

March 22, 2021

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

RE: COMMENTS ON THE PROPOSED AMENDMENTS TO ARTICLE 6, CLEAR AND REASONABLE WARNINGS SHORT-FORM WARNINGS

Dear Ms. Vela:

The National Marine Manufacturers Association (NMMA) appreciates the opportunity to submit comments on the Office of Environmental Health Hazard Assessment's (OEHHA) Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings, which proposes significant changes to the "short-form" Proposition 65 warning requirements applicable to consumer products and food exposure for items sold in California.

By way of background, NMMA is the trade association for the U.S. recreational boating industry, representing nearly 1,300 marine businesses, including recreational boat, marine engine and accessory manufacturers. NMMA members collectively manufacture more than 85 percent of the marine products sold in the U.S. Furthermore, the recreational boating industry has a significant impact on our nation's economy and in communities across the country, with nearly 700,000 American jobs across 35,000 U.S.-based marine businesses.

OVERVIEW

NMMA supports the continued use of the short-form warning, which currently provides a reasonable warning for recreational marine products that are sold in catalogs, online, and in marine retail stores. Marine manufacturers and businesses have invested significant resources to overhaul their Proposition 65 compliance plans to ensure compliance with the new requirements that took effect only a few years ago in 2018. Once finalized, these new amendments would mandate, once again, that all marine businesses using short-form warnings completely revise their Proposition 65 warning label programs at considerable expense and effort for little, if any, additional benefit to the health and safety of Californians.

OEHHA's proposal suggests that there has been widespread use of the short-form warnings in ways that were not intended and that do not further the purposes of Proposition 65. However, OEHHA does not identify specific products of concern and instead proposes widely applicable amendments to the regulations that have only been in place for a few years. The current short-form warning requirements provide a reasonable and appropriate warning for marine products protective of human health and safety. Completely revising these requirements will only impose a significant financial burden on already pandemic-weakened marine manufacturers and small businesses as well as California consumers, who will have to shoulder the increased costs associated with these new requirements.

COMMENTS

NMMA worked collaboratively with OEHHA to develop the current short-form label to protect consumers of marine products and provide certainty for our members' businesses. NMMA is very concerned that OEHHA is now seeking to change these requirements just a few years after their implementation. The current short-form warning requirements appropriately balance the Proposition 65 warning and the other critical consumer safety warnings and information for marine products. Importantly, the current short-form warning requirements for marine products provide the notification of risk and appropriate information for the consumer to follow up for more specific details, if needed.

OEHHA's proposal fails to consider the adverse financial and logistical impacts these proposed changes would have on affected businesses. If these proposed changes are finalized as proposed, the financial impact to marine manufacturers and small businesses would be considerable. Ninety three percent of recreational boating industry businesses are small businesses, yet OEHHA has not evaluated this impact. Instead, OEHHA states that the proposed changes would have no adverse impact on small businesses "because Proposition 65 is limited by its terms to businesses with 10 or more employees." This is not the case. These proposed changes to the short-form warning will require marine small businesses to identify chemical levels in all products, either through collecting information from suppliers or partnering with laboratories to test all their products — not to mention subsequently updating the packaging and labeling. Such a mandate has significant financial costs and requires significant expenditure of scant resources. Many of these marine businesses are struggling financially due to mandatory closures, supply chain disruptions, and new COVID-19 safety requirements and do not have the resources or ability to undertake another Proposition 65-compliance overhaul. Thus, if finalized, these proposed changes may require marine businesses (many of which are small businesses) to limit what they sell into the state of California, hurting California consumers and businesses.

The proposed changes to the short-form warning also would create a significant logistical impact on these businesses. The chance for error with these proposed changes is far greater because the myriad of labels for various products will look the same, though they will need to be applied to the correct product. Moreover, forcing online and catalog retailers to update their Proposition 65 warnings for tens of thousands of marine products would be substantial, and any online or catalog warning that marine retailers fail to update would be at risk for future lawsuits. The proposed changes would further exacerbate limited resources of marine manufacturers and suppliers of products and create consumer confusion with different warnings for the same product. The existing short-form warning regulations contemplated the supply chain complexities and provided a commonsense approach of allowing the online and catalog warning to mirror that which is found on the actual product.

While OEHHA claims these proposed changes to the short-form warning requirements will address the Proposition 65 issue of over-warning, unfortunately, the proposed changes will not accomplish this. Manufacturers concerned about litigation risk (which remains considerable in

this area) will feel compelled to continue over-warning. Eliminating the short-form warning for marine products and requiring naming the chemical on the label will open the door for more litigation targeting manufacturers for not only reporting but potentially over reporting. This would not be good for either the consumer or for California businesses.

CONCLUSION

Without reasonable alternatives or a more targeted approach for marine products, NMMA cannot support the current proposal as drafted. NMMA recommends that OEHHA withdraw its proposed changes to amend the short-form warning requirements under Article 6 until OEHHA can address the concerns raised in these comments.

We appreciate the opportunity to provide you with these comments and urge OEHHA to take a commonsense approach to any changes to the short-form warning requirements. The current short-form warning requirements should remain in place given that they effectively balance the protection of the health and safety of consumers with the need for workable requirements for marine manufacturers and small businesses.

If you have any questions about these comments, please contact me at 202.737.9760 or ccrabtree@nmma.org.

Sincerely,



Clayton Crabtree
Director, Federal Government Relations
National Marine Manufacturers Association