

Prop 65 Compliance

for Snack Chips

The acrylamide question is not over — it is on appeal. The dye phase-out clock is running.

Jun 2025

AG appealed acrylamide injunction

End 2026

FDA voluntary dye phase-out target

Jan 2027

AB 418 takes effect (Red 3, BVO, etc.)

Chips Sit on a Moving Regulatory Floor

The signature exposure (acrylamide) just became unenforceable for cancer — and is back on appeal.



Acrylamide Defines the Category

OEHHA names potato chips as carrying the highest acrylamide levels. Pre-2025, chips drove most NOVs in the food snack aisle.



Cancer Injunction — Now on Appeal

Bonta v. CalChamber (May 2025) enjoined cancer warnings. AG filed appeal June 2, 2025. Repro listing (140 µg/day) untouched.



Synthetic Dye Reformulation

Red 40, Yellow 5, Yellow 6 in Doritos, Cheetos, Lay's flavored chips. FDA target end 2026. AB 2316 already in CA schools.



Documentation Wins on Appeal

If the injunction is reversed, every gap reopens overnight. Reasoned-estimate files and reformulation timelines are the defense.

The Three Numbers That Define the Floor

Each one is a cliff edge. Each one moved in 2025. Each one will move again.

140 µg/day

Acrylamide repro MADL

Reproductive-toxicity safe harbor. Survives the May 2025 injunction. Still enforceable against any chip product where exposure can be calculated.

0.2 µg/day

**Acrylamide cancer NSRL
(enjoined)**

The number that drove a decade of chip-category settlements. Currently unenforceable, but back on appeal — preserve the documentation anyway.

End 2026

FDA dye phase-out target

Red 40, Yellow 5, Yellow 6, Blue 1, Blue 2, Green 3 — voluntary, not mandatory, but market-enforced. Slipped to end-2027 in early 2026 communications.

Sources: 27 CCR §§ 25801–25821 (Prop 65 safe harbor) · Cal. Chamber v. Bonta (E.D. Cal. May 2, 2025; appeal filed Jun 2, 2025) · FDA HHS dye phase-out announcement Apr 22, 2025.

Five Regulatory Fronts Converge on the Bag

Every chip SKU sold into California is exposed to multiple overlapping rules — and none of them are stable.



Acrylamide (Repro Track)

Cancer warning enjoined May 2025 — but on appeal since June 2. Repro MADL 140 µg/day still applies.



Synthetic Dye Phase-Out

Red 40, Yellow 5, Yellow 6 in flavored chips. FDA target end 2026/2027. AB 2316 already excludes them from CA schools.



AB 418 Additive Bans

Red 3, BVO, propylparaben, potassium bromate banned from food sold in CA effective Jan 1, 2027. Affects flavorings, oils, coatings.



BHA / BHT in Frying Oils

BHA listed Prop 65 carcinogen. Common preservative in chip oils. Targeted in NY and PA additive bills currently pending.



Packaging Phthalates

DEHP and DINP in flexible chip-bag films, seal layers, and printing inks. Heavy 2025 NOV activity for flexible packaging.

Five fronts. One bag. Reformulation alone won't close all of them.

Listed Chemicals of Concern for the Category

Each entry is a Prop 65-listed chemical with documented enforcement against snack-chip products.

Chemical	Prop 65 Endpoint	Safe Harbor	Primary Source in Category	Enforcement Status (2025–26)
Acrylamide	Cancer + Repro	Repro MADL 140 µg/day; cancer NSRL enjoined	Frying / baking of starch + asparagine	Cancer enjoined May 2025; APPEAL pending; repro intact
Red 3 (Erythrosine)	Cancer + Repro	No oral safe harbor	Red-tinted seasonings, candy-coated chips	AB 418 ban effective Jan 1, 2027
Red 40, Yellow 5, Yellow 6	(Not Prop 65 listed)	FDA voluntary phase-out	Cheese-style, BBQ, hot, flavored chips	FDA target end 2026/2027; CA schools banned
BHA	Cancer	No oral safe harbor	Antioxidant in frying oils, packaging liners	Active — NY, PA bills pending
Lead	Cancer + Repro	0.5 µg/day MADL	Soil uptake into potato; some seasonings	Active — secondary driver
Cadmium	Cancer + Repro	4.1 µg/day MADL	Soil uptake into potato; corn lower risk	Active — moderate frequency
DEHP / DINP (phthalates)	Cancer + Repro	DEHP MADL 410 µg/day	Flexible chip-bag films, seals, printing inks	Active — rising 2025 packaging NOVs

Risk Profile by Chip Format

Each chip format carries a different mix. The 'colorful flavored' bag is exposed on every front.

