AMERICAN APPAREL & FOOTWEAR ASSOCIATION

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September 15, 2025

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

RE: Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce [Docket No. OLP182]

Dear Mr. Schilling,

On behalf of the American Apparel & Footwear Association (AAFA), we are providing comments to the Department of Justice (DOJ) regarding its Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce [Docket No. OLP182].

We submit these comments to bring to the Department's attention, and thereby to the attention of the Administration as a whole, the deleterious effects on commerce in and between States from the implementation of Proposition 65 in the State of California, the patchwork approach to the regulation of Per- and Polyfluoroalkyl Substances (PFAS) across several States, and the Utah Bedding, Upholstered Furniture and Quilted Clothing Program. These programs and approaches to regulation unnecessarily impede commerce, particularly for small businesses, and therefore increase the cost of necessities for American consumers.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,100 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its more than 3.6 million U.S. workers, and its contribution of more than $523 billion in annual U.S. retail sales. AAFA drives progress on three key priorities: Brand Protection; Supply Chain & Sourcing; and Trade, Logistics, & Manufacturing. AAFA approaches this work through the lens of purpose-driven leadership in a manner that supports each member's ability to build and sustain inclusive and diverse cultures, meet and advance ESG goals, and draw upon the latest technology.

With our members engaged in the production and sale of clothing and footwear, we are on the front lines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make.

AAFA and our members are proud advocates for regulatory requirements that can effectively protect human health and the environment. Regulation plays a critical role in furthering our industry's efforts. But only if regulations are designed properly, serve their purpose, and are properly enforced. That is why we recently launched the *THREADS Sustainability and Social Responsibility Protocol*. We believe that the *THREADS Protocol* will speed up the development of policies that are effective and catalyze meaningful progress. *THREADS* calls for policies that are:

- **T**ransparently Developed and Enforced

- **H**armonized Across Jurisdictions and Industries
- **R**ealistic in Terms of Timelines
- **E**nforceable
- **A**djustable
- **D**esigned for Success
- **S**cience-Based

It is our understanding that DOJ, through its Request for Information, also seeks to ensure that regulations serve their intended purpose without unduly stymying commerce and entrepreneurship. In that spirit, we provide the following comments.

Proposition 65

Proposition 65 (Prop 65), otherwise known as the Safe Drinking Water and Toxic Enforcement Act, was enacted in California in 1986. Prop 65 requires businesses to inform Californian consumers about exposures to listed chemicals found by the California Office of Environmental Health Hazard Assessment (OEHHA) to cause cancer, birth defects, or other reproductive harm. While Prop 65 can be enforced by certain California officials, such as the California Attorney General's Office, in reality nearly all enforcement is conducted by a small number of private plaintiff law firms that derive tens of millions of dollars annually from settlements.

According to OEHHA, "any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law." This means that *anyone* can initiate a lawsuit against a company alleged to be in violation of Prop 65, which usually takes the form of private citizens and attorneys, often through shell organizations, issuing a "60-day notice" to a company informing them that their product is suspected to expose consumers to a chemical/chemicals on the Prop 65 list, without first providing a warning, and that the complainant intends to file a private enforcement action.

Although well-intentioned, Prop 65 does not require or prescribe a testing protocol to certify that your product does not contain any of the over 900 listed chemicals, many of which are not regulated at the federal level. This has resulted in a system where effectively any amount of a Prop 65 chemical can result in lengthy and expensive legal proceedings, often for chemical concentrations that present no risk of harm to consumers. Even trace amounts of chemicals, created by environmental factors, can trigger Prop 65 60-day notices from the cottage industry of Prop 65 bounty hunters who routinely test products for minimal chemical concentrations.

Prop 65 can be extremely costly and burdensome to business as it authorizes penalties up to $2,500 per day per violation. Private plaintiffs can recover both their attorney fees and a percentage of the final penalty. Faced with such targeted efforts, companies often agree to settle out of court. Last year, there were more than 1,000 out-of-court settlements and over 300 in-court settlements, totaling approximately $100 million. These settlement costs do not include the cost to defend the actions or the actual cost of compliance with Prop 65, which is significant.

Chemicals are added to the Prop 65 list through several different mechanisms, none of which require clear evidence of cancer or reproductive toxicity harms to humans. These listings often rely on evidence far removed from plausible showing any human risk. For example, when OEHHA added Bisphenol A to the Prop 65 list, the evidence on which the listing relied for its determination of female reproductive toxicity included dosing mice with BPA pellet implantations. At the observable level of estrogen-induced changes,

the necessary dose would be the equivalent for humans of injecting about a nickel's worth (5 gram) of BPA. Obviously, this exposure pathway is not plausible or relevant to humans. Further, some of the chemicals on the Prop 65 list do not have a recognized scientific test that can be used to confirm chemical presence below a threshold amount. For example, given that BPS has no safe harbor exposure threshold, and that no scientific test can show 0 parts per million BPS, there is no scientific method to prove the negative and defend against Prop 65 claims, which leads many companies to settle.

Not only does Prop 65 create a significant burden for Californian businesses, but it also impedes interstate commerce for companies operating out of state, but which sell goods into the State of California. The obligation to warn consumers about the risk of cancer, birth defects, or other reproductive harm when the actual exposure risk is negligible not only lacks a commonsense approach to regulation but also is potentially violative of companies' First Amendment rights. For example, in May of this year, the U.S. District Court for the Eastern District of California granted declaratory relief and a permanent injunction following a request by the California Chamber of Commerce, finding that the mandated Prop 65 warning for acrylamide in food products violates the First Amendment owing to the lack of scientific support to justify the determination of carcinogenic risk. Just a few months later, another Eastern District Court granted a permanent injunction requested by the Personal Care Products Council, finding that mandated Prop 65 warnings for titanium dioxide in cosmetics violate the First Amendment due to the lack of scientific evidence.

