

PERFORMANCE PRODUCTS



# Proposition 65 and Coated Fabrics

[chemicalfabricsandfilm.com](http://chemicalfabricsandfilm.com) | [cffaperformanceproducts.org](http://cffaperformanceproducts.org)



# Who We Are

## JEFF POST

- Vice President/General Manager, CGPC America/Enduralex™
- Member, Chemical Fabrics and Film Association

# Who We Are

- THE CHEMICAL FABRICS AND FILM ASSOCIATION is an international trade association representing manufacturers of polymer-based fabric and film products, used in the building and construction, automotive, fashion and many other industries.
- The members of the Performance Products Division manufacture chemical fabrics and film used in numerous applications such as contract upholstery, pool liners, and transportation interiors.

# Summary

- I. History of Prop 65
  - a) Clean Water Act – November 1986
  - b) Bounty Hunter
- II. Chemicals of Concern / Prop 65 Chemical Listing
  - a) Nearly 1,000 on list today
  - b) Required to add to list each year
  - c) Trends
- III. Governing Body
  - a) OEHHA – Office of Environmental Health Hazard Assessment
  - b) The Public
    - Policing the Proposition
    - Any individual acting in the public interest

# Summary (continued)

- IV. Notification / Labelling
- V. Conformity
- VI. Coated Fabrics & Prop 65
  - a) Phthalates & Plasticizers
  - b) Fire Retardants
  - c) Other Chemicals
- VII. NSRL
  - a) DINP
- VIII. Legal

## Item I – History of Prop 65



# PROPOSITION 65

## WHO IS RESPONSIBLE FOR WHAT?



### MANUFACTURER

- Provide a warning for the product (this may include labeling, shelf signs or tags, as well as appropriate warning language for products sold through the internet)
- Provide written notice directly to the authorized agent for a retail seller (to be updated annually)



### DISTRIBUTOR

- Pass on information from the manufacturer to an authorized agent for the retail seller



### RETAIL SELLER

- Confirm that all relevant information is provided to consumers (ensure the correct placement and maintenance of warning materials, including those for products sold online)

Most importantly, Proposition 65 is designed to link together the manufacturer, producer, packager, importer, supplier and distributor of any given product. This means they must work together to provide warning information to the authorized retail seller to ensure the consumer is informed of possible risks. Each of these actors has the same labeling requirements as a manufacturer if the manufacturer fails to provide the appropriate warning information.

## Item II - A

### PROP 65 VIOLATIONS

The vast majority of Prop 65 lawsuits and alleged violations only involve a handful of chemicals, including acrylamide, cadmium, lead and phthalates (DEHP, DBP, BBP, DIDP, DnHP). For that reason, it is notable when a new trend emerges with Prop 65 notices.



## Item II - B

# A TECHNICAL LOOK AT PROP 65

### HOW IS A SUBSTANCE ADDED TO THE LIST?

1. If either of the following independent committees of scientists and health professionals, known as the State's Qualified Experts, find the chemical has been clearly shown to cause cancer, birth defects or other reproductive harm:
  - a. Carcinogen Identification Committee (CIC)
  - b. Development and Reproductive Toxicant (DART) Identification Committee
  - c. U.S. Environmental Protection Agency (EPA)
  - d. U.S. Federal Drug Administration (FDA)
  - e. National Institute for Occupational Safety and Health (NIOSH)
  - f. National Toxicology Program (NTP) and International Agency for Research on Cancer
2. If the CIC or DART designates one of the following authoritative bodies to identify whether a chemical causes cancer or reproductive harm:
  - c. U.S. Environmental Production Agency (EPA)
  - d. U.S. Federal Drug Administration (FDA)
3. If an agency requires a chemical to be labeled or identified as causing cancer, birth defects or other reproductive harm (usually the case for the labeling of prescription drugs)
4. If a chemical meets a predetermined scientific criteria and is identified in the California Labor Code as causing cancer, birth defects or other reproductive harm.

