

**California Proposition 65**

- [Recent Court-Approved Consent Judgments Exempt Non-Lead Crystalline/Crystal Glass from Proposition 65 Warning Requirements.](#)

Crystal with “no intentionally added lead” has been exempted from Proposition 65 warning requirements in multiple 2023 and 2024 Mateel Environmental Justice Foundation settlements. “After dozens of tests, Mateel has determined that crystalline serving articles do not leach lead into food or beverages in amounts that would cause lead exposures that require a Proposition 65 warning”.

Although the California Attorney General’s office has not yet embraced Mateel’s position regarding a warning exemption for crystalline, the California court-approved Mateel settlements are moving the issue in the right direction. There are two Mateel cases pending and we expect to see more such settlements. Future court-approved crystalline exemptions from Proposition 65 leaded crystal warnings may help persuade the AG’s office to come around to Mateel’s position on crystalline and may discourage other “private enforcers” from pursuing such cases.

- **Proposition 65 “notice” activity increased 92% in 2024, and “lead” cases have also increased significantly. A federal preliminary injunction barring new notices on acrylamide and new decorated ceramic/glass notices are prime causes.**

<u>Year</u>	<u>Total</u>	<u>Lead</u>	<u>% of Total</u>
<b>2024</b>	<b>5,398</b>	<b>2,307</b>	<b>43%</b>
<b>2023</b>	<b>2,810</b>	<b>1,832</b>	<b>65%</b>
2022	2,780	1,491	54%
2021	3,155	1,006	32%
2020	3,514	1,134	32%

- **“Decorated” ceramic and glass ware have become a new “cottage industry” for bounty hunters. Targets are primarily national value/discount chains who specialize in imports from China. These cases are highly lucrative because samples are easily obtained, swipe lead tests are inexpensive, 60 Day Letters cost little, and settlements average \$25,000. Lead “exposure” alleged through ingestion from dermal contact and “hand to mouth” activity is difficult and very expensive to disprove.**

<u>Year</u>	<u>Ceramics</u>	<u>Glass</u>	<u>Total</u>	<u>% of Lead Notices</u>
<b>2024 Est.</b>	<b>280</b>	<b>30</b>	<b>310+</b>	<b>14%</b>
<b>2023</b>	<b>265</b>	<b>72</b>	<b>337</b>	<b>18%</b>
2022	255	53	308	21%
2021			88	9%
2020			83	7%

- **The cost of consent judgments increased 227% and the cost of settlements was unchanged in 2024. Private enforcers receive 80% of the fees. The new generation of enforcers is dramatically increasing the cost of “going to court.”**

<u>Year</u>	<u>Judgments</u>	<u>Settlements</u>	<u>Total (Millions)</u>	<u>Attorney (Share)</u>
<b>2024</b>	<b>302 - \$76.3</b>	<b>1082 - \$26.7</b>	<b>\$103.0</b>	<b>\$80.9 (79%)</b>
<b>2023</b>	<b>240 - \$23.2</b>	<b>1071 - \$26.6</b>	<b>\$49.8</b>	<b>\$40.6 (82%)</b>
2022	153 - \$10.2	741 - \$16.5	\$26.7	\$21.9 (82%)
2021	167 - \$11.9	659 - \$13.6	\$25.5	\$18.8 (74%)
2020	192 - \$10.9	435 - \$9.3	\$20.2	\$15.3 (76%)

