



**MOTORCYCLE
INDUSTRY
COUNCIL**



April 8, 2015

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010

Submitted electronically to: P65Public.Comments@oehha.ca.gov

Submission of Comments RE: Notice of Proposed Rulemaking, Title 27 California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6, Proposition 65, Clear and Reasonable Warnings, January 16, 2015

Dear Ms. Vela:

These comments are submitted on behalf of the member companies of the Motorcycle Industry Council, the Specialty Vehicle Institute of America and the Recreational Off-Highway Vehicle Association. The MIC is a not-for-profit, national trade association whose members include manufacturers and distributors of motorcycles. The SVIA is the national nonprofit trade association which represents manufacturers and distributors of all-terrain vehicles in the United States. The ROHVA is a national industry organization representing manufacturers and distributors of recreational off-highway vehicles, also known as side-by-sides.

We appreciate this initiative on the part of the agency to update various aspects of the long standing Prop 65 to bring needed clarity to Article 6, Clear and Reasonable Warnings. Although OEHHA, in this proposed regulation, has addressed several of our ongoing concerns regarding Proposition 65 generally, there still are areas of concern where we see an opportunity for improvement as enumerated below.

“Passenger” Vehicle Exposure Warnings:

It is difficult to understand the rationale for limiting product inclusion in the specialized warning for “passenger vehicle” as defined at Section 465 of the Vehicle Code. It is more appropriate that a public warning relating to “vehicles” be more inclusive and apply to all motorized vehicles, of which there are many more than those included in the Section 465 definition of “passenger vehicle” and are otherwise defined and regulated by California. In this regard we recommend that additional types of vehicles produced by our collective industries, including motorcycles, motor-driven cycles, mopeds, all-terrain vehicles, recreational off-highway vehicles, limited speed vehicles, and snowmobiles be included – either by specifically naming each covered vehicle or by an inclusive definition, such as *a “vehicle” as defined in Section 670 of the Vehicle Code and an “off-highway motor vehicle” as defined in Section 38012 of the Vehicle Code*. Not only does the current “passenger vehicle” warning need to be expanded to encompass other vehicles, but it needs to be clarified. For example, the Section 465 definition of “passenger vehicle” includes an on-highway motorcycle; however it obviously will not be possible for motorcycle manufacturers to comply with the requirement for placement of a warning label on the driver’s side front window.

In view of the foregoing, we strongly urge that OEHHA expand the definition of “passenger vehicle” (covered vehicle) to clarify and include our products under the Safe Harbor Clear and Reasonable Warnings.

Warning Content/Placement

25608.16 Warnings - Method of Transmission

- We urge that the options for text, font size and placement of warning be expanded. For example, manufacturers want and need flexibility to include other matters of more importance than the reminder to wash hands. Regarding placement, owners’ manuals generally address the various warnings in a specific section or pages of which this should be a part, rather than inside or outside the front or back covers. Cover detail is more particularly reserved for corporate information and has less to do with vehicle particulars.
- As an alternative to the prescribed 12 point font size, a lesser size should be permitted if it is in a font size no smaller than those used for other warning information on the product in compliance with other federal and California regulations.
- At 25608.16(a)(2), a placement of the label other than attached to the front window on the driver’s side must be designated for motorcycles and other such vehicles without either windows or a “driver’s side.” A hang tag or other appropriate locations should be considered.
- It should be provided that the warning label is removable and may be removed by the ultimate purchaser.

25608.17 Warnings – Content

- At 25608.17 (a) (3), text should be modified as follows:
The words: “Operating, servicing and maintaining a ~~passenger~~ vehicle ~~can~~ may expose you to chemicals such as lead, phthalates, engine exhaust and carbon monoxide that are known to the State of California cause cancer and birth defects or other reproductive harm. To minimize exposure, avoid breathing exhaust, service your vehicle in a well-vented area and wear gloves or wash your hands frequently when servicing your vehicle. For more information go to: www.P65Warnings.ca.gov/passenger vehicle.”

This will provide for motorized vehicles other than passenger vehicles (as defined), such as motorcycles and off-highway vehicles, and applies specifically to the labeled vehicle. The use of the word “may” expose as opposed to “can” expose is more appropriate as vehicles are a complex product with many component parts and incorporating an extended supply chain. Toxic exposure may range from the apparent known to a de minimis unknown as threshold content in many instances may be impossible to either ascertain or measure. In addition, the next to last sentence addressing exposure speaks to breathing exhaust gases. We believe this is a matter more appropriately addressed by the California Air Resources Board (emissions regulations) and Cal/OSHA (occupational issues). In our view, this is extraneous, as the regulation should more appropriately be focused on the product per se and not on how it is used.

- The ubiquitous warning symbol is not necessary. The word “warning” in bold caps should be more than sufficient.

Effective Date and Lead Time:

The proposed 2-year lead time is an acceptable minimum, however 3 years would be more helpful in view of production lead times encompassing model year changes. In any event, it is imperative that provisions are made for an indefinite shelf life of any pre-effective date production units or vehicles in-process or in inventory and consumer owned-in-use vehicles. It is essential that the rule thoroughly address this issue with express and specific language to foreclose fishing expeditions for shelf-life litigation.

Thank you for your consideration of these comments.

Respectfully submitted:

A handwritten signature in black ink that reads "Kathy R. Van Kleeck". The signature is written in a cursive style with a large, stylized initial 'K'.

Kathy R. Van Kleeck
Sr. Vice President
Government Relations