



RUBBER
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association

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April 26, 2016

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Office of Environmental Health Hazard Assessment
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RE: Clear and Reasonable Warning Regulations

RMA is the national trade association representing major tire manufacturers that produce tires in the United States, including Bridgestone Americas, Inc., Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA members thank the California Office of Environmental Health Hazard Assessment (OEHHA) for consideration of these comments on the Modification to Text of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act (Proposition 65) dated March 25, 2016 (“proposal”).

I. §25600 General

A. §25600(c) - RMA supports a process for an interested party to request that the lead agency adopt a warning method or content specific to a consumer product, area or chemical

Section 25600(c) specifies that “if the lead agency has not adopted a specific product, chemical or area exposure warning in Section 25607, an interested party may request that the lead agency adopt one pursuant to Government Code Section 11340.6 et seq. (Petition for Rulemaking), or may request guidance from the lead agency pursuant to Article 2, section 25203(Interpretive Guideline Request) or Article 2, section 25204 (Safe Use Determination). RMA supports the petition process for rulemaking or guidance for product, area or chemical specific warning methods or messages. The proposal specifies that warnings can be provided on a shelf-tag or on a shelf sign, via any electronic device, on-product labels, or via a hyperlink for internet purchases. Each of these methods of transmission for warnings pose labeling issues for tires. Including a process to petition OEHHA for rulemaking gives RMA members the opportunity to seek a product specific warning method that is feasible for tires, which will provide RMA members certainty that they are in compliance with the requirements of Prop 65 should warnings be required for tires.

II. §25600.2 Responsibility to Provide Consumer Product Exposure Warnings

A. RMA thanks OEHHA for clarifying in section 25600.2(d) that retailers are responsible for the placement and maintenance of warning materials that the retail seller receives.

In our comments on the March 7, 2014 Pre-Regulatory draft proposal and on the November 27, 2015 proposal, RMA expressed concern that the regulation did not specify who was responsible for providing the shelf-tag or self-sign for the product at each point of display. Specifically, RMA expressed concern that if a manufacturer provides a shelf-tag or shelf-sign to the retail store and the label does not comply with the retail stores label specifications, then manufacturers will have no control over whether the shelf-sign or shelf-tag is displayed to the consumer. RMA supports OEHHA's revised provisions which make retailers responsible for the placement and maintenance of warning materials and/or warning language for products sold on the Internet, however we have continued concern about labeling requirements for products, like tires, where often only a small number of the actual tires available for sale in the store are on display. We recommend that labeling requirements for retailers only apply to products that come into contact with consumers.

III. §25601 Safe Harbor Clear and Reasonable Warnings – Methods and Content

A. The new requirements in Section 25601(c) create confusion about what is required to determine a warning is required and how many chemicals are required to be listed on a warning.

The proposal adds new language to Section 25601(c) that creates confusion about what information is needed to determine a warning is required and how many chemicals should be listed on a warning. First section 25601(c) specifies that “a warning meets the requirements of this article if the name of one or more of the listed chemicals for which the person has determined a warning is required is included in the text of the warning.” The proposal does not go into detail regarding what information is required to show that a warning is required for a product. RMA recommends that OEHHA clarify what information is necessary to determine that a warning is required or eliminate the phrase “for which the person has determined a warning is required.”

Second, section 25601(c) also creates confusion regarding the number of substances that must be included on a warning. Specifically, section 25601(c) specifies that “where a warning is being provided for more than one endpoint (cancer and reproductive toxicity) the warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause cancer and reproductive toxicity and has been so identified in the warning.” The use of the phrase “one or more” may create confusion whether a warning needs to include all of the chemicals for which the warning is being provided. RMA recommends that OEHHA edit this section to clarify that to meet the safe harbor requirements, only one chemical name is required on a warning for each endpoint in which a warning is being provided.

IV. §25602 Consumer Product Exposure Washings – Methods of Transmission

A. RMA asks that OEHHA define the term “at each point of display of the product” in §25602(a)(1)

Section 25602(a)(1) specifies that a warning can be provided on a shelf-tag or on a shelf sign for the consumer product at each point of display of the product, however the term “at each point of display of the product” is not further defined. This may cause confusion for products, such as tires, that sold in retail stores where only a small number of the actual tires available for sale in the store are on display. For tires that are not on display in a retail store, RMA members ask OEHHA to specify that only products which can come in contact with the consumer require a shelf-tag, shelf-sign or label.

B. §25602(a)(2) – RMA has concern that small tire stores or small automotive centers do not have access to the internet in order to provide a label via an electronic device in the retail store.

Section 25602(a)(2) specifies that “a warning may be provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning.” This labeling requirement assumes that retail stores have access to the internet or the means to provide a process that would automatically provide a warning to the consumer while purchasing the product. The requirement to provide a product-specific warning via an electronic device or process that automatically provides the warning may not be feasible for many small tire stores or small automotive centers that do not have internet access. Additionally, this section does not provide detail as to the level of actions a purchaser must take in order to be considered “seeking out” a warning. RMA recommends that OEHHA provide additional clarification about what level of actions a purchaser must take to be considered “seeking out” a warning.

C. §25602(a)(3) – RMA recommends that this section clarify that a package insert, pamphlet or owner’s manual satisfy a manufacturer’s warning obligation under Proposition 65.

Section 25602(a)(3) specifies that a label may be provided on a product, however it does not clarify whether a warning can be transmitted using methods such as a package insert, pamphlet or owner’s manual to satisfy a manufacturer’s warning obligation under Proposition 65. “Label” is defined as “affixed to a product or its immediate container or wrapper.” “Labeling,” however, is defined to include “any written, printed, graphic, or electronically provided communication that accompanies a product including tags at the point of sale or display of a product.” The methods of transmitting a warning include “An on-product label that complies with the content requirements in Section 25603(b).” (See §25602(a)(4)) However, it does not include the term “labeling.” Current Proposition 65 language specifies that a warning may be provided “on a product’s label or other labeling.” The terms “Label” and “Labeling” in the current regulation have the same general definitions as in the proposal in that “Labeling” includes communication accompanying a product and “Label” does not. To ensure that the regulation continues to allow for methods of transmission such as warnings in a package insert,

pamphlet or owner's manual, OEHHA should make the following revision to section 25602(a)(4) before it is finalized: An on-product label or other labeling that complies with the content requirements in Section 25603(b).

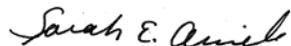
D. §25602(b) internet purchases – RMA recommends that if a product contains an on-product warning label, and is sold on the internet, the online retail seller is not required to provide an additional warning for that product.

“Section 25602(b) specifies that for internet purchases a warning that complies with the content requirements of Section 25603(a) must be provided by including either the warning on the product display page, or a clearly marked hyperlink using the word “Warning” on the product display page, or by otherwise prominently displaying the warning to the purchaser. If an on product warning is provided pursuant to Section 25602(a)(4), the warning provided on the website is not prominently displayed if the purchaser must search for it in the general content of the website.” The new language in section 25602(b) can be interpreted to require online retailers to provide a second warning, even if the product they are selling contains an on product warning. RMA recommends that this requirement is overly burdensome and we ask that OEHHA clarify that online warnings are not required for products that already contain an on-product warning.

V. Conclusion

RMA again thanks OEHHA for this opportunity to comment on these proposed revisions to Proposition 65. Please contact me at (202) 682-4836 if you have questions or require additional information.

Respectfully Submitted,



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