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SUBMITTED VIA OEHHA RULEMAKING PORTAL: [Comment Period - Notice of Modification to Text of Proposed Regulation Title 27, California Code of Regulations Proposed Amendments to Article 6 Clear and Reasonable Warnings – Short Form - OEHHA](#)

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: 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), the following comments are submitted to the California Environmental Protection Agency Office of Environmental Health Hazard Assessment (OEHHA) in response to the December 17, 2021, Notice of Modification to Text of Proposed Regulation, Title 27, California Code of Regulations Proposed Amendments to Article 6 Clear and Reasonable Warnings Amendments – Short Form. AHRI members appreciate OEHHA responding to stakeholder comments during the first rulemaking cycle and making additional changes in response to stakeholder concerns. However, AHRI members still 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.

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.

AHRI supports the comments submitted by the California Chamber of Commerce and the Consumer Brand Association, which are incorporated by reference.

Current Short Form Warnings Provide Sufficient Notice to Consumers

The current short form warning provides sufficient notice to alert consumers of potential harm to a chemical known to cause cancer or reproductive harm. It puts the consumer on sufficient notice and the consumer is responsible for finding the additional information they need to decide on how to proceed with that information.

AHRI members appreciate the increase of the maximum label size for short form warnings from 5 square inches to 12 square inches. Despite this additional space, AHRI members continue to believe it will provide limited value to consumers in California who are already inundated with Proposition 65 warnings.

The current short form warning provides manufacturers the flexibility to use the same warnings on a variety of product lines, and service parts, with varying space availability. The elimination of the current short form warning on large equipment will lead to additional consumer confusion and will raise more questions than answers both inside and outside the state of California.

Manufacturers will again have to invest substantial time and resources to comply with the Proposed Amendments

Within a five-year period since OEHHA's last amendments to the short form requirements in 2018, manufacturers again will be required to invest substantial time and resources to comply with the proposed amendments to the short form warnings. It is unreasonable for OEHHA to require manufacturers to go back to their manufacturing process to add an identified chemical to the Proposition 65 warnings when the current short form warnings are sufficient to provide the necessary consumer information of any potential harm.

Manufacturers will have to completely rethink and redesign their internal processes to develop the short form warnings for hundreds of their unique products. Manufacturers will need to identify separate chemicals that may cause cancer and/or reproductive harm for each of their products. In some instances, manufacturers will need to consult and seek information from their suppliers to identify the chemicals in the components and parts used to manufacture their products.

As of December 31, 2021, there are over 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.¹ Suppliers provide many of the components and parts that make up a product and are manufactured externally. Some suppliers fail to respond to manufacturers' requests for

¹ December 31, 2021 Proposition 65 List. <https://oehha.ca.gov/proposition-65/proposition-65-list>. Last accessed on January 16, 2022.

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' marketing and communications team will need to redesign the short form warnings to include the identified chemical, the additional signal wording and translate it into several languages. Depending on the product and the identified chemical, several versions of the short form warning labels will need to be developed to accommodate the specified products, parts, and accessories. This will further confuse, rather than clarify, these warnings for consumers.

In addition to the time, the costs to redesign and reprint product materials will be exorbitant considering the hundreds of products. 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.

Due to the lengthy and complex supply chain, manufacturers rarely know if their products are installed in California because they are sold to distributors throughout the U.S. As a result, manufacturers will have to place a Proposition 65 warning on all their products even if the product may not be installed in California, adding to the cost and burden for manufacturers to further explain these warnings to consumers outside of California.

A five-year transition period is warranted

Although the California Chamber of Commerce and the Consumer Brand Association are requesting a three-year transition, AHRI members continue to advocate for a five-year transition period to comply with the proposed amendments to the short form warnings. OEHHA is only providing a one-year transition period as opposed to the two-year transition period provided in the 2018 provisions. Even then, the two-year transition time was not sufficient to prepare for the 2018 provisions. OEHHA staff are mistaken to assume that it is a simple process to change the short form warning label to implement the proposed amendments.

Manufacturers will need this time to evaluate their products to identify the appropriate chemicals, will need to redesign and implement labels on potentially tens to hundreds of thousands of packages and implement this process throughout their complex supply chain. This is a time consuming and resource-intensive process that cannot be achieved within a one-year transition period. Further, as noted earlier, manufacturers must rely on information from component suppliers, which is not always provided.


It is important to note that HVACR manufacturers are currently working to comply with several other recent requirements, including the Department of Energy's efficiency metrics, the transition to lower Global Warming Potential refrigerants, and the U.S. Environmental

Protection Agency's changes to the Toxic Substance Control Act chemical requirements. A one-year transition is simply not practical given the above requirements.

Like the rest of the world, U.S. businesses and manufacturers are entering the third year of the COVID-19 pandemic with no real end in sight due to the numerous variants. Businesses and manufacturers are already suffering due to supply chain issues and labor shortages. Manufacturers will need the additional time to factor in these additional challenges that were not in existence during the 2018 provisions.

In conclusion, AHRI strongly requests the proposed amendments to the short form warnings be rescinded.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Marie Carpizo". The signature is written in a cursive, flowing style.

Marie Carpizo
AHRI General Counsel