



September 15, 2021

Submitted via [Part368Regs@dec.ny.gov](mailto:Part368Regs@dec.ny.gov)

NYSDEC  
625 Broadway, 9<sup>th</sup> Floor  
Albany, NY 12233-7254  
ATTN: Katie Kidalowski

RE: Comments on Proposed Part 368

Dear Ms. Kidalowski:

Thank you for the opportunity to provide comments on the recent proposal by the New York State Department of Environmental Conservation (NYSDEC), "NYCRR Part 368 Product Stewardship and Product Labeling." The Alliance for Automotive Innovation<sup>1</sup> (Auto Innovators) represents automakers that produce and sell about 99% of the new light-duty vehicles in the United States, and the proposed revisions to Part 368 could potentially have a significant impact on our members.

Based on our reading of the proposal, there are three separate actions that relate to recycling and reuse:

1. *Subpart 368-1 Recycling Labeling:* A new Subpart 368-1 is proposed to establish consistency with existing federal and state guidance and requirements, as well as to better inform consumers about proper end-of-life management of their products. The proposed Subpart 368-1 identifies new definitions for package, person and product. Standards for "recyclables", "recycled" and "reusable" are each identified and specify that a person may only use these terms on a product or package that is in conformance with sections 260.12, 260.13 and 260.14 of the Federal Trade Commission's "Guides for the Use of Environmental Marketing Claims" published in 16 CFR Part 260.

Auto Innovators appreciates the efforts to ensure consistency with existing federal requirements. Consistency across the state and federal authorities provides clear direction for the regulated community and a common set of terms to inform the public.

2. *Subpart 368-2 Mercury-Added Consumer Products Labeling:* A new Subpart 368-2 is proposed to establish consistency with existing federal and state guidance and requirements, as well as to inform consumers about the content of their products. The proposed Subpart 368-2 provides new definitions

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<sup>1</sup> Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website <http://www.autosinnovate.org>.

in Section 368-2.2 for consumer, distributor, manufacturer, mercury-added consumer product, package, person and retailer. Section 368-2.3 of the proposed regulations requires mercury-added consumer products sold or offered for sale in New York State by a distributor or retailer to be labeled by the manufacturer. The label must clearly inform the consumer that mercury is present in the product and that the product cannot be disposed of or placed with waste destined for disposal as municipal solid waste until the mercury is removed and reused, recycled or otherwise managed to ensure that mercury does not become part of solid waste, contaminate wastewater, or is released to the environment. A manufacturer can instead request that an alternative label be approved by the Department. The proposed regulations also establish a procedure for department-approval of alternative labeling upon request by a manufacturer.

The proposed revisions provide the following guidance specific to automobile manufacturers:

(b) Automobile manufacturers meet the labeling requirements of this section, with respect to either **original equipment or service parts**, if the automobile bears a label on the doorpost that **lists the mercury-added components present in the vehicle**. Such label shall, to the largest extent possible, **be consistent with labeling provisions of other states**. An automobile manufacturer may apply to the department for approval of an alternative to the labeling requirement for providing presale notification of mercury content.<sup>2</sup> (*emphasis added*)

Auto Innovators request that NYSDEC provide the following clarifications in any final rulemaking:

- Labels currently used by the automotive sector that have been approved by the Northeast Waste Management Officials' Association (NEWMOA) under the State Mercury-Added Labeling Guidelines meet the requirements of this proposal. As New York state is a party to these guidelines, providing assurance of this consistency should not be in conflict with this proposal. Requiring automotive manufacturers to provide multiple labels for the same purpose would be costly and more importantly, confusing for the consumer.
  - Clarify that aftermarket service parts sold for vehicle repair are not required to have separate labeling distinct from the whole vehicle label, unless otherwise specified by federal or state law.
3. *A new Subpart 368-3 is proposed to clarify and strengthen the existing provisions of the NYS Electronic Equipment Recycling and Reuse Act (EERRA) for all participating stakeholders and Covered Electronic Equipment (CEE) manufacturers' responsibility for all costs associated with the implementation of their electronic waste acceptance programs. The definitions of computer, computer peripheral, and small electronic equipment have been updated to include a listing of products on the market (such as e-readers, external hard drives, digital picture frames, and internet streaming devices, etc.) that have been determined by the department to meet the definition of those types of CEE but were not expressly stated in statute.*

The proposal further states “(2) CEE does not include: (i) any motor vehicle or any motor vehicle part”.<sup>3</sup> Auto Innovators requests that NYSDEC provide the following clarifications in any final rulemaking that nothing in new Subpart 368-3 applies to automotive manufacturers.

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<sup>2</sup> NYSDEC, “Product Stewardship and Product Labeling Proposed Rule.” 6 NYCRR Part 368, p. 10 of 88. Found at: [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/part368proposedexpressterms.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/part368proposedexpressterms.pdf).

<sup>3</sup> *Ibid*, p. 19 of 88.

Thank you for your consideration of these requests for clarification. We believe that consistency across state and federal requirements for labeling is of significant benefit to the consumer and to those who must comply with nationwide requirements.

Sincerely,

A handwritten signature in black ink, appearing to read 'JMR', written in a cursive style.

Julia M. Rege  
Vice President, Energy & Environment