

December 20, 2023

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

RE: 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 resubmitting comments (originally submitted in 2021) in opposition to the Office of Environmental Health Hazard Assessment's (OEHHA) proposed amendments to warning labels for Prop 65.

The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel, footwear and other sewn products companies, and their suppliers, which compete in the global market. 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 more than 3.2 million U.S. workers, and its contribution of more than \$490 billion in annual U.S. retail sales. AAFA approaches all of its work through the lens of purpose-driven leadership in a manner that supports each member's ability to build and sustain inclusive and diverse cultures, meet and advance ESG goals, and draw upon the latest technology.

We deploy our association's extensive expertise in trade, brand protection, supply chain management, and manufacturing to help our members navigate the complex regulatory environment, lower costs, and grow their sustainability and product safety efforts. With our members engaged in the production and sale of clothing and footwear, we are on the front lines of product safety. It is our members who design and execute the quality and compliance programs that stitch product safety into every garment and shoe we make. To support our members in this effort, AAFA has taken the lead in educating our industry through alerts, webinars, and conferences on the development, interpretation, and implementation of product safety standards and regulations.

AAFA opposes OEHHA's proposed amendments to the warning label system for Prop 65 for the reasons below:

Lack of Benefit to Consumers

We understand that the long-form warning may be intended to educate consumers who are confused by the short-form warning or who don't understand why the product has a warning. However, it is disingenuous to frame the long form warning as a means of empowering consumers with more information. The long-form warning does 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, listing only one or two specific chemical names on a warning label represents an arbitrary selection of the chemicals to which a consumer could be exposed in using that product.

If a consumer wants to avoid, for example, Prop 65 listed chemical A, and they purchase a product that warns of potential exposure to Prop 65 listed chemical B, then they would have no way to know if the product could also expose them to chemical A or any of the 900 plus other Prop 65 chemicals. Additionally, if a consumer wants to avoid all Prop 65 listed chemicals, then the current short-form warning most efficiently supports that goal. In fact, that is 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.

Instead, adding more information to the warning label – in this case one or two chemical names, would mislead the consumer by implying that the chemical(s) on the warning label are the only chemicals to which a consumer could be exposed, which is not the true meaning of a long-form warning label. The long-form warning makes 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.

Inconsistency of Regulations

Unfortunately, changing the requirements for warning labels requires time and money on the part of companies who must make those changes. 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.

OEHHA states that a primary driver for the proposed 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 stated that "There is no express prohibition, however, 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.

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 businesses. 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 effectively requires over-labeling.

In conclusion, we appreciate your consideration of our comments. Again, we strongly oppose OEHHA's proposal because of the inefficient regulatory behavior of moving the target; the growing confusion of consumers with, and ineffectiveness of, Prop 65 labels in general, which would only be compounded by requiring the use of only the long-form warning; and the resulting over-labeling of products- which OEHHA purports to oppose. We urge OEHHA to reject the proposed amendments to avoid exacerbating the already convoluted regulatory environment of Prop 65 labeling.

We look forward to working with OEHHA to ease the process of compliance for companies who make and sell

safe apparel and footwear products without reducing protections for consumers. Thank you for your time and consideration in this matter. Please contact Chelsea Murtha (cmurtha@aafaglobal.org) if you have any questions or would like additional information.

Respectfully,

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

Stephen Lamar
President & CEO
American Apparel & Footwear Association