

January 21, 2022

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

Via portal at: <https://oehha.ca.gov/comments>

Re: SEMA Comments on OEHHA's Modification to Text of Proposed Amendments to Article 6, Clear and Reasonable Warnings—Short Form

Dear Ms. Vela:

The Specialty Equipment Market Association (SEMA) appreciates this opportunity to provide comments to the Office of Environmental Health Hazard Assessment (OEHHA) on its Proposed Modification to Text of Proposed Amendments to Article 6, Clear and Reasonable Warnings—Short Form (December 17, 2021). SEMA opposes the proposal since it makes significant changes to the Proposition 65 regulations that took full effect on August 30, 2018, following years of development through public discussion and collaboration.

SEMA represents the \$48 billion specialty automotive industry comprised of 7,500 mostly small businesses nationwide, including over 1,400 in California, that manufacture, retail, and distribute custom parts and accessories for motor vehicles. The industry produces performance, restoration, and enhancement parts for use on passenger cars and trucks, collector vehicles, racecars, and off-highway vehicles. Products range from wheels and tires to engines, exhaust systems, lighting equipment, suspensions, truck caps, leather seating, mobile electronics, and more.

SEMA and its members were disappointed on January 8, 2021 when OEHHA proposed major revisions to the Prop 65 short-form regulations. The agency had worked for years with the business community and other stakeholders to craft the Prop 65 revisions that took effect in 2018. The agency was now proposing to significantly alter a short-form warning option just three years after it took effect. The proposed changes were unanticipated and OEHHA has yet to fully justify a need for taking this action.

SEMA submitted comments on March 10, 2021 urging OEHHA to abandon the proposals. That sentiment was echoed by other businesses, organizations, and the general public. Although the agency has modified the proposed revisions, SEMA continues to urge the OEHHA to rescind the proposal altogether for many of the same reasons SEMA identified last March.

Like many other trade associations, SEMA has invested significant time and resources to disseminate information to its members about the Prop 65 regulations that took effect in 2018,

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including the option of providing short-form warnings. The information is posted on the SEMA website and conveyed via magazine articles, newsletters, and webinars. SEMA staff have also spoken directly with members and consulting attorneys about the law. Member companies subsequently took actions to comply with the law such as retooling their product labels, updating their websites, revising catalogs, and instructing downstream distributors and retailers. If OEHHA implements the proposed amendments, the business community will need to be reeducated and then take necessary steps to comply. Meanwhile, bounty hunter attorneys will be waiting to pursue companies that are unaware of the new rules.

While SEMA recommends that OEHHA withdraw the rulemaking, we also provide the following comments on the proposal.

- A one-year deadline for businesses to comply with the amended law is insufficient. SEMA recommends a minimum of three years before the amendments would take effect. OEHHA must provide adequate time for companies to be informed of the changes, review their Prop 65 programs, and implement necessary revisions. Some businesses may produce a variety of parts and components that require individualized warnings and potential testing to comply with the new regulations. Manufacturers will also need to inform their distributors and retailers of the new labeling requirements.
- OEHHA should clarify and confirm that short form warnings for products made prior to the new Prop 65 amendments taking effect, and that comply with the 2016 requirements, are still valid and not subject to legal action.
- Although the maximum label size requirement for short form warnings would be increased from 5 square inches to 12 square inches, SEMA contends that this number remains a random calculation that has not been justified by marketplace surveys and analysis. It should be much larger, such as over 40 square inches. A marketplace analysis would include consideration of other state and federal rules governing warnings or safety instructions that may need to be accommodated on product labels.
- OEHHA should clarify and confirm that only one chemical per toxicity is required to be identified on the short form warnings.
- Providing the option to use the words “CA WARNING” or “CALIFORNIA WARNING” reinforces the reality that Prop 65 is a de facto 50-state law. Most products subject to the law are produced for interstate commerce. Companies across the country are forced to accommodate the Prop 65 labeling rules since it is an additional financial burden to implement and monitor two supply chains for the same product. While a California label may confuse consumers in other states, it also clarifies the source for the warning.
- OEHHA has failed to acknowledge the investment of time, money, and resources needed for companies to understand the regulatory changes, retool product labeling,

and revise catalogs and websites. These are direct costs. Companies are struggling with COVID challenges, supply-chain issues, inflation, and other marketplace realities. While federal, state, and local jurisdictions have sought to assist the business community in coping with these challenges, OEHHA is potentially imposing another regulatory burden.

- The OEHHA rulemaking is untimely and unnecessary. The fact that there is no federal equivalent or similar program in any other state places an extra fiduciary obligation on California officials to take a cautious regulatory approach.

SEMA respectfully urges OEHHA to withdraw its proposed short-form warning rule changes. Thank you for this opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ingber', with a long horizontal line extending to the right.

Daniel Ingber
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