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June 28, 2024

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, CA 95812-4010

Re: Comments on Modification to Proposed Amendments to Regulations Clear and Reasonable Warnings, Safe Harbor Methods and Content

Dear Ms. Vela:

On behalf of a client, I write to request clarification from the agency as to the proposed modification to add §25602(b)(2) to Title 27 of the California Code of Regulations. The proposed new subsection reads in relevant part: “For internet purchases made before [...three years after the effective date of the 2023 amendments], a retail seller is not responsible under Section 25600.1(e)(4) for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates a short-form warning...” As drafted, this proposal could be read to make internet retail sellers responsible for providing an updated short-form warning well before three years after the effective date of the 2023 amendments. This would impose additional costs on internet retail sellers that have not been accounted for in OEHHA’s Economic and Fiscal Impact Statement. *See* Initial Statement of Reasons, fn. 44. This result also would be inconsistent with the governing statute which requires the agency to “minimize the burden on retail sellers of consumer products.” Health & Safety Code § 25249.11(f).

The agency originally proposed that its updated short-form warnings would be the regulatory safe harbor two years after the effective date of the 2023 amendments. Comments submitted to the original proposal noted the significant burden that the proposal would place upon the regulated community and explained how the agency’s Economic and Fiscal Impact Statement failed to account for the full cost of that burden. In response, the agency modified its proposed amendment to § 25603(c) to provide the regulated community three years to implement the updated short-form warning safe harbors. However, in also adding the proposed §25602(b)(2), the agency has potentially significantly shortened the time period for internet retail sellers to develop and implement the programming and on-line infrastructure necessary to support the updated short-form warnings.

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While manufacturers and suppliers would have a three-year period following the effective date of the 2023 amendments in which they could choose to continue to meet the safe harbor by using the existing short-form warnings, a manufacturer or supplier could also choose to use the updated short-form warnings the day after the effective date of the 2023 amendments and give notice of same to its internet retail sellers under § 25600.2(b) and (c). In that event, under the agency's proposed subsection §25602(b)(2), the retail seller would be responsible for proving the updated short-form warnings 60 days thereafter, which would be a **mere 61 days** after the effective date of the 2023 amendments. My client has millions of items for sale online in its store. Even a small percentage of those items is a large number. The agency has not addressed the feasibility of an internet retail seller meeting the updated short-form warning safe harbors for a potentially large number of items a mere 61 days after the effective date nor is the cost to do so addressed in OEHHA's Economic and Fiscal Impact Statement. In contrast to the statute, the proposed subsection §25602(b)(2), as drafted, also places more burden on retail sellers than suppliers, who may always choose to take the full three-year period to invest the resources necessary to meet the updated short-form warning safe harbors.

My client requests that OEHHA revise its proposed new subsection §25602(b)(2) as follows (additions underscored):

(2) For internet purchases made before [Office of Administrative Law to insert date that is three years after the effective date of the 2023 amendments], a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until [Office of Administrative Law to insert date that is three years after the effective date of the 2023 amendments] or 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section 25603(c) with content compliant with Section 25603(b), whichever is later.

Very truly yours,



Amy P. Lally
Partner