## Item II - C

Chemical	Notices	Comments
Arsenic	39	Mostly food
Benzophenone	17	Sunscreen
Cadmium	12	
Cocamide	58	Shampoo
DBP	35	
DEHP	448	
P-Dichlorobenzine	6	Mothballs
Formaldehyde (gas)	9	Usually environmental
Lead	352	
4-MEI	10	Cola coloring
4-4 Methylenedianiline	4	Nylon cooking utensils
TDCPP	54	Flame retardant

## Item III – Governing Body

### HOW IS PROPOSITION 65 ENFORCED?

A small number of high-profile Proposition 65 cases are enforced by the California Attorney General's Office. However, the vast majority of cases are brought forward by ordinary citizens and public interest groups under the Act's "bounty hunter" provision. This private litigation element increases the risks posed to companies, as evidenced by the rapidly increasing value of settlements awarded to plaintiffs in recent years. For example, in 2010, the total value of private Proposition 65 settlements reached approximately \$13 million. Just five years later, this number had climbed to more than \$26 million.

The resolution of the enforcement action typically occurs through settlement rather than full court proceedings. In addition to a possible fine of \$2,500 per day per incident of exposure, competition laws may allow for other fines or legal actions if the defendant is deemed to have gained an unfair market advantage by failing to provide the appropriate warning, in comparison to a competing product that did provide the warning.

## Item IV – Notifications & Labelling

- ✓ **The Warning Must Be “Conspicuous”**
- ✓ **The Warning Must Be “Clear”**
- ✓ **The Warning Must Be “Reasonable”**

Note – Labels would likely appear on all of your product, regardless of whether or not the product was ultimately sold in California. That means your product could contain the above warning whether sold in Ohio or California.

If your product is made from materials that contain traces of Proposition 65 chemicals, you may want to consider placing a warning label on your product that is conspicuous to the consumer at the time of purchase as a possible way to comply with Proposition 65.


The warning label, as long as it complies with the regulations under Prop 65, can also protect your company and products if your product contains a chemical that is added to the list in the future.



## BEFORE

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

## AFTER

 **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, and [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)

# Item V - Conformity

## LONG FORM WARNING OPTION

**WARNING:** This product contains a chemical known to the State of California to cause cancer.

Ex.1 Current safe harbor warning



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

Ex.2 New safe harbor warning

## SHORT FORM WARNING OPTION

**WARNING:** This product contains a chemical known to the State of California to cause cancer.

Ex.1 Current safe harbor warning



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

Ex.2 New safe harbor short-form, on product warning

Moving forward, businesses will need to reach into the supply chain to determine which substance, or substances, caused the warning. This is especially important, as the general warning may have originally been passed through the supply chain without accurate knowledge of exactly where and why the warning was applied.



## NEW PROP 65 WARNING REQUIREMENTS IN ACTION

A chemical company supplies a proprietary plasticizer to a polymer extrusion company. In the Safety Data Sheet (SDS) provided by the chemical company, it indicates that the plasticizer contains a substance known to cause cancer in the State of California, without specifying the substance in question.

The polymer extrusion company produces flexible Polyvinyl Chloride (PVC) wires for broad applications, then sells the wires to a cable assembly company and passes on the warning they received from the SDS. The cable assembly company manufactures USB cables using the flexible PVC, among other materials, and sells the USB cables to a consumer product company to accompany the sale of their portable Bluetooth speaker.

During this sale, the cable assembly company notifies the consumer product company that the cable contains a substance known to cause cancer. In light of this, the consumer product company labels the packaging of the Bluetooth speaker with a general warning.

After August 30, 2018, this label will not meet the best-practice recommendations of the amended Article 6. The consumer product company may therefore need to ask the actors within the USB supply chain to provide the specific name of the substance so they can properly label their product moving forward.

The above example applies to companies that have already determined their product requires a warning due to the presence of a Proposition 65-listed substance in quantities exceeding the safe harbor level. For companies that have yet to start the process of collecting and verifying data to determine whether their products are in scope of the Proposition 65 law, it would be prudent for them to collect data with the intention of meeting the August 30, 2018 deadline.

The Prop 65 regulations are very specific. If it is determined that a product meets the criteria for labeling, a current warning must contain the following language:

**WARNING:** This product contains a chemical known to the State of California to cause [cancer] [and/or birth defects or other reproductive harm].

In 2016, the warning regulations were updated to require additional information. The new rules went into effect for products manufactured after August 30, 2018. Under the new rules, a warning must contain:


- A graphic depiction of a yellow triangle containing an exclamation point;
- Specify at least one chemical for which the warning is being provided if the label is not included on the product or packaging;
- Include the website [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

If the warning is placed directly on the product or product packaging, a shorter “truncated” label that does not include a specific chemical may be used. See slide #16 for example warnings.