**Proposition 65 Recommendations:**

- **Under the “industry” Mangini consent judgments, Proposition 65 warnings are required for crystal containing *any detectable lead*.** The California Attorney General set a 25-ppb lead detection limit for decanters in 1996. Laboratory science has advanced, and plaintiffs have recently contended single digit ppb detection limits must be used to determine if a product requires a Proposition 65 warning. The Attorney General’s office suggested a 2 ppb limit of detection in migration tests for products that do not require a Proposition 65 warning.
- **The ICF has spent a lot of time lobbying for “non-lead” crystalline/crystal glass to be differentiated from lead crystal relative to Proposition 65 requirements.** The ICF’s legal counsel, Robert Falk, continues to advise that all crystal and crystalline products may be considered within the scope of the Mangini consent judgments if they contain lead at any detectable level above zero. Assuring compliance with the Mangini warning program is imperative - if you want to avoid plaintiff notices (60 Day Letters).
- **Most importantly, with respect to the above, please remember to send the annual “Retailer Proposition 65 Warning Program” reminder letters as required by the “Mangini” consent judgments since 2001.** Plaintiffs have asserted that a company’s failure to issue the “annual reminders” negates the protection of “Mangini,” gives them standing in court, and allows them to sue for a violation of Proposition 65 itself – contending they were not “adequately warned”. If you are one of the 106 companies that participated in the industry consent judgments, full compliance with Mangini’s requirements on an annual basis and documenting them is the most practical way of protecting your company from a future Proposition 65 claim.
- **Proposition 65 “Notices of Violation” (60 Day Notices) have been issued for lead crystal products that were sold without the word “lead” on their product labels or packaging.** Unless the word “lead” appears on/with the product, “bounty hunters” have contended that the industry’s Prop 65 warning signs are ineffective because the consumer has no way of knowing that the “leaded crystal warning” applies to the product. The Attorney General’s office has been sympathetic to their position and has not stood in the way of their notice letters.
- **You only need to pay attention to the updated Proposition 65 safe harbor warning regulations if your company did not participate in the “industry” Mangini consent judgments and intend to use “on product/package” warnings.**

**Note: Purchasing and Product Development Departments should be aware of the decorating materials, packaging, and product accessories that could result in a Proposition 65 claim.**

Paper coating materials (BPA and PFAS) and plasticizers (Phthalates) are money makers for “Bounty Hunters.” Certification from suppliers that such materials are not present in their products will help to avoid problems in California.

**Safe Harbor Warning Option Changes Adopted in December 2024.**

OEHHA, the department that manages Proposition 65, changed the “Short Form” Proposition 65 Warning requirements because they believed the former regulations provided too little information and clarity for the consumer.

The new short-form warning option is much more onerous (requiring use of yellow triangle symbols, identification of the chemicals for which the warning is being given and specifying the health effects associated with those chemicals). **Only members who cannot use the Mangini leaded crystal warning program need to pay attention to this matter.**

**AB 1200 - California Law Requiring Disclosure and Labeling of Chemicals in “Cookware”**

This legislation bans PFAS in food packaging effective 1/1/23. The law also establishes consumer labeling requirements for 2500+ intentionally added chemicals (including lead and cadmium) beginning in 2024. The definition of “cookware” is deliberately broad (durable houseware items used in homes and restaurants to prepare, dispense, or store foodstuffs or beverages).

“Cookware” includes pots, pans, skillets, grills, baking sheets, baking molds, trays, bowls, and cooking utensils.

While we cannot rule out the possibility of future litigation on this matter, we do not believe “Cookware” applies to “non-durable” crystal, glass or ceramic serveware products. Durable storage products used to hold food, or beverages are potentially another matter. **There is no enforcement mechanism for AB 1200 and a proposal to add enforcement provisions failed in 2024.**

**SB 343 – California Places Restrictions on “Recyclable” Claims on Products or Packaging**

This 2021 law requires that a product or package is “recyclable” only if it is made from a material type and form that is (1) collected by recycling programs in areas encompassing at least 60% of the state’s population and (2) sorted into defined streams for recycling processes by at least 60% of the state’s recycling programs. **Recyclability claims or symbols are considered deceptive or misleading unless the product or packaging is routinely recycled into new products or packaging.**

**Extended Producer Responsibility (EPR) Packaging Law**

California is one of seven states (Colorado, Oregon, Maine, Minnesota, New Jersey, and Washington) who have EPR laws. EPR originated in Europe and is an environmental policy that shifts the cost of waste management to the “producer” while regulating packaging materials, packaging design, returns, recycling and final disposal. Eight additional states (New York, Illinois, Michigan, New Hampshire, Tennessee, Rhode Island, Hawaii, and Massachusetts) are considering adopting EPR legislation.

Minnesota’s new EPR law requires all packaging to be reusable, recyclable, compostable or managed through an approved alternative collection system by 2032. In Minnesota, producers are brands, packaging manufacturers or distributors. Mills that make packaging materials from 100% recycled content or use virgin wood fiber, are exempted from EPR requirements. Producers are responsible for 50% to 100% of net recycling costs between 2029 and 2031 in Minnesota.

Every state is doing this legislation “their way” and there is no “model law” like Toxics in Packaging legislation. If you are concerned about this development, I suggest you look up EPR legislation to see how the different states plan to manage the process. State governments are not normally able to “police” this type of wide-ranging commercial activity within their borders.

