



April 8, 2015

Via email (PDF) Only (P65Public.Commens@oehha.ca.gov)

Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

Re: Proposed Revisions to Proposition 65 Regulations on Clear and Reasonable Warnings

Dear Ms. Vela:

On behalf of the Grocery Manufacturers Association¹ (“GMA”), we incorporate by reference the comments of the California Chamber of Commerce Coalition regarding the January 16, 2015 Notice of Proposed Rulemaking and proposed repeal and replacement of the Proposition 65 regulations on Clear and Reasonable Warnings found in Title 27, Article 6 of the California Code of Regulations. We also write separately, however, to remind the Office of Environmental Health Hazard Assessment (“OEHHA”) that this regulatory proposal has always been intended to be a relatively small part of a broader set of reforms to Proposition 65 and its implementing regulations and to urge OEHHA to devote its resources to longstanding and more pressing Proposition 65 issues that continue to weaken the state’s business climate.

As you know, the origin of the subject regulatory proposal is Governor Jerry Brown’s call to reform Proposition 65 almost two years ago. The Governor called on his administration, stakeholders, and the Legislature to discuss the following reforms:

- Cap or limit attorney’s fees in Proposition 65 cases.
- Require stronger demonstration by plaintiffs that they have information to support claims before litigation begins.
- Require greater disclosure of plaintiff’s information.
- Set limits on the amount of money in an enforcement case that can go into settlement funds in lieu of penalties.
- Provide the State with the ability to adjust the level at which Proposition 65 warnings are needed for chemicals that cause reproductive harm.
- Require more useful information to the public on what they are being exposed to and how they can protect themselves.

¹ Based in Washington, D.C., the Grocery Manufacturers Association is the voice of more than 300 leading food, beverage and consumer product companies that sustain and enhance the quality of life for hundreds of millions of people in the United States and around the globe. Founded in 1908, GMA is an active, vocal advocate for its member companies and a trusted source of information about the industry and the products consumers rely on and enjoy every day. The association and its member companies are committed to meeting the needs of consumers through product innovation, responsible business practices and effective public policy solutions developed through a genuine partnership with policymakers and other stakeholders. The food, beverage and consumer packaged goods industry in the United States generates sales of \$2.1 trillion annually, employs 14 million workers and contributes \$1 trillion in added value to the economy every year.

These issues were set out as part of an overall effort to “pursue regulatory changes to improve the state’s business climate,” as noted in the Governor’s May 7, 2013 press release.

The Governor’s office convened intensive discussions among stakeholders in the summer and fall of 2013, during which these and other proposals were discussed in great detail. The one concrete regulatory action resulting from these discussions to date is the subject proposal to overhaul OEHHA’s regulations concerning clear and reasonable warnings. Although GMA appreciates the effort that OEHHA has put into this proposal, including the time that OEHHA staff have spent with GMA and other interested stakeholders, we must reiterate that the issues addressed by this proposal are not among our members’ priorities for reform of Proposition 65.

On the contrary, there are many aspects of Proposition 65 and its implementing regulations that GMA and its members, among others, have been asking OEHHA to address for many years -- in some cases more than a decade. OEHHA took a useful step toward identifying these issues with its September 16, 2014 Request for Public Participation on Potential Regulatory Actions, which requested ideas on the following concepts, among others:

- Alternative risk levels for chemicals in foods (25703(b))
- Update the Naturally Occurring regulation (25501)
- Update and streamline the Safe Use Determination process (25104)
- Where Interpretive Guidance is needed

GMA and dozens of other members of the business community submitted extensive comments to OEHHA as part of the California Chamber of Commerce Coalition in November 2014. To date there has been little evidence of activity by OEHHA to respond to these submissions or otherwise engage on efforts to reform these aspects of Proposition 65 and its implementing regulations. We urge OEHHA to devote its resources toward these issues, and we stand ready to work with OEHHA to develop and refine proposals in these areas that will address the pressing problems of Proposition 65 that our members and the entire California business community would like addressed as part of the Governor’s reform efforts.

Thank you for considering these comments. GMA and its members appreciate the opportunity to continue this dialog with OEHHA and look forward to progress on these core issues of Proposition 65 reform.

Sincerely,



John Hewitt
Grocery Manufacturers Association