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INTERNATIONAL
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Mario Fernandez
Office of Environmental Health Hazard Assessment
1001 I Street, 22nd Floor
Sacramento, CA

Sent Electronically to: mario.fernandez@oehha.ca.gov

**Re: MODIFICATION TO TEXT OF PROPOSED REGULATION TITLE 27,
CALIFORNIA CODE OF REGULATIONS PROPOSED SECTION 25205 LEAD
AGENCY WEBSITE**

Dear Mr. Fernandez:

The Alliance for Natural Health USA (“ANH-USA”) appreciates this opportunity to comment on the proposed modification to the text of the proposed section 25205 of Title 27 of the California Code of Regulations.

ANH-USA is a non-profit membership-based organization consisting of healthcare practitioners, natural product companies and almost 500,000 consumer members. ANH-USA protects and promotes access to information concerning the interaction between health and the environment, and the benefits of foods, dietary supplements, and lifestyle choices. Through public education, ANH-USA arms consumers with the tools they need to make informed, individualized decisions and take personal responsibility for their health.

ANH-USA is highly supportive of the intent of the Safe Drinking Water and Toxic Enforcement Act (“Prop 65”), to prevent public exposure to carcinogenic and reproductive toxins, but we remain deeply concerned about the problematic implementation and enforcement of the law. The proposed lead agency website will likely exacerbate an already abusive Prop 65 climate by increasing consumer confusion about Prop 65 warnings, facilitating predatory lawsuits, and dramatically increasing compliance costs for manufactures doing business in California. In addition, ANH-USA questions whether the Office of Environmental Health Hazard Assessment (“OEHHA”) has the statutory authority to enforce these new requirements.

Website Requirements Overly Burdensome:

ANH-USA is concerned that the proposed lead agency website will be overly burdensome on businesses in California and will not provide meaningful information to consumers.

The proposal requires manufacturers, producers, importers and distributors of products bearing a Prop 65 warning to provide a great deal of complicated and highly technical information. The information may include everything from the identities of the chemicals in the product necessitating a warning to the location or components of a product to the concentration of the chemicals in the product to “any other information the lead agency deems necessary.” Businesses would need specific tests for any pertinent chemicals, in addition to the testing that is done to determine whether a warning label should be applied to the product. Businesses will also incur costs by monitoring the website to ensure that OEHHA is not posting information that is inaccurate, misrepresents their products, or otherwise misleads the public. All of these requirements will be particularly onerous for small and mid-sized companies.

It is also unclear how the collected information will be used. This information could have serious legal and financial implications for businesses, given the highly litigious nature of Prop 65 enforcement. It would be very damaging to businesses if information shared on the lead agency website provides yet more ammunition for the predatory lawsuits which have flourished since Prop 65 was enacted. These lawsuits do nothing to enhance consumer safety and instead have created an entire industry based around seeking settlements and attorneys’ fees for the benefit of a handful of private entities. It is our fear that the information shared on the website will not assist consumers as intended, but will instead be used as a roadmap for new litigation by enterprising plaintiffs’ attorneys.

Lack of Authority:

Prop 65 only requires businesses to provide a “clear and reasonable” warning before knowingly exposing individual to Proposition 65 listed chemicals. OEHHA lacks the authority to require or compel additional information to be provided.

Conclusions and Recommendations:

The requirements put forth in this proposal exceed the statutory authority granted to OEHHA under Prop 65 and will be extremely onerous for businesses. The required information sharing will simply add additional costs to the regulated community with no evidence of value to residents of California.

ANH-USA recommends that OEHHA instead provide the option to businesses to provide such supplemental information for the purpose of posting such information on its website under Section 25600(d). If information collection is voluntary, Section 25600(b) of the proposal is unnecessary and should be eliminated entirely.