Donations and Salvage

Proposed Consensus Statement

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Goal

Surplus consumer products:

Consumer products offered through the retail supply chain often become “surplus” or unsellable in the primary marketplace, due to changes in consumer demand, the seasonal nature of certain products and other factors that do not affect the integrity of the products. Such products may have significant value if they can be donated or salvaged.

Uncertainty

A key uncertainty is whether a manufacturer, distributor or retailer must know for certain that a surplus product will be donated or salvaged before it ships that product through the reverse supply chain, including a reverse distributor.

Reverse Supply Chain

The “reverse supply chain” refers to the process of moving goods from a retail market for the purpose of capturing value (including to donees or salvagers and intermediary steps in between). Such redistribution may be accomplished by third parties or by the retailer itself.

Applicable Laws

Hazardous Waste Control Law (HWCL) - product is not a waste until:

(1) it is "discarded;" or

(2) it "poses a threat to public health or the environment" and meets certain conditions described below.

- "Discarded" if it is disposed, burned or incinerated, or stored prior to discard or recycling. Once a decision is made to discard or recycle a product, the product becomes a waste and the accumulation, storage, treatment and disposal of that product is regulated as waste management.

- A surplus product is a waste if it poses a threat to public health or the environment and is: (1) not contained in a sound or undamaged container; or (2) mislabeled or not adequately labeled, unless those conditions are corrected within the time specified in the regulations.

The Medical Waste Management Act defines the term "waste" by reference to the HWCL.

Guidance

A surplus consumer product may be sent through the reverse supply chain for possible donation or salvage if it is capable of being donated or salvaged.

A product is not capable of being donated or salvaged if it is:

- Expired, such that donation or salvage is unlawful;
- Adulterated, such that donation or salvage is unlawful;
- Mislabeled or not adequately labeled, such that donation or salvage is unlawful;
- Not contained in a sound or undamaged container, such that donation or salvage is unlawful; or
- Does not have a bona fide use or reuse by others in accordance with California law.

Key Consequences

A surplus consumer product that is capable of being donated or salvaged may be sent through the reverse supply chain for evaluation to determine whether there is a need that can be filled by donation, or the product can be salvaged, or whether the product must be discarded.

A surplus consumer product that is capable of being donated or salvaged (i.e., meets the criteria above) and is being sent through the reverse supply chain becomes a waste at such time as an entity in the reverse supply chain possessing the product makes the decision to discard the product.

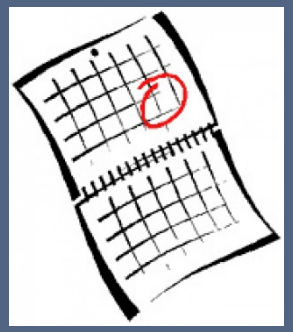
Key Consequences Cont.

- The decision to discard may be reached when that entity determines that there is no current demand for such products, storage or transportation costs would be excessive or other similar factors.
- The entity in the reverse supply chain that has possession of the product and makes the decision to discard is the generator of such waste.
- Reverse distribution facilities receiving surplus products must be qualified to properly identify and manage hazardous waste.

Prohibition/Limitation

It is important to ensure that facilities in the reverse supply chain are not abused as a method of unlawful disposal of surplus consumer products.

To minimize the potential for such unlawful operations, not only must products meet the criteria set forth above, but products that have not been donated or salvaged within one year of receipt by an entity in the reverse supply chain shall be presumed to be waste.



Relevant Law Quotes

Health & Safety Code §25124

(a) Except as provided in subdivision (c), "waste" means any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.

(b) For purposes of subdivision (a), a discarded material is any material that is any of the following:

(1) Relinquished by being any of the following:

(A) Disposed of.

(B) Burned or incinerated.

(C) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

(2) Recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.

(3) Poses a threat to public health or the environment and meets either, or both, of the following conditions:

(A) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(B) It is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(4) Considered inherently wastelike, as specified in regulations adopted by the department.

