

Dear Carol Monahan-Cummings:

The Center for Environmental Health makes the following comments about OEHHA's most recent proposal regarding Proposition 65 warnings for food products:

1. The proposal to provide warnings on cash register receipts does not allow consumers to make an informed choice about which products they want to purchase. Purchasers who wish to use the warning to avoid exposure to a listed chemical would be forced to return the product or exchange it for a different one. In most situations this would mean waiting in a check out line a second time. Given the arrays of similar products on many store shelves it is not reasonable to expect that consumers will be able to remember from one shopping trip to the next one which products contain listed chemicals.

2. The compendium/binder option does not comply with the legal requirements for warnings. Even as modified in the OEHHA proposal, we believe that the option is legally inadequate unless the on-product or shelf-tag identifier contains the same language as a standard Proposition 65 warning. Most consumers are busy people who have limited time for grocery shopping. The warnings need to be provided to consumers; it should not be the obligation of the consumer to seek out the warning by searching through a compendium to find the relevant warning.

3. All retailers above the Proposition 65 threshold of 10 employees should be treated equally. The statute does not provide for exemptions based on the square footage of retail space.

4. We are concerned about the language concerning "opportunity to cure." The statute is clear that failure to provide warnings about a knowing and intentional exposure to a listed chemical is a violation. There is no way to "cure" an exposure once it has occurred.

Sincerely,

Caroline Cox
Center for Environmental Health
