

DOWNEY BRAND

California's Proposition 65, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986 – or “Prop. 65” – requires “clear and reasonable warnings” on consumer products sold in California if use of the products causes an exposure to chemicals on the [Prop. 65 List](#). Prop. 65 continues to have a significant impact on California consumer product manufacturers, distributors, and retailers, in large part because of active “bounty hunter” plaintiffs that allege violations of the law based on various and sundry chemical exposures. These allegations have grown more and more novel with each year that the regulation has been in effect.

2019 was no exception, and shaped up to be yet another creative year for Prop. 65 bounty hunter plaintiffs. In 2019, Prop. 65 plaintiffs sent over 2,400 60-Day Notices alleging violations of the law to hundreds of different defendants (in and out-of-state manufacturers, retailers, distributors, and everyone in-between). In addition to the “typical” consumer product notices that those in the Prop. 65 world have grown accustomed to – Di(2-ethylhexyl) phthalate ([DEHP](#)) and Diisononyl phthalate ([DINP](#)) in plastics, as well as [Lead](#) (and related compounds) in hardware/brass products – plaintiff groups have branched out to target new chemicals, industries, and products. For example, Prop. 65 plaintiff groups sent over three dozen notices for chromium (hexavalent compounds) in leather work gloves, leather products, and baby powder. Plaintiffs also continued their food product claims, alleging that Prop. 65 warnings are required for [acrylamide](#) in ice cream cones and cookies, [cadmium](#) and lead in seaweed, and [furfuryl alcohol](#) in hamburger buns and pretzels.

Highlights and trends in 2019 Prop. 65 claims included:

- **Lead, DEHP, and DINP as Common Chemicals in Prop. 65 Notice of Violation Letters.** Lead (and related compounds), DEHP (the most common type of phthalate plasticizer), and DINP (another type of phthalate) remained three of the most common Prop. 65 chemicals that are the subject of the vast majority of Prop. 65 60-Day Notices. These claims typically allege that hardware/brass products contain lead and therefore require a warning, and certain plastic products contain phthalate plasticizers (DEHP and DINP, for example) which also require a warning.
- **DEHP and DINP in Plastic Bags.** Likewise, plaintiffs also targeted plastic bags and cases containing phthalate plasticizers in 2019. These claims allege that all sorts of bags allegedly containing DEHP and DINP require warnings, including tote bags, cosmetic bags, and golf bags.
- **Chromium in Leather Work Gloves, Leather Products, and Baby Powder.** Leather work gloves, leather products, and body powder products (including baby powder) also received attention from plaintiff groups in 2019. Plaintiff groups allege that these products contain chromium (hexavalent compounds), and therefore require a warning. In 2019, plaintiff groups sent over three dozen Prop. 65 60-Day Notices for such products.
- **Acrylamide in Food, Including Ice Cream Cones, Cookies, and Nut Products.** Acrylamide in food products continues to be a common allegation in Prop. 65 enforcement actions. In 2019, Plaintiffs issued over 200 Prop. 65 60-Day Notices for acrylamide, which were almost entirely for food products including ice cream cones, cookies, and products containing nuts such as almonds and peanuts. Acrylamide forms as part of a chemical reaction, which contributes to the aroma, taste, and color of cooked foods and can occur during frying, baking, or roasting.
- **Cadmium in Seaweed and Dietary Supplements.** In 2019, plaintiff groups also issued over three dozen Prop. 65 notices for cadmium in products including seaweed and various dietary supplements, alleging that these products required a warning because they contained cadmium.
- **Furfuryl Alcohol in Hamburger Buns and Pretzels.** Finally, in 2019, seven Prop. 65 60-Day Notices were issued for furfuryl alcohol in hamburger buns and pretzel products. California added furfuryl alcohol to the Prop. 65 list on September 30, 2016 as a carcinogen. Furfuryl alcohol is a naturally occurring byproduct of heating and can commonly be found in many foods and beverages. 2019 may mark the beginning of a new trend for Prop. 65 notices for food products alleging exposure to this chemical.

This list showcases trends within the Prop. 65 world over the last year, and provides common themes for forward-looking consumer product manufacturers, distributors, and retailers dealing with Prop. 65 risk analyses in 2020.