



January 25, 2016

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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. Vela:

We are writing on behalf of the Automotive Aftermarket Suppliers Association (AASA),<sup>1</sup> the Auto Care Association,<sup>2</sup> and the California Automotive Wholesalers' Association (CAWA).<sup>3</sup> Together our associations represent the coast-to-coast network of independent aftermarket manufacturers, distributors, wholesalers, repair shops, marketers and retailers small and large. We offer the following comments on the California Office of Environmental Health Hazard's (OEHHA) proposed regulations for the Proposition 65 (Prop 65) warning requirements. We also support the comments submitted by the Alliance of Automobile Manufacturers, Association of Global Automakers, Inc. and the Motor & Equipment Manufacturers Association (MEMA) on OEHHA's proposed rule and herein incorporate those comments by reference.

We appreciate OEHHA latest revisions to the Prop 65 warning requirements proposed rule and applaud many of the changes OEHHA has made in response to industry concerns. We still remain concerned, however, that the proposed rule leaves too much uncertainty for our members, leaving them open to increased liability risks.

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<sup>1</sup> The Automotive Aftermarket Suppliers Association is a division of the Motor & Equipment Manufacturers Association (MEMA). MEMA represents more than 1000 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.

<sup>2</sup> The Auto Care Association has more than 3,000 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.

<sup>3</sup> 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.

We offer the following recommendations on the proposed rule to increase consistency and clarity for our members.

### **OEHHA Should Exempt Replacement Parts**

We urge an exemption from the new warning requirements for all of the aftermarket replacement and service parts. Replacement parts must be available for several years after the parts are being produced. Replacement parts are often on service and repair shop shelves for decades.

Replacement parts need to be available to service vehicles currently on our nation's roadways without manufacturers, distributors, wholesalers, or retailers having increased liability risks as a result of changes in Proposition 65 warning requirements. For this reason, replacement parts should be given an exemption from the new Proposition 65 warning requirements. If OEHHA is unwilling to provide a full exemption for replacement parts, OEHHA should provide a model year based exemption from the warning requirements for replacement parts, according to the warning requirements in place at the time the vehicle was produced. For parts that apply to multiple model years, the earliest model year would be the basis for the warning requirements.

### **OEHHA Should Include Replacement Parts in the Specific Vehicle Warnings**

If OEHHA does not provide an exemption from the proposed new warning requirements for replacement parts, we urge OEHHA to include replacement parts in the proposed vehicle specific warning language requirements in Section 25607.17. OEHHA should revise Section 25607.17(a) by adding "and use of replacement parts for vehicles" after "passenger vehicle or off-road vehicle." OEHHA should also revise Section 25607(a)(3) by adding "from the vehicle and/or replacement parts" after "expose you to chemicals." This revision would clearly warn consumers of exposure that can occur when handling motor vehicle replacement parts.

### **OEHHA Should Change "Can Expose" to "May Expose"**

If OEHHA does not provide an exemption from the proposed new warning requirements for replacement parts, we urge OEHHA to replace the exposure warning phrase "can expose" to use the phrase "may expose." The change better reflects the reality of risk, which is exhibited in a combination of hazard plus exposure.

In the instance of replacement parts, these are complex goods that can consist of several pieces or parts necessary for function of the part within a vehicle, but are encased by or blocked from contact by an individual through exterior elements of the replacement part. For example, a replacement fuel pump contains additional seals and functional elements encased within an exterior cylinder. Therefore, the existence of a chemical related to the interior functional elements does not necessarily mean there is exposure. The term "may" best reflects potential exposure and we urge OEHHA to change "can expose" to "may expose" throughout the full proposal.

### **OEHHA Should Clarify Specific Product Warning Versus the General Warnings**

OEHHA outlines the general warning requirements in Section 25601(c) and outlines vehicle-specific warning requirements in Section 25607.17. We urge OEHHA to state

clearly that the vehicle-specific warning requirement overrides the general warning requirement.

**OEHHA Should Clarify “One or More Chemical”**

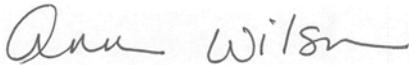
In Section 25601(c), OEHHA states that a warning should include “the name of one or more of the listed chemicals for which the warning is being provided.” The proposed language is unclear and could potentially be construed as requiring all the Proposition 65 chemicals for which the product is required to warn. Listing every chemical the product is required to warn would be virtually impossible given the industry’s complex supply chain. We urge that OEHHA makes clear that businesses are required to list at least one chemical in the warning and not all.

**OEHHA Should Provide a Three-Year Transition Period**

In Section 25600(b), OEHHA proposes a two-year transition period for the new warning requirements to become effective. We urge OEHHA to provide a three-year transition period. A longer transition time would greatly benefit the motor vehicle industry as motor vehicles are planned and designed on a model year basis, not on a calendar year basis.

We thank you for considering the recommendations presented herein. Please do not hesitate to contact us with questions or for additional information. We look forward to working with OEHHA as this proposed rule moves forward.

Sincerely,



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