - Other
  - Personal care
  - Tools/equipment – hand
  - Sports equipment
  - Plumbing/HVAC
  - Kitchen/merchandise



## DEHP Trends

- Gym bags
- Recreational gear bags
- Fitness balls
- Hats
- Grooming kits/make up bags
- Wireless cable charger
- Jewelry box
- Gloves
- Travel cases
- Messenger bags

# Lead Trends

- Brass (e g: key chains, pens, coffee mugs, pen holders)
- Fastening and trim on clothing (zippers, trim on sports clothing)
- Protective/decorative coatings on products
- Jewelry
- Decorative figurines
- Candles
- Toys

## Environmental warnings

- If workers or visitors to your California facilities will be exposed to Prop 65 listed chemicals, consider posting a Prop 65 warning in your facility
- You will also want to create a “map”—a floor plan delineating the affected area of the facility.
- The warning should be provided close enough to the source of exposure for the person seeing the warning to determine where and how they may be exposed



## **WARNING**

Paint and Chafing Fuel in  
this establishment can  
expose you to Cumene and  
Methanol which are known  
to the State of California to  
cause cancer and birth  
defects or other  
reproductive harm.

For more information go to  
[www.P65Warnings.ca.gov/hotels](http://www.P65Warnings.ca.gov/hotels)

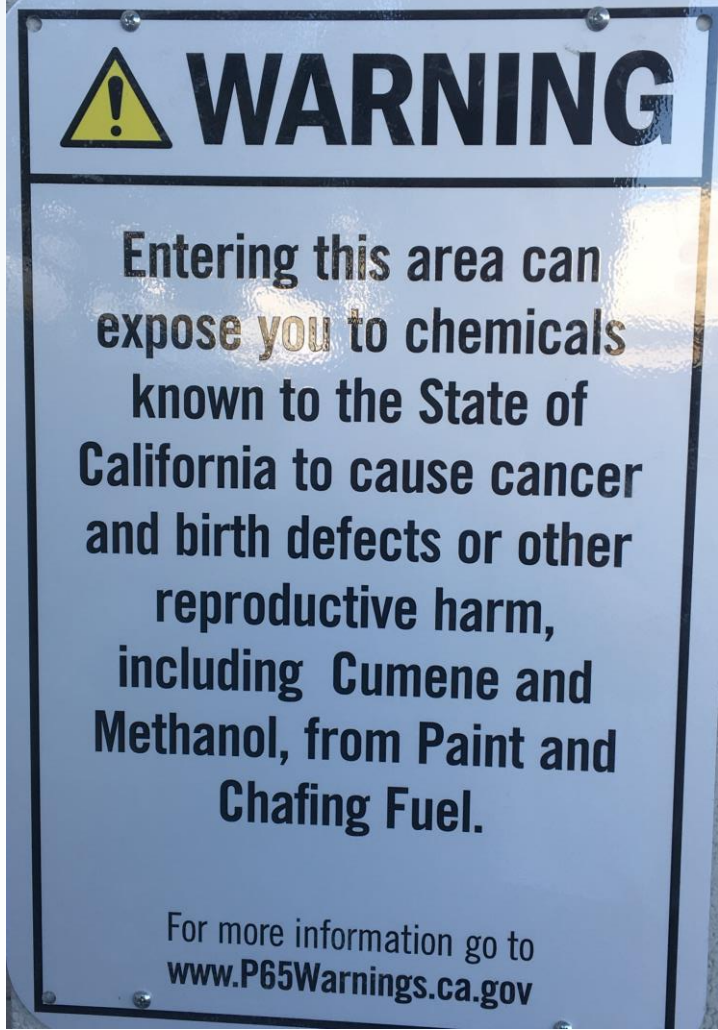
SmartSign.com • 800-952-1457 • S-3814

## WARNING

Many food and beverage cans have linings containing bisphenol A (BPA), a chemical known to the State of California to cause harm to the female reproductive system. Jar lids and bottle caps may also contain BPA.

You can be exposed to BPA when you consume foods or beverages packaged in these containers.

