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Pesticides and Proposition 65

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What is Proposition 65?

Proposition 65, officially known as the "Safe Drinking Water and Toxic Enforcement Act," was approved by California voters in 1986. Proposition 65 is based on the premise that the public and workers have a right to be informed about exposures to chemicals that are known to the state to cause cancer, birth defects, or other reproductive harm. In addition, Proposition 65 prohibits businesses from knowingly discharging significant amounts of these chemicals into sources of drinking water.

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency responsible for carrying out Proposition 65. OEHHA maintains and updates the Proposition 65 list of chemicals that cause cancer, birth defects and other reproductive harm, and promulgates regulations that help businesses determine when warnings are required, and how to provide warnings. For additional information on OEHHA's implementation of Proposition 65, visit OEHHA's Web site at <https://oehha.ca.gov/proposition-65> or call (916) 445-6900. Information for the public on Proposition 65 chemicals and ways that Californians can be exposed to them is available on OEHHA's Proposition 65 warnings website at www.p65warnings.ca.gov.

What does Proposition 65 require?

Proposition 65 requires California to maintain and publish a [list of chemicals](#) that can cause cancer, birth defects, or other reproductive harm. The list contains a wide range of chemicals, including certain constituents found in pesticide formulations, common household products, food, drugs, dyes, and solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

Twelve months after a chemical is added to the Proposition 65 list, businesses are required to provide a clear and reasonable warning before knowingly exposing anyone to that chemical, unless the business can show that the anticipated exposure level will not pose a significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm. Twenty months after a chemical is added to the Proposition 65 list of chemicals businesses are also prohibited from knowingly discharging significant amounts of these chemicals into sources of drinking water.

Proposition 65 does not ban or limit the use of listed chemicals; instead, it requires a business to provide a warning prior to exposing a person to a listed chemical. The warning requirement has encouraged many businesses to either remove or sharply reduce listed chemicals in their products. Warnings are not required simply because a listed chemical is present in a product or location (such as the presence of lead in a circuit-board inside a computer, or the storage of listed pesticides in sealed containers). Warnings are required only when typical use of a product or a business's operations results in exposure to the chemical.

Businesses with fewer than 10 employees are exempt from the requirements of Proposition 65.

UPDATED [Pesticides on Proposition 65 List, PDF - Updated December 2018](#)

How do pesticides get listed?

Chemicals - including pesticides - may be put on the Proposition 65 list in any one of four ways:

- **State's Qualified Experts:** Two independent scientific committees consisting of experts appointed by the Governor determine if chemicals qualify for listing by having clearly been shown to cause cancer, birth defects, or other reproductive harm. One committee (the Carcinogen Identification Committee, CIC) is responsible for reviewing data on carcinogens, and the other committee (Developmental and Reproductive Toxicant Identification Committee, DARTIC) is responsible for reviewing data on chemicals that cause male and female reproductive and developmental effects. The committees consider chemicals for listing during public meetings held at least once a year.
- **Authoritative Bodies:** The two scientific committees also designate other entities who they consider to be experts in identifying chemicals that cause cancer and reproductive or developmental effects. The designated authorities are the U.S. Environmental Protection Agency, the U.S. Department of Health and Human Services National Toxicology Program, the World Health Organization's International Agency for Research on Cancer (IARC), the Food and Drug Administration (FDA), and the National Institute for Occupational Safety and Health. OEHHA lists chemicals identified by these authorities after verifying their evaluations meet Proposition 65 regulatory standards for chemical listings.
- **Labor Code:** Proposition 65 requires the listing of substances identified by IARC as causing cancer in humans or laboratory animals. More specifically, Proposition 65 says the list "at a minimum" must consist of chemicals recognized as carcinogens under the California Labor Code, which in turn recognizes carcinogens identified by IARC.
- **Formally Required to be Labeled:** If a state or federal agency formally requires that a chemical be labeled or identified as causing cancer or birth defects or other reproductive harm, it must be listed under Proposition 65. Most of the chemicals listed in this manner are prescription drugs identified as causing cancer or reproductive effects by the FDA.

When does a warning need to be given?

