



Calorie Control Council

Re Prop. 65

JUN 26 1987

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June 23, 1987

TO: PRIMARY CONTACTS

RE: PROPOSITION 65 -- UPDATE

During the week of June 15, California Department of Health and Welfare (H&W) officials completed three days of hearings and meetings concerning Proposition 65, and the state's Scientific Advisory Panel held its first official meeting to consider additions to the "primary list" of alleged carcinogens and reproductive toxins. The following summarizes these developments.

H&W Public Hearings

Public hearings were held June 15 and 16 to consider petitions filed by major food and drug trade associations that request specific exemptions from the requirements of Proposition 65. The food processing industry petition, submitted by the Grocery Manufacturers of America (GMA) and supported by dozens of other food trade associations, states that federal standards already in effect must prevail over state regulations. Industry's point of view that consumers are already adequately protected by these federal laws and regulations was articulated in testimony at the hearings and during a press conference sponsored by GMA.

Industry officials testified that it was economically and practically impossible to comply with the requirements of Proposition 65. They also noted that the warning statements required under the act would be devastating to the export of California-produced food, and to the food/beverage and tourist industries within the state.

Proponents of Proposition 65 noted that nothing in the Proposition allows California H&W to grant exemptions, and that the industry petitions must be denied on legal grounds. (Rebuttal from industry lawyers pointed out numerous examples in the Sherman Food and Drug Law of California, which is patterned after and utilizes federal law precedents).

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Supporters of Proposition 65 also called upon H&W not only to deny the GMA petition, but also to "demand" that the food industry launch a comprehensive program to quantify the level of chemicals on the Governor's list found in foods.

At the hearings, H&W officials and scientists articulated numerous views and suggestions regarding the implementation of Proposition 65. For example, Undersecretary Thomas Warriner and Executive Secretary Dr. Stephen Book both stated their desire to separate man-made toxicants (e.g., PCBs) from natural toxicants (e.g., aflatoxin). Consideration also was given to a possible third category of chemicals, to include substances that are present in water, foods or drugs; are on the Governor's list; are present at detectable levels; but are at levels currently allowed by federal regulation.

H&W officials also discussed a previously circulated draft guideline which calculates an acceptable daily intake (ADI) of certain toxicants. In calculating an "Acceptable Daily Body Burden," the guideline employs an allocation, or "banking system," to distribute the acceptable intake from the compounds. The guideline assumes: that the substance will be ingested daily for a lifetime; that one-half of the acceptable daily intake will be allocated to drinking water; that two liters of drinking water will be consumed daily; and that of the remaining 50 percent ingested, no more than ten percent will be allocatable to a single food product.

#### H&W Reviews Draft Guidelines for Implementation

H&W discussion meetings on June 17th in effect rejected the industry petitions for exemptions, as various draft guidelines for the implementation of Proposition 65 were circulated and discussed.

Regarding food products, the various draft guidelines state:

- Man-made toxicants, but not naturally occurring toxicants, would be subject to warning in California.
- Toxicants formed during food preparation in the home, such as, baking, cooking, frying, etc., would not be regulated under Proposition 65.
- An ADI allocation system based on allowable levels of toxicants in drinking water will be employed, unless opponents can suggest and convince H&W to utilize another basis.
- Prescription drug products will not be dealt with at this time.
- The idea of a non-verbal communication warning system is still under consideration.

Considerable discussion also revolved around a proposal made by Mr. Warriner of a marked cash register tape with appropriate asterisks or signs that would be placed next to the listing of the food or its price, and that would inform the consumer under Proposition 65.

The docket will remain open for the submission of written comments on initial interpretive guidelines nos. 1-3 (previously provided) through the end of June. Comments for guidelines nos. 4-8 (attached) will be accepted through July 17. Another hearing on the regulations is scheduled for August 19.

#### California Manufacturers Submit "Logo-Type Consumer Warnings"

The California Manufacturers Association has submitted to H&W several suggested symbols, or "logos," for possible use to warn consumers of the presence of chemicals regulated under Proposition 65. The group's suggestions, illustrated in the attached montage, demonstrate the potentially devastating impact of the California law.

#### Scientific Advisory Panel Meets

During the Scientific Advisory Panel (SAP) meeting on June 18, little mention was given to the two public hearings on the petitions for exemptions from Proposition 65. The SAP instead followed its agenda to consider various additions to the state's "primary list" of chemicals.

Though a plan to first establish criteria for carcinogens and reproductive toxicants was discussed, a compound-by-compound review of the chemicals on the group's agenda was undertaken.

The Panel recommended that nearly all of the substances identified on the meeting agenda (attached) be added to the Governor's "primary list." The exceptions were: aflatoxins and the beryllium compounds (these will be considered at a later date), and 2-Aminoanthraquinone and 1-Amino-2-methylantraquinone (based on inconclusive evidence of carcinogenicity or reproductive toxicity).

#### USDA Responds

At the request of several meat and poultry associations, U.S. Department of Agriculture Secretary Richard Lyng has written California Governor George Deukmejian stating that federal meat and poultry inspection statutes would prohibit any special labeling required under Proposition 65. In his June 12 letter, Lyng cited several legal precedents in support of USDA's preemptive authority. He added that the State of California should "carefully consider the preemptive effects

of Federal law before taking any further action" to implement the section of Proposition 65 dealing with meat and poultry products. Meanwhile, the Food and Drug Administration has yet to take action, as requested in the recent petition filed by the National Food Processors Association.

We will continue to keep you apprised of all developments and interpretations related to the implementation of Proposition 65.

Sincerely,

  
Robert H. Kellen  
President

RHK:rlw  
Attachments

Note: Covington and Burling has revised its detailed summary of the requirements of Proposition 65 and the law's implementation and impact, which was shared with you March 11, 1987. The most significant change related to low-calorie sweeteners is sentence 1, paragraph 3, page 54, which states: "If the food additive is found to 'induce cancer' within the meaning of the Act, its use may not be approved."

Previously, sentence 1, paragraph 3, page 51 read: "If the food additive 'induces cancer' in humans or in animal tests, its use may not be approved at any level." The complete, revised document is available from Council headquarters upon request.

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Attachments