
From: Roger Kratz [<mailto:rogerkratz@htseafood.com>]

Sent: Monday, April 18, 2016 3:26 PM

To: P65Public Comments

Subject: Clear and Reasonable Warnings Regulation

A retail seller of consumer products can only rely on the “safe harbor” content and methods provided in Article 6, Subarticle 2 if that retail seller has knowledge of a potential consumer product exposure requiring the warning. This limits the practical usefulness of the proposed draft text of Article 6 and, under certain circumstances, does not minimize the burden on retail sellers of consumer products, as required by Section 25249.11 of the Act. If knowledge of a potential consumer product exposure requiring a warning does not come from the manufacturer, producer, packager, importer, supplier, or distributor of the product, then it must come from “specific knowledge of the consumer product exposure received by the retail seller from any reliable source” (Section 25600.2, Paragraph (f)). Unless the source of this “specific knowledge” is a notice served pursuant to Section 25249.7 (d)(1) of the Act, then “specific knowledge of the consumer product exposure received by the retail seller from any reliable source” is not defined in the Act. This is an oversight, and “any reliable source” needs either to be defined or eliminated from the draft. Article 6, Subarticle 2 states that “a warning meets the requirements of this article if the name of one or more of the listed chemicals for which the person has determined a warning is required is included in the text of the warning.” However, if a retail seller does not have knowledge of a potential consumer product exposure requiring a warning (as described above), then the retail seller cannot include the name of one or more of the listed chemicals in the text of the warning. Prop. 65 warnings in general use by retail sellers today are non-specific; these warnings do not include the name of any listed chemical. Nevertheless, by means of the proposed text of Article 6, it is clear that OEHHA wants to place the burden of identifying listed chemicals in a consumer product on the shoulders of the retail seller under all circumstances, even if the retail seller has no knowledge of a potential consumer product exposure requiring a warning. Article 1, section 25102(n) states that “a person in the course of doing business who, through misfortune or accident and without evil design, intention or negligence, commits an act or omits to do something which results in a discharge, release or exposure has not violated Section 25249.5 or 25249.6 of the Act”. That said, could not a retail seller be accused of being “negligent” in a potential consumer product exposure if that retail seller could be alleged to have received “specific knowledge of the consumer product exposure...from any reliable source”, when “any reliable source” is not defined in the Act?