



April 20, 2022

Sent Electronically to: P65Public.Comments@oehha.ca.gov

Monet Vela
Office of Environmental Health Hazard Assessment
P. O. Box 4010
1001 I Street
Sacramento, CA 95812-4010

SUBJECT: Amendments to Article 6, Clear and Reasonable Warnings: Short-Form Warnings

Dear Ms. Vela:

The Alliance for Automotive Innovation¹ (Auto Innovators) appreciates the opportunity to provide comments on the Second 15-Day Modification to Proposed Amendments to Article 6 - Clear and Reasonable Warnings for Consumer Product Exposures, issued on April 5, 2022. This notice presents the Office of Environmental Health Hazard Assessment's (OEHHA) consideration of comments and subsequent modifications to its January 8, 2022, proposal to modify the Proposition 65 Short Form warning content and methods of transmission.

We appreciate the work and time that OEHHA has dedicated to balancing the necessary elements of a safe harbor warning while providing businesses with appropriate options for smaller products and packaging. Our comments here today and our previous comments have focused on collectively outlining a workable process that considers the public information goals of OEHHA and the realities of complex supply chains.

We would like to share our support for the changes to the short form warning content and methods and transmission proposed in this April 5, 2022, notice. It is clear that OEHHA staff have worked diligently to understand and address concerns raised in comments on the January proposed modifications. Specifically, we support:

- Removal of the label size and package shape limitations 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.
- Removal of the requirement in Section 25602(a)(4) that the font type size must be the same as the largest type size providing consumer information, which will provide additional flexibility when applying labels to small packages.

¹ Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website <http://www.autosinnovate.org>.

- Clarifying language by changing the words “exposes you to” in subsections 25603(b) and 25607.2(b) to “can expose you to”, aligning with other safe harbor language applied for the general consumer safe harbor warning (Section 25603).
- Changing the date that the regulation becomes operative from one year to two years after the effective date of the amendments in Subsections 25602(e) and 25607.2(c); this provides important and necessary lead time, avoiding additional costs and allowing any existing, pre-printed labels to be clear inventory.

We also appreciate the clarifications provided for the first fifteen-day modification published on December 17, 2021. Specifically, we appreciate and support the clarification that the language in the modified text “[name of chemical]” makes clear that the name of only one chemical is required in each of the parentheses.

The set of recommendations put forward in our comments submitted in January 2022 were designed to be a comprehensive set of process improvements that collectively would ensure a workable approach to implementing the short form requirements. While we appreciate and support the significant changes that OEHHA has proposed in the second 15-day modification, there are two specific recommendations which OEHHA has not addressed, which continue to be key pieces of our collective set of process improvements.

1. Listing of Specific Chemical Names on Short-Form

As proposed, the short-form warning would continue to require listing a chemical for a specific toxicity endpoint. OEHHA’s continued proposal to require the listing of a specific chemical for a toxicity endpoint for “small” products would have far-reaching consequences for the automotive sector. As we have explained in previous comments,² Proposition 65 warnings may be used on automotive parts to ensure a safe harbor for manufacturers, dealers, and retailers.

While OEHHA has often said that most “hard parts” likely do not have any exposure risk and therefore should not require a safe harbor warning, costly testing (\$10,000-\$20,000 per part) is required to definitively either (1) prove the negative, i.e., no chemical exposure is possible or (2) identify specific chemicals and any potential exposure scenarios. Because Proposition 65 has a very low established threshold for plaintiffs to bring an enforcement action against a party, out of an abundance of caution, companies may choose to conduct this type of testing and/or label a product when there is any possibility that a listed chemical is present.

Each vehicle includes tens of thousands of parts, including sub-assemblies and assemblies. These same parts are sold as service and replacement parts to maintain vehicles throughout their lifetime. All of these articles are generated through a complex, multi-tiered, global supply chain that can span upwards of 10 tiers. Ascertaining which chemicals may have been used in the production of a service part and which may be present in minute quantities in the finished part may mean reaching back through those 10 tiers or may result in a need to undergo testing of each article.

While we recognize that OEHHA states that “OEHHA’s regulations do not require a business to perform any testing”,³ the proposed amendments to list a specific Proposition 65 chemical could essentially require the domestic automotive sector to test and assess hundreds of thousands of automotive parts to identify any Proposition 65 chemical content and exposure potential. Any *de facto*

² Alliance for Automotive Innovation comment: March 29, 2021.

³ “Proposition 65 Clear And Reasonable Warnings: Questions And Answers For Businesses.” May 2021, page 2. Available at: https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa.pdf.

testing requirement that would be cost-prohibitive in a product containing so many parts and/or for the replacement parts available to repair that vehicle. Additionally, identifying chemicals that may be present as impurities, byproducts and/or in *de minimis* quantities is infeasible and of marginal value to consumers in California.

The economic consequences of complying with this requirement are significant and should be given careful consideration as OEHHA moves forward. The minimal potential benefit of testing service parts is far outweighed by the significant economic consequences of this potential requirement. In addition to the costs, OEHHA should assess the time that it would take for the automotive sector to conduct this type of testing and the current availability of certified facilities to perform the testing.

As part of the overall 15-day modifications already made, we request that OEHHA reconsider this requirement and make the identification of a specific chemical optional; alternatively, a specific safe harbor warning to address our concerns could be an appropriate approach.

2. Exemption for Replacement Parts Manufactured Prior to the Effective Date of Any Final Rule

If OEHHA moves forward with a final amendment for short-form warnings, we request that OEHHA clarify that any products or replacement parts, for which a safe harbor warning is deemed necessary by the manufacturer, manufactured prior to the implementation date of any final rule be exempt from any new or revised labeling requirements. OEHHA has previously implemented a “manufactured by” date to make it clear that products manufactured before the applicable date are covered by the previous safe harbor warnings. We highly encourage OEHHA to continue to provide this clarification in order to provide the regulatory community with certainty that existing products do not have to be recalled to be relabeled. Recalling replacement parts to be relabeled would be cost-prohibitive.

Auto Innovators appreciates that significant progress that has been made in ensuring a more workable approach to short form warnings. We request due consideration of our remaining two concerns, which in combination with the already made modifications would further improve upon the goals of a workable and feasible short form warning. Please let us know if we can be of assistance in any way or if further clarification of our concerns is necessary.

Sincerely,



Julia M. Rege
Vice President, Energy & Environment