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April 19, 2022

### **SUBMITTED VIA ONLINE PORTAL**

Attn: Monet Vela  
Office of Environmental Health Hazard Assessment  
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P. O. Box 4010  
Sacramento, California 95812-4010  
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**Re: NAFEM Comments on OEHHA's Second Modification  
(Apr. 5, 2022) to its Proposed Rulemaking: Clear and  
Reasonable Warnings Short-form Warnings (Jan. 8, 2021)**

Dear Ms. Vela:

The North American Association of Food Equipment Manufacturers (NAFEM) previously submitted certain comments to the Office of Environmental Health Hazard Assessment (OEHHA) regarding: (i) its Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings (January 8, 2021) (Proposed Rulemaking); and (ii) Notice of Modification of Text (Dec. 17, 2021) (First Modification).

On April 5, 2022, OEHHA issued a notice that “the proposed regulatory text is being further modified.” (Overview of Second Modification.<sup>1</sup>)

NAFEM is a trade association of more than 500 commercial foodservice equipment and supplies manufacturers – a \$14.9 billion industry. These businesses, their employees and the products they manufacture, support the food-away-from-home market – which includes more than one million locations in the U.S. and countless more around the world. Member companies sell either directly or through distribution relationships indirectly into California, and thus OEHHA's regulations, including Proposition 65 labeling mandates, apply.

In response to the Second Modification, NAFEM refreshes and reincorporates its prior comments as if fully set forth herein, but offers the following additional comments with respect to the Second Modification:

- NAFEM understands that “[t]he label size and package shape limitations on the use of the short-form warning were removed in Section 25602(a)(4). This modification means that the short form can be used on product labels of any size, regardless of package size and shape.” (Overview of Second Modification.)

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<sup>1</sup> Notice Second 15-Day Modification of Text for Proposed Amendment: Clear and Reasonable Warnings - Short Form, <https://oehha.ca.gov/proposition-65/cnr/notice-second-15-day-modification-text-proposed-amendment-clear-and-reasonable>.

- NAFEM also understands that “[t]he requirement in Section 25602(a)(4) that the font type size must be the same as the largest type size providing consumer information was removed. The existing provision requiring a minimum of 6-point type size when using short-form warnings remains unchanged.” (*Id.*)
- Finally, NAFEM understands that “[t]he date that the regulation becomes operative has been modified to be two years rather than one year after the effective date of the amendments in Subsections 25602(e) and 25607.2(c).”

With respect to the foregoing changes, NAFEM’s comments are based on its members’ experience in complying with Proposition 65. OEHHA’s April 5, 2022 proposed modifications appear to be consistent with NAFEM’s comments and we believe improve OEHHA’s regulatory approach for all stakeholders.

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Please contact the undersigned if NAFEM can provide any additional insight or assistance. We would be happy to work with OEHHA on further development of the Proposed Rulemaking, the First Modification, and/or the Second Modification.

Respectfully submitted,



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