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via electronic transmission

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Subject: Draft Proposed Amendments to California Consumer Products Regulation; “Other Topics” Discussed During the Third Public Webinar¹

Dear Mr. Ramalingam, Mr. Calavita and Mr. Berghouse,

The Household & Commercial Products Association (HCPA) appreciates the opportunity to file additional comments on the draft proposed amendments that were presented and discussed during the third public workshop that was held on April 14.

HCPA opposes the draft proposal to review “web-based or other product claims” because it is vague and overbroad.

HCPA understands CARB’s assessment that “consumers are receiving increasing product information on-line in lieu of or in addition to the physical product label.”² However, HCPA members have concerns that the scope of the draft proposed regulation is more extensive than necessary to achieve its goal of ensuring that product information found on a manufacturer’s website is consistent with that found on the physical product label. Specifically, HCPA strongly objects to CARB’s draft proposal because it is vague and overbroad.

As an initial matter, HCPA respectfully urges CARB staff to delete the new draft proposed definition of the term “labeled” [proposed Section 94508(a)(79)] in its entirety. At a minimum, the proposed wording is imprecise.

¹ On April 14, 2020, CARB staff conducted the third public workshop to discuss draft regulatory strategies for meeting the commitments for VOC reductions set forth in the 2016 State Strategy for the State Implementation Plan. A copy of the CARB staff’s PowerPoint presentation is found at: https://ww2.arb.ca.gov/sites/default/files/2020-04/Workshop_Presentation_April_14_2020_final_2.pdf. Other relevant documents are posted on the CARB website at: <https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/regulatory-activity-workshops-meetings>.

² “February 26, 2020 Public Work Group Meeting Discussion Paper,” CARB, at p. 5. See <https://ww2.arb.ca.gov/sites/default/files/2020-02/Consumer%20Products%20Regulation%202-26-20%20WG%20Discussion%20Document.pdf>

Instead of creating a new definition of the term “labeled,” HCPA recommends that CARB amend the existing definition of the term “label” to include any other written, printed, or graphic information that is specifically incorporated in the product label by reference.

Therefore, HCPA respectfully recommends that CARB make the following revisions to the draft proposed definition for the term “label”:

Consumer Product Regulation, Section 94508(a):

(78) “Label” means any written, printed, or graphic matter: 1) that is affixed to, applied to, attached to, blown into, formed into, molded into, embossed on, referenced on, or appearing upon, or connected with any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package, 2) that accompanies the consumer product or consumer product package at any time during its sale, supply, or offer for sale for use in the State of California, for the purposes described in item 1 of this paragraph, or 3) to which reference is made in any written printed or graphic matter described in item 1 or 2 of this paragraph.

For clarity and emphasis, HCPA recommends that “referenced on” be moved to a new item 3, which is added at the end of the paragraph. HCPA believes that, as currently drafted, “referenced on” is lost in the surrounding text, and its importance is diminished.

HCPA respectfully recommends that CARB staff strike the words “or connected with,” because the meaning of the term is vague and overly broad. Specifically, HCPA is concerned that the term could encompass any kind of written, printed, or graphic information that has any kind of connection with a consumer product or its package and provides any information about the product or the package’s contents that appear on third-party websites. It is unreasonable to expect that product manufacturers can control the claims and advertising statements made by third-party merchants. Therefore, HCPA recommends that the words “or connected with” be removed.

HCPA respectfully recommends that CARB make the following revisions to the draft proposed text of the “Most Restrictive Product” provision [17 CCR § 94512(a)(3)]:

(3) Where a manufacturer’s claims regarding a product differ substantially across different materials that qualify as a “label” under section 94508(a)(78) of this title, such as between the label affixed to a consumer product and the website to which reference is made on the label affixed to the product, the product shall fall into the product category with the most stringent limit for the claims made in any of the materials.

CARB staff cited FIFRA as a precedent for the draft proposal to review web-based or other product claims.³ Thus, it is important to understand that under FIFRA, EPA can prosecute “differing claims” only when these statements are made in connection with (*i.e.*, there is some demonstrable connection to) a specific sale or distribution of a product.

Finally, the scope of product label claims should not include customer reviews that may appear on company-owned Internet sites. Customer reviews are opinions – not product claims made by manufacturers. Furthermore, any attempt by companies to review, or otherwise limit customers’ feedback would undermine the credibility of the company-owned website.

Conclusion

HCPA appreciates CARB Staff’s consideration of issues addressed in this additional comment document. HCPA members are continuing to develop consensus positions on the Two-Percent Fragrance Exemption and will provide supplemental comments at a future date.

Please contact us if you have questions about the issues addressed in these comments.

Respectfully,

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cc: Jose Gomez, Manager, Technical Development Section, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division
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³ “February 26, 2020 Public Work Group Meeting Discussion Paper,” CARB, at p. 5.