

January 21, 2022

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

RE: Proposed Modified Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings

Dear Coordinator Vela:

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting these comments in opposition to the Office of Environmental Health Hazard Assessment's (OEHHA) proposed modified amendments to Prop 65 and urge OEHHA to withdraw the proposed modified amendments.

Representing more than 1,000 world famous name brands, AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its three million U.S. workers, and its contribution of more than \$350 billion in annual U.S. retail sales. Our members are on the frontlines of product safety, designing, manufacturing, and selling apparel and footwear products. 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 opposes OEHHA's proposed modified amendments to Article 6 of Prop 65 for the reasons below:

Proposed Modifications to Short-Form Warning Label Would Confuse & Mislead Consumers

We understand that the goal of the modified proposal is to educate consumers who are confused by the current short-form warning or who don't understand why the product has a warning. However, it is disingenuous to frame the proposed modification to the short-form warning label as a means of empowering consumers with more information. Instead, the proposed modifications to the short-form warning label do not give the consumer any meaningful information with which to make an educated choice in purchasing products. With more than 900 chemicals on the Prop 65 list, a short form label that lists only one or two specific chemical names would appear as an arbitrary selection of the chemicals to which a consumer *could* be exposed in using that product.

For example, suppose a consumer wants to avoid Prop 65 listed chemical A. If they encounter a product with the current short form label, they can make an informed purchasing decision since there is a possibility that there is a chemical A exposure risk in the product. Under the new regime, they could make this decision only if the label specifically listed chemical A. If the consumer encounters a short form label listing only chemical B, the implication is that the product does not create an exposure risk for chemical A (or any other chemical). This may or may not be the case. Rather than provide consumers with actionable information to safeguard their health, it provides them more specific information about a limited exposure situation, and then provides them no information (or perhaps a false sense of security) about all other risks.

Further, the proposed changes to the short-form warning label would make the consumer feel like they have more information about a product, when in reality, it gives no context about the actual risk, measurable content of the listed chemical(s), or even a full picture of the other Prop 65 listed chemicals to which a consumer may be exposed by using the product. As such, the proposed modifications to the short-form warning label would greatly mislead and confuse the consumer.

On the other hand, the current short-form warning label provides the consumer with accurate and actionable information. If a consumer wants to avoid all Prop 65 listed chemicals, then the current short-form warning label most efficiently supports that goal by warning the consumer not to buy that product. That is indeed the express purpose of the law, to educate consumers so that they can avoid exposure to ALL chemicals OEHHA has deemed harmful, if they so choose.

Inconsistency of Regulations

Unfortunately, changing the requirements for warning labels requires time and money on the part of companies who must make those changes. With the most recent warning label requirements just changed in 2018, companies have hardly had time to adjust to those changes. If the proposed modified amendments were accepted, the industry would be required to shift yet again. The fact that some form of this proposal has been public for almost a year has also had a chilling effect and created immense confusion among the regulated community. It is important that OEHHA maintains a consistent regulatory system, so that there is not a constantly moving regulatory target with which companies must comply, assuming immense and unnecessary costs, while doing nothing to further product or public safety. This is especially true with only a year to put the proposed warning label changes in place.

OEHHA states that a primary driver for the proposed modified amendments is that the short-form warning is currently being used inconsistently with the intention for which OEHHA created that label. However, in [OEHHA's Questions and Answers for Businesses](#), it states that "There is currently no limitation on using the short-form warning on larger products." The proposed amendments walk back that allowance for the use of the short-form warning on any product. This moving target and inconsistency of regulations increase costs for businesses and create confusion for businesses and consumers alike. Should OEHHA want to create more consistency, we would be happy to engage to identify best practices and other approaches to help meet this goal.

Over-Labeling

OEHHA has stated repeatedly that it does not recommend that companies use warning labels on products that do not need them. However, given that OEHHA has created a system in which any unlabeled product is subject to litigation and financial penalty, companies will continue to be forced to use labeling as their only recourse to protect their business. These proposed amendments are part of the larger issue with Prop 65's growth over the past decades, morphing beyond its original intent into a system which incentivizes over-labeling.

In fact, the recent changes that contain a short form that covers all scenarios and a longer form with an opportunity for more specific disclosures creates a practical way for the regulated community to manage this situation more effectively. Changing the short form as OEHHA has proposed in effect creates a shorter long form label while doing away with the rationale that makes the short form so important for both consumers and the regulated community.

In conclusion, we appreciate your consideration of our comments. Again, we strongly oppose OEHHA's modified proposal because the proposed modified short-form labeling would not meet its stated purpose of better informing consumers but would instead mislead and confuse consumers. Further, the constant and repeated changes have made it difficult, and costly, for the regulated community to comply. Finally, the modified proposal would further encourage the over-labeling that has seriously diminished the effectiveness of Prop 65.

Therefore, we again oppose the proposed modified amendments and urge OEHHA to immediately withdraw the proposal.

Thank you for your time and consideration in this matter. Please contact Trisha Dello Iacono of my staff at 202-853-9358 or tdelloiacono@aafaglobal.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lamar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Lamar
President & CEO