

June 6, 2016

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

SUBJECT: “Clear and Reasonable Warning Regulations”

Dear Ms. Vela:

We are writing on behalf of the members of the Alliance of Automobile Manufacturers<sup>1</sup> (Auto Alliance), Association of Global Automakers, Inc.<sup>2</sup> (Global Automakers), and Motor & Equipment Manufacturers Association<sup>3</sup> (MEMA). Together, our associations include nearly every company selling new vehicles in the United States (U.S.) and represent more than 1,000 companies that manufacture and supply parts, components and systems for use in light- and heavy-duty motor vehicles in the original equipment and aftermarket industries. We appreciate the opportunity to provide comments on the May 20, 2016 Notice, “Modification To Text Of Proposed Regulation, Proposed Repeal of Article 6 And Adoption of New Article 6, Proposition 65 Clear And Reasonable Warnings” (“proposed regulation” or “proposal”). This proposed regulation was originally the subject of a Notice of Proposed Rulemaking published on November 27, 2015 in the California Regulatory Notice Register (Register No Z-2015-1117-11).

We reiterate our concerns detailed in all our comments submitted previously to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and incorporate them here by reference.<sup>4</sup> In addition, we support the California Chamber of Commerce (“CalChamber”) comments and incorporate them here by reference.

We appreciate the changes that have been made to Section 25601(c): The Chemical Specification Requirements and believe that the deletion of the phrase “*for which the person has determined a warning is required...* [emphasis added]” clarifies that exposure testing and risk modeling are not required to be conducted prior to providing a warning. We also recognize that OEHHA has

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<sup>1</sup> Auto Alliance members are BMW Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit <http://www.autoalliance.org>.

<sup>2</sup> Global Automakers’ members are Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Subaru, Suzuki, and Toyota. Please visit [www.globalautomakers.org](http://www.globalautomakers.org) for further information.

<sup>3</sup> MEMA represents more than 1,000 companies that manufacture and supply parts, components and systems for use in light- and heavy-duty motor vehicles in the original equipment and aftermarket industries.

<sup>4</sup> We remain concerned about issues identified in our previous comments submitted: June 13, 2014; October 17, 2014; April 8, 2015; and January 22, 2016 that have not been resolved.

modified Section 25600.2 clarifying that there is no requirement for a retailer to affirmatively demonstrate that a warning is required. We support these changes, because they will help improve the feasibility of the proposed requirements.

While some changes have been made to the proposed regulation that will help to make this a more workable program, many of the issues which we raised in previous comments<sup>5</sup> have not been addressed and remain concerns for our members. These issues are critical to the implementation of the warning labels. ***If these problems are not addressed, it is unlikely that OEHHA will achieve its goals of reducing litigation and minimizing overwarning.*** These issues include:

- Passenger Vehicle Warning Provisions
- Expansion of Passenger Vehicle Definition
- Need for a *De Minimis* Exemption
- Consideration for Replacement Parts

We urge OEHHA to address these issues and the clarifications that we have recommended in the Final Statement of Reasons.

## **REDUCING LITIGATION**

### **(1) Passenger Vehicle Warning Provisions**

Section 25607.16 provides that two warnings would be necessary for one product—one in the owner’s manual and one on the driver’s side window at point of sale—in order for the safe harbor to apply. As stated in the CalChamber April 26, 2016 comments, this regulation would be the first and only instance since Prop 65’s passage where two warnings for a single product would be necessary. Please refer to pages two and three of our January 25, 2016 comments; in summary, OEHHA should provide flexibility to require labeling §25607.16(a)(1) in the owner’s manual *or* §25607.16(a)(2) a label attached to the front window.

Furthermore, regarding the warning in the owner’s manual, OEHHA should make sure the regulations do not inadvertently limit the owner’s manual to a printed version. In some cases, the owner’s manual is provided in an electronic format, and therefore the regulations should not explicitly use the words “printed” or “print”, for example in Section 25607.16(1), so as to allow for both printed and electronic versions of the manual. Alternatively, a statement in the regulations and/or the Final Statement of Reasons that the provisions for the owner’s manual warning apply to both printed and electronic versions would provide appropriate clarification.

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<sup>5</sup> Comments submitted jointly by the Global Automakers and Auto Alliance, dated April 8, 2015 and comments submitted jointly by Global Automakers, Auto Alliance and MEMA dated January 25, 2016 and April 26, 2016.

## **REDUCING OVERWARNING**

### **(1) Expansion of Passenger Vehicle Definition**

The current definition of passenger vehicle<sup>6</sup> referenced in Section 25607.16 states “A “passenger vehicle” is any motor vehicle, other than a motor truck, truck tractor, or a bus, as defined in Section 233, and used or maintained for the transportation of persons.” For purposes of this regulation, this definition is overly broad and has the potential to create significant uncertainty as responsible parties work to identify the appropriate warning for the appropriate vehicle. The passenger vehicle definition excludes a significant number of vehicles that are purchased by consumers, including light-duty trucks, medium-duty trucks, and heavy-duty vehicles. Because the definition of passenger vehicle does not include light-duty trucks, medium-duty trucks, or heavy-duty vehicles, warnings for these vehicles would need to follow the less specific methods of transmission and content in Sections 25602 and 25603 in an attempt to secure safe harbor. One purpose of the passenger vehicle warning section is to provide more specific guidance to consumers than they would receive with a warning following Sections 25602 and 25603. It is helpful for consumers to see a similar label on light-duty trucks, medium-duty trucks, and heavy-duty vehicles. In addition, not including all passenger vehicles under the “Passenger Vehicle” warning section will likely result in confusion among the warning providers, the general public and potential plaintiffs which could result in increased litigation.

