



January 25, 2016

VIA EMAIL to P65Public.Comments@oehha.ca.gov

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

**RE: PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6 –  
CLEAR AND REASONABLE WARNINGS - PROPOSITION 65**

Dear Ms. Vela:

The American Beverage Association appreciates the opportunity to comment on the Office of Environmental Health Hazard Assessment's ("OEHHA") November 27, 2015, Notice of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations (the "Proposed Regulations"). The American Beverage Association is the trade association representing the broad spectrum of companies that manufacture and distribute non-alcoholic beverages in the United States, many of which could be impacted by the proposed regulations.

We appreciate the changes OEHHA has made in the Proposed Regulations in response to comments it received on its January 2015 proposed regulations (which proposal was withdrawn in November 2015). However, there are several concerns that remain. We incorporate by reference the comments of the California Chamber of Commerce coalition and the comments of the Grocery Manufacturers Association regarding the Proposed Regulations, and submit this letter to address several additional issues that specifically impact the food and beverage industry.

*Method of Transmission - Shelf Tags or Signs*

In response to stakeholder concerns regarding space limitations on shelf tags and signage, the Proposed Regulations provide that a product-specific warning given on a shelf tag or on a shelf sign be provided in a type size no smaller than *one half* the largest type size used for other consumer information on the shelf tag or shelf sign. (Section 25602(a)(1).) However, the proposed regulation for food-exposure warnings includes a general requirement that "type size shall be no smaller than the largest type

size used for other consumer information on the product.” (Section 25607.1(a).) We request that OEHHA amend Section 25607.1(a) to clarify that it does not supersede the provision that warning language on shelf tags or shelf signs may be one half the largest type size used for other consumer information. Specifically, we propose the following revision to Section 25607.1(a), “. . . . Except as set forth in Section 25602(a)(1), the type size shall be no smaller than the largest type size used for other consumer information on the product.”

#### *Label “Box” Requirement*

The requirement that a food product warning provided on the product label be enclosed in a box remains problematic. (See Section 25607.1(b).) Such a requirement may confuse and mislead consumers by signaling a more significant or acute level of risk than that being presented by the exposure at issue. In addition, it could cause consumers to think that other protective or precautionary warnings being given, which are not required to be boxed in, are less significant or concern less significant risks than that for which the Proposition 65 warning is being given. Therefore, we request that OEHHA remove the in-box requirement from proposed Section 25607.1(b).

#### *Chemical Identification Requirement*

We continue to have concerns regarding the requirement to specifically identify chemicals in the warning language. Including the name of one or more chemicals makes the warning language cumbersome, lengthy and potentially unmanageable for some products. In addition, the chemical identification requirements will almost certainly lead to additional litigation. As currently drafted the regulations suffer from ambiguous drafting, leaving room for conflicting interpretations and, as such, will undoubtedly result in increased “bad warning” enforcement actions. For these reasons, we request that OEHHA eliminate the requirement that warnings provide the name of one or more chemicals for which the warning is being provided.

#### *Truncated On-Product Warning Option*

Proposed Section 25603(b) provides a short version of the consumer goods warning language for on-product warnings. As stated in the Initial Statement of Reasons, this option is available to accommodate product manufacturers’ concerns that a longer warning message will not fit on the labeling or packaging of some small products. The same concerns exist for food and beverage products in that many such products have limited available space for a longer warning message, thereby effectively eliminating the on-product warning option. Proposed Section 25607.2, however, does not include a shortened warning option for food exposures. Given that OEHHA believes its shortened language “will provide useful information to individuals while avoiding unwieldy on-

product warnings” (ISOR at p. 29), such language should also be permitted for food exposure warnings. Therefore, we request that new subsections (b) and (c) be added to Section 25607.2 as follows:

25607.2(b): An on-product warning label may be provided using all the following elements:

(1) The word “WARNING” in all capital letters, and bold print in a font no smaller than the largest type size used for other consumer information on the product.

(2) For exposures to a listed carcinogen, the words, “Cancer - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

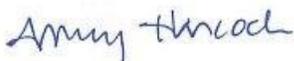
(3) For exposures to a listed reproductive toxicant, the words, “Reproductive Harm - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

(4) For exposures to both a listed carcinogen and a reproductive toxicant, the words, “Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).”

25607(c): A person providing an on-product warning label pursuant to subsection (b) is not required to include within the text of the warning the name or names of a listed chemical.

We appreciate the opportunity to comment on the Proposed Regulations and we thank you for the considering our comments.

Sincerely,



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Amy Hancock  
American Beverage Association