PINYON
PUBLIC AFFAIRS

To: Assemblyman Duy Nguyen
From: David Goldwater and Tess Opferman; Pinyon Public Affairs
Date: Monday, May 1, 2023
Subject: Conceptual Amendment: AB322, Kratom Protection Act - DPBH

Currently AB322 puts Kratom regulations in the Department of Agriculture. Through meetings during session, it has been decided that the Division of Public and Behavioral Health is a more appropriate agency to regulate the product.

Proposed change:

- Section 3: ~~"Department" means State Department of Agriculture.~~ **"Division" means the Division of Public and Behavioral Health, Environmental Health Section.**
    - All conforming changes

- Section 9 (2) (a): **(3) Adulterated has the meaning ascribed to it in NAC Chapter 446.**

- Section 9 (2) (d): **(4) Labels shall be in compliance with NAC Chapter 446.**

- Recommendation: Lab tests should be done through an accredited food laboratory. (Section 6 (2)

****

Reference:

NAC 446.0103 "Adulterated" defined. (NRS 439.200**,** 446.940**)** "Adulterated" has the meaning ascribed to it in 21 U.S.C. § 342.

(Added to NAC by Bd. of Health by R069-10, eff. 12-18-2013)

NAC 446.187 Labeling. (NRS 439.200**,** 446.940**)**

1. Packages of food, including, without limitation, processed foods, dietary supplements and packages of food repackaged from bulk prepared in this State, that are for sale in a food establishment, must have labels which have been approved by the health authority. The labels must be printed in English in addition to any other languages required by the health authority. Such labels must be reviewed and approved by the health authority and any fees required must be paid in full before any label may be used.

2. Food that is prepared and stored in a food establishment for later use must have a label that includes the contents and the date on which the food was prepared.

3. Food packaged in a food establishment for retail sale must be labeled as provided in law, including 21 C.F.R. Part 101, "Food Labeling," and 9 C.F.R. Part 317, "Labeling, Marking Devices, and

Containers." Unless otherwise approved in advance by the health authority, label information must include, without limitation:

(a) The name of the food establishment and the place of business of the manufacturer, packer or distributor;

(b) The address of the food establishment, including, without limitation:

(1) The city;

(2) The state; and

(3) The zip code;

(c) The common name of the food or, absent a common name, an adequately descriptive identity statement;

(d) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including, without limitation, a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(e) An accurate declaration of the quantity of contents;

(f) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;

(g) When requested by the health authority:

(1) The telephone number of the food establishment; and

(2) The street number or post office box of the food establishment;

(h) Except as otherwise exempted in 21 U.S.C. § 343(q)(3)-(5), nutrition labeling as specified in 21 C.F.R. Part 101, "Food Labeling," and 9 C.F.R. Part 317, Subpart B, "Nutrition Labeling"; and

(i) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, including, without limitation, a counter card, that discloses the use of canthaxanthin.

4. Prepackaged foods prepared in a food establishment, including frozen sandwiches that have been thawed and other potentially hazardous food (time/temperature control for safety food) contained in boxed lunches that are made for sale and consumption off the premises must have a label that has been approved by the health authority. Unless otherwise approved in advance by the health authority, the label must include:

(a) The name of the food establishment;

(b) The mailing address of the food establishment, including, without limitation:

(1) The street number or post office box;

(2) The city;

(3) The state; and

(4) The zip code;

(c) A list of ingredients in descending order of predominance;

(d) The last date of sale shown clearly as three letters of the month followed by the date;

(e) A list of known allergens, including, without limitation, ingredients made from or containing nuts; and

(f) When requested by the health authority, the telephone number of the food establishment.

5. Bulk food that is available for consumer self-dispensing must be prominently labeled with the following information in plain view of the consumer:

(a) The manufacturer's or processor's label that was provided with the food; or

(b) A card, sign or other method of notification that includes the following information:

(1) The common name of the food or, absent a common name, an adequately descriptive identity statement;

(2) A list of ingredients in descending order of predominance by weight including, without limitation, a declaration of artificial color or flavor and chemical preservatives, if found in the food and if the food is made from two or more ingredients; and

(3) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.

6. Bulk, unpackaged foods, including, without limitation, bakery products and unpackaged foods that are portioned to consumer specification, need not be labeled if:

(a) A health, nutrient content or other claim is not made;

(b) There are no state or local laws requiring labeling; and

(c) The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing establishment that is owned by the same person and is regulated by the health authority that has jurisdiction.

7. Upon review of a dietary supplement, a letter from the health authority will be issued which states that the labels have been reviewed for content only and that the health authority makes no implied or written warranty or guarantee as to the safety of these supplements. Labels for dietary supplements must include:

(a) The name and place of business of the manufacturer, packer or distributor;

(b) The name of the supplement;

(c) The net quantity of the contents by capsule count;

(d) The directions for use, including the quantity of supplement to be taken per day;

(e) The supplement facts panel; and

(f) Other ingredients in descending order of predominance.

8. In addition to the required labeling information, questionable and uncommon ingredients, including those listed by the manufacturer as "other ingredients," must be fully defined and explained, when requested by the health authority, to prove that the questionable ingredient is safe for use.

9. As used in this section, "major food allergen" means:

(a) Milk, eggs, fish, such as bass, flounder, cod, crab, lobster and shrimp, tree nuts, such as almonds, pecans and walnuts, wheat, peanuts and soybeans; or

(b) A food ingredient that contains protein derived from a food described in paragraph (a).

Ê The term does not include any highly refined oil derived from a food described in paragraph (a) or any ingredient derived from such a highly refined oil.

(Added to NAC by Bd. of Health by R069-10, eff. 12-18-2013)