

January 20, 2022

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, CA 95812-4010

**RE: COMMENTS ON THE PROPOSED MODIFICATION OF TEXT TITLE 27,
CALIFORNIA CODE OF REGULATIONS PROPOSES AMENDMENTS TO ARTICLE
6, CLEAR AND REASONABLE WARNINGS - SHORT FORM**

Dear Ms. Vela:

The National Marine Manufacturers Association (NMMA) appreciates the opportunity to submit comments on the Office of Environmental Health Hazard Assessment's (OEHHA) Notice of Proposed Modification of Text Title 27, California Code of Regulations Proposed Amendments to Article 6, Clear and Reasonable Warnings – Short Form. We appreciate OEHHA's willingness to work with marine manufacturers to modify its original proposal of significant changes to the "short-form" Proposition 65 warning requirements applicable to consumer products and food exposure for items sold in California.

By way of background, NMMA is the trade association for the U.S. recreational boating industry, representing nearly 1,300 marine businesses, including recreational boat, marine engine and accessory manufacturers. NMMA members collectively manufacture more than 85 percent of the marine products sold in the U.S. Furthermore, the recreational boating industry has a significant impact on our nation's economy and in communities across the country, with nearly 700,000 American jobs across 35,000 U.S.-based marine businesses.

OVERVIEW

NMMA supports the continued use of the short-form warning, which currently provides a reasonable warning for recreational marine products that are sold in catalogs, online, and in marine retail stores. Marine manufacturers and businesses have invested significant resources to overhaul their Proposition 65 compliance plans to ensure compliance with the new requirements that took effect only a few years ago in 2018. Once finalized, these new amendments would mandate, once again, that all marine businesses using short-form warnings completely revise their Proposition 65 warning label programs at considerable expense and effort for little, if any, additional benefit to the health and safety of Californians.

OEHHA's proposal suggests that there has been widespread use of the short-form warnings in ways that were not intended and that do not further the purposes of Proposition 65. The current short-form warning requirements provide a reasonable and appropriate warning for marine products protective of human health and safety. Completely revising these requirements will only impose a significant financial burden on already pandemic-weakened marine manufacturers and small businesses as well as California consumers, who will have to shoulder the increased costs associated with these new requirements.

SHORT FORM LABEL RECOMMENDATIONS

In previous proposals, NMMA has worked collaboratively with OEHHA to develop the current short-form label to protect consumers of marine products and provide certainty for our members' businesses, and we appreciate OEHHA's willingness to work with marine parts and accessories small businesses to develop a reasonable and sufficient safe harbor warning. The current short-form warning requirements appropriately balance the Proposition 65 warning and the other critical consumer safety warnings and information for marine products. Despite the proposed modifications, NMMA remains concerned that OEHHA is proposing to change these requirements just a few years after their implementation. Importantly, the current short-form warning requirements for marine products provide the notification of risk and appropriate information for the consumer to follow up for more specific details, if needed.


We strongly urge OEHHA to consider the adverse financial and logistical impacts these proposed changes would have on affected small businesses. If these proposed changes are finalized as proposed, the financial impact to marine manufacturers and small businesses would be considerable. Ninety three percent of recreational boating industry businesses are small businesses, yet OEHHA has not evaluated this impact. We remain concerned that OEHHA states that the proposed changes would have no adverse impact on small businesses "because Proposition 65 is limited by its terms to businesses with 10 or more employees." This is not the case. These proposed changes to the short-form warning will require marine small businesses to identify chemical levels in all products, either through collecting information from suppliers – some of whom will not provide the necessary information due to proprietary concerns – or partnering with laboratories to test all their products — not to mention subsequently updating the packaging and labeling. Such a mandate has significant financial costs and requires significant expenditure of scant resources. Many of these marine businesses are struggling financially due to ongoing supply chain disruptions and new COVID-19 safety requirements and do not have the resources or ability to undertake another Proposition 65-compliance overhaul. Thus, if finalized, these proposed changes may require marine businesses (many of which are small businesses) to limit what they sell into the state of California, hurting California consumers and businesses.

The proposed changes to the short-form warning also would create a significant logistical impact on these businesses. The chance for error with these proposed changes is far greater because the myriad of labels for various products will look the same, though they will need to be applied to the correct product. Forcing online and catalog retailers to update their Proposition 65 warnings for tens of thousands of marine products would have been substantial, and any online or catalog warning that marine retailers failing to update would be at risk for future lawsuits. The responsibility of the appropriate warning signage should be the responsibility of the retailer, not the manufacturer. Furthermore, given the vast overhaul required to support these proposed changes, NMMA strongly urges OEHHA to delay implementation for at least two years following the final rule. This time is necessary for OEHHA to provide compliance training to affected industries, and specifically for the marine industry, the model year runs ahead of the calendar year so providing enough implementation is critical for our industry.

While OEHHA claims these proposed changes to the short-form warning requirements will address the Proposition 65 issue of over-warning, unfortunately, the proposed changes will not accomplish this. Manufacturers concerned about litigation risk (which remains considerable in this area) will feel compelled to continue over-warning. Eliminating the short-form warning for marine products and requiring naming the chemical on the label will open the door for more litigation targeting manufacturers for not only reporting but potentially over reporting. This would not be good for either the consumer or California businesses. As we have noted, the proposed changes would further exacerbate limited resources of marine manufacturers and suppliers of products and create consumer confusion with different warnings for the same product. The existing short-form warning regulations contemplated the supply chain complexities and provided a commonsense approach of allowing the online and catalog warning to mirror that which is found on the actual product.

SAFE HARBOR LANGUAGE FOR RECREATIONAL VESSEL PARTS

NMMA appreciates the collaborative approach OEHHA has taken with our industry to develop a safe harbor warning for marine parts and accessories. We again strongly urge you to consider the following draft safe harbor for marine parts and accessories, as you have done for recreational vessels and diesel engines.

 **CALIFORNIA WARNING:** Recreational vessel parts can expose you to chemicals such as [Name of one or more chemicals], which can cause cancer or reproductive harm. To minimize exposure, service your vessel in a well-ventilated area, wear gloves, and wash your hands. For more information go to www.P65Warnings.ca.gov/ [fact sheet].”

“Recreational Vessel Parts” means any part offered for sale or transferred to a consumer for installation in or service on a recreational vessel but shall not include packaged service chemicals or upholstery.

Methods available for providing warnings:

- Posting a sign at point of sale or display
- Shelf tags or shelf signs
- On product or its immediate container

NMMA reserves the right to continue our discussions with OEHHA regarding this preliminary safe harbor proposal and methods for providing the warnings. Recreational vessel parts are sold through catalogs, online, and in bulk to retail locations. NMMA would like to schedule a follow up call with OEHHA to illustrate how safe harbor language will look in each of these product offerings to the consumer.

CONCLUSION

Without a more targeted approach for marine products, such as a safe harbor warning for marine parts and accessories, NMMA cannot support the current proposal as drafted. NMMA recommends that OEHHA withdraw its proposed changes to amend the short-form warning

requirements under Article 6 until OEHHA can address the concerns raised in these comments or provide safe harbor for marine products and accessories.

We appreciate the opportunity to provide you with these comments and urge OEHHA to take a commonsense approach to any changes to the short-form warning requirements. The current short-form warning requirements should remain in place given that they effectively balance the protection of the health and safety of consumers with the need for workable requirements for marine manufacturers and small businesses.

If you have any questions about these comments, please contact me at 202.737.9760 or ccrabtree@nmma.org.

Sincerely,



Clayton Crabtree
Director, Federal Government Relations
National Marine Manufacturers Association