



January 16, 2009

Carol J. Monahan-Cummings
Chief Counsel
Office of Environmental Health Hazard Assessment
Via e-mail: cmcumings@oehha.ca.gov

Re: OEHHA's Regulatory Update Project on Warnings for Foods

Dear Ms. Monahan-Cummings,

This letter serves to provide comments of the American Herbal Products Association (AHPA) in response to OEHHA's request for ideas for possible regulatory options for providing warnings for exposures to Proposition 65 listed chemicals in foods sold at retail. AHPA appreciates the opportunity to provide comments on this matter.

As a member of the work group that OEHHA formed to address this issue, I have attempted to communicate the strong interest that AHPA and its members have in supporting the creation of regulatory options for providing clear and reasonable warnings related to the presence in foods of non-naturally occurring listed chemicals. I reiterate that interest here, and also my willingness to continue to play an active role in the work group should OEHHA decide to extend its function.

OEHHA provided, in its November 19, 2008 Notice to Interested Parties on this matter, numerous concepts for key elements of a safe harbor warning program for exposures to listed chemicals in foods sold at retail. With regard to the general concepts presented in this notice, AHPA agrees that any emerging regulations should clarify food retailer and manufacturer responsibility for providing warning materials to consumers; should establish specific safe harbor methods for providing warnings for food product exposures sold by retailers; and should specify warning message content.

Of the more specific concepts presented in this notice, AHPA agrees that new regulations should provide conditional protection from liability for food manufacturers and retailers who provide warnings via any resultant safe harbor methods. AHPA also agrees that manufacturers should have the primary responsibility for identifying

products needing a warning, for the content of the warning messages, and for providing warning materials, and that retailers should serve as the conduits for warning information. AHPA also agrees that minor infractions that are quickly remedied should be allowed to be corrected without retroactive liability.

Though AHPA has expressed here agreement with several of the concepts presented by OEHHA on this matter, AHPA necessarily withholds any comments at this time on any specific regulation that OEHHA may come to propose.

Should OEHHA issue any formal regulatory proposal in this matter, AHPA believes that two elements are essential to ensure better provision of warnings for foods: (1) any such regulations should be voluntary, so that manufacturers and retailers can choose whether or not to comply with the new regulations to meet any obligations to warn; and (2) the regulations should identify numerous regulatory options for providing clear and reasonable warnings for listed non-naturally occurring chemicals in foods. The retail food industry in California is diverse, consisting of small and specialized stores as well as large stores and chain outlets. These retailers have varying levels of resources available to implement new regulatory options, so that, as much as possible, OEHHA should consider the range of retailer resources as it develops regulatory options.

AHPA hopes and assumes that these comments will be seriously considered, and again appreciates the opportunity to provide this input.

Respectfully submitted,



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