

June 28, 2024

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

Re: Proposed Amendments to Article 6 Clear and Reasonable Warnings - Safe Harbor Methods and Content

Dear Ms. Vela,

On behalf of the Household & Commercial Products Association<sup>1</sup> (HCPA) and its members, we want to convey comments on the Proposed Amendments to Article 6 Clear and Reasonable Warnings - Safe Harbor Methods and Content<sup>2</sup> to address Proposition 65 short-form warnings. HCPA has commented throughout the process to revise the short form warning and appreciates the Agency's efforts to address the previously raised concerns. HCPA appreciates the inclusion of an additional year for companies to transition from current short-form warnings to revised versions but remains concerned that the substantive changes to the short-form warning were unaddressed. As noted previously<sup>3</sup>, HCPA believes the short-form label warning proposal is a deviation from established policies that have improved access to detailed ingredient use and handling instructions for consumers and workers and can be

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<sup>1</sup> HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

<sup>2</sup> <https://oehha.ca.gov/proposition-65/cnr/modification-proposed-amendments-regulations-clear-and-reasonable-warnings-safe>

<sup>3</sup> [https://oehha.ca.gov/media/dockets/21229/21440-household\\_amp\\_commercial\\_products\\_association/hcpa\\_comments\\_of\\_prop\\_65\\_short\\_form\\_warning.pdf](https://oehha.ca.gov/media/dockets/21229/21440-household_amp_commercial_products_association/hcpa_comments_of_prop_65_short_form_warning.pdf)

interpreted as exceeding Clear and Reasonable Warning requirements. HCPA incorporates our prior comments by reference, and we remain concerned that some substantive issues have not been fully addressed. HCPA also supports the comments submitted by the California Chamber of Commerce.

HCPA remains concerned that the changes to the short-form warning represent a fundamental shift to a chemical-specific warning rather than the product-specific safe harbor afforded others. This change unduly places companies at the greatest need for a short-form warning at considerable litigation risk and will increase compliance costs for manufacturers. HCPA also remains concerned that with the introduction of three warning word options and the options of "CA WARNING" or "CALIFORNIA WARNING" for the short-form warning, OEHHA will create even greater confusion in the marketplace, particularly for products sold via the internet or outside the state of California. HCPA reiterates the recommendation that OEHHA align the short-form warning language with the safe harbor warning language to ensure consistency in the marketplace.

HCPA remains concerned that the proposed addition of the term "labeling" in §25602 (d) brings collateral materials in scope for determining when multi-language warnings are needed. Currently, multi-language warnings are required if multiple languages are used on the product label; however, the inclusion of the term labeling<sup>4</sup> could bring literature or collateral communications that provide more context to non-English speakers *beyond* the control of the manufacturer. If the intent is to ensure the collateral material offers a clear and reasonable warning in all languages on the associated collateral materials, then OEHHA should clarify accordingly.

HCPA is concerned that the proposed changes to §25602 (a)(4) no longer offer clear safe harbor protection for manufacturers. Previously, manufacturers were able to rely upon "(t)he entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product," whereas the proposed revision to reference the broader provisions of §25601 (c) encompasses elements potentially available at the point of purchase beyond the control of the manufacturer. HCPA

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<sup>4</sup> §25600.1 (j) defined as "...any written, printed, graphic, or electronically provided communication that accompanies a product including tags at the point of sale or display of a product,

recommends modifying §25602 (a)(4) to include the label-specific provisions of §25601 (c) for clear, safe harbor protection.

HCPA believes that the proposed amendments warrant a more comprehensive Regulatory Impact Analysis. This includes the scale and scope of the rule, and the costs incurred by companies to perform the necessary labeling changes on products and their packaging. HCPA urges OEHHA to conduct a more comprehensive Regulatory Impact Analysis.

Regarding Article 6 Clear and Reasonable Warnings - Safe Harbor Methods and Content, HCPA continues to believe OEHHA should explore other pathways of addressing the stated concerns with over-warning rather than upending the entire regulation, which would affect companies with legitimate needs for the use of the short-form warning. At a minimum, we recommend that OEHHA complete a Regulatory Impact Analysis to fully understand the proposal's economic impact and strongly reconsider whether the changes to the short-form warning are warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Bennett", with a long horizontal line extending to the right.

Steven Bennett, Ph.D.  
Executive Vice President, Scientific & Regulatory Affairs