January 25, 2016

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

Sent electronically to: P65PublicComments@oehha.ca.gov

RE: PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6 – CLEAR AND REASONABLE WARNINGS

Dear Ms. Vela:

Family Winemakers of California (FWC), an association of small, family-owned premium wine producers, wishes to advise you of its concern with several of the proposed changes to the Clear and Reasonable Warning as expressed by the California Chamber of Commerce, and to further underscore the problems that could arise in the lack of clarity created under section 26603 (b): products containing on-product warnings that are also sold via internet or mail order catalog.

As you may be aware, the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) requires that any alcoholic beverage containing .5% alcohol or higher is required to have a Health Warning Statement on the label. The Health Warning statement must appear on all wine containers for sale or distribution, must be legible and appear on a contrasting background, and must appear separate and apart from all other label information.

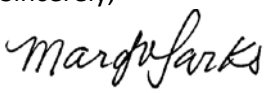
In conjunction with federal law, Proposition 65 requires that alcoholic beverages that are sold or delivered via the mail must also provide a Proposition 65 warning "on or in the shipping container or delivery package in such a manner so that the warning message is likely to be read by the recipient prior to consumption of the alcoholic beverage(s)."

Given the federal on-bottle warning requirement as well as the on/in box labeling requirement, we believe that concerned that OEHHA's new proposal might be duplicative in that it leaves unanswered whether internet or mail order catalog retailers who sell products bearing on-product warning labels must also warn online or within the catalog using the methods of transmission identified in proposed section 25602 subsections (b) and (c). Absent a regulatory clarification, the Proposal can be interpreted to promote an unprecedented warning regime wherein certain products would require *two* Proposition 65 warnings merely because of the manner in which they are sold. Of course, if on-product warning labels in brick-and-mortar stores are clear and reasonable under the law, then so too should on-product warning labels for products sold online or via mail order catalogs. In both scenarios, the consumer would receive a warning prior to exposure, in furtherance of the purpose of Proposition 65. The Proposal's lack of clarity on this issue, however, fundamentally undermines OEHHA's intent to encourage the use of on-product warnings. To achieve OEHHA's goal and avoid such an unprecedented warning burden, the Proposal must include an express statement that a business providing an on-product warning label pursuant to section 25603 subsection (b) need not provide a warning using any other method. We join the California Chamber of Commerce in recommending adding newly proposed subdivision (d) to section 25603:

(d) A retail seller that sells a product containing an on-product warning label pursuant to subsection (b) via catalog or the internet is not required to provide an additional warning for that product using the methods of transmission identified in Section 25602 subsection (b) or (c).

Thank you for the considering our comments. We appreciate the opportunity to participate in this very important regulatory process.

Sincerely,



Margo Parks

Political Solutions for Family Winemakers of California