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SUBMITTED VIA OEHHA RULEMAKING PORTAL: [Proposed Amendments to Regulations Clear and Reasonable Warnings, Safe Harbor Methods and Content California Code of Regulations, Title 27, Sections 5601 - 25603, 25607.2 New Sections 25607.50 - 25607.53](#)

January 3, 2024

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 Clear and Reasonable Warnings, Safe Harbor Methods and Content

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 October 27, 2023, Notice of Proposed Rulemaking on Clear and Reasonable Warnings: Short-form Warnings – Amendments to Title 27 California Code of Regulations § 25601, 25602, 25603, 25607.2 And New Sections 25607.50, 25607.51, 25607.52, And 25607.53; Clear And Reasonable Warnings, Safe Harbor Methods and Content (“Prop 65”). AHRI members do not support the proposed changes to the short form because the current short form warnings provide notice to alert consumers of potential harm but adding the name of a specific chemical does not give the consumer actionable information and could be misleading. AHRI requests OEHHA address AHRI’s proposed changes and provide clarity to our concerns below.

AHRI represents more than 330 manufacturers of air conditioning, heating, and refrigeration equipment. It is an internationally recognized advocate for the HVACR industry and certifies the performance of many of the products manufactured by its members. In North America, the annual economic activity resulting from the HVACR industry is approximately \$256 billion. In the United States alone, AHRI member companies, along with distributors, contractors, and technicians employ more than 1.3 million people.

AHRI provides its concerns regarding the significant challenges that these proposed amendments pose for the industry, which warrant careful consideration. Additionally, AHRI supports the comments submitted by the American Chemistry Council (ACC) and the California Chamber of Commerce and Consumer Brands Association (CalChamber), which are incorporated by reference. While AHRI acknowledges general alignment with the comments from ACC and CalChamber, AHRI wishes to draw attention to concerns outlined in these comments that pertain specifically to its member companies, such as the need for a longer transition period.

Current Short Form Warnings Provide Sufficient Notice to Consumers

AHRI recommends keeping the current short form warning label requirements for Prop 65. The current short form warnings provide notice to alert consumers of potential harm. It places the consumer on notice to gather any additional information that may be necessary to decide how to proceed. However, if the proposed amendments are adopted, as written, the addition of a specific chemical to the label will not give the consumer actionable information and could be misleading.

The regulatory framework requires clear rationale for changing the rules as currently adopted. Without substantial reasoning for the proposed amendments, stakeholders are left without a complete understanding of why the proposed amendments are considered necessary. The proposed addition of a chemical to the short form warnings risks diluting the clarity of the message, potentially causing consumers to misinterpret the safety implications of the product.

It is essential for OEHHA to provide justification for the proposed amendments to stakeholders to ensure that regulatory amendments are in line with the overarching goal of public safety. From the documentation provided by OEHHA in the current and previous rulemakings, it is unclear how the addition of one chemical to the short form warnings will provide actionable information for the consumer.

Furthermore, another concern for manufacturers is that the addition of a chemical to the label will create confusion for consumers. By adding a chemical to the warning label for equipment or products that are already on the market, consumers may think that the chemical was recently added to the equipment or product.

Therefore, AHRI recommends that the short form warning label requirements are kept as currently written in the regulations.

Limited Consumer Interaction with HVACR Equipment

AHRI recommends that an exception is made for HVACR equipment, which is usually operated in confined spaces. AHRI wishes to impart that this is similar to the concept of internal components

which the consumer will never be exposed.¹ OEHHA already acknowledges that for internal components for which the consumer will not be exposed, there is no need to include a Prop 65 warning label.

The proliferation of warning label requirements to more products where no real risk of exposure occurs diminishes the value of the Prop 65 warning on products where there is actual risk of exposure.

Since HVACR equipment typically operates in spaces such as attics, utility closets, or garages, direct consumer interaction to chemicals is particularly limited. In fact, on a day-to-day basis, consumer interaction with HVACR is usually limited to a wall-mounted thermostat. It is unnecessary to require manufacturers to post detailed Prop 65 warnings, since consumers have very minimal contact with these systems, let alone any internally stored chemicals.

Exemption for Replacement Components

AHRI appreciates that components currently have an exemption under the amendments when sold as part of the fully assembled product or equipment.² However, an exemption for replacement component parts is necessary when sold and packaged separately. Manufacturers often do not have packaging specifically for components and by requiring a label, this would cause manufacturers to have to develop specific packaging for these component parts.

In addition, this exemption should also be applied to Commercial Appliances and Commercial Appliance service parts. Thus, interaction between service parts for Commercial Appliances are limited to those trained to handle them and the short form warning is not necessary.

AHRI recommends adding an exemption to the proposed amendments for replacement component parts and Commercial Appliance service parts.

Transition Period for Proposed Amendments

AHRI appreciates that OEHHA proposed a two-year transition period. However, AHRI members believe that a five-year transition period will be necessary to comply with the proposed amendments.

Manufacturers require time to determine appropriate evaluation and testing needs to ensure

¹ Initial Statement of Reasons, Clear and Reasonable Warnings Safe Harbor Methods and Content Title 27, California Code of Regulations Division 4, Chapter 1, Article 6, Subarticle 2 Proposed Amendments to Existing Sections 25601 - 25603, 25607.2 Proposed Adoption of New Sections 25607.50 - 25607.53, at page 7.

<https://oehha.ca.gov/media/downloads/cnr/isornprshortformamendments102723.pdf>

² Initial Statement of Reasons, Clear and Reasonable Warnings Safe Harbor Methods and Content Title 27, California Code of Regulations Division 4, Chapter 1, Article 6, Subarticle 2 Proposed Amendments to Existing Sections 25601 - 25603, 25607.2 Proposed Adoption of New Sections 25607.50 - 25607.53, at page 7.

