



**SUBMITTED VIA OEHHA RULEMAKING PORTAL:** <https://oehha.ca.gov/proposition-65/comments/comment-submissions-notice-proposed-rulemaking-amendments-article-6-clear>

March 29, 2021

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23rd Floor  
P. O. Box 4010  
Sacramento, California 95812-4010

**RE: Comments on Proposed Amendments to Article 6 Clear and Reasonable Warnings  
Short Form Warnings**

Dear Ms. Vela:

On behalf of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) and the National Electrical Manufacturers Association (NEMA), we submit the following comments to the California Environmental Protection Agency Office of Environmental Health Hazard Assessment (OEHHA) in response to the January 8, 2021 Notice, "Article 6 Clear and Reasonable Warnings Amendments Related to Short-Form Warnings for Consumer Product Exposures" (30-day notice). Our associations have serious concerns with the proposed amendments to the Proposition 65 (Prop 65) Article 6 Clear and Reasonable Warnings Short Form Warning and urge OEHHA to withdraw the proposal. In addition, we support comments submitted by the California Chamber of Commerce (Cal Chamber) and the National Association of Manufacturers (NAM) and incorporate them here by reference.

AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. More than 300 members strong, AHRI is an advocate for the industry and develops standards for and certifies the performance of many of the products manufactured by our members. In North America, the annual output of the heating, venting, air-conditioning, and refrigeration (HVACR) and water-heating industry is worth more than \$44 billion. In the United States alone, the HVACR and water heating industry support 1.3 million jobs and \$256 billion in economic activity.

The National Electrical Manufacturers Association (NEMA) is the leading U.S. trade group representing electrical equipment and medical imaging manufacturers, which are at the

forefront of electrical safety, reliability, and efficiency. Our nearly 325 Member companies provide a range of products used in buildings, industrial facilities and by utilities, transportation departments and hospitals. Collectively our membership provides some 370,000 American manufacturing jobs in more than 6,100 facilities, with worldwide industry sales exceeding \$140 billion.<sup>1</sup>

### **Current Short Form Warnings**

First and foremost, AHRI and NEMA Members believe the current short form warning provides sufficient notice to consumers.

Our Members believe the proposed amendments will provide limited value, if any, to consumers. At a minimum, the current short form warning alerts the consumer of potential harm to a chemical known to cause cancer or reproductive risk. It puts the consumer on notice and the consumer is responsible for finding the additional information they need in order to make a decision on how to proceed with that information.

The use of the short form warning allows manufacturers the flexibility to use the short form warnings on a variety of product lines with varying space availability. The elimination of the short-form warning on large equipment will add no additional benefit in terms of consumer awareness or increased consumer protection. Our Members believe that requiring the exclusive use of the long-form warning for manufacturers will lead to additional consumer confusion and will raise more questions than answers.

### **Manufacturers expended a substantial amount of time and resources to comply with the 2018 provisions.**

During the last implementation of the 2018 Proposition 65 provisions, manufacturers expended a substantial amount of time and resources to prepare their manufacturing process to comply with the new regulations. Manufacturers were allotted two years to prepare for the implementation of the 2018 provisions. With the proposed amendments, manufacturers are given less than two years to comply with the new proposed amendments which will require a complete redo of the work done to comply with the current provisions. The time period between the implementation of the 2018 provisions and the newly proposed revisions will not allow businesses sufficient time to recoup the costs already incurred by industry to comply with the 2018 implementation date.

Manufacturers will have to undergo a more lengthy and costly process again as in 2018 without providing any additional benefit to consumers. Manufacturers will need to work internally with their marketing and communications team to redesign the Proposition 65 labels. Several versions of the warning label will need to be designed for manufacturers depending on their

---

<sup>1</sup> For more information, please visit: <https://www.nema.org/>.

products, parts, and accessories offered with those products creating confusion for manufacturers, distributors and others in the supply chain. Manufacturers will need to expend the resources to redesign and reprint product materials. For some products, manufacturers will need to recreate packages that include consumer kits that may contain repair parts for their products with the appropriate labels. In addition, manufacturers, distributors and others in the supply chain will need to redesign their websites and catalog listings, as well as those of their subsidiaries. Lastly, manufacturers will need to readjust their manufacturing process to ensure that the label is placed on the appropriate products bound for California. The above requirements are time-consuming and costly without adding benefit to the consumer.

### **OEHHA must provide a five-year transition period**

If OEHHA chooses not to withdraw the proposal – as they should -- we urge the Agency to provide at least five-year transition period. Manufacturers will need this time to evaluate their products to identify the appropriate chemical for the label. Next, they will need to redesign and implement labels on potentially tens to hundreds of thousands of packages. This is both a time consuming and resource-intensive process. Five years is the minimum time necessary to conduct the research, implement the changes, and absorb the associated costs. This is especially important as many businesses are already suffering due to the current pandemic, especially small businesses.

### **It is unreasonable for Original Equipment Manufacturers to expand the text in the warning label to specify additional chemical substances**

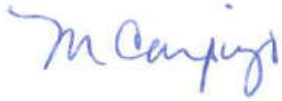
Currently, there are roughly 1,000 chemical substances on the Proposition 65 list that manufacturers are required to monitor and note if the specific chemical is in their products. Many components and parts that make up a product are manufactured externally. Often-times, suppliers provide manufacturers those components and parts and often fail to respond to requests for information regarding chemicals used in parts or claim that the information is proprietary. It is unreasonable for Original Equipment Manufacturers to know and expand the test on the short form warnings if the information is not provided by their suppliers due to claims of confidentiality or from unresponsiveness.

### **Manufacturers rarely know in which states any specific product will be installed once it leaves the factories.**

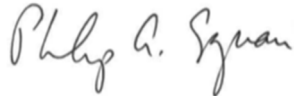
Manufacturers supply chain are long and complicated. Manufacturers generally sell their products to distributors that may have warehouses in California or in other states. Due to this arrangement, manufacturers rarely know where their products are ultimately installed. To ensure compliance in California, manufacturers have no choice but to place a Proposition 65 warning on all their products even if the product may not end be installed in California, which adds to the cost and burden for manufacturers.

In conclusion, the joint commentators strongly request the proposed amendments be withdrawn. Please contact Marie Carpizo ([MCarpizo@ahrinet.org](mailto:MCarpizo@ahrinet.org)) or Stacy Tatman ([Stacy.Tatman@nema.org](mailto:Stacy.Tatman@nema.org)) to schedule a meeting to further discuss this issue.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Marie Carpizo".

Marie Carpizo  
Deputy General Counsel  
AHRI

A handwritten signature in black ink that reads "Philip A. Squair".

Philip A. Squair  
Vice President, Government Relations  
NEMA