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22 Cal. Code Regs. §66262.2

(a) "Waste" means any discarded material of any form (for example, liquid, semi-solid, solid or gaseous) that is not excluded by section 66261.4(a) or section 66261.4(e) or that is not excluded by Health and Safety Code section 25143.2(b) or Health and Safety Code section 25143.2(d).

(b) A discarded material is any material which is any of the following:

(1) relinquished as explained in subsection (c) of this section; or

(2) recycled, as explained in subsection (d) of this section; or

(3) considered inherently waste-like, as explained in paragraph (e) of this section.

(c) A material is a waste if it is relinquished by being any of the following:

(1) disposed of;

(2) burned or incinerated;

(3) accumulated, stored or treated, but not recycled, before or in lieu of, being relinquished by being disposed of, burned or incinerated.

(d) A material is a waste if it is recycled, or accumulated, stored or treated before recycling, by being managed:

(1) through being used in a manner constituting disposal:

(A) materials noted with an "*" in column 1 of Table I are wastes when they are:

1. applied to or placed on the land in a manner that constitutes disposal; or

2. used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself is a waste);

(B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are applied to the land and application to the land is their ordinary manner of use are non-RCRA hazardous wastes. Commercial chemical products which are "retrograde materials" as defined in section 66260.10 are not wastes until

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they become “recyclable materials” pursuant to subsection (e) of the definition of “recyclable materials” in section 66260.10;

(2) through being burned for energy recovery:

(A) materials noted with an “*” in column 2 of Table 1 are wastes when they are:

1. burned to recover energy;

2. used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself is a waste);

(B) however, commercial chemical materials listed in section 66261.33, which are discarded commercial chemical products, off-specification species, container residues, or spill residues thereof, and which are fuels are non-RCRA hazardous wastes. Commercial chemical products which are “retrograde materials” as defined in section 66260.10 are not wastes until they become “recyclable materials” pursuant to subsection (e) of the definition of “recyclable materials” in section 66260.10 are not wastes until they become “recyclable materials” pursuant to subsection (e) of the definition of “recyclable materials” in section 66260.10

(3) through being reclaimed: materials noted with an “*” or “**” in column 3 of Table 1 are wastes when reclaimed;

(4) through being accumulated speculatively: materials noted with an “*” or “**” in column 4 of Table 1 are wastes when accumulated speculatively.

[Tables not reproduced]

Quotes

(e) A material is a waste if it is inherently waste-like when it is recycled. The following materials are wastes when they are recycled:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026 and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in articles 3 or 4 of this chapter, except for brominated material that meets the following criteria:

(A) The material must contain a bromine concentration of at least 45%; and

(B) The materials must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(C) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(f) A material is a waste if it poses a threat to human health or the environment and meets either, or both, of the following:

(1) it is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled;

(2) it is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

What Does “Expired” Mean?

FDA Requirements

- With the exception of infant formula, the laws that the Food and Drug Administration (FDA) administers do not preclude the sale of food that is past the expiration date indicated on the label. FDA does not require food firms to place "expired by," "use by" or "best before" dates on food products. This information is entirely at the discretion of the manufacturer.
- There are no regulations or requirements under current United States law that require cosmetic manufacturers to print expiration dates on the labels of cosmetic products. Manufacturers have the responsibility to determine shelf life for products, as part of their responsibility to substantiate product safety. FDA believes that failure to do so may cause a product to be adulterated or misbranded.

Quotes

21 Code of Federal Regulations PART 211 -- CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

Sec. 211.137 Expiration dating.

(a) To assure that a drug product meets applicable standards of identity, strength, quality, and purity at the time of use, it shall bear an expiration date determined by appropriate stability testing described in 211.166.

(b) Expiration dates shall be related to any storage conditions stated on the labeling, as determined by stability studies described in 211.166.

