

PROP 65 FOOD WARNING WORKGROUP MEETING
July 15, 2008

Workgroup Members/Alternates Participating:

Dominic DiMare
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OEHHA Staff :

Joan Denton
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Cynthia Oshita
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OBJECTIVE OF WORKGROUP:

Proposition 65 requires “clear and reasonable warnings” prior to exposure. The purpose of the this work group is to develop a proposal for a new regulation that describes the process for providing warnings for exposures to Proposition 65 listed chemicals in foods that addresses both the methods for providing a warning when one is required, as well as the basic components of the content of the message that should be delivered. (Questions concerning when a warning should be or is required for a particular exposure to a particular listed chemical in a specific product are beyond the scope of the project.)

MEETING SUMMARY:

1. Following welcome, introductions and a brief reminder concerning the statutory requirements for providing clear and reasonable warnings prior to exposures to listed chemicals, the group discussed the draft problem statement proposed by OEHHA (see 6/24/08 e-mail from Carol Monahan-Cummings). A suggestion was made that the group consider addressing scientific issues such as whether to

include a warning for “birth defects or other reproductive harm” is always required. After further discussion, the problem statement was tabled for the time being.

2. The remainder of the meeting was devoted to a discussion of various issues and concepts related to the method, form and content of warnings for listed chemicals in foods. A summary of the points raised during the meeting follows.
 - a. Foods are different and require a different approach from the standard “safe harbor” provisions in the existing regulations. We need a warning process that is modern, leverages existing and future technology and provides options that will fit a variety of retail situations.
 - b. There is a need for balanced messages to consumers about products that have real health benefits that may also cause an exposure that requires a warning.
 - c. Food warnings should include information about the relative risks and benefits of the products, and other ways in which a consumer might be exposed to the chemical (i.e. from other products that don’t require a warning or through home cooking of a similar food).
 - d. Retailers should be able to provide a warning via a method similar to the one available to restaurants under the existing regulations because of the high number of products sold in a store and potential variability in the types of exposures to listed chemicals as well as variability in the levels of the chemicals in given products.
 - e. Consider providing warning information via the Web.
 - f. Foods that cause immediate danger to health (i.e. high lead content) should be treated differently than foods that may intermittently cause exposures to lower levels of listed chemicals.
 - g. Acute exposures that are known to cause serious effects are different from chronic exposures that have only theoretical effects.
 - h. The regulation should be drafted in a way that avoids potential federal preemption.
 - i. There is a need to address uncertainty and variability of listed chemicals in foods, in addition to the perishable nature of the food products (not feasible to test all or significant volume of products for listed chemicals).
 - j. We should avoid over warning. Give incentive to provide warnings only for those products where they are actually required.
 - k. Flags on products stigmatize them and give too little information. Consumers will just avoid purchasing those products.
 - l. On-Product flags or icons are problematic when products are sold outside California. Not feasible to have separate labeling for California only.
 - m. Internet access is not universal in California and therefore should not be the primary source for providing information to consumers.
 - n. Retailers want certainty concerning what they need to do and for manufacturers to provide all necessary information, including identifying products that require Proposition 65 warnings.

- o. Prop 65 warnings should not take the place of information provided by the Public Health Department or FDA.
- p. If many options are provided for warning methods and content, will retailers and manufacturers need to agree on which will be used for specific products?
- q. Retailers should have a “safe harbor” if they cooperate with manufacturers to provide warning information for products identified by the manufacturer (assuming the retailer is not adding the chemical to the product and has no other reason to know about the exposure).

HOMEWORK QUESTIONS (Please respond by August 1 with up to two pages of comments on the following four questions):

1. What specific media or modes of delivery could be used to provide consumers with information about exposures to listed chemicals in foods purchased at the retail level?
2. Give an example of a “trigger” mechanism that could be used to alert consumers that a Proposition 65 warning may apply to a particular product or class of products and explain how it would provide the consumer with an opportunity to receive the warning prior to exposure. (For example triggers may be based on location of the product in the store, identification of specific food groups, on-product flag or icon, on shelf flag or icon, cash register receipt flags, etc.)
3. How should chemical-specific (versus product-specific) information be provided, including a discussion of how exposures should be categorized. Types of foods? Product names?
4. Give your perspective concerning what information should be conveyed in a general warning for listed chemicals in foods that could be provided to the consumer at the retail level (i.e. the general content of a pamphlet, hand-out, electronic communication via kiosks, etc.)