

American Beverage Association

Statement of Critical Issues re Proposition 65 Food Warnings

July 3, 2008

1. A reasonable warning method that does not involve on-product warnings or shelf signs is important for foods. California-specific food packages are not feasible, practical or economical. Food labeling often does not contain enough space for warnings of the length made necessary by Proposition 65. Some foods are not sold in packages at all. Shelf signs are costly to post and maintain, not practical for a food manufacturer to implement, and place undue risk of liability if they fall down or are removed by a customer. Making information available on the internet and promoting the availability of that information in supermarkets should be seriously explored as a warning method for foods that contain Proposition 65 chemicals.
2. A Proposition 65 “flag” on a food product likely will stigmatize the product as “dangerous.” Consumers likely will perceive the risk associated with most or all of these products to be well above the best scientific estimate of reproductive or cancer risk posed by the chemical exposure at issue. Proposition 65 flags on food likely will not serve the goal of communicating more balanced or more nuanced information to the consumer. They also likely would be confusing and poorly understood outside California.
3. Sound science should inform warning language for Proposition 65 food warnings. If the risk posed by a particular reproductive toxicant does not include birth defects, the warning should not mention birth defects. If a risk in humans is predicted but not known (e.g., chemicals identified by IARC as possibly or probably carcinogenic to humans), the warning should not say or imply that the human risk is known. This is especially important for foods because foods provide essential health, nutrition, energy, and refreshment benefits.
4. The safe harbor warning system for foods should allow general educational warnings to be provided for chemicals that are listed food ingredients, rather than require warnings on or close to each food that contains a chemical subject to the general warning system. In this way, businesses could elect to provide information that covers chemical exposures to both naturally occurring and other chemicals so that consumers would not be misled when considering two products that both contain the same chemical from different sources.
5. Proposition 65 chemicals in foods have presented several unique and unanticipated issues already, such as the unexpected discovery of acrylamide in many foods. The future may bring more unique and unanticipated issues that will require specific guidance. Accordingly, OEHHA should provide a mechanism whereby specific warning language and methods may be promptly reviewed and approved.