Presuming this has been OEHHA’s intent all along, a technical amendment could be made to the regulation revising the definition to read, “as defined in Vehicle Code Section 465 and/or Section 410”. We encourage OEHHA to make it clear either in the regulation or at the very least, in the Final Statement of Reasons, that the intention with the passenger vehicle sections is to include, in addition to passenger cars, light-duty trucks, medium-duty vehicles and heavy-duty vehicles.

This change would provide better consistency for product types with similar content for which the safe harbor provisions of the regulation would apply. (See April 8, 2015 and January 25, 2016 comments for more detail)

### **(2) Need for a *De Minimis* Exemption**

For the over 900 Prop 65 chemicals, only approximately 300<sup>7</sup> have “safe harbor” levels. These safe harbor levels reflect “No Significant Risk Levels” (NSRLs) for Carcinogens and “Maximum Allowable Dose Levels” (MADLs) for chemicals causing reproductive toxicity. By establishing these safe harbor levels, OEHHA has allowed for a rationale differentiation between levels of concern and levels for which there is no concern. This more scientific approach recognizes that the mere presence of a chemical in a product indicates neither exposure nor risk. We recommend that OEHAA establish a *de minimis*, percent-by-weight level for the Prop 65 chemicals. Establishing a *de minimis* level will not only allow the automotive sector to use existing resources to expedite implementation, but it will also allow consumers to distinguish between small or insignificant risks and those that potentially pose a threat to human health and the environment. (See April 8, 2015 and January 25, 2016 comments for more detail.)

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<sup>6</sup> As defined in Vehicle Code Section 465.

<sup>7</sup> CA Title 27, Section 27505.

### **(3) Consideration for Replacement Parts**

As explained in our previous comments, we support that OEHHA address replacement parts used to maintain and repair motor vehicles in the passenger vehicle warning. While OEHHA's proposed warning language touches on avoiding exposures from exhaust and servicing, we propose that language be provided in the Final Statement of Reasons to clarify that the warning language provided for passenger vehicles covers the replacement parts used for maintaining the vehicle. When the vehicle is first sold to the consumer, there are not separate warnings for each vehicle part; all vehicle parts on the original vehicle are covered by the passenger vehicle warning which, according to the draft, must be provided as a window label and in the owner's manual. If a replacement part is used to replace an existing vehicle part, the safe harbor warning for the passenger vehicle should cover those replacement parts. Once again, the warning covers the whole vehicle, including its individual parts. The consumer has already received adequate warning of the exposure risk from the vehicle and these replacement parts are, in most cases, identical to those made as original equipment parts.

The draft warning language for passenger vehicles provides a statement regarding vehicle servicing, but does not specifically mention replacement parts. To provide clarity, we request that OEHHA state in the Final Statement of Reasons that replacement parts are covered by the passenger vehicle warning. This will ensure that consumers are receiving succinct, consistent information regarding the vehicle and its parts throughout the life of the vehicle. (See April 8, 2015 and January 25, 2016 comments for more detail.)

## **OTHER ISSUES**

### **(1) Additional Lead Time Prior to Implementation**

In Section 25600(b), the proposal provides for a two-year transition period before the new regulations become fully effective. We strongly support inclusion of lead-time prior to implementing the regulations, because any change to existing owner's manuals or labeling requires time for notification, redesign of materials (i.e. labels), and application of any changes. However, given the complexity of implementing these provisions for a global industry sector, we request an additional third year. A model year approach is also necessary for these same reasons. Automobiles are manufactured and planned on a model year basis, not calendar year. A three-year transition period will better align with engineering cycles and model change overs in the industry. (See April 8, 2015 and January 25, 2016 comments for more detail).

## CONCLUSION

In conclusion, we urge you to consider the issues we have raised in these comments and address them in the final rule or the Final Statement of Reasons. Our intent in pursuing these specific issues is to enhance the clarity and consistency of the warnings, and we thank you for your consideration of these comments.

Best Regards,



Julia M Rege  
Director, Environment & Energy  
Association of Global Automakers  
202.650.5555  
[jrege@globalautomakers.org](mailto:jrege@globalautomakers.org)



Stacy Tatman  
Director, Environmental Affairs  
Alliance of Automobile Manufacturers  
202.326.5551  
[statman@autoalliance.org](mailto:statman@autoalliance.org)



Laurie Holmes  
Senior Director, Environmental Policy  
Motor & Equipment Manufacturers Association  
202.312.9247  
[lholmes@mema.org](mailto:lholmes@mema.org)

CC: George Alexoff  
Allan Hirsch  
Carol Monahan-Cummings  
Mario Fernandez