

# Prop 65 Year-End Highlights: 2024's Key Regulatory Changes, Legal Battles, and Enforcement Trends

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As businesses and legal professionals strive to keep pace with California's ever-changing regulatory environment, Proposition 65 ("Prop 65") remains a key focal point. Known for its stringent requirements on chemical exposure warnings, Prop 65 continues to evolve, driven by new legislation, court rulings, and regulatory updates.

Below is a summary of 2024's most notable Prop 65 developments. Whether you're a seasoned legal expert or new to the world of compliance, staying informed on these changes is crucial for safeguarding your business against potential liabilities.

## **Private Enforcement Actions Still On The Rise: Beware of PFOA**

Prop 65 permits private actors to bring enforcement actions "in the public interest," provided the private enforcers first issue a 60-day notice of intent to sue the alleged violator.[1] In 2024, **5,398** notices were filed with the California Attorney General's Office by approximately 40 private enforcers—up from 4,142 notices in 2023, and the highest number filed in any year since Prop 65's inception.[2]

Top targeted product categories included:[3]

- Food and herbal supplements
- Beauty/Personal Care/Hygiene/Cosmetics/Sanitizers

Top targeted chemicals included:

- Metals (including lead, cadmium, mercury and arsenic)
  - Phthalates (chemicals used in plastic)
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- Diethanolamine

Claims related to PFOA (perfluorooctanoic acid) have also been on the rise, accounting for over 200 of the notices filed in 2024—up from 53 PFOA notices in 2023.[4] PFOA is a chemical in the “PFAS”[5] family that was used to make products stain resistant, heat resistant, and waterproof, and to reduce friction.

### **Changes to Short-Form Warnings**

After years of debate and analysis, California has adopted new guidelines for short-form warnings. On October 27, 2023, California Office of Environmental Health Hazard Assessment (“OEHHA”) published a Notice of Proposed Rulemaking, proposing amendments to existing sections of the safe harbor warning regulations for short-form warnings.[6] On November 26, 2024, the Office of Administrative Law approved the rulemaking.

The final regulatory text can be viewed [here](#).[7] Under the new regulations, a short-form warning for food or consumer product exposures must specify at least one chemical name for which the warning is being provided.

The effective date for the amendments is January 1, 2025. However, businesses may use the previous version of the short-form warning for consumer products through 2027.

### **Consumer Advocacy Group v. Gulf Pacific Rice Company: Plaintiff Appeals Following Big Win for Food Manufacturers Challenging Exposure Assessments In Food Prop 65 Cases**

In 2014, Consumer Advocacy Group commenced an action against an alleged manufacturer/distributor/promoter/retailer of rice for failure to provide a Prop 65 warning regarding lead in the rice product, *Consumer Advocacy Group, Inc. v. Gulf Pacific Rice Co. Inc., et al.*, Cal. Super. Ct. Case No. BC553427. Multiple actions were consolidated into JCCP No. 4816, Prop 65 Rice Product Cases.

In 2024, following a bench trial, the Los Angeles Superior Court entered final judgment in favor of defendant Gulf Pacific Rice Co., Inc., finding that the rice product in question did not require Prop 65 warnings.[8] The court relied on data from the U.S. Center for Disease Control and Prevention’s National Center for Health Statistics’ National Health and Nutrition Examination Survey (“NHANES”[9]) for calculating the lead exposure, concluding that the level of exposure to lead from the rice products did not exceed the Safe Harbor level, i.e., the Maximum Allowable Dose Level provided in Prop 65 regulations of .05 µg/day. Consumer Advocacy Group has appealed the decision in the Second District Court of Appeal, Case No. B338777. That appeal is pending.

### **Epps v. Walmart: Court Denies Motion to Approve Consent Judgment After Office of the Attorney General Opposes “Unreasonable” Attorneys’ Fees**

The San Francisco Superior Court recently denied[10] a motion to approve a proposed consent judgment in a lead exposure case on the grounds that plaintiff Epps failed to demonstrate its request for \$200,000 in attorneys’ fees was reasonable.

In its opposition,[11] the California Attorney General noted that plaintiff’s counsel had filed well over 300 similar notices involving lead exposures since 2020 and obtained a total of at least \$7,079,750 in attorneys’ fees and costs from the lead cases they have settled to date. Because the matter was not

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litigated, involved many template documents and non-complex legal issues, and took under 4 months from the service of the notice to signing of the settlement, the California Attorney General argued that the plaintiff had failed to show that the settlement was reasonable under California law. The Court concurred, citing, *inter alia*, counsel's "extensive communication with a seasoned plaintiff," the many hours spent on research despite counsel's experience with similar cases, and the low novelty and difficulty of the case.

### **Recent Uptick In Alcohol-Related Notices of Violation For Restaurants**

In April 2024 and from August to November 2024, the same private enforcer issued 143 Prop 65 notices of violation to Santa Monica restaurants for failing to provide Prop 65 warnings to their patrons. To date, 5 notices have been resolved by way of \$500 payments from the restaurants.

### **How Can We Help?**

As regulations continue to evolve, understanding and addressing compliance challenges can mitigate the risk of costly claims and penalties. From auditing your Prop 65 practices to assisting with notices of violation and Prop 65 litigation, our seasoned attorneys can help your business navigate Prop 65's dynamic regulatory landscape.

### **FOOTNOTES**

[1] Cal. Health & Safety Code § 25249.7(d)(1).

[2] <https://oag.ca.gov/prop65/60-day-notice-search>

[3]<https://www.cps.bureauveritas.com/newsroom/ca-proposition-6560-day-notice-summary-q3-2024> ; <https://www.cps.bureauveritas.com/newsroom/ca-proposition-6560-day-notice-summary-q2-2024>; <https://www.cps.bureauveritas.com/newsroom/ca-proposition-6560-day-notice-summary-q1-2024>

[4] <https://oag.ca.gov/prop65/60-day-notice-search>

[5] PFAS (per- and polyfluoroalkyl substances) are a group of synthetic chemicals that are used in many consumer and industrial products. They are also known as "forever chemicals" because they break down very slowly and can build up in the environment and in living things.

[6] [Notice of Proposed Rulemaking and Announcement of Public Hearing: Amendments to Article 6, Clear and Reasonable Warnings Safe Harbor Methods and Content](#)

[7] See also <https://oehha.ca.gov/media/downloads/crn/fsor112624approval.pdf>

[8] March 15, 2024 Final Judgment, *Consumer Advocacy Group, Inc. v. Gulf Pacific Rice Co. Inc., et al.*, Los Angeles Superior Court Case No. BC553427.

[9] NHANES is publicly available consumer use data and "is designed to be representative of the entire population in the United States, and to capture how often foods are consumed, when they are consumed and how much is consumed ... ." March 15, 2024 Final Judgment, *Consumer Advocacy Group, Inc. v. Gulf Pacific Rice Co. Inc., et al.*, Los Angeles Superior Court Case No. BC553427.

[10] September 26, 2024 Order Denying Epps's Motion to Approve Consent Judgment, *Epps v.*

*Walmart Inc.*, San Francisco Superior Court Case No. CGC-24-614279.

[11] July 8, 2024 Memorandum In Support of Opposition of the California Office of the Attorney General, *Epps v. Walmart Inc.*, San Francisco Superior Court Case No. CGC-24-614279.

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