MEMORANDUM OF UNDERSTANDING

ON COOPERATION AND COMMUNICATION IN THE IMPLEMENTATION OF PROPOSITION 65 WITH RESPECT TO EXPOSURE TO PROPOSITION 65 LISTED CHEMICALS IN FOOD OR FOOD ADDITIVES
BETWEEN THE OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
AND THE
CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

I. PURPOSE/OBJECTIVES/GOALS

This Memorandum of Understanding (MOU) serves as a mechanism for formalizing the communication and cooperation concerning OEHHA's implementation of Proposition 65 with respect to exposure to Proposition 65 listed chemicals in foods. Specifically, it describes the types of information that will be shared between the two agencies prior to public release and a mechanism by which the sharing can be accomplished.

II. BACKGROUND

Proposition 65[1] was enacted as a ballot initiative on November 4, 1986. The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is the lead state entity responsible for the implementation of Proposition 65. OEHHA maintains the list of chemicals known to cause cancer or reproductive toxicity. OEHHA has the authority to adopt and amend regulations to further the purposes of the Act. The Act requires businesses to provide a warning when they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity. The Act also prohibits the discharge of listed chemicals to sources of drinking water.

To assist businesses in determining whether a warning is necessary or whether discharges of a listed chemical into drinking water sources are prohibited, OEHHA has developed safe harbor levels. A business has "safe harbor" from Proposition 65 warning requirements or discharge prohibitions if it causes an exposure to a listed chemical that is at or below these levels. These safe harbor levels are called No Significant Risk Levels (for chemicals listed as causing cancer) and Maximum Allowable Dose Levels (for chemicals listed as causing birth defects or other reproductive harm). OEHHA has

[1] Health and Safety Code section 25249.5 *et seq.*, hereafter referred to as "Proposition 65" or the "Act"

adopted over 300 safe harbor levels to date and continues to develop more levels for listed chemicals.

The California Department of Food and Agriculture (CDFA) was created by the California Legislature in 1919. CDFA serves the citizens of California by promoting and protecting a safe, healthy food supply, and enhancing local and global agricultural trade, through efficient management, innovation, and sound science, with a commitment to environmental stewardship. CDFA is organized into six divisions and operates at more than 100 locations throughout California.

OEHHA and CDFA benefit from working together when the implementation of Proposition 65 involves listed chemicals in food. Sharing information, expertise and resources will benefit the state's significant interest in protecting and promoting a safe and healthy food supply along with OEHHA's duties in implementing Proposition 65 as it applies to listed chemicals that may be found in California's soil, food products, agricultural pesticides and fertilizers.

III. AUTHORITIES

OEHHA enters into this MOU with the authority to implement Proposition 65 under California Health and Safety Code Section 25249.12.

CDFA enters into this MOU with the authority to promote and protect the agricultural industry in the state under California Food and Agricultural Code section 401*et seq*.

All actions undertaken pursuant to this MOU shall be consistent with applicable laws, policies, and management directives.

IV. ROLES AND RESPONSIBILITIES

OEHHA and CDFA mutually agree to share information and to collaborate as needed regarding both candidate chemicals and chemicals that are already listed under Proposition 65 that are or may be found in California's soil, food products, agricultural pesticides and fertilizers. The collaboration will also include OEHHA's establishment of safe harbor levels and development of warnings for these chemicals as they relate to food exposures. This collaboration may involve but is not limited to:

1. OEHHA will inform CDFA of prioritization for listing of chemicals that may be found in California's soil, food products, agricultural pesticides and fertilizers prior to beginning the listing process to the extent possible;
2. CDFA will be invited to present information at any CIC or DARTIC committee meeting where the committee considers the listing of a chemical that may be found in California's soil, food products, agricultural pesticides and fertilizers.

