



The Vehicle Suppliers Association

Comments of
MEMA, The Vehicle Suppliers Association
to the
California Office of Environmental Health Hazard Assessment
on the
NOTICE OF PROPOSED RULEMAKING FOR AMENDMENTS TO TITLE 27
CCR § 25601, 25602, 25603, 25607.2 AND NEW SECTIONS 25607.50,
25607.51, 25607.52, AND 25607.53 – CLEAR AND REASONABLE
WARNINGS, SAFE HARBOR METHODS AND CONTENT
(Proposition 65)
June 28, 2024

Introduction

MEMA, The Vehicle Suppliers Association, is the leading trade association in North America for vehicle suppliers, parts manufacturers, and remanufacturers. It has been the voice of the vehicle supplier industry since 1904.

Automotive and commercial vehicle suppliers are the largest employer of manufacturing jobs in the United States employing over 900,000 people throughout the country. Direct, indirect, and induced vehicle supplier employment accounts for over 4.8 million U.S. jobs and contributes 2.5 percent to U.S. GDP.

Suppliers lead the way in new vehicle innovations. Member companies conceive, design, and manufacture the original equipment (“OE”) systems and technologies that make up two-thirds of the value of every new vehicle and supply the automotive aftermarket with the parts that keep millions of vehicles on the road, fueling international commerce and meeting society’s transportation needs. MEMA members are committed to safety and sustainability.

Background

Motor vehicle components provide these comments on proposed amendments to the regulations for Proposition 65 (Prop. 65) short-form warnings (Prop. 65 short-form warnings

amendments). MEMA has submitted comments in 2021¹, 2022², and early 2024³ regarding further proposed changes, and we reiterate and underscore our continued opposition to any changes to reporting and short-form requirements that will increase costs for manufacturers and consumers without improved corresponding benefits to California consumers.

OEHHA Should Withdraw the Short-Form Warning Amendments Proposal

The industry repeats the arguments made in March 2021, January 2022, and January 2024 and urges that OEHHA withdraw the proposed short form warning amendments. Our member companies continue to be concerned about the proposed requirement that the short-form warning identify a specific chemical or chemicals. This persists in the most recently proposed changes to the regulatory text.

A primary concern for our member companies is the proposed requirement that the short-form warning identify a specific chemical or chemicals. For those members that utilize the short-form warning for their products, the proposed changes would require significant changes to their current Prop. 65 labels. It remains unclear whether the proposed changes will result in changes to the California consumers' purchasing habits. The ultimate benefit to consumers is already served via the existing requirements, which discloses risks such as cancer and/or reproductive harm. Without a demonstrated benefit to consumers, the primary impact of the proposed requirement will be a significant economic burden on manufacturers and retailers. This economic burden may be passed onto consumers via price increases, despite the lack of perceived benefit from the proposed change. The lack of general consumer knowledge of most listed chemicals further emphasizes the lack of benefit to consumers that will result from listing specific chemicals.

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 based 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

¹ https://oehha.ca.gov/media/dockets/20021/20239-mema_aasa_aspa_auto_care_and_cawa_/mema_aasa_auto_care_aspa_prop_65_comments_march_26_2021_final.pdf

² https://oehha.ca.gov/media/dockets/20572/20629-motor_amp_equipment_manufacturers_association_mema_joint_association_comments_including_aasa_aspa_auto_care_and_cawa-representing_the_automotive_parts_industry/mema_aasa_aspa_aca_comments_to_ca_oehha_prop_65_short_form_mo.pdf
https://oehha.ca.gov/media/dockets/20664/20725-joint_association_comment_from_mema_aasa_cawa_and_auto_care/joint_association_comments_prop_65_amendments_4.20.2022.pdf

³ <https://oehha.ca.gov/proposition-65/comments/comment-submissions-notice-proposed-rulemaking-and-announcement-public-195>

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. This would also address the over-warning concern which OEHHA has expressed with the use of the current short-form warning.

The proposed amendments could cause confusion and impact the readability of other labels on the packaging. There is other important text on packaging for automotive parts, and a longer warning could distract from other significant messaging. Product packaging, especially for smaller automotive parts, already has limited space due to increased regulatory and customer information requirements, including multilingual requirements. The Prop. 65 short-form warning, as it appears today, stands out and is easier for consumers to notice.

OEHHA Has Significantly Underestimated Manufacturer Burden

We have reviewed the source document⁴ for the OEHHA cost estimates. MEMA does not agree with OEHHA's financial impact assumptions or conclusions. The proposed changes document and Initial Statement of Reasons (ISOR) do not appear to address our joint comments of April 2022, which states that manufacturer estimates as a result of the rule change can be as high as \$12 million. Even if OEHHA did attempt to address our previous comments, the vast difference between the OEHHA cost estimates for compliance versus our own member company figures begs reevaluation. It could be that the OEHHA cost assessment is purely for a labeling change (i.e. print and digital changes). If this is true, OEHHA would appear to have overlooked the significant costs and time associated with exposure assessment testing and toxicological evaluation of those chemicals to-be-declared on the revised short-form labels. This cost is not trivial. Any mistake or oversight in economic impact evaluation that could be several orders of magnitude off could significantly impact the ability of California consumers to obtain the products they need and want. More accurate financial impact evaluations would also help to assure the proceeding gives our industries and California consumers the regulatory certainty needed to provide market stability and continued product availability.

Using the numbers from our joint association impact estimates versus those from the ISOR, arrives at a difference of 2,808 times the ISOR-estimated financial impact (ISOR estimated \$4,273.46 per business divided by Joint estimated \$12,000,000 per business = \$2,808.030). This is over three orders of magnitude difference (i.e. x 1,000 or a factor of $>10^3$). OEHHA *cannot* ignore this massive difference.

⁴ OEHHA, Economic and Fiscal Impact Statement (Regulations and Orders) STD 399, Amendments to Title 27 CCR § 25601-25603, 25607 et seq. – Clear and Reasonable Warnings, Safe Harbor (August 2023). ISOR footnote #44. Provided by OEHHA staff on request.

OEHHA Should Provide a Five-Year Transition Period

MEMA thanks OEHHA for the modified regulatory text that now provides a three-year transition period. This change provides a small improvement on the original proposal which provided a two-year transition period for the revised-short form warning requirements to become effective. MEMA reiterates its support for a five year transition.

A lengthier transition period is essential if OEHHA intends to eliminate over-warning. This is necessary to allow manufacturers the time and resources to conduct testing and evaluations to ensure that Prop. 65 warnings are justified. Most aftermarket suppliers have long and complex supply chains that must be considered throughout the process. A lengthier transition will provide manufacturers with stability and sufficient time to comply with proposed regulations.

Conclusion

Many businesses are still recovering from 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 in our industry, as well as others. OEHHA's Prop. 65 short-form warning amendment is inappropriate given the limited or non-existent associated benefit coupled with the expected significant costs.

Industry will comply with changes if OEHHA insists on proceeding, despite these significant negative impacts. Given the circumstances noted above, if OEHHA proceeds with these amendments, we strongly recommend a five-year transition period.

Preferably, industry urges OEHHA to withdraw the short form warning amendments proposal in its entirety. If OEHHA is unable to withdraw this proposal, we again deeply 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 Alex Boesenberg, MEMA vice president of regulatory affairs at aboesenberg@mema.org or Emily Sobel, MEMA senior manager of regulatory policy at esobel@mema.org with questions or for additional information.