Businesses generally must provide warnings when they know their products or operations cause exposures to listed chemicals, however there is an exemption when exposures are not significant. Warnings must be provided to workers when the exposure occurs as a result of workplace activities. Warnings must be provided to either a business's customers or the public when the business's products or operations cause the exposures.

The primary exception is that a business does not have to provide a warning if it can show that exposure to the listed chemical is at or below the "No Significant Risk Level" for chemicals listed as causing cancer, or is at or below the "Maximum Allowable Dose Level" for chemicals listed as causing birth defects or other reproductive harm. For many listed chemicals, OEHHA enacts regulations identifying these two types of levels, which helps businesses determine whether they need to provide warnings.

The No Significant Risk Level is defined as "the level which is calculated to result in no more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime." The Maximum Allowable Dose Level for chemicals that cause reproductive effects is defined as the level at which there are no observable reproductive effects, divided by 1,000. That is, the level of exposure is the "no-observable-effect level" divided by 1,000.

In what form must Proposition 65 warnings be given to workers?

For pesticide exposure in a **workplace** setting, a business that meets the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Department of Pesticide Regulation's (DPR) hazard communication regulations governing pesticide and worker safety requirements also meets Proposition 65 warning requirement for **employees**. Proposition 65 regulations also allow warnings to be provided in the same manner as they are provided under the federal Occupational Safety and Health Administration's Hazard Communication Standard (HazCom) regulations for **workplace** exposures.

The hazard communication regulations for pesticide handlers and fieldworkers (Title 3, California Code of Regulations sections 6723 and 6761) require that, whenever employees are working in treated fields or handling pesticides, the employer must display Pesticide Safety Information Series (PSIS) leaflet A-9 ("Pesticide Safety Rules for Farmworkers"), PSIS A-8 ("Safety Rules for Pesticide Handlers on Agricultural Settings"), or PSIS N-8 ("Safety Rules for Pesticide Handlers in Non-Agricultural Settings") at the work site or at a central location where workers gather. Additionally, A-9 and A-8 must be displayed at all permanent decontamination facilities and decontamination facilities serving 11 or more workers. The leaflets (available online in English, Spanish, and Punjabi at www.cdpr.ca.gov/docs/whs/psisenglish.htm) specifically discuss Proposition 65, which must be read upon request to any employee. In addition, application-specific information identifying the pesticide, location of the treated area, restricted entry interval, crop or site treated, and a copy of the Safety Data

Sheet for the applied pesticide must be displayed at a central location within 24 hours of the application and remain for 30 days or until field workers are no longer present, whichever occurs earlier. PSIS leaflets and application-specific information provide a warning comparable to those provided for other occupational exposures under HazCom and may be more informative than the "generic" safe harbor warning signs authorized by Proposition 65 regulations.

In what form must Proposition 65 warnings be given to consumers or bystanders?

For exposures to the **general public**, the warning may be given by a variety of means, such as labeling a consumer product, posting signs in affected areas, sending notices to affected residents, or publishing notices in a newspaper. For products sold through catalogs or over the internet, the Proposition 65 warning must also be given prior to purchase. For internet purchases a warning could be provided by a clearly marked hyperlink using the word "WARNING" on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the internet purchase. More information for businesses about providing warnings under Proposition 65 is available at <https://www.p65warnings.ca.gov/businesses>.

How is Proposition 65 enforced?

Proposition 65 is enforced through civil lawsuits. Lawsuits may be initiated by the State Attorney General, any district attorney, and some city attorneys (those in cities with a population exceeding 750,000). In addition, lawsuits may be initiated by private parties acting in the public interest, but only after providing notice of the alleged violation to the business accused of the violation with copies of the notice to the Attorney General and the appropriate city or district attorney. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in the regulations. **A business found guilty of violating Proposition 65 may face penalties of up to \$2,500 per day for each violation.** In addition, the business may be ordered by a court to stop committing the violation.

For more information about Proposition 65, visit <https://oehha.ca.gov/proposition-65>, or contact OEHHA at (916) 445-6900. Information for the public concerning many Proposition 65 listed chemicals, and products and places commonly associated with exposures to those chemicals, is available at www.P65warnings.ca.gov. For information about compliance with the hazard communication program for work sites where pesticides are used, contact your county agricultural commissioner's office or the Department of Pesticide Regulation at (916) 445-4300, www.cdpr.ca.gov.

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