A warning must be given at or before the point of purchase. If a product is sold through a website or catalog, the warning must be listed next to the product or on the product-specific web-page. If the warning is included on the product or product packaging, a label may be used that does not include a specific chemical (a “truncated” warning). If a product contains a truncated warning, a truncated warning may also be used on the website or catalog. If an unlabeled product is sold at retail, a retail sign may be used.

Another way to comply is to keep all chemicals in your products below the so-called “safe harbor” level that requires a Proposition 65 warning. Unfortunately, those levels are hard to determine. Proposition 65 compliance is based on how much of a chemical the average consumer is exposed to, not on how much is in the product.

The law requires the defendant to prove that the average consumer is not exposed to more than the allowable amount of the chemical, based on scientific studies such as behavioral and toxicology tests.

THICKNESS	WIDTH	YARDS
PATTERN		COLOR NAME
PO NO.		
PART NO.		
THE FABRIC CONTAINS 65% POLYESTER 35% RAYON BACKING		
 <p>WARNING: This product can expose you to chemicals including Di-iso-nonyl Phthalate which is known to the State of California to cause cancer and birth defects and/or other reproductive harm. For more information go to <a href="http://www.P65Warnings.ca.gov">www.P65Warnings.ca.gov</a></p>		
PRODUCER : CHINA GENERAL PLASTICS CORP.		

☐ HJ10707179C ☐

Note: All typeface must be the same size font and a minimum size of 6 pt.

## Prop 65

THICKNESS	WIDTH	YARDS
PATTERN	COLOR NAME	
P O NO.		
PART NO.		
THE FABRIC CONTAINS 65% POLYESTER 35% RAYON BACKING		
WARNING : This product contains chemicals known to cause cancer and/ or to cause birth defects or other reproductive harm.		
PRODUCER : CHINA GENERAL PLASTICS CORP.		

- What does this mean? How can your company “comply” with Prop 65?
- Perhaps the easiest way to comply would be to no longer sell your product in California.

**If your products could make their way to California – on store shelves or through internet sales – Proposition 65 affects you.**

# Item VI-A – Phthalates

## Phthalates



### Why am I being warned about phthalates?

- Six phthalates are on the Proposition 65 list because they can cause birth defects or other reproductive harm and/or cancer.
- Proposition 65 requires businesses to determine if they must provide a warning about exposures to listed chemicals.

### What are phthalates?

Phthalates are a family of chemicals that are added to many plastics to make them flexible. They are usually identified by their individual chemical names.

## What are the names of these phthalates? What health effects am I being warned about?

Exposure to:

- [BBP](#) [1] (Butyl benzyl phthalate) during pregnancy may affect development of the child
- [DBP](#) [2] (Di-n-butyl phthalate) during pregnancy may affect development of the child, and may also harm the male and female reproductive system
- [DEHP](#) [3] (Di(2-ethylhexyl)phthalate) may increase the risk of cancer, and may harm the male reproductive system. Also, exposure to DEHP during pregnancy may affect the development of the child
- [DIDP](#) [4] (Diisodecyl phthalate) during pregnancy may affect the development of the child
- [DINP](#) [5] (Diisononyl phthalate) may increase the risk of cancer
- [DnHP](#) [6] (Di-n-hexyl phthalate) may harm the male and female reproductive system



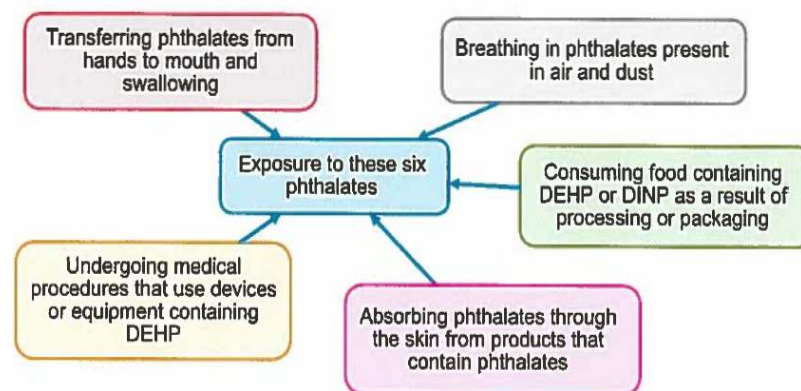
## What type of products may contain these phthalates?

