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January 8, 2019

Ms. Monet Vela  
Office of Environmental Health Hazard Assessment  
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Filed via e-mail:  
[P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)  
*Subject line: Section 25600.2*

**Re: Section 25600.2**

Public comment regarding clear and reasonable warnings

Dear Ms. Vela:

The Food Lawyers® herewith respectfully files its public comment regarding The Office of Environmental Health Hazard Assessment's ("OEHHA") proposed rulemaking respecting Title 27 California Code of Regulations §25600.2. We appreciate OEHHA's proffered improvements to §25600.2 and we feel that two further refinements would facilitate compliance by parties subject to the law.

**27 CCR §25600.2(b)(3): Number of shelf signs or tags**

§25600.2(b)(3) provides:

[The written notice to the authorized agent] *(i)includes all necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for products sold on the internet, that satisfies Section 25249.6 of the Act;*

We think that as a practical matter, it is impossible for the "... the manufacturer, producer, packager, importer, supplier, or distributor of a product ..." ("Purveyor") to know what number of "shelf signs or tags" would be "necessary" to equip retailers to give the "necessary warning." If the Purveyor is dealing with someone in the supply chain other than the retailer, the Purveyor has no idea to whom his customer ("wholesale reseller") is reselling the Purveyor's product. The identities of the wholesale reseller's customers is trade secret information that will never be disclosed to the Purveyor.

Equally, the Purveyor won't know what is the "necessary" number of "shelf signs or tags" even when selling directly to the retailer. The Purveyor may not know how much of a shipment will be sold in California and even if he knows how many outlets the retailer has in California, there is no guarantee that all of those outlets will carry the Purveyor's product.

We believe the remedy to this situation is to provide the Purveyor with a “safe harbor” number of “shelf signs or tags” and require the Purveyor to offer to provide more upon request. We propose that the following language be added to §25600.2 and be identified as §25600.2(b)(5):

- (5) *The number of shelf signs or tags to be provided with the notice shall be the lesser of*
  - (i) *respecting existing customers and/or existing products, the average number of shipping cartons of the subject SKU sold monthly to the customer during the preceding twelve months, or*
  - (ii) *for new customers and/or new products, the number of shipping cartons in the first shipment, or*
  - (iii) *25.*

*When providing shelf signs or tags, the written notice prescribed by §25600.2(b) shall include the following sentence: “To receive more shelf signs or tags, please send an e-mail to [e-mail address] stating the SKU, the number of shelf signs or tags needed and where they should be shipped.”*

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**27 CCR §25600.2(b)(c)(2): On whom notice should be served**

OEHHA has proposed that the following new language be added to §25600.2(b)(c)

*(2) Where a business has not designated an authorized agent, the manufacturer, producer, packager, importer, supplier, or distributor may serve the notice on the legal agent for service of process for the business.*

We feel the proposed language is an excellent addition and provides the Purveyor with an easily ascertainable recipient for the notice. We are concerned, however, that some agents for service of process will be persons or entities located outside of California who will become confused by receipt of a box containing letters, lists of SKUs and shelf signs and/or tags. Further, the standard contract for many commercial multi-state agents for service of process requires the agent to receive the legal process (i.e., a summons and complaint printed on paper) and forward it to the principal -- -- usually by e-mail. The principal’s contract with these agents for receiving service of process does not contemplate or include receipt of cartons or boxes.

We believe this situation can be remedied by adding the following words after the end of OEHHA’s proposed paragraph §25600.2(b)(c)(2): “... or the chief executive officer of the business.” The entire paragraph, including our proposed additional language **highlighted in yellow** would read as follows:

*(2) Where a business has not designated an authorized agent, the manufacturer, producer, packager, importer, supplier, or distributor may serve the notice on the legal agent for service of process for the business **or the chief executive officer of the business.***

We feel that enabling service on the chief executive officer of the business provides a practical, workable solution for giving good notice to the company in question.

### **Conclusion**

Given that our firm represents companies subject to Prop 65, we are grateful for OEHHA's refinements to §25600.2 that facilitate compliance with the warning statute. We hope our suggested additions can operate as further aids to regulatory compliance.

Sincerely,

***The Food Lawyers®***

*George C. Salmas*

By: \_\_\_\_\_

George C. Salmas  
Managing Principal