Chip Format	Acrylamide	Synthetic Dyes	AB 418 Add'ves	BHA / BHT	Packaging
Plain Potato Chips	HIGH	LOW	LOW	MED	MED
Flavored / Cheese Chips	HIGH	HIGH	MED	MED	MED
Hot / Spicy (Cheetos-style)	HIGH	HIGH	MED	MED	MED
Tortilla / Corn Chips	HIGH	MED	LOW	LOW	MED
Veggie / Plantain / Banana	HIGH	LOW	LOW	LOW	MED
Pretzels & Pita Chips	MED	LOW	LOW	MED	MED

Legend: ■ LOW ■ MED ■ HIGH

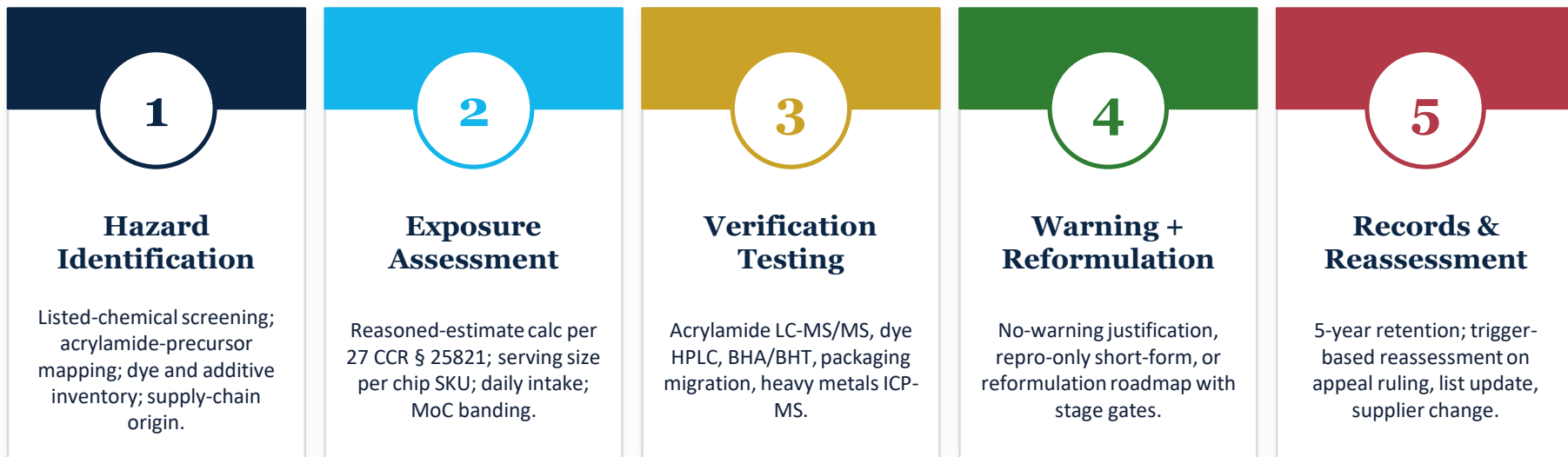
Where the Pressure Is — 2025 Signals

The signature defense of the category is unsettled. The reformulation deadline is moving.

- May 2025** **INJUNCTION** **Acrylamide Cancer Warning Enjoined**
Cal. Chamber v. Bonta — permanent injunction. Cancer warnings on chips can be removed. Repro listing untouched.
- Jun 2025** **APPEAL** **California AG Files Notice of Appeal**
Filed June 2, 2025. Same Ninth Circuit panel heard the prior preliminary injunction appeal — and upheld it. Outcome uncertain.
- Apr 2025** **PHASE-OUT** **FDA Voluntary Dye Phase-Out Announced**
HHS + FDA joint announcement targeting six FD&C dyes by end 2026. Slipped to end-2027 in early-2026 communications.
- All 2025** **REFORMS** **PepsiCo, Conagra, General Mills Move**
Conagra: school foodservice dye-free by 2026–27. General Mills: full portfolio by end-2027. PepsiCo reformulating Doritos and Lay's.

A Five-Pillar Compliance Program

Each pillar maps to a specific regulatory front from Slide 4 — and to a specific deliverable.



