

California Proposition 65 – Challenges for the Spice Industry

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Prop 65



Prop 65 requires warnings for any exposure to a listed carcinogen or reproductive toxin

- A Prop 65 listing is not a “ban”
- Prop 65 list has >500 substances listed but few are relevant to spices
- Relevant listed substances that are constituents of spices include acetaldehyde, estragole, furfuryl alcohol, methyl eugenol, *B*-myrcene, pulegone, safrole, and styrene
- Naturally occurring exemption means warning is not required for these

Naturally occurring constituent vs. naturally occurring contaminant



Naturally occurring constituents

- Acetaldehyde, estragole, furfuryl alcohol, B-myrcene, methyl eugenol, pulegone, safrole, styrene.
- Naturally occurring exemption applies

Naturally occurring contaminants

- Lead, furfuryl alcohol
- Naturally occurring exemption does not apply

Naturally occurring constituent vs. naturally occurring contaminant



Lead is listed as a carcinogen and reproductive toxin and has been a problem for many industries with numerous civil enforcement actions (“bounty hunter lawsuits”)

- There have been several enforcement actions involving lead in spices
- Will there be more involving turmeric?

Prop 65 Warning Requirements

The Office of Environmental Health Hazard Assessment (OEHHHA) published revisions to the Prop 65 warning regulations in June 2016 with an implementation date of August 2018

- Changes will have a minimal effect on spices because of small number of listed spice constituents and the naturally occurring exemption
- Side-by-side comparison available on the OEHHHA website and the ASTA web post

Prop 65 Warning Requirements

Consumer products are subject to new requirements for warning content

- Name of listed substance
- Appearance of the warning
- Contact information

Specific Prop 65 warning website making more information available

- Will include a searchable database of listed substances and warnings

Prop 65 Enforcement

Primary mechanism for Prop 65 enforcement has been civil lawsuits (“bounty hunter” lawsuits)

- Much dissatisfaction with this among state government and industry
- Recent revisions are intended to assure that the state receives the appropriate funds from civil enforcement actions and that civil enforcement actions have a public health benefit.
- Time will tell on effectiveness

Prop 65 Enforcement – How Does It Work?



Bounty hunter/plaintiff identifies target defendant – the alleged violator.

- 60-day notice issued – alleged violator has 60 days to remedy the alleged violation.
- If not remedied to the plaintiff's satisfaction then civil suit may be initiated.

What do you do if you receive a 60-day notice?

- Get help!

Prop 65 - What's Happening Now



Furfuryl alcohol

- Listed September 2016, effective date of 30 September 2017.
- Natural occurrence in some foods (naturally occurring constituent) but more importantly, it's a product of heat processing (naturally occurring contaminant).
- Widespread presence in foods similar to acrylamide, 4-Mel and others.
- Much concern in the food industry but few answers.

Prop 65 - What's Happening Now



Lead in food

- Many enforcement actions including some for lead in ginger, chili peppers, others.
- OEHHA is seeking information on “background” levels of lead in foods.
- ASTA is collecting information to engage with OEHHA.
- Goal is to set a higher and more realistic safe harbor level for lead in foods that covers natural occurrence.

Prop 65 - What's Happening Now



Coumarin

- Current proposal to list as a carcinogen.
- Banned by FDA as a flavoring substance added as such since 1960s.
- Naturally occurring constituent of cinnamon and other foods.
- Likely to be listed – CIC meeting 2 November 2017
- Be prepared for inquiries.

Prop 65 - What's Happening Now



Hexane

- Solvent approved for use in the U.S. and elsewhere with U.S. residue limit for spice oleoresins of 25 ppm (21 CFR 173.270).
- Will be reviewed for Prop 65 listing by DARTIC on 29 November 2017; comment period closes 16 October.
- Prop 65 listing is likely.
- If listed, hexane will be a contaminant requiring a NSRL/safe harbor level.
- Note conflict with FDA listing.

Prop 65 Warnings



Too many Prop. 65 warnings

STARBUCKS, WHOLE Foods and about 80 other places in California that sell coffee may soon be forced to put warning labels on grande lattes and coffee bean packages to alert consumers that the product within contains acrylamide, a chemical that may be carcinogenic.

Wait a minute. Coffee causes cancer? Actually, research increasingly points to the opposite conclusion. Two large studies published this year in the *Annals of Inter-*

prompted businesses to post prophylactic warnings regardless of the severity of the risk. And the signs they post don't provide the context to help people make educated decisions about the risk they face. Many don't even identify which chemical or chemicals are at issue.

State regulators are updating the Proposition 65 signs to offer more information to consumers, including the identity of at least one of the chemicals present. Still, the update won't fix the larger problem of having so many warnings that consumers have

Noxious weed seeds

We're making slow but steady progress with this long-term project

Objective

Development of weed seed devitalization method validation study protocols, approved by APHIS, that can be used by private companies to gain inclusion of methods in the USDA Treatment Manual

- Goal is to have protocols that can test multiple methods – Heat/steam, EtO, irradiation, CO₂

Noxious weed seeds

Protocol development discussions continue with APHIS

- Likely to take some time given our experience

Progress

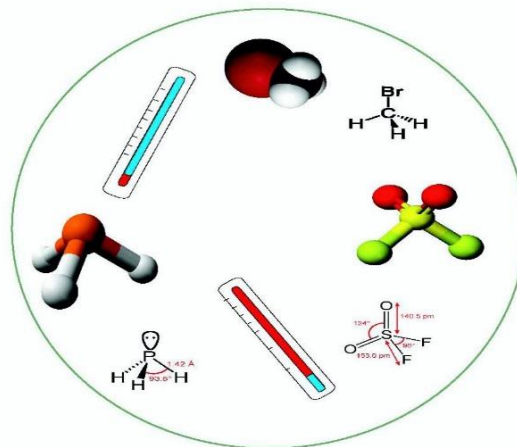
- Focus on *Cuscuta spp.* and *Asphodelus spp.*
- Focus on irradiation as fastest path to change.
- Importing seeds for testing – CSU available.

Noxious weed seeds



United States Department of Agriculture

Treatment Manual





Questions?

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Thank you

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