



**AUTO ALLIANCE**  
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September 7, 2017

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**Sent Electronically to:** [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)

**SUBJECT:** “Clear and Reasonable Warning Regulations”

Dear Ms. Zeise:

The Association of Global Automakers, Inc.<sup>1</sup> (Global Automakers) and the Alliance of Automobile Manufacturers<sup>2</sup> (Alliance) (collectively, “the Associations”) submit these comments in response to the California Office of Environmental Health Hazard’s (OEHHA) most recent proposal for amending Proposition 65 (Prop 65) safe harbor regulation: *Notice of Proposed Rulemaking, Amendments to Certain Sections of Article 6, Clear and Reasonable Warnings*.

We appreciate OEHHA’s openness and willingness to work with industry and other stakeholders throughout the regulatory and pre-regulatory stages of this rulemaking. We have seen positive changes in the latest draft of the proposed regulations that demonstrate that OEHHA has considered a number of our previously submitted comments. However, we remain concerned about issues identified in our previous comments that have not been resolved that will impact the effectiveness and workability of this regulation.<sup>3</sup> Specifically, we have concerns with (1) the compliance challenges and burden imposed upon manufacturers by the certain changes to Sections 25607.16 and 25607.17 concerning pickup trucks and vans beyond changes made in the most recent proposal, and (2) OEHHA’s decision not to address our concerns about the applicability of Proposition 65 and the safe harbor regulations to replacement parts.

A number of changes proposed in the draft amendments address issues that we have previously raised, and we appreciate OEHHA’s willingness to add clarity to the regulations. Specifically,

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<sup>1</sup> The Association of Global Automakers, Inc. represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. In the state of California, our members’ market share is 57 percent, and our members have invested \$5.7 billion in the state through employment, facilities, dealerships, etc. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans’ quality of life. For more information, please visit [www.globalautomakers.org](http://www.globalautomakers.org).

<sup>2</sup> Auto Alliance members are BMW Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit <http://www.autoalliance.org>.

<sup>3</sup> Comments submitted by Global Automakers and the Alliance on June 13, 2014, October 17, 2014, April 8, 2015 and January 25, 2016.

we appreciate the clarity added to the regulation through most of the proposed revisions to Sections 25607.16 and 25607.17 to include pickup trucks and vans. However, additional changes are now essential to allow the regulated community to comply with both the spirit and letter of the law and to ultimately fulfill the intention of Prop 65 to “provide more useful information to Californians about their exposures to listed chemicals.”<sup>4</sup> The Associations believe that accomplishment of OEHHA’s goals will be enhanced by further modifications, which we discuss below.

## I. Sections 25607.16 and 25607.17

The Associations have concerns with OEHHA’s modification of Sections 25607.16 and 25607.17 to add the references to pickup trucks and vans. OEHHA’s Initial Statement of Reasons states that these sections are amended “to clarify that the vehicle exposure warning methods in Section 25607.16 also apply to ‘pickup trucks’ and ‘vans’ that are passenger vehicles” under Vehicle Code § 465.5. In other words, pickup trucks and vans are merely subclasses of “passenger vehicles” that are already covered in the safe harbor. While making specific reference to pickup trucks and vans may provide some clarity and consistency with respect to the application of this tailored warning to vehicles, it does not warrant OEHHA’s reversal of position in terms of the owner’s manual language previously finalized and relied upon by manufacturers. In fact, if OEHHA is to proceed with this clarification, additional revisions are necessary to address certain practical challenges in light of the passage of time since OEHHA first adopted the new regulations last year, and to clarify the scope of these revised sections.

### A. Revisions to the Warning Text to Encompass Pickup Trucks and Vans in Section 25607.17(a)(3)

The Associations understand that OEHHA revised the warning text to add the reference to pickup trucks and vans to be consistent with the rest of the proposed revisions to this regulation. We agree with this overall goal of consistency.

However, due to the long development cycle for products and owner’s manuals, most of our members already have produced (and in some cases, distributed) owner’s manuals with the warning text as it appeared in the January 9, 2017 version<sup>6</sup> of the regulations. The warning text in the pre-printed owner’s manual reflects guidance previously provided by OEHHA to industry and, for some manufacturers, has already been included in the sale of certain vehicles manufactured prior to the effective date of August 30, 2018 (and may be included in certain

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<sup>4</sup> Final Statement of Reasons Title 27, California Code of Regulations, page 9.

<sup>5</sup> Initial Statement of Reasons, Title 27, California Code of Regulations, Proposed Amendments to Article 6 Clear and Reasonable Warnings (July 21, 2017), page 9.

<sup>6</sup> Pursuant to that version of the § 25607.17, the warning being used by many automakers on their pickup trucks and vans states: “Operating, servicing and maintaining **a passenger vehicle or off-road highway motor** vehicle can expose you to chemicals including engine exhaust, carbon monoxide, phthalates, and lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, do not idle the engine except as necessary, service your vehicle in a well-ventilated area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to [www.P65Warnings.ca.gov/passenger-vehicle](http://www.P65Warnings.ca.gov/passenger-vehicle).” Retrieved from <https://oehha.ca.gov/media/downloads/crn/art6sec100amendedsections010617.pdf>.

vehicles manufactured after the effective date of August 30, 2018.) These companies now are faced with the prospect of disposing of and reprinting, in the aggregate, hundreds of thousands of printed manuals to benefit from the revised safe harbor warning text as proposed for no measurable benefit. To penalize manufacturers' good faith compliance efforts, which were based on OEHHA's assurance of the finality of this language, would undermine both compliance with the regulations and with OEHHA's own rulemaking process.

