

April 19, 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 Proposition 65: Second 15-Day Modification of Short Form Warnings Amendments

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 Second 15-Day Modification to Proposed Amendments to Article 6, Clear and Reasonable Warnings—Short Form (April 5, 2022). SEMA acknowledges improvements made to the proposed short form warning amendments originally published on January 8, 2021 but continues to oppose the overall proposal since it represents a significant change to the Proposition 65 regulations issued in August 2018 after years public discussion and collaboration.

SEMA represents the \$48 billion specialty automotive industry comprised of 7,500 mostly small businesses nationwide, including over 1,500 in California, that manufacture, sell, 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 previously submitted comments on March 10, 2021 and January 21, 2022 opposing amendments to the Prop 65 short-form regulations proposed by OEHHA in January 2021. The amendments were an unwanted surprise since the short-form regulations had only taken effect in 2018, following years of dialogue between the agency, business community, and other stakeholders. SEMA, like many other trade associations, invested enormous time and resources in helping educate its members about the 2018 Prop 65 regulations.

In response to comments submitted by SEMA and other organizations, OEHHA refined the regulatory text reflected in the first modifications published on December 17, 2021. SEMA welcomes the second modifications including:

- Removing the label size and package shape limitations thereby allowing the use of the short-form warnings on product labels of any size, regardless of package size and shape;
- Removing the requirement that the font type size must be the same as the largest type size providing consumer information thereby leaving unchanged the existing provision requiring a minimum of 6-point type size when using short-form warnings; and

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- Extending the date that the regulation becomes operative to two years, rather than one year, thereby providing additional time for businesses to implement changes to the short form warnings.

While the second modifications are positive, SEMA is still opposed to amending the rule after such a short period of implementation. SEMA members have invested significant resources in complying with the current Prop 65 regulations and therefore SEMA opposes the proposed amendments for the following reasons.

- 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.
- SEMA member companies have taken actions to comply with the 2018 regulations 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.
- The justification for taking such a drastic action is insufficient and SEMA members are concerned that the agency still intends to move forward despite inadequate basis. In its Initial Statement of Reasons (ISOR), the agency admits that “OEHHA did not rely on any technical, theoretical, and/or empirical studies, reports, or documents as part of this rulemaking” (ISOR, p. 15). This admission should be sufficient to overturn the rulemaking.

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,



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