



*Sent Electronically to:*  
[P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)

April 26, 2016

Monet Vela  
Office of Environmental Health Hazard Assessment  
P. O. Box 4010  
1001 I Street  
Sacramento, CA 95812-4010

**RE: “Clear and Reasonable Warning Regulations”**

Dear Ms. Vela:

The Automotive Aftermarket Suppliers Association (AASA) offers the following comments on the California Office of Environmental Health Hazard’s (OEHHA) March 25, 2016 notice, “Modification to Text of Proposed Regulation, Proposed Repeal of Article 6 and Adoption of New Article 6, Proposition 65 Clear and Reasonable Warnings” (March 25 proposal). AASA represents manufacturers of aftermarket components, tools and equipment, and related products.<sup>1</sup> AASA also supports the comments submitted by the Alliance of Automobile Manufacturers, Association of Global Automakers, Inc. and the Motor & Equipment Manufacturers Association (MEMA) on OEHHA’s March 25 proposal and herein incorporate those comments by reference.

AASA appreciates OEHHA’s latest revisions to the Proposition 65 warning requirements proposed rule, but remains concerned that many of the issues raised in previous comments have not been addressed.<sup>2</sup> If these critical issues are not resolved, it will result in much uncertainty and increased liability risks for our members. Since the purpose of Governor Brown’s call for Proposition 65 reform in May 2013 was to decrease Proposition 65 litigation, it is important that these issues are addressed. The following recommendations on the March 25 proposal would help resolve the uncertainty for our members.

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<sup>1</sup> AASA a division of 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. Suppliers are the largest employers of manufacturing jobs in the U.S. directly employing over 734,000 Americans with a total employment impact of 3.6 million jobs.

<sup>2</sup> Comments submitted jointly by the AASA, Auto Care Association, and California Automotive Wholesalers' Association, dated January 25, 2016.

## **OEHHA Should Exempt Aftermarket, Replacement, and Service Parts**

OEHHA should exempt all replacement parts, which include aftermarket and service parts, from the new warning requirements. AASA understands that Section 25600(b) explains that a product manufactured prior to the effective date of this rule is in compliance with Proposition 65 as long as the warning complies with the September 2008 revision of the article. However, as explained in previous comments, replacement parts must be available for several years after the parts are produced, and have an extremely long shelf life. As such, it is important for manufacturers, distributors, wholesalers, and retailers of replacement parts to avoid having increased liability risks as a result of changes in the Proposition 65 warning requirements. (Please see January 25, 2016 comments for further detail on the unique situation created by aftermarket parts.)

Having a special allowance for replacement parts will eliminate any possible litigation claims against replacement parts manufactures or requirements to prove that a certain product was manufactured prior to the effective date of the final rule. Therefore, we request that OEHHA provide an exemption for the new Proposition 65 warning requirements for replacement parts.

## **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, AASA urges OEHHA to include language for replacement parts in the proposed vehicle-specific warning language requirements in Section 25607.17. The Proposition 65 warning included in the owner's manual for the vehicle should provide a warning for these replacement parts. AASA urges OEHHA to revise Section 25607.17 to read as follows:

Section 25607.17(a): "... during the service, operation, and maintenance of a passenger vehicle or off-road vehicle, **and use of replacement parts for vehicles.**"

Section 25607.17(a)(3): "Operating, servicing and maintaining a passenger vehicle or off-road vehicle, can expose you to chemicals **from the vehicle and/or replacement parts** such as ..."

The inclusion of the above language will clearly warn consumers of exposure that can occur when handling motor vehicle replacement parts and/or any exposure that may occur from replacements parts after it is installed in the vehicle. AASA urges OEHHA to include the above language in the Proposition 65 warning for vehicles as it would provide a much more practical way for providing a Proposition 65 warning to consumers servicing their own vehicles rather than providing an individual Proposition 65 warning for every replacement part.

### **OEHHA Should Clarify “One or More” Chemicals**

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 phrase “one or more” is problematic because it can be interpreted as a warning must specify all of the chemicals for which a warning is being provided. As AASA understands it, that is not OEHHA’s intention. AASA (and several other organizations) requested in our January 25, 2016 comments to revise the language clarifying that businesses must only specify one chemical in the warning and are not required to list all chemicals. Listing every chemical the product is required to warn would be virtually impossible given the industry’s complex supply chain.

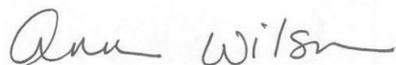
Given that this language could be misinterpreted by the private enforcement community and cost businesses significant litigation expense, AASA requests that OEHHA clarify this language.

### **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. 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. Therefore, as AASA previously requested, we urge OEHHA to provide an additional year thereby allowing for a three-year transition period.

AASA appreciates consideration of the recommendations presented herein. Please do not hesitate to contact Laurie Holmes at 202-312-9247 with questions or for additional information. AASA looks forward to working with OEHHA as this proposed rule moves forward.

Sincerely,



Ann Wilson  
Senior Vice President, Government Affairs  
Motor & Equipment Manufacturers Association