- These items include:
  - Some plastic lunchboxes, binders, backpacks and storage cases
  - Some rainwear, handbags, belts, footwear and other artificial leather items that are made with polyvinyl chloride (commonly referred to as PVC or vinyl)
  - Some plastic shower curtains and bath mats
  - Some vinyl gloves, tubing and garden hoses
  - Some furniture and automobile upholstery, and other materials used in automobile interiors
  - Some vinyl tile flooring, and coverings on some wires and cables
  - Some personal care products, including some perfumes and other products containing fragrances, and nail polishes
  - Some inks and pigments, adhesives, sealants, paints, and lacquers
  - Some plastic food packaging materials
  - Some medical devices and equipment, including some types of blood and intravenous solution bags, tubing for dialysis, feeding tubes, oxygen masks, and surgical gloves

- California law prohibits:
  - The manufacture, sale, or distribution of children's toys and childcare articles containing BBP, DBP, or DEHP at greater than 0.1%
  - The manufacture, sale, or distribution of toys and childcare articles intended for the use of a child under 3 years old, if that product can be placed in the mouth and it contains DIDP or DINP at levels greater than 0.1%.
- US law has similar prohibitions.

## How does exposure to these phthalates occur?

- These phthalates can be gradually released from products into indoor environments such as homes, schools, daycare centers, and offices. They can settle on floors and other surfaces, and can accumulate in dust and air, where they can be inhaled.
- These phthalates can be absorbed into the body by touching or other direct contact with phthalate-containing products.
- Exposure to DEHP can result from contact with medical devices or during medical procedures where devices or equipment containing phthalates are used.
- Low levels of DEHP and DINP have been detected in some foods that have been in contact with plastics during processing and packaging.
- During pregnancy, these phthalates can pass from mother to baby.



## Item VI-B – Flame Retardants

### Flame Retardants

**Why am I being warned about potential exposure to chemicals from furniture products?**

- Some furniture contains chemicals that are on the Proposition 65 list because they can cause cancer and/or birth defects or other reproductive harm.
- Proposition 65 requires businesses to determine if they must provide a warning about exposures to listed chemicals.

Some furniture is made with chemicals on the Proposition 65 list. Some of these chemicals can be gradually released from the furniture into the air and can accumulate in dust. You can be exposed to these chemicals when you use the furniture, or when you breathe the air or come into contact with dust containing these chemicals.

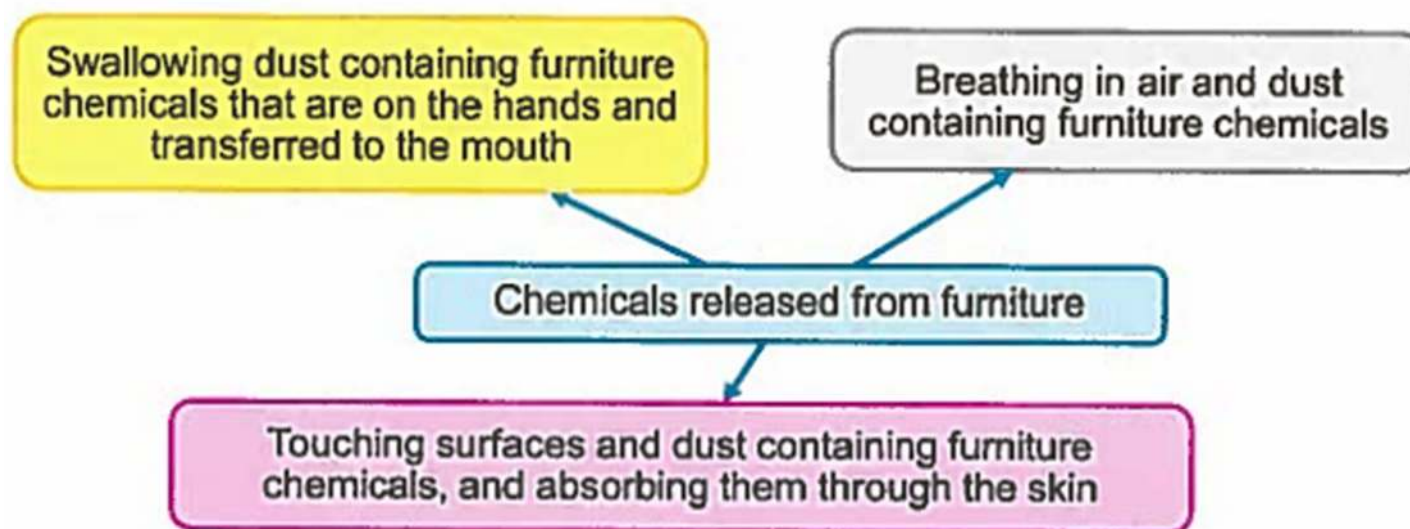


Not all furniture products are made with chemicals on the Proposition 65 list. Some furniture products containing Proposition 65 chemicals may not cause high enough exposures to require a warning. A furniture product with a Proposition 65 warning suggests the product can expose you to levels of a listed chemical or chemicals that pose greater health risks than furniture that causes exposures to lower levels of listed chemicals.

