



April 20, 2022

Monet Vela
Office of Environmental Health Hazard Assessment
State of California
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 and CAWA – Representing the Automotive Parts Industry.⁴ Together, our associations represent the coast-to-coast network of automotive chemical and vehicle appearance product manufacturers; original equipment 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 April 5, 2022 Notice, “Proposition 65 – 2nd 15-Day Modification for Proposed Amendment: Clear and Reasonable Warnings - Short Form and Addendum to Initial Statement of Reasons (15-day notice).

The industry appreciates the 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) short-form warnings (Prop 65 short-form warnings amendments). Specifically, the industry appreciates OEHHA’s removal of the label size, package shape, and font size limitations. While our associations support some of the modifications, we have significant

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.

concerns with OEHHA's proposed amendments and the proposed modifications for the Prop 65 short-form warnings amendments.

Therefore, we urge OEHHA to withdraw the short-form warning amendments and modifications as the proposals provide no marked benefit or value to California consumers. We also urge OEHHA to provide a five year transition period. Please see our Joint Association comments submitted electronically to OEHHA on March 21, 2021 and January 21, 2022 on the original proposed amendments and we incorporate them by reference our prior concerns and raise supplemental concerns below.

OEHHA Should Withdraw the Short-Form Warning Amendments Proposal

The industry repeats its request made in March 2021 and January 2022 and urge that OEHHA to withdraw the proposed short-form warning amendments. Our member companies are particularly concerned about the proposed requirement that the short-form warning identify a specific chemical or chemicals. This is a significant departure from the current short-form warning which does not require the identification of a specific listed chemical or chemicals. In short, this proposed amendment to the short-form warning would require a complete overhaul of our members' current Prop. 65 warnings, since the bulk of our members utilize the current version of the short-form warning. From a California consumer's perspective, if a product has a warning today and will so in the future but now also must list the chemical associated with the warning, it is very unlikely that the consumer's purchasing habits will change as there is little to no perceived benefit for the consumer. As such, this proposed requirement will solely serve to place further economic burden on manufacturers or retailers, especially smaller entities. Furthermore, general consumer knowledge of most of the listed chemicals is limited aside from well-known chemicals such as asbestos or lead. Hence, there is little to no benefit to the consumer.

Also, OEHHA must recognize that implementing a requirement to specify a chemical or chemicals will create further confusion for consumers. The confusion will stem from many companies choosing to list a chemical on the warning based on the product containing the chemical -- NOT on whether the consumer may be exposed to the chemical from use of the product. The regulation clearly states that exposure to a chemical is of concern, not whether the product contains the chemical. To effectively serve California consumers, OEHHA should work with manufacturers to develop approved analytical testing methods for products to determine whether exposures are possible or not. Such an action would serve the consumers and the manufacturers who supply them with products they want.

As we have previously argued, 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 warning proposal is unreasonable, would be extraordinarily difficult and a costly burden, especially considering companies have only just expended significant resources to implement changes in 2018. Our member companies, including many small businesses, expended 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, just a few years later, OEHHA is proposing that businesses overhaul 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 3,000 hours of labor – depending 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 two-year lead time.

Finally, the industry is concerned that the proposed provisions, instead of helping, could instead cause confusion and impact the readability of labels on the packaging. There is other important text on packaging for automotive parts, 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.

OEHHA Should Provide a Five-Year Transition Period

The modifications released on April 5, 2022, provide a two-year transition period for the revised short-form warning requirements to become effective once finalized. Although this is an improvement from the previously proposed one-year transition period, it is still not sufficient time for businesses to evaluate and re-label every product that requires a Prop 65 warning. 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 necessary 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 to communicate with throughout the whole process. Businesses thrive on regulatory certainty and stability; and need sufficient 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.

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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 with the proposed amendments to the short-form warnings.

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 with these amendments, we strongly recommend a five-year transition period.

The industry urges 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, resources and expenses that businesses would endure to comply with the proposal.

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

Sincerely,



Catherine Boland
Vice President, Legislative Affairs
Motor & Equipment Manufacturers Association



Rodney Perini
President & CEO
CAWA - Representing the Automotive
Parts Industry



Thomas Tucker
Senior Director, State Affairs
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