For more information, go to:  
[www.P65Warnings.ca.gov/BPA](http://www.P65Warnings.ca.gov/BPA).



 **WARNING**

**Breathing the air in this  
smoking area can expose you  
to chemicals including  
tobacco smoke and nicotine,  
which are known to the  
State of California to cause  
cancer and birth defects or  
other reproductive harm.  
Do not stay in this area longer  
than necessary.**

For more information go to  
[www.P65Warnings.ca.gov/smoking-areas](http://www.P65Warnings.ca.gov/smoking-areas)

SmartSign.com • 800-952-1457 • S2-1684

## Options for suppliers

- Inventory your products and identify all products that trigger the obligation to warn
  - Check chemical list published and updated by the OEHHA and can be found at [www.oehha.ca.gov](http://www.oehha.ca.gov)
- Review the testing process
  - Test for all 900+ chemicals? Not reasonable
  - Know what chemicals are in the product and test the product if it contains chemicals noted on the OEHHA list
  - Engage a certified toxicologist to review the product to determine appropriate warning language



## Options for suppliers

- LABEL with appropriate Prop 65 warning statement
- Update all catalogs and ecommerce sites to include warnings
- Communicate warning requirements to distributors
- Train the team

## Options for distributors

- Ask the customer if the product will or could be distributed in California and tell the supplier
- Ask if the product would be displayed or sold at retail
- Check Chemical List published and updated by the OEHHA and can be found at [www.oehha.ca.gov](http://www.oehha.ca.gov)
- Confirm with the supplier that none of the 900+ chemicals are in the product
- Ask for test reports
- LABEL with appropriate Prop 65 warning statement
- Update all catalogs and ecommerce sites to include warnings
- Communicate warning requirements to customers
- Train the team

# Monitor the Settlements

- Keep up with recent settlements
  - Keychains and jewelry organizers- phthalates
  - Barware and kitchenware with brass handles—lead
  - Pet leashes and collars—lead
  - Audio cables—phthalates
  - Ice scoops—BPA
  - Watchbands—phthalates
  - Golf bag rain hoods- phthalates
  - Pet toys—phthalates
  - Polycarbonate goblets and salad servers- BPA
  - Beach umbrellas with cases—phthalates
  - Pet waste bag holders-phthalates
  - And...
    - Ginger cookies--acrylamide

# Prop 65 Monthly Update Newsletter

- Includes New Chemicals proposed to be added to Prop 65 list
  - Reasons for proposed inclusion
  - Where they may be used, in which type of products
- Includes New Chemicals added to Prop 65 list
  - Where they may be used, in which type of products
  - Implementation date
- Includes Recent 60-day notices

## Importance of 60 Day Notices

- These notices may become settlements
- These notices identify current chemicals being targeted

*Note that Nickel is included in a 60-day notice for zipper and zipper pull. No settlement to date.*

- Track most frequently listed chemicals in recent 60-day notices
  - In July, Di(2-ethylhexyl)phthalate (DEHP) is the most frequently listed chemical
- Track most frequently listed product types in recent 60-day notices
  - In July, Backpack/Bags/Wallet/Badge Holder and Accessories is the most frequent product type

Monthly  
Newsletter  
also  
includes...

#### 4. Recent Settlements

Date	Docket no.	Product Type	Chemical (Limit)
July 9, 2019	RG19025632 – Kim Embry V. John B. Sanfilippo & Son, Inc.	Roasted almond products	Acrylamide (225 ppb)

#### 5. 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 Harbour Levels:  
<http://www.oehha.ca.gov/prop65/getNSRLs.html>
- c. New Proposition 65 Warnings:  
<https://www.p65warnings.ca.gov/new-proposition-65-warnings>
- d. Warning Translation for Business:  
<https://www.p65warnings.ca.gov/warning-translations-businesses>

# Product Responsibility Resources

**PPAI:** [www.ppai.org](http://www.ppai.org)

**PPAI Corporate Responsibility:**

<http://www.ppai.org/corporate-responsibility/>

**QIMA:** [QIMA.com](http://QIMA.com)

**Questions?** [AnneS@ppai.org](mailto:AnneS@ppai.org) 972-258-3041