**Examples of listed chemicals that can be used in furniture are:**

- Flame retardants such as [chlorinated tris \(also known as TDCPP or TDCIPP\)](#) [1], tris(2-chloroethyl) phosphate (TCEP), tetrabromobisphenol A (TBBA) are added to foam or textile. Most use of pentabromodiphenyl ether mixtures (PBDE) in the US ended in 2006, but it may be found in older furniture.
- [Formaldehyde](#) [2] is present in some particle board, paints, lacquers and coatings.
- [Phthalates](#) [3] are a family of chemicals added to many plastics to make them flexible. They may be found in plastic furniture and vinyl textiles on cushions and other upholstery.

## How does exposure to Proposition 65 chemicals from furniture occur?



- During pregnancy, these phthalates can pass from mother to baby.

## Item VII - NSRL

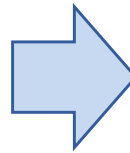
Proposition 65's content standards are set in litigation that applies to only the litigants in a particular case, not in regulations that apply to everyone. Some settlements set content standards that are even lower than the national Consumer Product Safety Improvement Act (CPSIA) standards.

For example, a common settlement standard is 200 ppm (parts per million) for lead in vinyl components.

Remember, though, that **Proposition 65 is a warning law, not a ban.**

## DINP and Prop 65

To reiterate, CIC's decision was based on cancer effects in rodents, without any consideration of human relevance



Other regulatory bodies worldwide, including from the E.U., Canada, Australia and the U.S. CPSC, have all dismissed the human relevance of the cancer endpoints that formed the basis of the DINP listing



## Assessing the Need to Label

OEHHA has adopted an NSRL for DINP of 146  $\mu$ g/day

- It's an overly conservative estimate
- Does not change regardless of the use of DINP

Three ways exposure typically occurs from consumer products

- Direct contact with DINP – skin/dermal absorption
- Breathing air containing DINP – inhalation
- Hand-to-mouth ingestion – oral exposure

Examples to demonstrate use of the ACC HPP exposure estimation tool

- Walking barefoot on vinyl flooring
- Wearing PVC gloves
- Home installation of PVC coated electrical wire
- Home installation of vinyl floor covering

# **AMERICAN CHEMISTRY COUNCIL**

## **Estimating Potential Exposures to DINP From Consumer Products**

**A Resource to Assist Manufacturers and Sellers  
Of Consumer Products  
In Complying with the Warning Requirements  
Of California Proposition 65**

**Date: Revised September 2018**

## Worksheet 1: Estimating Exposure from Skin Contact

Please read instructions first.

1. Will the DINP-containing portion of the product be in direct contact with skin during normal use?

\_\_\_\_\_ NO. You do not need to estimate dermal exposure. [Go on to page 12.](#)

\_\_\_\_\_ YES. Go to Line 2 of this worksheet.

2. How many hours per day is the average consumer in direct contact with the product?

\_\_\_\_\_ hours per day

[INSTRUCTIONS](#)

3. How much surface area of the body ordinarily comes in direct contact with the DINP-containing portion of the product during normal use?

\_\_\_\_\_ cm<sup>2</sup> (Total of all relevant body parts – Use [Table 1](#))

[INSTRUCTIONS](#)

4. Enter the rate of dermal absorption of DINP.  
0.006  $\mu\text{g}/\text{cm}^2/\text{hour}$

[INSTRUCTIONS](#)

OR, if mass loading of DINP after handling product is known:

- 4a. Enter mass loading of DINP on skin surface.  
                      $\mu\text{g}/\text{cm}^2/\text{hour}$

[INSTRUCTIONS](#)

- 4b. Enter the dermal absorption of DINP.  
0.0015  
 (dimensionless)

[INSTRUCTIONS](#)

