



March 26, 2021

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: Article 6 Clear and Reasonable Warnings Amendments 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 and aftermarket motor vehicle suppliers; and independent aftermarket

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 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. 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 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.

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, the Auto Care Association, and Household and Commercial Products Association (HCPA).

manufacturers, distributors, wholesalers, repair shops, marketers and retailers small and large.

We provide the following comments regarding the January 8, 2021 Notice, “Article 6 Clear and Reasonable Warnings Amendments Related to Short-Form Warnings for Consumer Product Exposures” (30-day notice). In general, our associations have significant concerns with California Office of Environmental Health Hazard’s (OEHHA) proposed regulations for the Proposition 65 (Prop 65) warnings amendments related to the short-form warnings (Prop 65 short-form warnings amendments). In addition, we support comments submitted by the California Chamber of Commerce (Cal Chamber) and incorporate them here by reference.

As explained in OEHHA’s Initial Statement of Reasons (ISOR),⁶ in August 2016, OEHHA adopted major changes to the “Clear and Reasonable” safe harbor warning relations (Title 27 of the California Code of Regulation, Article 6). The purpose of OEHHA’s rulemaking was intended to provide consumers with more information on the chemicals they were exposed to and direct them to a new OEHHA website for more information. In this rulemaking, implemented in 2018, OEHHA also included an option to provide a “short-form” warning on a product label with few parameters around when it could be used.

Now, only two years later, OEHHA’s proposed rulemaking released in January 2021 would impose significant restrictions and parameters for the Prop 65 short-form warning. Even when the Prop 65 short-form warning can be used, businesses are required to list at least one Prop 65 chemical in the short-form warning to which the consumer may be exposed while using the product. OEHHA argues that this change will provide more information to consumers to make informed decisions. Furthermore, OEHHA argues that mandating that businesses list at least one chemical in the Prop 65 short-form warning would essentially “stop the practice of over-warning” by businesses.⁷

The proposal by OEHHA, upending the short-form requirements, will do little to nothing to address OEHHA’s stated goal of reducing Prop 65 over-warnings. 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. Year after year, the California Attorney General’s summary shows that the volume of settlements and settlement amount is consistently high and trending upward.⁸ 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.

⁶ 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/crn/p65shortformisorf2021.pdf>

⁷ ISOR, p. 8

⁸ <https://oag.ca.gov/prop65/60-day-notice-search> and <https://oag.ca.gov/prop65/annual-settlement-reports>

Summary of Comments

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

- **We Urge OEHHA to Withdraw the Short-Form Warning Proposal**

OEHHA's 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. More importantly, this proposed change would add only a small incremental gain for California consumers to have the specified chemical in the Prop 65 short-form warning.

- **At a Minimum, We Request OEHHA Provide a Five-Year Transition Period**

If OEHHA does not withdraw the proposal, we urge OEHHA, at a minimum, provide a reasonable transition. We recommend a five-year transition period. A one-year transition is unworkable for businesses to evaluate and re-label all their Prop 65 warnings and published materials. Motor 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 also have complex supply chains making communication through the supply chain extremely challenging. Businesses need to have confidence that the regulations they invest significant resources to comply with will stay stable and consistent, and having a longer transition period would help with the compliance costs.

OEHHA Should Withdraw the Short-Form Warning Amendments Proposal

We strongly oppose the proposed changes because of the impact to our member companies so quickly after the changes that were completed in August 2018. OEHHA's proposal essentially would require any company that provides a Prop 65 short form warning for their product to re-label each product and re-label each associated product description on the internet and in catalogs. As proposed, each short-form warning would require at least one Proposition 65 chemical be listed in the warning. Furthermore, in some cases, businesses would have to switch to the full Prop 65 safe harbor warning given the limited scenarios under which the short-form warning would be allowed.

Our member companies, including many small businesses, went to significant expense to update not only product labels, but also published materials to comply with the changes mandated by OEHHA's August 2018 deadline. Our member businesses took extensive time and resources to update Prop 65 product warnings to ensure on-time compliance with the new requirements. Now, two years later, OEHHA is proposing that businesses re-do their Prop 65 short-form warnings.

More importantly, this proposed change to add a specified chemical to the Prop 65 short form warning would add very little incremental benefit for California consumers; particularly because the Prop 65 warnings have become ubiquitous in California. OEHHA's

2021 proposal is unreasonable, would be extraordinarily difficult and a costly burden, especially considering companies have only just expended significant resources to implement changes. Based on the burdens on business outlined below, we urge OEHHA to withdraw the proposed short form warning amendments.

OEHHA's proposed short form warning requirements would pose significant impacts and challenges to motor vehicle aftermarket supplier companies due to industry characteristics. Many members manufacture, package, and sell as many as 80,000 consumer products or SKUs. Motor vehicle suppliers also manufacture, package, and sell thousands of these products that range from very large to very small products. Further, many motor 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 motor vehicle suppliers.

Requiring another major label update would have significant adverse economic impact to businesses including small businesses as small as 10 employees given the complexity of the motor 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 2018 required Prop 65 changes required a minimum of 3000 hours of labor –dependent on how many products a company produces. OEHHA's 2021 proposed changes could have a comparable impact on their businesses. These costs are significant in part because of the OEHHA's proposed narrow one-year lead time, costs that businesses are often forced to absorb because these costs cannot necessarily be passed on to consumers.

Our members are 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. The longer, full Prop 65 safe harbor warning tends to blend with other hazard warning text (as was the case with the previous safe harbor warning). Listing a chemical on the Prop 65 short-form warning could create confusion with consumers who do not have the knowledge or may not be aware of the specific chemical(s) and may have only just recently become accustomed to label changes since 2018. Again, this proposed change would add very little incremental gain for California consumers to have the specified chemical in the Prop 65 short-form warning.

At a Minimum, 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. If OEHHA does not withdraw the proposal and moves forward, at a minimum, we strongly urge OEHHA to provide a reasonable transition. We recommend a five-year transition period.

Providing businesses with a reasonable transition period of at least five years would help manufacturers have the needed time and resources to test parts, assess potential exposure and ensure the Prop 65 warnings are justified. Again, motor 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. A longer and more reasonable transition time could mitigate some of the significant Prop 65 compliance costs that motor 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 should not start any earlier than January 2022.

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."⁹ 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. 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.

⁹ ISOR, p. 4.

For all the above reasons, 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 commencing in January 2022 to mitigate the extreme burden, resource 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. We look forward to working with OEHHA as this proposal moves forward.

Sincerely,



Laurie Holmes
Senior Director, Environmental Policy
Motor & Equipment Manufacturers Association



Thomas Tucker
Senior Director, State Affairs
Auto Care Association



Rodney Perini
President & CEO
CAWA – Representing the Automotive Parts
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