



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)
January 3, 2024
[Online submission](#)

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

The industry appreciates this opportunity to once again comment 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 and 2022² 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 request made in March 2021 and January 2022 and urges that OEHHA withdraw the proposed short-form warning amendments. Our member companies are particularly concerned about the proposed requirement that the short-form warning identify a specific chemical or chemicals. This is a significant departure from the current short-form warning that does not require the identification of a specific listed chemical or chemicals. For our members who have deemed a short-form warning for their products as necessary, this proposed amendment to the short-form warning would require a complete overhaul of their current Prop. 65 warnings. From a California consumer's perspective, if a product has a warning today and will so in the future but now also must list the chemical associated with the warning, it is unlikely that the consumer's purchasing habits will change as there is little to no perceived benefit for the consumer. The benefit for the consumer originates from endpoint disclosed, e.g., cancer and/or reproductive harm; not the specific chemical(s) to which the consumer may be exposed. As such, this proposed requirement will solely serve to place further significant economic burden on manufacturers or retailers, especially smaller entities. A further natural consequence would be passing along the economic burdens caused by this proposed change in requirements to the consumers in the form of price increases with little to no perceived benefit. Furthermore, general consumer knowledge of most of the listed chemicals is limited, aside from well-known chemicals such as asbestos or lead. Hence, there would be little to no benefit to the consumer in knowing the specific chemicals to which they may be exposed from use of the product.

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

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

whether the product *contains* the chemical. To effectively serve California consumers, OEHHA 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.

Our industry remains concerned that 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 multi-lingual requirements. The Prop. 65 short-form warning, as it appears today, stands out and is easier for consumers to notice.

OEHHA Should Provide a Five-Year Transition Period

The proposed changes provide a two-year transition period for the revised short-form warning requirements to become effective once finalized. Although an improvement from the early proposals for a one-year transition period, two years remains an insufficient period of time for businesses to evaluate and re-label every product that requires a Prop. 65 warning. Our association supports a transition of five years, but no less than a three-year transition.

If OEHHA is serious about eliminating over-warning, providing businesses with a reasonable transition period is essential. A reasonable transition would help manufacturers have the necessary time and resources to test parts, assess potential exposure and ensure the Prop. 65 warnings are justified. Again, 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 to communicate with throughout the entire process. Businesses thrive on regulatory certainty and stability; and need sufficient time to prepare for compliance. Businesses also need to have confidence that the regulations they invest significant resources to comply with will stay stable and consistent.

OEHHA Has Significantly Underestimated Manufacturer Burden

In the initial statement of reasons³ (“ISOR”) OEHHA estimates that:

- the short-form amendment will result in costs associated with changing existing short-form warning labels and internet and catalog warnings totaling approximately \$14,538,327.67, or \$4,273.46 per business;
- the new passenger or off-highway motor vehicle parts tailored warning will result in costs associated with adoption of new tailored

³ <https://oehha.ca.gov/media/downloads/cnr/isornprmshortformamendments102723.pdf>, ISOR page 46 of 52

warning signs totaling approximately \$154,800.00, or \$697.30 per business; and

- the new recreational marine vessel parts warning will result in costs associated with the adoption of new tailored warning signs totaling approximately \$1,800.00, or \$81.82 per business.

We reiterate from our joint association comments of April 2022 (submitted by MEMA, AASA, Auto Care Association, and CAWA) that:

“Requiring another major label update would have significant adverse economic impact to businesses including small businesses as small as 10 employees particularly given the complexity of the 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 Prop 65 2016 revisions required a minimum of 3,000 hours of labor – depending on how many products a company produces. OEHHA’s proposed changes could have a comparable impact on their businesses. These are costs businesses are often forced to absorb because these costs cannot necessarily be passed on to consumers. These costs are significant in part because of the OEHHA’s proposed narrow two-year lead time.”

We have reviewed the source document⁴ for the OEHHA estimates. Based on our analysis, we do not agree with OEHHA’s financial impact assumptions or conclusions. The proposed changes document and ISOR do not appear to address our joint comments of April 2022. 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

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.

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.

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 with questions or for additional information.