



January 21, 2022

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

Sent Electronically to: <https://oehha.ca.gov/comments>.

RE: Modification of Text to Proposed Amendments to Article 6 Clear and Reasonable Related to Short-Form Warnings for Consumer Product Exposures

Dear Ms. Vela:

We are writing on behalf of the Motor & Equipment Manufacturers (MEMA),¹ Automotive Aftermarket Suppliers Association (AASA),² the Auto Care Association,³ CAWA – Representing the Automotive Parts Industry,⁴ and the Automotive Specialty Products Alliance (ASPA).⁵ Together, our associations represent the coast-to-coast network of automotive chemical and vehicle appearance product manufacturers; original equipment

¹ MEMA represents its members via four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA – The Association for Sustainable Manufacturing; and, Original Equipment Suppliers Association (OESA). MEMA represents more than 900 companies that manufacture and supply parts, components, and systems for use in light and heavy-duty motor vehicles in the original equipment and aftermarket industries. Motor vehicle suppliers is the largest sector of manufacturing jobs in the U.S. providing more than 900,000 jobs in all 50 states – 27,051 of those jobs are in California. ([US Labor & Economic Impact of Vehicle Supplier Industry – 2019CY Report](#) for MEMA by IHS Markit, December 2020.)

² The Automotive Aftermarket Suppliers Association is a division of MEMA.

³ The Auto Care Association has more than 3000 member companies that represent some 150,000 independent automotive businesses that manufacture, distribute, and sell motor vehicle parts, accessories, tools, equipment, materials, and supplies, and perform vehicle service and repair.

⁴ The CAWA is a non-profit trade association representing automotive aftermarket parts manufacturers, jobbers, warehouse distributors and retailers in California, Nevada, and Arizona. The Association was formed in 1955 and serves as the voice of the aftermarket parts industry in the West.

⁵ ASPA provides a unified industry voice for its members engaged in the automotive chemical and vehicle appearance product markets before state, regional and federal legislators, and regulators. ASPA draws upon the combined services offered to companies in the automotive chemical and vehicle appearance product markets through the MEMA and the Auto Care Association.

and aftermarket vehicle suppliers; and independent aftermarket manufacturers, distributors, wholesalers, repair shops, marketers and retailers small and large.

We provide the following comments regarding the December 17, 2021 Notice, “Modification of Text to Proposed Amendments to Article 6 Clear and Reasonable Warnings Related to Short-Form Warnings for Consumer Product Exposures”(15-day notice).

In general, we appreciate California Office of Environmental Health Hazard Assessment’s (OEHHA) efforts to mitigate the burden of the proposed amendments to the regulations for the Proposition 65 (Prop 65) related to the short-form warnings (Prop 65 short-form warnings amendments). While our associations support some of the modifications, we have significant concerns with OEHHA’s proposed amendments and the proposed modifications for the Prop 65 short-form warnings amendments. Consequently, we repeat the request that OEHHA withdraw the short-form warning amendments and modifications. In addition, we support comments submitted by the California Chamber of Commerce (Cal Chamber) and incorporate them here by reference. Please also see MEMA’s Joint Association comments submitted electronically to OEHHA on March 21, 2021 on the original proposed amendments and we incorporate them by reference our prior concerns and raise supplemental concerns below.

Summary of Comments

Our comments on the proposed modifications to the Prop 65 amendments discuss the following:

- **We Urge OEHHA Provide a Five-Year Transition Period**

The proposed one-year transition period is unworkable for businesses to evaluate and re-label all their Prop 65 warnings and published materials. We strongly urge OEHHA provide a reasonable transition. We recommend a five-year transition period. Vehicle aftermarket suppliers often have tens of thousands of Stock Keeping Units (SKUs) to review, re-design packaging, or re-label. Most aftermarket supplier companies have complex supply chains making communication through the supply chain extremely challenging. Having a longer transition period would help mitigate the significant compliance costs and logistics especially given the COVID-19 disruptions.

- **We Urge OEHHA to Increase Maximum Label Size, Size is Still Too Small**

We appreciate OEHHA amending the maximum label size for the short-form warning from 5 square inches to 12 square inches. However, a maximum of 12 square inches for allowing the short-form warning is still too small.

- **We Support Allowing Use of the Short-Form on Websites and Catalogs**

OEHHA’s modification of allowing the use of the short-form warning on websites and in catalogs is supported by our associations. This modification will provide consistency along the supply and distribution chain and will help eliminate varying warning language for the same products. This consistency is essential for vehicle suppliers and the industry’s complex supply chain.

- **We Request OEHHA Withdraw the Short-Form Warning Amendments**

We repeat our request made in March 2021 and urge OEHHA to withdraw the short-form warning amendments. OEHHA's original proposed revisions to the short-form warning are inappropriately timed as these changes would be extraordinarily difficult, expensive, and burdensome after companies just spent significant resources to implement changes in 2018. These proposed amendments will have significant adverse economic impacts on businesses as small as 10 employees. This proposal could cost as much as \$12 million per company to re-label the tens of thousands of products our members manufacture and sell.