**Minnesota Lead & Cadmium Consumer Products Law – Amendments Proposed**

**“A person must not import, manufacture, sell or distribute or offer for use any of the fifteen products listed below that contain more than 90 ppm of lead or 75 ppm of cadmium:”**

Clothing, Footwear, Headwear, and Accessories; Jewelry and Jewelry Supplies; Cosmetics; Keys, Key Chains and Key Rings; Costumes; Pots and Pans; Cups, Bowls, and Food Containers; Art Supplies; Craft Supplies; School Supplies; Outdoor Games; Toys, Play Sets; Puzzles and Board Games. This odd conglomeration of products was aimed at protecting children and pregnant women.

The State legislature is proposing a series of amendments to correct some of the “unintended consequences” from a poorly written, confusing bit of legislation. The lead and cadmium limits are identical to the Consumer Product Safety Commission limits for these metals in children’s toys.

Mixing standards for adult and children’s products is clearly problematic.

**ICF Is Renewing Harmonized Tariff Schedule Product Descriptions for Crystalline/Crystal Glass**

US Customs notified our Washington DC law firm that the HTSUS Product Classification Descriptions created for Crystalline and non-lead Crystal Glass products are up for renewal (five years since they were created). We authorized our law firm to apply for their renewal for another five years. Last year, more than \$112 million in US imports of non-lead crystal were recorded .

**Reorganization and Layoffs Will Likely Delay FDA Action Plan for Heavy Metals**

**FDA's "Closer to Zero: Action Plan"** will evaluate existing data, propose action levels for specific toxic elements in priority food categories, work with stakeholders on proposed action levels to assess their feasibility and timing. Lead will be the first toxic element to have new action levels, with cadmium, mercury, and arsenic also getting attention. The FDA published new "lead" action levels for certain baby and toddler foods in 2024 (10ppb).

**EU – Revised 84/500/EEC Ceramics Directive (Ceramics, Glass & Cookware Legislation)**

*The new Ceramics, Glass and Cookware draft Regulation will not be issued until 2026 – if then.* This issue has been shelved until the major players can determine a way forward.

**New Lead Migration Test Method:** Three consecutive 2-hour migration tests (4% acetic acid/22 C) with only the third test's results being used (ISO 7086-1: March 2020) replaces the single 24-hour migration test for "frequently used products" like wine glasses, carafes, and barware. The 24-hour ISO 7086-1 migration test will continue to be used for storage vessels like decanters.

**International Workshop Agreement – Definition of Crystal, Crystal Glass, and Lead Crystal**

The EDG and AFNOR cooperated to achieve an International Workshop Agreement (IWA 43 (2023)) concerning the definition of **crystal**, **crystal glass** and **lead crystal**. An IWA Standard is valid for up to three years and renewable once. An ISO Standard could follow the IWA Standard in the future.

**IWA 43 (2023) Glass Types, Specifications and Test Methods**

- **Crystal Glass** – 10% or more of following metal oxides - ZnO, BaO, K<sub>2</sub>O, SrO, Al<sub>2</sub>O<sub>3</sub>, TiO<sub>2</sub>, ZrO<sub>2</sub>, SbO<sub>3</sub> (singly or together). Density = 2.45 and Refractive Index = 1.520  
Maximum ancillary lead content: 100 ppm
- **Crystal** – 24% or more of following metal oxides – ZnO, BaO, K<sub>2</sub>O, SrO, Al<sub>2</sub>O<sub>3</sub>, TiO<sub>2</sub>, ZrO<sub>2</sub>, Sb<sub>2</sub>O<sub>3</sub>, CaO (singly or together). Density = 2.67 and Refractive Index = 1.535  
Maximum ancillary lead content: 500 ppm
- **Lead Crystal** – 24% or greater PbO by weight.  
Density = 2.90 and Refractive Index = 1.545

The importance of this International Workshop Agreement cannot be exaggerated. You can purchase it from the ISO Store ([iso.org/store.html](https://www.iso.org/store.html)).

*Note: France gave notice that the updated French norm **NF B 30-004** on crystal types has added "crystal", and they will make the new norm mandatory in France.*

**ISO 7086 and 6486 Part 2 (Release Limits for Lead, Cadmium) – Work Resumes**

ISO 7086 and ISO 6486 – Part 1 (Test Methods) were revised and published in March 2020. Now Part 2 (Release of Lead and Cadmium) is being revised and must be completed.

**Special appreciation to Paola Di Discordia, Secretary General of the EDG, for her expert knowledge and outstanding assistance in European legislative and regulatory matters.**

Thank you,

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