



March 29, 2021

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 continue our engagement with the Office of Environmental Health Hazard Assessment (OEHHA) on the development and application of Proposition 65 (Prop 65) clear and reasonable warning labeling. We have engaged with you and staff from your office since the inception of the Prop 65 warning label initiative and believe that that engagement has benefited both OEHHA and our members and has resulted in workable approaches to Prop 65 implementation.

During our meeting on March 5, 2021, we presented a high-level overview of the concerns we have with the January 8, 2021 proposed amendment, "Notice of Proposed Rulemaking: Title 27, California Code of Regulations: Proposed Amendments to Article 6 Clear and Reasonable Warnings".² Prop 65 warnings are frequently used on automotive parts to ensure a safe harbor for manufacturers and retailers, and therefore the availability of a short-form warning is appropriate and needed, especially for smaller parts.³ While OEHHA has often said that most "hard parts" likely do not have any exposure risk and therefore should not require a label, costly testing (\$10,000-\$20,000 per part) is required to definitively identify specific chemicals and any potential exposure scenarios. Because Prop 65 has established a very low threshold for plaintiffs to bring suit against a manufacturer or retailer, out of an abundance of caution, companies will label a product when there is any possibility that a listed chemical is present and may become available.

Our comments below provide additional detail and recommendations and focus on four key issues related to the short-form warning: (1) listing of specific chemical names; (2) short-form label size

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>.

² <https://oehha.ca.gov/media/downloads/cnr/p65noticeshortformold2021.pdf>.

³ Alternatively, development of a warning specific to vehicle parts may also be appropriate, along with consideration of the use of warnings used at point of sale and/or in owner's manual.

restrictions; (3) an exemption from new requirements for replacement parts placed in commerce prior to the effective date of any final rule; and (4) the implementation timetable.

1. Listing of Specific Chemical Names on Short-Form

The proposed amendments for “small” products would have far-reaching consequences for the automotive sector. As proposed, the short-form warning would require listing a chemical for each toxicity endpoint:

Where a warning is being provided for more than one endpoint (cancer and reproductive toxicity) the warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause both cancer and reproductive toxicity and has been so identified in the warning.⁴

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, and global supply chain, which complicates identification of information without testing. The proposed amendments would require the domestic automotive sector to test and assess hundreds of thousands of automotive parts to ascertain potential Prop 65 chemical content and exposure potential. OEHHA states that it does not require testing:

Q3: What kind of testing does a business have to do in order to meet the safe harbor warning requirements?

A3: The warnings regulations do not address the question of whether a warning is required; rather, the regulations provide guidance on how to provide a warning once a business has made a determination that a warning is required. OEHHA’s regulations do not require a business to perform any testing.⁵

Yet, the proposed requirement imposes a *de facto* testing requirement that would be cost-prohibitive and unworkable. 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.

2. Short-Form Label Size Restrictions

The proposed amendment for the short-form warning, which would restrict the total surface area available for consumer information to 5 square inches or less, is an unworkable approach that will basically eliminate the ability to use a short-form warning for small parts or products. A 2 x 2 ½ inch label cannot possibly accommodate both the information required by OEHHA as well as basic product information required by the consumer. This small label would need to include:

- ⚠ WARNING: Cancer Risk From [NAME OF ONE OR MORE CHEMICALS KNOWN TO CAUSE CANCER] Exposure -www.P65Warnings.ca.gov
- Product identification including name, part number and any required external directions
- SKU
- And possibly provide this same warning in multiple languages

⁴ <https://oehha.ca.gov/media/downloads/cnr/p65shortformproposedregtextd2021.pdf>.

⁵ https://www.p65warnings.ca.gov/sites/default/files/art_6_business_qa.pdf.

Many automotive service parts exceed short-form size restrictions and would therefore make the short-form option unavailable to our members. We urge OEHHA to rethink this size restriction and work with the impacted sectors to determine a more realistic size restriction that would still allow the short-form to be used where appropriate.

3. 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 replacement parts manufactured prior to the effective 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 product manufactured before the applicable date are covered by the previous safe harbor warnings, and we highly encourage OEHHA to continue this application. Recalling replacement parts to be relabeled would be cost-prohibitive.

4. Implementation Timetable

Changes to the current labeling requirements will require more than the one year proposed by OEHHA to implement. To the extent a short-form warning is already applied, any updates should allow adequate time to design and implement the new label, and also to use the remaining stock of existing warning labels to avoid unnecessary waste or costs. Additional implementation time will be needed if the requirement to list chemicals results in the need for product testing in order to identify those chemicals. Therefore, we request that OEHHA provide at a minimum two years to comply with any changes.

In closing, we want to express our appreciation for the March 5th meeting and the opportunity to provide the more detailed comments and recommendations presented here. These comments are offered with the intent of making the short-form warning more readily available and useful to parts and other goods contained in small packaging. The current proposal would require costly and time-consuming testing to name individual chemicals on the short-form label. While OEHHA states that it does not require testing, the proposed requirement would be a *de facto* requirement and those costs will be prohibitive. Combined with the proposed size limit for the short-form, the proposal makes it almost universally unavailable to our members given the information that will be required for the warning. Auto Innovators is open to considering additional means, like point-of-sale labels, reliance on other existing warnings, and/or development of specific vehicle part warnings that could also address our concerns. Finally, an exemption for parts in commerce and a longer implementation timeframe are key issues for our members.

Thank you for your consideration of our recommendations.

Sincerely,



Julia M. Rege
Vice President, Energy & Environment