OEHHA Should Provide a Five-Year Transition Period

In § 25603(d), OEHHA proposes a one-year transition period for the revised short-form warning requirements to become effective once finalized. One year is not sufficient time for businesses to evaluate and re-label every product that provides a Prop 65 warning. We strongly urge OEHHA to provide a reasonable transition. Our associations support a transition of five years but no less than a three-year transition.

If OEHHA is serious about eliminating over-warning, providing businesses with a reasonable transition period is essential. A reasonable transition would help manufacturers have the needed time and resources to test parts, assess potential exposure and ensure the Prop 65 warnings are justified. Again, vehicle aftermarket suppliers often have tens of thousands of SKUs to review, re-design packaging, or re-label. Most aftermarket supplier companies have very long and complex supply chains with which to communicate with throughout the whole process. Businesses thrive on regulatory certainty and stability; and need time to plan compliance. Businesses also need to have confidence that the regulations they invest significant resources to comply with will stay stable and consistent.

Further, many businesses, including small businesses, are facing incredibly difficult times economically with increased labor, work force and other regulatory complexities created by the COVID-19 pandemic and other external forces. A longer and more reasonable transition time could mitigate some of the significant Prop 65 compliance costs that vehicle suppliers would face.

Many businesses are struggling to stay afloat due to the difficult economic challenges brought on by the pandemic. In addition to the toll on an already constrained workforce, there have also been significant supply chain disruptions. Receiving the needed materials and parts during this period poses unique challenges not seen before. OEHHA's Prop 65 short form warning amendment is inappropriate given the timing and obstacles businesses are already encountering in this era. Given these circumstances, if OEHHA proceeds, we strongly recommend the five-year transition period.

We appreciate OEHHA providing an "unlimited sell-through period... allowing businesses to avoid recalling items in the stream of commerce to apply the modified short-

form warning.”⁶ We also understand that a Prop 65 warning will be deemed to be clear and reasonable if it complies with the August 2016 revision as long as it is manufactured prior to the operative date.

However, if implemented as proposed, OEHHA’s requirements could still require companies to scrap many already produced printed packaging materials and labels to adhere to the proposed requirements if the transition time is limited to one year. Often, when ordering labels or packaging materials, there are quantity minimums that provide more than a year’s worth of labels or packaging. Many of our members have sustainability goals and adhere to strict standards for sustainable manufacturing and waste restrictions. OEHHA’s proposed changes will affect our members’ ability to meet their sustainability goals by forcing the disposal of tens of thousands of labels and packaging materials in inventory. This associated waste is increased even further if the changes are required with the lead time of only one year.

We Urge OEHHA to Increase Maximum Label Size, Size is Still Too Small

OEHHA’s December 2021 modifications propose a larger label maximum and would allow a company to use the short-form warning only if the label size is 12 square inches or less. This is an adjustment from OEHHA’s original January 2021 proposal that would allow a company to use the short-form warning only if the label size is 5 square inches or less.

While we appreciate OEHHA amending this maximum label size, 12 square inches or less restriction is still too small for the aftermarket supplier industry to be restricted to the long-form Prop 65 warning on a label larger than 12 square inches. Our companies have a significant amount of information to place on a package. This information includes, but is not limited to, other warnings, application information, directions for use, ingredient list, brand name, product name, company name, location of manufacture, date of manufacture, and product advertising. This is why short-form warnings were adopted almost universally after the 2016 amendments, companies have a lot of information on their products and labels. It is difficult to redesign the label or packaging to accommodate the full long-form Prop 65 warning with that size requirement, particular with one year transition.

We urge OEHHA to increase maximum label size for short-form warnings. If OEHHA will not increase maximum label sizes for the short-form warnings, we urge OEHHA to provide other options for companies to provide the information. We recommend allowing companies to include QR codes on the label. QR codes could be scanned by the consumer for the Prop 65 warning, the listed chemicals in the warning, and how to potentially avoid exposure to the listed chemicals. All of this information could be accessed prior to purchase. This would somewhat mitigate significant adverse economic impact to businesses having to completely redesign product packaging or labels to comply with these new short-form requirements.

Further, there needs to be clarifying language in the regulation or the Final Statement of Reasons as to how “label” is defined. Does the maximum restriction refer to the size of the

⁶ ISOR, p. 4.

packaging, product or the label? This detailed information and definition is critical for companies to ensure they can plan compliance appropriately.

