



## Pesticides and Proposition 65

### 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.

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHHA) is the lead agency responsible for implementing Proposition 65. OEHHHA gets input and comments from the Department of Pesticide Regulation (DPR), other agencies, and interested parties to ensure that the "best scientific" information is used in the process of listing chemicals. For additional information on OEHHHA's implementation of Proposition 65, visit OEHHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov), then click on Proposition 65, or call (916) 445-6900.

### What are the requirements of Proposition 65?

Proposition 65 requires the Governor to maintain and publish a list of chemicals that are known to the state to cause cancer, birth defects, or other reproductive harm. The list, which must be updated at least once a year, covers a wide range of chemicals which are sometimes in products we use, such as dyes, solvents, drugs, food additives, by-products of certain processes, and pesticides. Some of these chemicals are naturally occurring, some are added to common household products, and some are used only in specific industrial applications.

### How do pesticides get listed?

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

- The Governor has appointed two scientific committees to determine if a pesticide or other chemical has clearly been shown to cause cancer, birth defects, or other reproductive harm. One committee is responsible for reviewing data for cancer-related information, and the other committee is responsible for reviewing data for developmental and reproductive toxicity. The committees are made

up of nationally recognized scientists. The committees consider chemicals for listing in public meetings held at least once a year.

- If a state or federal agency formally requires that a pesticide be labeled or identified as causing cancer or reproductive toxicity, it must be listed under Proposition 65 as well.

- The scientific committees, consisting of members appointed by the Governor, also designate other entities, whose decisions are authoritative in these areas. For carcinogenicity, the designated authorities are the U.S. Environmental Protection Agency (U.S. EPA), U.S. Food and Drug Administration (U.S. FDA), National Institute for Occupational Safety and Health (NIOSH), National Toxicology Program, and the International Agency for Research on Cancer (IARC). For reproductive toxicity, the designated authorities are the U.S. EPA, U.S. FDA, NIOSH, and IARC (for transplacental carcinogenicity only). If any of the state's designated "authoritative" bodies formally identifies a pesticide as causing cancer or reproductive toxicity that pesticide must be listed under Proposition 65, if all of the pertinent scientific and regulatory criteria are met.

### What are the responsibilities when using a listed pesticide?

Twelve months after a chemical, such as a pesticide, is added to the Proposition 65 chemical list, businesses with ten or more employees must provide a warning before knowingly and intentionally exposing their employees or the public to an amount of the listed pesticide that poses a significant risk. The warning must be "clear and reasonable." Also, 20 months after a pesticide is listed, businesses must not knowingly discharge listed pesticides, in a concentration that poses a significant risk, into drinking water or onto land where it will pass or probably will pass into a source of drinking water.

### When does a warning need to be given?

Unless it can be demonstrated that exposure to a chemical listed under Proposition 65 as known to

cause cancer (such as a pesticide) poses "no significant risk," a warning must be provided. Businesses may choose to provide a warning based on the presence of the pesticide without attempting to evaluate the exposure. If a pesticide is listed because of its carcinogenicity, 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." In other words, if someone is knowingly and intentionally exposed to a pesticide on the list at or above this level, they must be warned of a cancer risk.

If a pesticide is listed as a reproductive toxicant, the "no significant risk" level is defined as the level at which there are no observable effects, divided by 1,000. That is, the level of exposure is the "no observable effect level" divided by 1,000. The "no observable effect level" is the highest dose level that is not observed to cause reproductive harm in humans or test animals.

### **In what form must Proposition 65 warnings be given?**

For pesticide **workplace** settings, meeting the requirements of DPR's hazard communication regulations governing pesticide and worker safety requirements also meets the warning requirements of Proposition 65 regarding warnings for **employees**. Proposition 65 regulations also allow warnings to be provided in the same manner as they are provided under the federal Hazard Communication Program regulations for **workplace** exposures.

The State hazard communication program requires that, whenever employees are working in treated fields or handling pesticides, the employer must display Pesticide Safety Information Series (PSIS) leaflet A-9 ("Hazard Communication Information for Employees Working in Agricultural Fields"), PSIS A-8 ("Hazard Communication Information for Employees Handling Pesticides in Agricultural Settings), or PSIS N-8 ("Hazard Communication Requirements for Employees Handling Pesticides in Noncrop Settings") at the work site or at a central location where workers gather. The leaflet (available online at [www.cdpr.ca.gov](http://www.cdpr.ca.gov)) specifically discusses Proposition 65 and identifies the pesticides listed. It is available in both English and Spanish and must be read upon

request to any employee. In addition, application-specific information identifying the pesticide, treated area, restricted entry interval, and method of application must be displayed at a central location within 24 hours of the application and remain for 30 days or until employees 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 the Hazard Communication Standard and may be superior to the "generic" safe harbor warning signs authorized by Proposition 65 regulations.

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 instance, signs can be found on most gas pumps; and some utility companies include warning notices in their billings. In some instances the companies comply with Proposition 65 by removing the chemicals in question from their products.

### **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 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, contact the OEHHA office at (916) 445-6900. For information about compliance with the Hazard Communication Program, contact your county agricultural commissioner's office or the Department of Pesticide Regulation at (916) 445-4300.