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SUBMITTED VIA OEHHA RULEMAKING PORTAL: [Comment Submissions - Modification to Proposed Amendments to Regulations Clear and Reasonable Warnings, Safe Harbor Methods and Content California Code of Regulations](#)

June 28, 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 Article 6 Clear and Reasonable Warnings Short Form Warnings

Dear Ms. Vela:

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI), submits the following comments to the California Environmental Protection Agency Office of Environmental Health Hazard Assessment (OEHHA) in response to the June 13, 2024, Notice of Modification to Text of Proposed Regulation, Title 27, California Code of Regulations Proposed Amendments to Article 6 Clear and Reasonable Warnings – Safe Harbor Methods and Content. AHRI members appreciate the response by OEHHA to stakeholder comments during the 45-day portion of the rulemaking process and making changes to the regulatory text in response to stakeholder comments. However, AHRI members continue to have 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 represents more than 330 manufacturers of air conditioning, heating, and refrigeration (HVACR) 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 more than \$211 billion. In the United States alone, AHRI member companies, along with distributors, contractors, and technicians employ more than 704,000 people.

AHRI supports the comments submitted by the California Chamber of Commerce and the Consumer Brands Association, which are incorporated by reference. While AHRI acknowledges general alignment with the comments from CalChamber and Consumer Brands Association, 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.

AHRI requests that the proposed amendments to the short form warnings are rescinded. AHRI reiterates the following discussion points from its 45-day comments as the 15-day modification to regulatory text fails to address many of Industry's concerns.

Current Short Form Warnings

AHRI supports retaining the current short form warning requirements, which are designed to provide consumers with a straightforward alert about potential harm. The existing system effectively prompts consumers to seek additional information if they have concerns about a product's safety.

Manufacturers adding a name of a specific chemical to the short form warning could lead to consumer confusion rather than clarity. This could result in unnecessary alarm or misinterpretation about the safety of the product, as the presence of a chemical name might suggest a new risk that was not previously considered, even if the risk level has not changed.

Justification for Changes

AHRI requests OEHHA to provide a comprehensive explanation for the proposed amendments. For regulatory changes to take place, the changes should be backed by substantial reasoning and evidence demonstrating the necessity and benefit of the changes.

For example, as noted in the October 27, 2023 Initial Statement of Reasons (ISOR), OEHHA states that the need to make changes regarding the short form warnings is due to businesses "prophylactically" adding short form warnings to products and asserts that by adding a chemical to the label, this behavior will be reduced or stopped.¹ However, evidence to support OEHHA's assertion has not been provided to show that the change to the current short form warnings is warranted or necessary. AHRI requests that OEHHA provide the information relied upon to make this assertion.

The addition of chemical names to the short form warning could dilute the clarity of the message conveyed by the warning. Consumers may misinterpret the presence of a chemical as indicating new or increased risk, which could lead to undue concern or misinformation regarding the product or equipment. Clear and understandable warnings are crucial for consumer safety, and adding complex chemical information does not necessarily enhance consumer understanding.

Exemption for Replacement Components

AHRI recommends that replacement component parts, when sold separately, are exempt from the warning label requirement. This exemption should also extend to service parts for commercial appliances, which are typically handled only by trained technicians, further minimizing consumer exposure.

¹ "OEHHA anticipates that if a business must identify a chemical exposure, businesses will be less likely to use the warning prophylactically and more likely to warn only when the Act requires it." *See* Initial Statement of Reasons, pg. 7 (October 27, 2023).

Limited Consumer Interaction with HVACR Equipment

AHRI recommends that an exemption is made for HVACR equipment, which may be out of reach to most consumers daily. HVACR equipment is typically installed in areas such as attics, utility closets, or garages, where consumer interaction is minimal. The day-to-day consumer interaction is generally limited to the use of devices such as wall-mounted thermostats.

Given the confined and often inaccessible locations of certain of these systems, requiring detailed Prop 65 warnings on HVACR equipment is unnecessary. Where the consumer is not in direct exposure to a component of concern within the product or equipment, then a short form warning does not need to be affixed to the product or equipment. This should mirror OEHHA's existing policy that internal components not exposed to consumers do not require warnings.

Manufacturers rarely know the final installation locations of their products once they leave the factories.

To comply with Prop 65, manufacturers must manage and monitor their entire, complex distribution chains, which often involve distributors with warehouses across various states, including California.

Since they cannot trace where equipment will be installed, manufacturers must label all products with Prop 65 warnings, regardless of the location in which the products or equipment is installed. This requirement increases costs and burdens, particularly for smaller manufacturers, who may struggle to adapt their distribution processes while continuing to innovate.

Resource Investment

The proposed amendments will require substantial time and resources from manufacturers. This includes reassessing internal processes, redesigning labels, consulting with suppliers to identify chemicals within the products and equipment, and managing extensive distribution chains.

Manufacturers will need to invest heavily in redesigning their labeling systems, which involves coordinating with suppliers to obtain detailed chemical information that is often proprietary or withheld. The process will be particularly burdensome for smaller manufacturers, who may lack the resources to implement these changes swiftly without compromising their operational efficiency.

Implementation Timeline

AHRI appreciates OEHHA taking into consideration the need for a longer implementation timeline. However, AHRI and its members maintain that a five-year transition period is necessary to make changes to the short form warnings. Manufacturers require ample time to redesign labels and ensure compliance with the regulation, along with other regulatory burdens.

Five years would help to mitigate the logistical and financial challenges associated with such extensive regulatory modifications.

Conclusion

AHRI appreciates the opportunity to submit these comments and welcomes the opportunity to discuss this issue further. AHRI urges OEHHA to reconsider the proposed amendments to the short form warnings under Prop 65. The existing system provides clear, actionable warnings without causing unnecessary confusion.

The proposed changes will impose significant burdens on manufactures, require extensive resource investment, and potentially mislead consumers. Therefore, AHRI strongly recommends maintaining the current warning requirements and, if amendments are necessary, allowing a five-year transition period to ensure smooth and effective implementation. Please do not hesitate to contact me.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kaitlin Walker".

Kaitlin Walker
Associate General Counsel
Email: kwalker@ahrinet.org