



California New Car Dealers Association

April 8, 2015

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

RE: Proposition 65 Clear and Reasonable Warning Proposed Regulations

Dear Ms. Vela:

The California New Car Dealers Association (CNCDA) is a statewide trade association that represents the interests of over 1,100 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale and leasing of new and used motor vehicles, but also engage in automotive service, repair and part sales.

We are writing to you regarding the proposed regulations addressing the “clear and reasonable warnings” mandated by Proposition 65. CNCDA and its members thank you for the opportunity to provide comments to OEHHA. This letter addresses specific concerns unique to CNCDA’s members. However, CNCDA is also a signatory to the California Chamber of Commerce’s comments and incorporates those comments by reference herein.

First, we applaud OEHHA’s outreach to date to the regulated community and appreciate the opportunities we have had to date to participate in the regulatory process. The proposed regulations represent some major improvements from the pre-regulatory proposal and clearly reflect input from the regulated industry representatives.

Nonetheless, we continue to have concerns with the proposed regulations. CNCDA’s members are in what is likely a unique position in that they operate complex, multi-faceted businesses, and yet have been in compliance with the warning requirements of Proposition 65 for many years. We therefore first and foremost urge OEHHA to adopt safe-harbor warning methods that more closely resemble the industry’s current, compliant practices.

In addition, the proposed passenger vehicle and repair facility regulations present new compliance challenges that we will address specifically. First, the requirement to provide warnings for passenger vehicles in two different ways increases the regulatory burden without significantly improving the likelihood that consumers will see or understand warnings. Second, the requirement that signs be provided in languages other than English at repair facilities is vague and burdensome.

CNCDA's Proposition 65 Compliance Program Works

CNCDA currently promotes to its members a Proposition 65 compliance program that it voluntarily developed that is both comprehensive and successful. By way of background, in 2002, private plaintiffs filed a large number of Notices of Violation against California franchised car dealers. These Notices were without merit; no complaints were filed by the plaintiffs against any franchised car dealer and no franchised car dealer in California entered into any settlement, in or out of court, with the plaintiffs.

CNCDA nonetheless worked with experienced Proposition 65 counsel to develop a comprehensive system of compliance for its members. CNCDA conducted training workshops across the state after debuting the compliance program. **Since adoption of the program in 2004, no California franchised dealer, to CNCDA's knowledge, has received a Notice of Violation of Proposition 65.¹**

We provide this information to establish why industry practice should be given particular weight. CNCDA's members have taken the warning requirements of Proposition 65 seriously. What the industry is currently doing is not broken. OEHHA therefore should avoid overly prescriptive requirements that will differ significantly from current industry practice and instead adopt safe-harbor warning methods that will fit easily within the industry's current compliance program.

The Non-English Warning Requirement is Vague

CNCDA echoes the concerns raised by the California Chamber regarding providing warnings in languages other than English. Car dealerships in particular would face major problems in complying with these various requirements as currently written. For example, does a non-English word in a product name trigger non-English warnings? Does posting in the dealership an advertisement for a vehicle run in a language other than English trigger a warning in that language? If an owner's manual is printed in two language, and arguably constitutes "labeling" per proposed section 25600.1(f), does that trigger a warning in a language other than English, even if there is no significant population of speakers of that language in California? The requirement is simply too vague.

Conclusion

Again, CNCDA appreciates OEHHA's efforts to date on this important issue and we thank you for the opportunity to provide comments.

¹ A search of the Office of the Attorney General's Prop 65 database reveals no Notice of Violation against a franchised dealership since 2004.

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Sincerely,

A handwritten signature in black ink, appearing to read 'M. J. Baumann', with a long horizontal line extending to the right.

Monica J. Baumann
Director of Legal and Regulatory Affairs
California New Car Dealers Association