Continuous loop — feedback to Pillar 1 on every change

What Consultare Builds for the Chip Category

Six core artifacts tailored to chip operations — each tied to a specific regulatory trigger.



Applicability Assessment SOP

Determines whether each SKU triggers Prop 65 obligations. Per 27 CCR §§ 25600–25607.



Acrylamide No-Warning File

Reasoned-estimate exposure assessment for repro track; preserve cancer-track records pending appeal.



Acrylamide Reduction Plan

Process controls — frying temp, asparagine reduction, sugar profile, browning targets per FDA guidance.



Dye Reformulation Roadmap

SKU-level dye inventory + alternative-color matrix (annatto, beet, paprika, gardenia).



Packaging Compliance Pack

DEHP/DINP migration testing, BPA/BPS lid liner audit, supplier indemnification clauses.



Reassessment & Records SOP

5-year retention; trigger events (appeal ruling, list update, formula change), QI signature.

Verification Testing — What, How, How Often

Test plans aligned to FSMA PCQI and Prop 65 reasoned-estimate documentation.

ANALYTE PANEL

Acrylamide	LC-MS/MS	<i>Per lot, finished chip</i>
FD&C dyes (Red 40, Y5, Y6)	HPLC-DAD	<i>Per recipe, per dye lot</i>
BHA / BHT in oil	GC-MS	<i>Quarterly + oil change</i>
Heavy metals (Pb, Cd, As)	ICP-MS	<i>Annual + new origin</i>
Phthalates (DEHP, DINP)	GC-MS migration	<i>Annual + film supplier change</i>

SAMPLING DISCIPLINE

- Composite sampling across the fryer outfeed; capture color and dwell-time variation.
- Reducing-sugar testing on incoming potato lots — primary acrylamide precursor.
- Frying-oil temperature and turnover logs cross-referenced with acrylamide results.
- ISO/IEC 17025-accredited labs only; method LOD \leq 50% of relevant Prop 65 MADL.
- Trend-track results in QMS — investigate any 30% upward shift batch-over-batch.

The Appeal-Preservation Strategy

The May 2025 injunction is a victory — but it is not final. Smart operators are positioned for either outcome.

THE PROCEDURAL POSTURE

California's Attorney General appealed the permanent injunction on June 2, 2025. The appeal goes to the same Ninth Circuit panel that upheld the prior preliminary injunction. Until resolved, the cancer-warning enforcement is paused — not eliminated.

THREE THINGS TO MAINTAIN ANYWAY:

- Acrylamide reduction process records (frying temp, dwell time, sugar profile).
- Reasoned-estimate exposure calculations for the repro endpoint (140 µg/day MADL).
- Reformulation roadmap and evidence files.

WHAT REVERSAL WOULD COST

Open NOV pipeline	Bounty-hunter inventory rebuilds in weeks; chips were the top pre-2025 target.
Settlement re-pricing	Pre-2021 settlements ran \$25k–\$500k+ per matter, plus reformulation undertakings.
Repro track unaffected	Even if cancer is reversed, the 140 µg/day repro listing was never enjoined.
Daily civil penalty	Per-day penalties up to \$2,500 begin from any reversal date forward.

90-Day Implementation Plan

Move from gap to documented program in three sprints. QI sign-off at each phase gate.

DAYS 1–30

DISCOVER

- SKU-level chemical and dye inventory
- Acrylamide test history pull; old settlements review
- Site visit + frying-line process review
- Initial gap report

DAYS 31–60

BUILD

- Acrylamide repro-track no-warning file
- Dye reformulation roadmap with stage gates
- Packaging migration test plan
- Reassessment trigger matrix (incl. appeal ruling)

DAYS 61–90

VALIDATE

- Mock NOV / appeal-reversal tabletop
- Internal audit + corrective actions
- QI approval and document control hand-off
- Reformulation kickoff with R&D

Phase gates: each phase closes with a Qualified Individual review and signed approval before the next sprint begins.

LET'S TALK

Build the program before the next NOV finds you.

Consultare Inc. Group designs and operationalizes Prop 65 programs for snack-chip manufacturers — through the appeal, through the dye phase-out, through the next list update.

01

Discovery Call

60 minutes, structured intake, no commitment.

02

Gap Assessment

Two-week review, written findings report.

03

Program Build

Templates, SOPs, test plans, supplier pack.

04

Audit-Ready Hand-Off

QI sign-off, training, ongoing reassessment cadence.