

**California Grocers Association**  
**Critical Issues / Regulatory Concepts**  
**Food Warning Work Group, July 3, 2008**

1. **Food Must Be Treated Differently.** The average supermarket carries over 30,000 food products. New regulations should prevent individual product warnings for these many different types of food items commonly sold. Prop 65 has recognized that food must be treated differently from other consumer products subject to the statute. See 22 Cal. Code Regs. § 12501; Final Statement of Reasons, 22 Cal. Code Regs. § 12501 (warnings on a basic necessity like food would cause consumer confusion). People buy food on a daily basis, they seek information about it in places other than the grocery store, and OEHHA and the courts have treated it differently than other products for Prop 65 warnings. Thus, the alternative warning supported by CGA is in keeping with precedent.
2. **Method Would Utilize Current And Future Technology.** A Prop 65 food warning program should utilize current and future technology such as a web site containing information regarding Prop 65 chemicals in foods and references to other sources concerning what is known about the risks of exposures to such chemicals. Details regarding function and implementation could be worked out and would not require funding by retailers.
3. **Centralized Food Warnings With Access To Specific Information.** Consistent with the statute, new regulations should give retail grocers the option of providing a global, centrally located safe-harbor warning for food (22 Cal. Code Regs. § 12601(b)(5)) which refers consumers to more detailed information that would be accessed at an OEHHA maintained website containing product information provided by manufacturers and any health and safety information supplied by the state. Consumers utilize the internet or other sources to obtain information about diet and health, such that this proposed warning program would be both clear and reasonable under the law, and help to relieve retailers from the proliferation and variety of in-store warnings that consumers find confusing and ignore. If publicized and implemented by the manufacturers and OEHHA, the program will act as an incentive for consumers to investigate food content and nutrition before their purchase. To assure that consumers have access to information about foods before and after they make their purchases, a website program would be preceded by a media/advertising campaign, providing consumers with the following information: (1) Brief description of Proposition 65; and (2) Public announcement that a website will be available to provide consumers with information concerning Proposition 65-listed chemicals that are present in foods.
4. **Methodology Options And Generic Content.** A centralized warning would contain both the Prop 65 safe-harbor warning and additional language directing the consumer to a centralized repository of information that the manufactures and the state wish to convey. Health and safety warnings are not the province of retailers. As more specifically described in CGA's March 28, 2008 submittal to OEHHA, the statute and regulations do not mandate individualized warnings or pre-purchase access to product specific data. Cal. Health & Safety Code § 25249.11(f); 22 Cal. Code Regs. § 12601(b)(1) ("Warning' within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods ..."). Labels or shelf or aisle warnings would not be required. As an alternative to the existing safe-harbor warning, a single, centralized in-store warning referencing the website, with options from which retailers may choose in light of varied business needs, including a statement on a register receipt, a sign or poster visible to most customers, a sign at the cash register, a notice at a kiosk, or any other method of notice that a consumer in the ordinary course of shopping would reasonably be expected to see. The message should include the following brief statement and not give any specific health or food safety warning:
  - (1) Prop 65 chemicals that are known to cause cancer or reproductive harm are present in many foods because they are naturally occurring, are produced by cooking, are present in water, or are added; (2) there is wide variation in the amount of chemicals present in any given food and in the amount of risk associated with such exposure; and (3) further information about Proposition 65 chemicals in foods that are sold in this store, and the risk associated with those chemicals, may be obtained at [www.\_\_\_\_.com <file://www.\_\_\_\_.com> ]
5. **Retailer Compliance Satisfied By Warning.** A retailer that provides an in-store warning as described above will be deemed to have fully complied with Prop 65 with regard to exposure to Prop 65 chemicals in foods sold in its store.