To avoid such a wasteful and costly result, the Associations propose that OEHHA adopt one of the following solutions:

1. Withdraw the proposed revision to the warning text in Section 25607.17, so that it would not require the reference to pickup trucks and vans. The definition of "passenger vehicle" in Vehicle Code Section 465 includes pickup trucks and vans, and we believe that even with this phrase stricken, consumers will understand the warning to apply to the pickup truck or van that they are purchasing and driving; or
2. Place the phrase "pickup truck, van" in brackets, and add new subsection (a)(4), which would state:  
"The bracketed phrase 'pickup truck, van' may, but is not required to, be included in the warning content in order to meet the requirements of this section with respect to pickup trucks and vans"; or
3. Add new subsection (a)(4), which would state:  
"A warning for a motor vehicle manufactured prior to August 30, 2020, is deemed to be clear and reasonable if it complies with the content in Section 25607.17(a)(3), even if the warning does not contain the phrase 'pickup truck, van.' A warning for a motor vehicle manufactured on or after August 30, 2020, is deemed to be clear and reasonable if it fully complies with the content in Section 25607.17(a)(3)."

#### B. Clarification of the Definition of "Pickup Truck" and "Van"

In light of the specific reference to pickup trucks and vans in Section 25607.16, the associations believe that further clarification of the definition of these terms will be important for both the regulated community and the enforcement community to understand what types of vehicles are encompassed by these terms, for purposes of determining compliance. Further clarification also ultimately will provide more meaningful information for consumers.

For that reason, we urge OEHHA to include, in its Final Statement of Reasons, the definitions of these terms that we previously provided, that is:

*A "pickup truck" is a motor truck with a manufacturer's gross vehicle weight rating of less than 16,001 pounds and which is equipped with an open box-type bed not exceeding 9 feet in length. "Pickup truck" does not include a motor vehicle otherwise meeting the above definition, that is equipped with a bedmounted storage compartment unit commonly called a "utility body."*

### C. Clarification that the Safe Harbor Applies to “Complete” Vehicles

The Associations previously recommended that the identification of vehicles encompassed by this regulation be clarified as being “complete,” i.e., a fully assembled vehicle. We interpret OEHHA’s decision not to include that word in the proposed revisions to mean that OEHHA believes it to be unnecessary given the statutory definitions of “passenger vehicle” and “off-highway motor vehicle.”

Notwithstanding those definitions, the Associations believe that including the word “complete” will clarify to what vehicle categories this tailored warning system applies. This is especially important with respect to the terms “pickup truck” and “van,” for which there are no statutory definitions. This clarification will avoid pulling in unintended stakeholders.

## II. Replacement Parts

Since 2014, major U.S. trade associations, including Global Automakers, the Alliance, a multitude of associations<sup>7</sup> representing automobile manufacturers, parts manufacturers, complex durable goods manufacturers, and the California Chamber of Commerce, have consistently raised serious concerns about the need for, and workability of, the Prop 65 safe harbors application to replacement parts. These organizations have identified several alternatives for how Prop 65 should address replacement parts in the safe harbor requirements. Several worthwhile meetings have occurred between OEHHA and major U.S. trade associations. While OEHHA has indicated they do not expect the majority of automotive parts to exhibit exposures over Prop 65 levels and thus would not require labeling, we remain concerned that without replacement part inclusion or relief by the safe harbor language in Sections 25607.16 and 25607.17, OEHHA would expect testing for each and every part for exposure potential. This course of action is cost-prohibitive and requires a mammoth undertaking.

Consequently, automakers and parts manufacturers may have to separately label hundreds of thousands of essential replacements parts—not because consumers are exposed to significant levels of listed chemicals from replacement parts (they are not), but rather solely to defend against the potential for unmeritorious lawsuits. It would be very difficult for an automaker to prove that thousands of replacement parts do not have exposures over Prop 65 levels. Moreover, replacement part warnings provide no additional benefit to consumers, as those parts are substantially identical to the original parts covered by the vehicle safe harbor warning and pose similar exposure potential (if any exposure at all) to parts in the vehicle as sold to the consumer.

Thus, the Associations will continue to request that OEHHA either clarify that vehicle replacement parts are covered by the safe harbor language in Sections 25607.16 and 25607.17, or provide some other regulatory relief for replacement parts. This will support our joint goal to reduce “over labeling” and “label numbness” that are antithetical to the very goal that OEHAA is trying to achieve. We believe that additional coordination and discussion between OEHHA and

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<sup>7</sup> Including the American Home Furnishings Association; Automobile Aftermarket Suppliers Association, Auto Care Association; California Automotive Wholesalers’ Association; Motor and Equipment Manufacturers Association.

our two associations is needed to find a workable path forward, and we look forward to working with OEHHA to address these issues.

In conclusion, we urge OEHHA to consider the comments we have provided. We would welcome the opportunity to meet with you on any of the issues we have raised and to discuss additional options we may develop for making this regulation more workable. Please do not hesitate to contact us with questions or if we may provide additional information.

Sincerely,



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