5. Using the following formula, estimate the dermal exposure to DINP from the product

$$\frac{\text{                    }}{\text{(Line 2)}} \text{ hours/day} \times \frac{\text{                    }}{\text{(Line 3)}} \text{ cm}^2 \times \frac{0.006}{\text{(Line 4)}} \mu\text{g}/\text{cm}^2/\text{hour} = \frac{0.000}{\text{                    }} \mu\text{g}/\text{day}$$

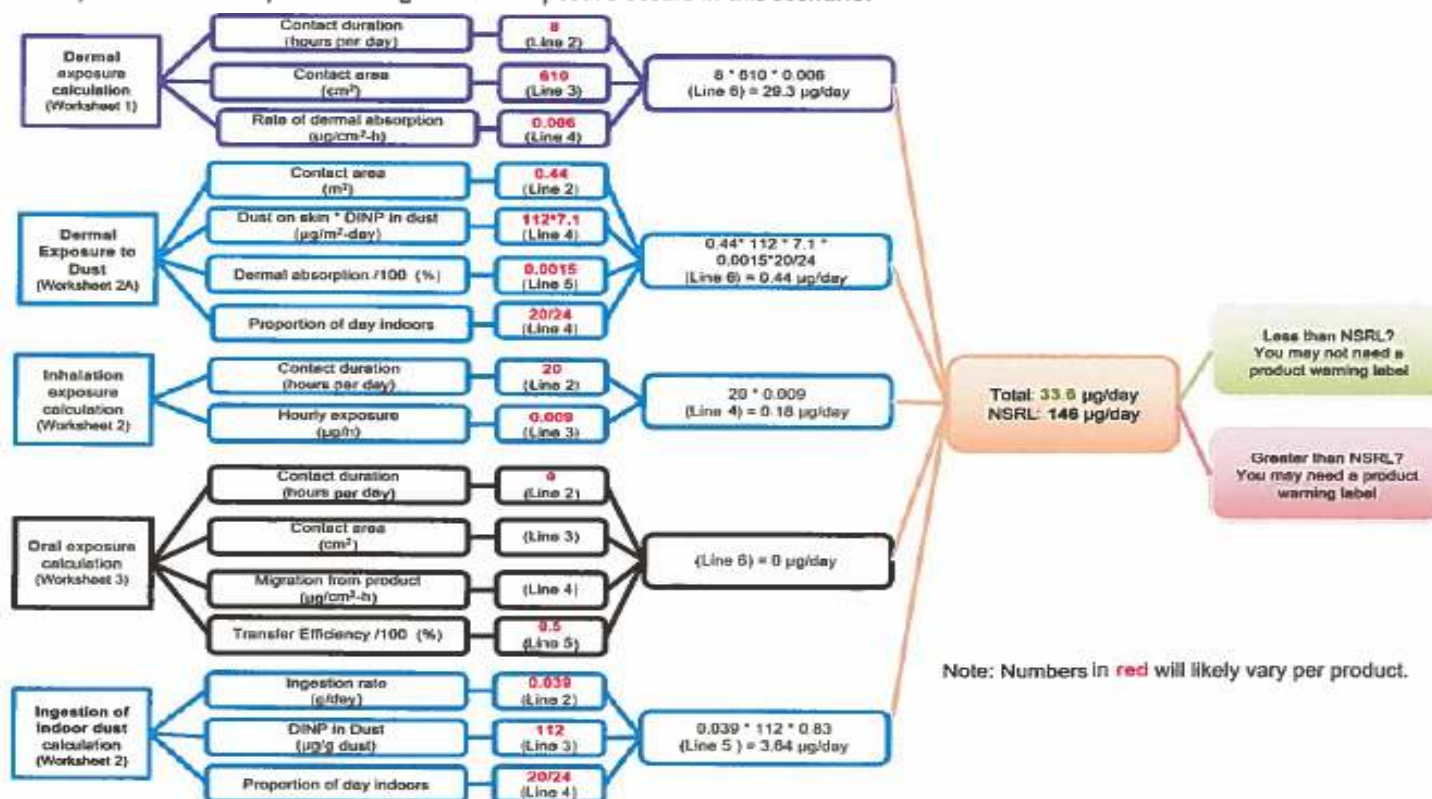
Or, if mass loading is known, use:

$$\frac{\text{                    }}{\text{(Line 2)}} \text{ hours/day} \times \frac{\text{                    }}{\text{(Line 3)}} \text{ cm}^2 \times \frac{\text{                    }}{\text{(Line 4a)}} \mu\text{g}/\text{cm}^2/\text{hour} * \frac{0.0015}{\text{(Line 4b)}} (-) = \frac{0.000}{\text{                    }} \mu\text{g}/\text{day}$$

