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Dear Ms. Vela:

Thank you for the opportunity to comment on OEHHA's proposed Proposition 65 warning regulations (repealing the current Article 6 and adopting a new Article 6 that includes two Subarticles). We very much support OEHHA's goals to provide more useful information to Californians about their exposures to listed chemicals and to provide more compliance assistance for affected businesses. Overall, while we have concerns about several aspects of the proposed changes (as discussed below), we believe the proposed regulations accomplish those goals and we support their adoption with the important changes recommended below. In light of the diversity of California's population, we particularly support the requirement to provide warnings in languages other than English.

1. Warning language:

During the process of drafting the proposed regulations, OEHHA changed the basic language of the safe harbor warning from "will expose" to "can expose." This change makes the warning significantly more ambiguous and does not meet the "clear" standard of the statute.

The phrase "can expose" in the safe harbor language should be eliminated and the phrase "will expose" should be restored.

2. § 25600.2 Responsibility to Provide Product Warnings:

The current proposal removes the responsibility of most retailers to provide clear and reasonable warnings. We believe this is not consistent with the statute. The statute states, "In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller." The current proposal goes much farther than the statutory requirement. For instance, under proposed Section 25600.2(d)(5), it appears that a retailer with actual knowledge of an exposure to a listed chemical has no obligation to provide a warning to its customers of that exposure unless the supplier of the consumer product meets certain criteria. Worse yet, the supplier criteria pertain to issues like the size of the supplier that neither the retailer nor enforcement authorities are likely to have knowledge about. These provisions are likely to create confusion, lead to further litigation, and ultimately undermine rather than further the purposes of the statute.

In today's global economy, when producers and packagers of most consumer products are outside of the U.S., it is crucial that retailers do their part to provide the information that consumers need and which Proposition 65 guarantees. Therefore, this section should be revised to provide retailer responsibilities that are consistent with the statute.

3. § 25602 Chemicals Included in the Text of a Warning:

We strongly support including the name(s) of the relevant chemical(s) in Proposition 65 safe harbor warnings. This will further Proposition 65's right-to-know purpose by providing more meaningful information to consumers who are seeking, for instance, to avoid cumulative exposure to a particular chemical or to educate themselves more about their choices. However, the intent of this section is severely weakened by the exception "Except as provided in Section 25604(c)." Product labels are the most important place for the chemical name information to be included since labels are most likely to be

read by consumers, and because consumers can bring product labels to their home or their health care professional for advice.
In addition, a method should be provided for adding chemicals to the list in Subsection (a) since other chemicals (either ones currently listed under Proposition 65, or newly listed chemicals) may be appropriate to name in a warning due to their widespread use, toxicity, or for other reasons.

The on-product label exception should be eliminated. Methods of adding chemicals to Subsection (a) should be added.

4. § 25603 Product Exposure Warnings – Methods of Transmission:

Subsection (a)(2) allows these warnings to be provided "during the purchase of the product." This is not a "reasonable" method for providing warnings as required by the statute. To avoid an exposure, consumers should not have to go through a check-out line twice, or to repeat often cumbersome on-line purchase procedures.

In addition, Subsection (b) provides that warnings about internet purchases can be provided by a hyperlink. This is not consistent with the requirement that warnings be clear and reasonable because too many consumers will miss the hyperlink or be confused by its relevance or applicability.

The phrase "or during" should be eliminated from Subsection (a)(2). The phrase "provided by a clearly marked hyperlink on the product display page, or otherwise" should be deleted from Subsection (b).

Sincerely,

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