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P.O. Box 4010  
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Sacramento, CA 95812-4010  
P65Public.Comments@oehha.ca.gov

Re: Proposition 65 Pre-Regulatory Warning Proposal

Dear Ms. Vela:

On behalf of the agricultural and food processing industries, we appreciate the opportunity to comment on the Office of Environmental Health Hazard Assessment’s (“OEHHA”) pre-regulatory proposal regarding potential amendments to Article 6, the clear and reasonable warning requirements, of Proposition 65.

Thank you for your continued work on Prop. 65 reform. We were actively engaged in the Administration’s Proposition 65 reform efforts last year and are aware that this proposal is a continuation of those efforts. While the efforts to create a legislative solution fell apart last summer, we are pleased to see the Administration pursue reform efforts within OEHHA and the Attorney General’s office.

The current proposal offers options for food and agriculture to abide by Prop. 65 regulations. Generally speaking, we appreciate OEHHA’s flexibility in trying to achieve solutions that work for the food industry and its perspective that “food is different.” Finding workable solutions for such a complex industry will be a daunting task and we conceptually support the idea that a “one size fits all” notion will not work for food and agriculture.

While we understand the Administration’s desire to make warnings more meaningful to better inform consumers, we are fearful that the current pre-regulatory proposal will confuse the consumer, particularly with respect to food. Furthermore, the proposal, as currently framed will likely expose food processors and agriculture to more unnecessary and unjustified litigation and will give the public the false impression that there are food safety concerns with fruits, vegetables and other healthy products.

In particular, we wonder whether requiring specific chemicals to be listed in a warning will unnecessarily draw the attention of bounty hunters to file lawsuits related to those particular chemicals. There is no clear strategy behind why the chemicals were chosen,
nor are there any studies or data supporting the idea that these chemicals, at their exposure levels, are worse than other chemicals on the Proposition 65 list.

Additionally, the generation of a website creates a homepage for potential litigation against the private sector. The food and agriculture industry is not completely opposed to having a website with general information regarding Prop. 65, but it has to be created in such a way that prevents trial attorneys from utilizing it in a fashion that deters from the good intentions of Prop. 65. This becomes particularly important if the Administration does not pursue litigation reform.

We are extremely concerned that consumers will have food safety concerns if they see Proposition 65 warnings on healthy foods, such as fruit and vegetables. These concerns are completely unjustified, especially when applied to naturally occurring chemicals in food. In fact, an exemption is supposed to protect food from the need for warnings, and to provide comfort to consumers who have been eating these products safely for thousands of years. Cancer and birth defect warnings on fruits and vegetables would also be an impediment to the Federal and state objectives of increasing consumption of fruits and vegetables in the interests of better health.

California consumers should not be told that packaged produce contains chemicals that will cause cancer and birth defects when these foods do not, in fact, cause these effects in the amounts typically eaten, particularly where FDA has said that such warnings are unnecessary and will mislead consumers.

Further, the proposed change in the warning language from indicating a product “contains” a chemical to a product “will expose” a person to a chemical is not appropriate or accurate and, again, could result in a public belief that the food is not safe for consumption. A food product may contain a Proposition 65 chemical in its packaging, but consumption of the food will not result in an exposure to the chemical. Under this circumstance, indicating that the food “will expose” a person to the chemical would not be accurate. Additionally, citing that it is a “cancer hazard,” or “reproductive hazard,” would also be incorrect. It could also lead to claims against the agricultural and food processing industries outside the context of Proposition 65.

We also respectfully request the ability to pursue alternatives for food warnings outside of the scope of this pre-regulatory proposal. Language such as “cancer hazard,” or “reproductive hazard,” may not be accurate, and there may also be ways to provide warnings outside of the context of this proposal.

We want to continue to be active participants in the process of improving warnings for the public and we look forward to working with OEHHA to address these and other issues related to OEHHA’s pre-regulatory proposal.

If you have any questions regarding this letter, please feel free to contact us.
Sincerely,

Emily Rooney  
Agricultural Council of California

Trudi Hughes  
California League of Food Processors

Matthew Allen  
Western Growers Association

Cynthia Cory  
California Farm Bureau Federation