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November 16, 2007

Carol J. Monahan-Cummings
Chief Counsel
Office of Environmental Health Hazard Assessment
1001 I Street, MS# 25B
Sacramento, CA 95816

via email: cmcummings@oehha.ca.gov

RE: Proposition 65 Proposed Regulatory Reforms

Dear Ms. Monahan-Cummings:

On behalf of the California Grocers Association, thank you for the opportunity to provide input on regulatory reforms which might be undertaken by the Office of Environmental Health Hazard Assessment (OEHHA) to clarify, improve and update the regulatory provisions governing the Proposition 65 program. We would like to work cooperatively with OEHHA and other interested parties to alleviate some of the burdensome requirements of Proposition 65 in such a way that continues to further the purposes of the statute while curbing needless litigation.

The average supermarket carries over 30,000 products and can be the subject of multiple Proposition 65 lawsuits filed against many items commonly sold in retail food stores.

Because of the quantity of products carried by grocery stores and the number of new product introductions each year, retailers continually face new exposure to Proposition 65 lawsuits.

CGA supports critical reforms which we have long advocated and believe are critical to assisting California's businesses with compliance.

- CGA supports regulatory reforms which would allow for safe harbor warnings similar to the warnings allowed for restaurants. Given the number of products sold in the retail grocery industry, we believe it is reasonable and clear to provide information at a single source which directs consumers to a central point for additional information on both the products requiring warnings and the chemicals contained in the products.

As we have seen in the last several years, as advances in science continue, it is likely that additional listed chemicals will be found in food products which are both healthful and nutritious or consumer products which are necessary for health and safety. Needlessly alarming consumers without providing information to allow them to make reasonable decisions is certainly not in the best interests of the retail food industry or the consumer. We believe a “global” warning at a retail establishment which provides information on products/chemicals through a website or other media is a sensible solution to the issue.

- In addition, we believe the regulations should require specificity of product description in the 60-day notice, limiting that which retailers are noticed on to a specific product rather than a category of products.
- We support defining “knowing and intentional” to preclude a finding of the same until the retailer has notice and a period to cure the alleged violation. We believe Proposition 65 should allow an opportunity for those noticed to cure violations within a reasonable period of time as a way to avoid unnecessary litigation.
- Proposition 65 should be not used as a means or substitute for broader food safety or health advisory warnings. We oppose the use of Proposition 65 for such purposes.
- And, we believe Proposition 65 should be amended to prohibit the inclusion of retailers when the product subject to the notice and lawsuit is not a house brand.

We look forward to working with interested parties to craft regulatory reforms which embrace the spirit of Proposition 65 balanced with a commonsense approach to providing information to consumers without pointlessly burdening California’s businesses.

Sincerely,



KRISTIN POWER
Vice President, Government Relations