Ultimately, Prop 65 listings entail significant costs in both unnecessarily granular product testing and in providing warning labels. Additionally, last year OEHHA amended the form of its short-form warning label to include the needless specification of at least one Prop 65 chemical, which not only adds cost to brands in changing and printing much longer new warning labels for every product, but also confuses customers about the safety of the products they are purchasing by giving consumers a false sense of security that only one possibly harmful chemical is in the product. Of course, the rule change is also clearly violative of companies' First Amendment rights due to compelled speech. *See AAFA's comments on the rule change for more details*. We therefore encourage DOJ to alleviate unnecessary regulatory burdens and costs imposed on the American people through a thorough examination of Proposition 65. Product safety is already capably regulated by federal bodies such as the Consumer Product Safety Commission (CPSC) while Prop 65 does little more than raise product cost and consumer confusion.

State PFAS Regulation

PFAS are a class of almost 15,000 organofluorine compounds, typified by multiple fluorine atoms attached to an alkyl chain, that have been in use since the 1950s for their ability to resist heat, oil, and water. PFAS, also sometimes referred to as 'forever chemicals', persist in the environment and are found widely in the water, air, and soil, as well as in the blood of people and animals across the globe. Several studies have linked certain PFAS chemistries to potential harmful health effects in humans and animals and there has therefore been a concerted effort across several U.S. States, as well as abroad, to regulate the use of PFAS in consumer products, although PFAS exposure levels from wearing apparel are quite low. Understanding the public concerns regarding increasing PFAS accumulation in the environment, our membership is actively engaged in phasing out the avoidable use of intentionally added PFAS. In fact, AAFA's open-industry Restricted Substances List has included PFAS as a class of prohibited chemicals for over two years. However, a patchwork approach to PFAS regulation across U.S. States, now banned in some capacity across 12 different states, all with different rules, listing different PFAS chemicals, serves no one's interests and only serves to increase the cost of chemical compliance, increase confusion, and introduce barriers to interstate commerce.

In regulating PFAS, States have varied in their definition of "intentionally added PFAS" through introducing defined total organic fluorine (TOF) limits, assuming intentional addition through mere fluorine detection, or underdefined presumptions of intentionality. PFAS testing, even at the chemical class level with a TOF analysis, is extremely expensive – running hundreds of dollars per sample. Further, there is currently no standardized method for TOF analysis. Testing each of the individual 15,000 PFAS chemicals at the analyte level would be astronomically expensive and yield little dividend. Further, given the fragmentation of PFAS regulation across States, there are various compliance deadlines with certain states applying timeframes that are impossible to comply with. As an example, this year Rhode Island passed S 241, which precludes the sale of firefighting personal protective equipment from 2027, despite the current lack of availability of viable replacements that provide protective performance equal to PTFE barriers, which are included within the restriction despite being considered safe. In fact, the FDA recently published a report concluding that PTFE is safe for medical devices *implanted inside the body*. See PFAS in Medical Devices. Variously enforced restrictions on PFAS lead to the costly disposal of otherwise viable inventory and thereby increase the cost burden experienced by consumers and brands alike.

These variously defined PFAS prohibitions introduce uncertainty to chemical management programs and introduce cost barriers to American businesses.

Additionally, the majority of PFAS bans currently in effect across the country provide no exemptions for recycled materials. We have heard time and again from our membership that it is impossible to remove PFAS contamination from the recycling of legacy products that leveraged PFAS chemistries. Yet many of the PFAS restrictions at the state level provide no or limited exceptions for recycled materials. As a result, PFAS regulation will necessarily impede the industry's efforts in growing textile-to-textile recycling in America, which not only would provide a new source of manufacturing jobs and, ultimately, create U.S. materials, bolstering the Administration's goals of expanding Made in USA manufacturing, but means more clothes and shoes are thrown into the nation's landfills.

We are supportive of a federal, science-based approach to the regulation of PFAS in textiles. For example, a federal regulation preempting State PFAS regulation would serve as an equalizing force and create a common framework for chemical management across the country. We look forward to continuing to engage on this topic.

Utah Bedding, Upholstered Furniture and Quilted Clothing Program

In Utah, the Bedding, Upholstered Furniture and Quilted Clothing Inspection Act applies to all bedding, upholstered furniture, and clothing made in whole or in part with a filling material. The Act requires that every manufacturer, supplier, or wholesaler of such stuffed products obtain annually a permit issued by the State, which must be purchased before selling merchandise in Utah. That permit number must then be put on the labels of every product. Although intended to prevent "fraud and product misrepresentation" regarding product fills, the Act is antiquated and provides no discernable value to consumers in Utah. The Act imposes needless registration fees on companies attempting to do business in Utah and provokes confusion through frequent updates to required product labels. As alluded to earlier in this letter, CPSC already capably manages product safety, and the Federal Trade Commission ensures truth-in-advertising for stuffed articles. Therefore, we would recommend that DOJ intercede on the part of American manufacturers to prevent such arbitrary regulation.

We look forward to continuing to work with DOJ on ensuring the effective regulation of consumer products for the benefit of consumer product safety and public health. In the meantime, our members continue to design and execute the quality and compliance programs that emphasize product safety for every individual who steps into our apparel and footwear products.

Thank you for your consideration of these comments.

Respectfully,

Stephen Lamar
President and CEO
American Apparel & Footwear Association