We Support Allowing Use of Short-Form Warnings on Websites and Catalogs

We strongly support OEHHA's modification of allowing the use of short-form warnings on websites and in catalogs to match the short-form on the product (or label). The original proposal would require any company that provides a Prop 65 short-form warning for their product to re-label each product and then re-label each associated product description on the internet and in catalogs with the long-form warning. Allowing businesses to use the short-form warning on both the product and the internet and catalog will provide consistency along the supply and distribution chain and will help eliminate varying warning language for the same products. This consistency is essential for vehicle suppliers and the industry's complex supply chain. Again, the vehicle aftermarket supplier industry has very long and complex supply chains with which to communicate. It is critical to have this communication certainty and stability when the industry commits great resources to ensure it complies with Prop 65.

OEHHA Should Withdraw the Short-Form Warning Amendments Proposal

We strongly oppose the proposed changes to the short-form warnings because of the impact to our member companies so quickly after the changes that were made and completed in August 2018. OEHHA's short-form proposal is unreasonable, would be extraordinarily difficult and a costly burden, especially considering companies have only just expended significant resources to implement changes. Our member companies, including many small businesses, went to significant time and resources to update not only product labels, but also published materials to ensure on-time compliance with the changes mandated by OEHHA's August 2018 deadline. Now, a few years later, OEHHA is proposing that businesses re-do their Prop 65 short-form warnings. OEHHA's proposal essentially would require any company that provides a Prop 65 short-form warning for their product to re-label each product within one year.

OEHHA's proposed short form warning requirements would pose significant challenges to vehicle aftermarket supplier companies due to industry characteristics. Many members manufacture, package, and sell as many as one million (1,000,000) consumer products or SKUs and develop tens of thousands of additional SKUs annually. Vehicle suppliers also manufacture, package, and sell thousands of these products that range from very large to very small products. Further, many vehicle aftermarket suppliers have extremely complex supply chains that are often seven or eight tiers deep. All these elements provide unique challenges and pose difficulties for determining which chemicals are in each component, at what level and which chemical is most appropriate to name in the Prop 65 warning. The agency's proposed change would add more uncertainty and risks for vehicle suppliers.

Requiring another major label update would have significant adverse economic impact to businesses including small businesses as small as 10 employees particularly given the complexity of the vehicle aftermarket supplier industry. Our member companies estimate that the proposed changes to the Prop 65 short-form warning on their product labels could cost a company as much as \$12 million – depending on how many products are produced

by the company. In addition, member companies estimate that just producing revised pre-printed product labels alone could cost each company as much as \$800,000. Member companies estimated implementation of the Prop 65 2016 revisions required a minimum of 3000 hours of labor – dependent on how many products a company produces. OEHHA's proposed changes could have a comparable impact on their businesses. These are costs businesses are often forced to absorb because these costs cannot necessarily be passed on to consumers. These costs are significant in part because of the OEHHA's proposed narrow one-year lead time.

OEHHA's requirements to provide long-form warnings with some products and short-form warnings with other products depending on criteria is cost and time prohibitive. Again, many suppliers have tens of thousands of SKUs. This requirement would force some suppliers to manage multiple labels for products, which increases risk of non-compliance and compliance cost. In addition, this could create competitive disadvantages for compliant companies due to price increases for having multiple label sizes and not having the advantage of bulk order quantities.

Our members are further concerned that the proposed provisions, instead of helping, could instead cause confusion and impact the readability of labels by increasing the text required on the packaging. There is other important text on packaging and a longer warning could take away from other important messaging. Product packaging already has limited space due to increased regulatory and customer information requirements, including multi-lingual requirements. The Prop 65 short-form warning, as it appears today, potentially stands out and is easier for consumers to notice.

While we appreciate OEHHA making modifications to the original proposal, we do not feel the proposed changes solve the obstacles and burden of the amendments. In the end, the proposal by OEHHA will do little to nothing to address OEHHA's stated goal of reducing Prop 65 over-warnings.⁷ The proposal will only further exacerbate the already abusive Prop 65 litigation climate by providing additional opportunities for private enforcers to file frivolous enforcement lawsuits against businesses. There is a litany of other ways for OEHHA to reduce Prop 65 over-warnings, but the proposed changes to the short-form warnings is not the way. We want to work with OEHHA on other ways to address over warnings including a streamlined process for safe use determinations.

While we support OEHHA's modification that would allow businesses to use the short form warning content on online warnings and in a catalog, the original proposal, even with its modifications, is still unworkable. We strongly urge OEHHA to withdraw the short form warning amendments proposal. If OEHHA is unable to withdraw this proposal, we strongly urge OEHHA at a minimum to provide a five-year transition period to mitigate the extreme burden, resource and expenses that businesses would endure to comply with the proposal.

⁷ Initial Statement of Reasons (ISOR), Title 27, California Code of Regulations, Proposed Amendments to Article 6, Clear & Reasonable Warnings: Short-Form Warning for Consumer Product Exposures, January 2021, Available here: <https://oehha.ca.gov/media/downloads/cnr/p65shortformisorf2021.pdf>, p. 8

Thank you for considering the recommendations presented herein. Please do not hesitate to contact us with questions or for additional information.

Sincerely,



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