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OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Food Warning Regulation Issues From September 25 Meeting

(FOR WORKGROUP USE ONLY)

Notice – Deadline for written comments is January 9th, 2009. It is preferable that the comments be submitted electronically to Fran Kammerer at fkammerer@oehha.ca.gov. If this is not possible, please submit paper copies to:

Fran Kammerer
 Staff Counsel
 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95812

Issue	Response
1. MFG/Distributor still liable if retailer does not participate in the program	<ul style="list-style-type: none"> • We plan to introduce the new regulation as a “pilot program” that will sunset in 4-5 years. This will allow us to make some basic assumptions about the level of participation and coverage of the program, and then test them out over the “pilot” period. • As part of the pilot we will include a full “safe harbor” for all participating manufacturers and retailers to encourage full participation in the program.
2. Binder Option needs to be available	<ul style="list-style-type: none"> • OEHHA will include a compendium/binder option for providing the warnings. • However, in order to comply with the requirements of the statute, the binder option will require use of an on-product identifier or shelf-tag identifier. The general information sign and the binders are not sufficient to provide a clear and reasonable warning for individual products.
3. Small retailers	<ul style="list-style-type: none"> • OEHHA will propose an alternative warning requirement for small food retailers (likely just posting of the informational sign with the web address). • Will apply to retailers with less than a certain total square footage of food items. • This is because of the likelihood of “saturation” coverage for warnings through mid-to-large food retailers and will help avoid significant compliance costs for small retailers. This is another basis for creating the program as a “pilot”.

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<p>4. OEHHA shouldn't require name/CAS Number for chemicals in the foods</p>	<ul style="list-style-type: none"> • Food is different from other products. • Food warnings need to be presented differently. • One of our main purposes for this regulation is to provide more meaningful/useful information to consumers. • Making available on our website the names and CAS numbers of listed chemicals known to be in the foods that require a warning is essential to this purpose. • We will clarify that mfg's need only identify "known" chemicals in the foods that are likely present at levels requiring a warning (not all trace chemicals in the foods require a warning). • We will clarify that new or additional testing of products for Prop 65 chemicals is not required in order to comply with this regulation. • Individual chemicals do not have to be included on the in-store warning. (Not a change from existing safe-harbor). • To provide more meaningful information to interested consumers, all known listed chemicals in a product that require a warning must be identified by the manufacturer on OEHHA's web site.
<p>5. Put back in the proposed language from the Mfg/Retailer Proposal</p>	<ul style="list-style-type: none"> • We will be including language concerning retailer cooking or processing foods. • Timelines for completing tasks may be increased.
<p>6. Fresh fish</p>	<ul style="list-style-type: none"> • Foods subject to existing court judgments or settlements other than fresh fish are included in the program. • AG has determined that safe harbor is insufficient for fresh fish.
<p>7. Change "provide" to "make available"</p>	<ul style="list-style-type: none"> • "Provide" is consistent with the language in the statute, regulations and case law.
<p>8. Opportunity to cure</p>	<ul style="list-style-type: none"> • OEHHA is open to this suggestion, but it should be considered as a separate regulatory project. • We have concerns that it may be beyond our authority.