3. The agencies will work cooperatively to exchange information that will assist OEHHA in the development of safe harbor levels, interpretive guidance, regulations regarding warnings and other actions that may affect California food and agriculture;
4. Each agency agrees to maintain the confidentiality of information being shared as requested or in accordance with the standard procedures of both offices as provided by law;
5. The agencies will share data, such as electronic and paper copies of critical documents on chemicals that may be found in California soil, foods and other agricultural products;
6. The agencies agree to engage in regular informal discussions of issues pertinent to OEHHA's implementation of Proposition 65.

a. RESOLUTION OF DISAGREEMENTS AND CONFLICTS

Insofar as OEHHA and CDFA are subject to different statutes, mandates, and directives, some methodological differences are inherent, and must be accepted as beyond the scope of this agreement. Other disagreements or differences should be discussed in a mutually supportive and respectful manner. Satisfactory resolution of such differences will help maintain efficiency and consistency between the two organizations. Therefore be it resolved that OEHHA and CDFA shall:

1. Agree to acknowledge the requirements of all applicable statutes, mandates, and executive directives;
2. Respect the opinions and scientific integrity of all staff from both organizations;
3. Work toward resolution of differences in methods and conclusions by all available consensus-building techniques, including personal telephone calls, teleconferences, videoconferences, or joint discussions in person, with written follow-up on the discussion results, communicated to both organizations; and
4. Agree that some conflicts or disagreements can best be settled by a joint management discussion participated in by both organizations.

b. IMPLEMENTATION PLAN

OEHHA and CDFA agree that since such cooperation already exists a formal implementation plan is unnecessary. OEHHA will continue to inform CDFA about projects underway at OEHHA, including chemicals under review for potential listing, development of safe harbor levels, interpretive guidance, warnings or other activities that may affect California food and agricultural interests.

c. OUTCOMES

1. Sharing scientific expertise between OEHHA and CDFA will improve evaluation of chemicals, determination of safe harbor levels and warnings.

2. Opportunities to improve consistency or to discuss potentially divergent scientific/policy issues will be provided through communication between the agencies.
3. Communication and sharing of ideas between agencies with expertise will result in more effective and efficient governance.

V. LIMITATIONS

a. All commitments made in this MOU are subject to each party's budget priorities. Nothing in this MOU, in and of itself, obligates OEHHA or CDFA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligation. CDFA agrees not to submit a claim for compensation for consultation rendered to OEHHA for activities it undertakes in carrying out this MOU.

b. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both parties.

c. This MOU does not apply to any person outside OEHHA and CDFA.

d. Nothing in this MOU creates any enforceable rights by any third party.

e. OEHHA or CDFA may make factual statements to the public which describe the agencies cooperation with each other.

VI. PROPRIETARY INFORMATION

To carry out the joint work resulting from this MOU, OEHHA and CDFA may need to disclose proprietary information to each other. For the purpose of this MOU, proprietary information is defined as information that an affected business claims to be confidential and is not otherwise available to the public. OEHHA and CDFA each agree to clearly mark confidential information disclosed in writing; and to clearly memorialize in writing, within a reasonable time, any confidential information initially disclosed orally. The parties agree not to disclose, copy, reproduce or otherwise make available in any form whatsoever to any other persons, firm, corporation, partnership, association or other entity information designated as proprietary or confidential information without consent of the proprietor of this information, except as such information may be subject to disclosure under the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and related regulations. In the event such information is disclosed by either agency, that agency agrees to provide the other with reasonable notice prior to the disclosure.

VII. INTELLECTUAL PROPERTY

The parties agree that any copyrightable subject matter, including but not limited to journal articles, training, educational or informational material or software, created jointly by the parties from the activities conducted under the MOU may be copyrighted by OEHHA or CDFA. OEHHA and CDFA mutually agree to a nonexclusive, irrevocable right to reproduce, distribute, make

derivative works, and publish or perform the work(s) publicly, or to authorize others to do the same on their behalf.

VIII. POINTS OF CONTACT

The following individuals are designated as points of contact for the MOU:

a. Office of Environmental Health Hazard Assessment:

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b. California Department of Food and Agriculture:

Karen Ross, Secretary
California Department of Food and Agriculture
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IX. MODIFICATION/DURATION/TERMINATION

This MOU will be effective when signed by both agencies. This MOU may be amended at any time by the mutual written consent of the agencies. The agencies will review this MOU every 5 years to determine whether it should be revised, renewed, or cancelled. This MOU may be terminated by either agency at any time by one agency notifying the other in writing 30 days in advance of the termination date.

X. APPROVAL

California Office of Environmental Health Hazard Assessment	California Department of Food and Agriculture
George Alexeeff	Karen Ross
Signature	Signature
11-25-2013	Nov. 19, 2013
Date	Date