(c) If the drug product is to be reconstituted at the time of dispensing, its labeling shall bear expiration information for both the reconstituted and unreconstituted drug products.

(d) Expiration dates shall appear on labeling in accordance with the requirements of 201.17 of this chapter.

(e) Homeopathic drug products shall be exempt from the requirements of this section.

(f) Allergenic extracts that are labeled "No U.S. Standard of Potency" are exempt from the requirements of this section.

(g) New drug products for investigational use are exempt from the requirements of this section, provided that they meet appropriate standards or specifications as demonstrated by stability studies during their use in clinical investigations. Where new drug products for investigational use are to be reconstituted at the time of dispensing, their labeling shall bear expiration information for the reconstituted drug product.

(h) Pending consideration of a proposed exemption, published in the Federal Register of September 29, 1978, the requirements in this section shall not be enforced for human OTC drug products if their labeling does not bear dosage limitations and they are stable for at least 3 years as supported by appropriate stability data.
https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=211.137

Quotes

Harvard School of Public Health

Since a law was passed in 1979, drug manufacturers are required to stamp an expiration date on their products. This is the date at which the manufacturer can still guarantee the full potency and safety of the drug.

Most of what is known about drug expiration dates comes from a study conducted by the Food and Drug Administration at the request of the military. With a large and expensive stockpile of drugs, the military faced tossing out and replacing its drugs every few years. What they found from the study is 90% of more than 100 drugs, both prescription and over-the-counter, were perfectly good to use even 15 years after the expiration date.

So the expiration date doesn't really indicate a point at which the medication is no longer effective or has become unsafe to use. Medical authorities state expired drugs are safe to take, even those that expired years ago. A rare exception to this may be tetracycline, but the report on this is controversial among researchers. It's true the effectiveness of a drug may decrease over time, but much of the original potency still remains even a decade after the expiration date. Excluding nitroglycerin, insulin, and liquid antibiotics, most medications are as long-lasting as the ones tested by the military. Placing a medication in a cool place, such as a refrigerator, will help a drug remain potent for many years.

http://www.health.harvard.edu/staying-healthy/drug-expiration-dates-do-they-mean-anything

Quotes

"Sell by" date. The labeling "sell by" tells the store how long to display the product for sale. You should buy the product before the date expires. This is basically a guide for the retailer, so the store knows when to pull the item. This is not mandatory, so reach in back and get the freshest. The issue is quality of the item (freshness, taste, and consistency) rather than whether it is on the verge of spoiling. Paul VanLandingham, EdD, a senior faculty member at the Center for Food and Beverage Management of Johnson & Wales University in Providence, R.I., tells WebMD the "sell by" date is the last day the item is at its highest level of quality, but it will still be edible for some time after.

- "Best if used by (or before)" date. This refers strictly to quality, not safety. This date is recommended for best flavor or quality. It is not a purchase or safety date. Sour cream, for instance, is already sour, but can have a zippier, fresh taste when freshly sour (if that's not an oxymoron!)

- "Born on" date. This is the date of manufacture and has been resurrected recently to date beer. Beer can go sub-par after three months. "It is affected by sun," VanLandingham says. The light can reactivate microorganisms in the beer. That's why you have to be especially careful with beer in clear bottles, as opposed to brown or green.

- "Guaranteed fresh" date. This usually refers to bakery items. They will still be edible after the date, but will not be at peak freshness.

- "Use by" date. This is the last date recommended for the use of the product while at peak quality. The date has been determined by the manufacturer of the product.

- "Pack" date. You will find this one on canned or packaged goods, as a rule, but it's tricky. In fact, it may be in code. It can be month-day-year-MMDDYY. Or the manufacturer could revert to the Julian calendar. January would then be 001-0031 and December 334-365. It gets even weirder than that.

http://www.webmd.com/a-to-z-guides/features/do-food-expiration-dates-matter#1

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