<https://oehha.ca.gov/media/downloads/cnr/isornprshortformamendments102723.pdf>

that the appropriate chemical is displayed on the warning. In addition, manufacturers will have to redesign and implement the warning labels on potentially tens of thousands of packages. This process will be time consuming and resource intensive. Five years is the preferable time period to mitigate any disruptions that will inevitably occur due to the necessary changes which manufacturers will have to complete.

As a note, during the 2018 provisions, OEHHA provided a two-year transition time. However, even at that time, the two-year transition was not sufficient for manufacturers to prepare equipment for compliance with the 2018 provisions. It is important to note that HVACR manufacturers are working to comply with the transition to lower Global Warming Potential (GWP) refrigerants and the U.S. Department of Energy's (DOE) efficiency metrics. It is impractical for manufacturers to comply with these proposed amendments within a two-year transition period.

Since 2018, equipment manufacturers have been working to transition their product lines to lower GWP refrigerant technologies to meet the U.S. Environmental Protection Agency's (EPA) American Innovation and Manufacturing (AIM) Act Technology Transitions Final Rule requirements. These AIM Act regulations are critical to manufacturers' core business and in many instances rely on the same personnel who also have responsibility for materials of concern regulations including Prop 65.

In addition to federal AIM Act implementation, there have been several EPA Toxic Substances Control Act (TSCA) regulations under Section 6(h), including chemical bans in products such as PIP (3:1). In response to these regulations, manufacturers have had to survey individual suppliers for the presence of specific chemicals and to determine the viability of potential alternative materials or parts. Recently manufacturers have been responding to the EPA TSCA Section 8 reporting regulation for per- and polyfluoroalkyl substance (PFAS) chemicals that requires a supply chain lookback to 2011. This effort will be ongoing for the next 18 months.

Pursuant to the Fall 2023 Unified Regulatory Agenda for the U.S. Department of Energy (DOE), there are several energy conservation standards for covered equipment under the Energy Policy and Conservation Act that are currently in "Final Rule Stage" impacting the industry. These include:

1. Energy Conservation Standards for Consumer Water Heaters.
2. Energy Conservation Standards for Small Electric Motors.
3. Energy Conservation Standards for Automatic Commercial Ice Makers.
4. Energy Conservation Standards for Consumer Boilers.

Furthermore, equipment manufacturers simply do not have information on how all parts or components that make up the whole of their equipment were produced. For a product such as an imported air-cooled chiller, some of the more mundane parts, such as structural channels, could be purchased from distributors. Multiplying this by the thousands of parts in the

thousands and thousands of SKUs, what is proposed in these amendments will take significant time to implement.

For the foregoing reasons, AHRI members are requesting five years for implementation of the amendments, should they go into effect.

Substantial Time and Resources Investment for Compliance

Manufacturers will be required to invest substantial time and resources to comply with the proposed amendments to the short form warnings. Manufacturers will have to completely reconsider and redesign their internal processes to develop the short form warnings, with an identified chemical, for hundreds of their unique 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 29, 2023, there are roughly over 1,000 chemical substances on the Prop 65 list that manufacturers are required to monitor and note if the specific chemical is in their products.³ Suppliers provide many of the components and parts that make up a product and are manufactured externally. Manufacturers request information from suppliers regarding chemicals used in parts, but do not always receive the information. Suppliers often cite that the information is that of a proprietary nature and withhold it due to confidential business information. It is unreasonable for manufacturers to know and expand the text on the short form warnings if the information is not provided by their suppliers due to claims of confidentiality or from unresponsiveness.

Furthermore, the chemical make-up of these materials may differ amongst suppliers, and it is necessary for manufacturers to receive this information directly from their suppliers. If manufacturers cannot receive the information necessary from suppliers, it would unreasonably require manufacturers to test the materials themselves which will cause enormous costs to the manufacturers.

Manufacturers' marketing and communications team will need to redesign the short form warnings to include the identified chemical, the additional signal wording, larger text, and translate it into several languages. This is true not only for on-product labels, but also in many cases for internet websites and product manuals. 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.

Imposing the requirement for manufacturers to modify labels will cause a considerable financial strain and regulatory burden. The associated costs of such alterations may be deemed

³ OEHHA, "The Proposition 65 List," <https://oehha.ca.gov/proposition-65/proposition-65-list>. The website contains the December 29, 2023 Proposition 65 List. (Last accessed on January 3, 2024).

unjustified, posing challenges for manufacturers in compliance while navigating economic considerations.

AHRI recommends that the proposed amendments remain as currently written.

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

To ensure compliance with Prop 65, manufacturers will have an enormous undertaking of managing and monitoring their entire distribution chain. Manufacturers' distribution chains are extensive and complicated. Manufacturers generally sell their products to distributors that may have warehouses in California or in other states.

Due to the distribution chain structure, the ability for manufacturers to trace where equipment is installed is hardly ever known. Manufacturers will have to ensure that all equipment leaving their warehouses contains a warning label that complies with the proposed amendments. This will be required even if the equipment is not installed in California. All of this adds to the cost and burden for manufacturers. This places an added burden on smaller manufacturers, which may not have the ability to pivot from their current distribution and innovate for the future, simultaneously.

In conclusion, the proposed amendments to Prop 65's short form warnings will demand a thoughtful and collaborative approach. This will require that all relevant parties balance the need for consumer safety with the practical challenges faced by the HVACR industry. AHRI strongly requests that OEHHA rescind the proposed amendments to the short form warnings. If you wish to discuss this issue further, please do not hesitate to contact me.

Respectfully submitted,



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