6. Enter the result into [Worksheet 4.](#)

## Example 2: Consumer exposure to vinyl flooring

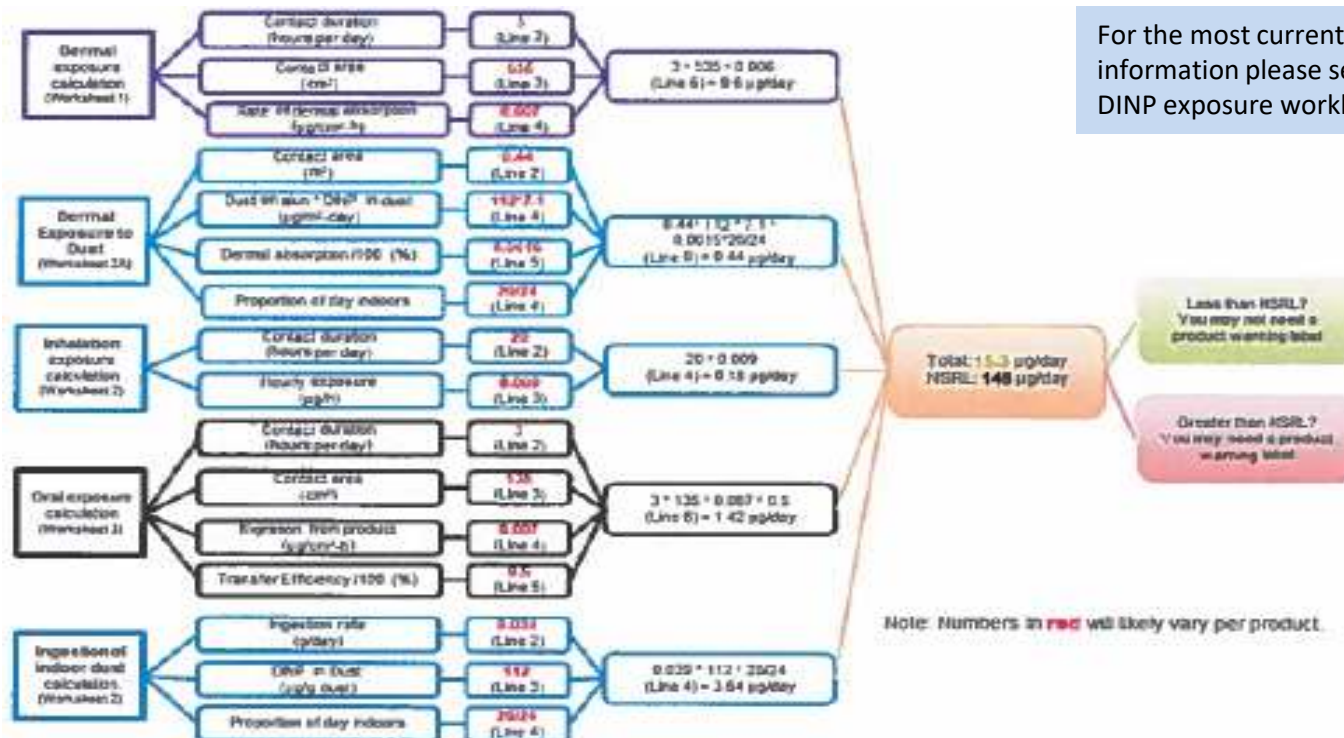
Scenario: the product is used in a vinyl floor in a kitchen where an adult might walk bare-footed on the surface for 8 hours a day and inhale any DINP emitted by the flooring. *No oral exposure occurs in this scenario.*



# Vinyl Wall Covering



Scenario: the product is used as part of a wall covering, being installed by a homeowner.





**QUESTIONS?**





The background of the slide is a close-up photograph of several rolls of chemical fabrics and films. The rolls are arranged diagonally from the top-left to the bottom-right. They display a wide range of colors including various shades of green, yellow, orange, red, and brown. The textures of the materials appear different, with some showing a fine woven pattern and others a smoother surface.

# THANK YOU!

**CFFA** CHEMICAL FABRICS & FILM  
ASSOCIATION, INC.

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