



**RUBBER**  
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Monet Vela  
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P.O. Box 4010  
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RE: Lead Agency Website 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's (OEHHA) for consideration of these comments on the Notice of Modification to Text to add section 25205 to Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act (Proposition 65).

**I. Changes in the May 22, 2015 proposed revisions to the Lead Agency Website Regulation**

**A. RMA supports the proposed changes to section 25205(a)(7)**

In the January 16, 2015 proposed Lead Agency Website regulation, Section 25205(a)(7) specified that the Lead agency will: "Provide a disclaimer indicating that OEHHA cannot assure the accuracy of information it has received under Section (b) from manufacturers, producers, distributors, or importers of consumer products." Section 25205(a)(7) was revised in the May 22, 2015 proposed changes to the Lead Agency website regulation to specify that the lead agency will: "Provide a disclaimer indicating that OEHHA cannot assure the accuracy of information it has received under subsection (b)." RMA supports this proposed change to section 25205(7). Because OEHHA plans to populate the website with information available in the public domain, OEHHA will be unable verify the accuracy of information it receives.

**B. RMA supports the proposed changes to section 25205(b)(10).**

In the January 16, 2015, Lead Agency Website proposed regulation, section 25205(b)(10) specified that businesses must submit "any other related information that the lead agency deems necessary." RMA recommended in our comments that, as drafted, this section enables OEHHA to request any information that may supplement a warning under Proposition 65. The Initial Statement of Reasons (ISOR) for the January 16, 2015 Lead Agency Website proposed

regulation specified that the information that can be requested in section 25205(b)(10) is limited “to information related to potential exposures to listed chemicals for which warnings are already being provided under the Act.” (ISOR for the Lead Agency Website, Page 7 of 13.) RMA recommended that OEHHA incorporate the language in the ISOR for the Lead Agency Website proposed regulation into the regulatory text for section 25205(b)(10). RMA appreciates OEHHA’s incorporation of the language from the ISOR into section 25205(b)(10) in the May 22, 2015 revised regulation.

### **C. RMA supports the proposed changes to section 25205(c)**

In the January 16, 2015 proposed Lead Agency Website regulation, Section 25205(c) specified that if OEHHA “determines that the information that a business claims should not be available for public inspection must be released to the public under the Public Records Act or other law, it will promptly notify the business in writing at least 15 days prior to disclosure, in order to provide the business with the opportunity to submit additional justification for the claim or to contest the determination in an appropriate proceeding.” In our comments on the January 16, 2015 proposal, RMA recommended OEHHA provide 30 days for businesses to submit additional information to support a confidential business information (CBI) claim or to seek judicial review of a determination that information is not CBI and should be released. Thirty days is consistent with other California regulations, such as the California Safer Consumer Products regulation. RMA supports the change in the May 22, 2015 revised Lead Agency Website regulation to provide businesses 30 days to submit additional information to justify a claim that the information is a trade secret or seek judicial review of the agency’s decision to disclose the information.

## **II. RMA recommends that OEHHA clarify the language in 25205(c)**

The May 22, 2015 proposal includes new language in section 25205(c):

“The section does not require a business to perform any new or additional testing or analysis for the sole purpose of responding to a request made by the lead agency pursuant to subsection (b). If the requested information is not in the possession or control of a business, the business is not required to procure it solely for the purpose of providing it to the lead agency.”

RMA supports the inclusion of language in section 25205(c), which specifies that a business does not need to conduct testing for the purpose of responding to a request made by OEHHA pursuant to subdivision (b). However, RMA recommends that OEHHA remove the words “sole” from this section. This language creates confusion in section 25205(c). For example, if a request is made for information by the lead agency and a business performed testing and submitted information confidentially in response to another government entity, it could be argued that the testing was not done for the “sole” purpose of submitting the information to OEHHA. To prevent confusion, RMA recommends that OEHHA remove the word “sole” from the new language proposed in section 25205(c).

**III. Issues raised in RMA's comments on the January 16, 2015 Lead Agency Website proposed regulation that were not addressed in the May 22, 2015 revisions.**

**A. RMA questions what authority OEHHA is relying on as the basis for Section 25205 – Lead Agency Website.**

Proposition 65 requires businesses to provide a “clear and reasonable” warning before knowingly and intentionally exposing individuals to Proposition 65-listed chemicals. Thus, OEHHA has the authority to promulgate regulations that specify when a label is “clear and reasonable.” However, Proposition 65 does not provide OEHHA with the authority to require businesses to submit supplemental information for a warning.

Section 25600(d) in the Warning Regulation specifies that “a person may provide information to the exposed individual that is supplemental to the warning.” This section provides the option, but does not require businesses to provide supplemental information for a warning. RMA recommends that OEHHA should not finalize the Lead Agency Website Regulation, and should instead rely on the language in section 25600(d) in the Warning Regulation which makes providing supplemental information to a warning optional.

In the event OEHHA finds the authority to move forward and finalize the Lead Agency Website regulations, RMA offers the following comments.

**B. RMA recommends that OEHHA should only include information from government agencies and manufacturers on the lead agency website.**

In the ISOR for the Lead Agency Website, OEHHA states that they primarily intend to collect existing, publicly available information to populate the website. Additionally, section 25205(a)(2) specifies that “any person may provide the lead agency with information that may be posted on the website, in the lead agency’s discretion.” Thus, OEHHA will be populating the lead agency website with supplement information for a warning from any source. As a result, this increases the opportunity that misleading or incorrect information regarding a chemical in a product, for which a warning is required, can be included on the lead agency website.

RMA strongly recommends that manufacturers are the best source for information to provide to consumers regarding the safety of a consumer product. Manufacturers of consumer products must comply with a number of federal regulatory programs that require them to report data on their product including: safety information, content information, and chemical disclosure information. Rather than OEHHA creating a website that contains information from any source on a chemical in a product, OEHHA should refer consumers directly to a manufacturer for additional information regarding a chemical in a product.

**C. RMA supports the inclusion of a process to request a correction of material provided to the website.**

If OEHHA populates the lead agency website with information from any source, it is essential that manufacturers have an opportunity to correct information contained on the website.

This will ensure that the public does not have access to information about a product that is inaccurate or misleading. Section 25205(a)(2) provides the opportunity to correct information on the lead agency website, however this section does not specify that OEHHA will remove inaccurate information. RMA recommends that section 25205(a)(2) be revised to specify that if a request is made to correct information on the website, that is substantiated with information showing why the material is inaccurate, OEHHA should remove the inaccurate information from the website. There may not always be an opportunity to correct information on the website, and if the information is shown to be inaccurate it should be removed from the website.

**D. RMA specific concerns with information that must be provided under section 25202(b)**

Section 25205(b) requires businesses that provide a warning to provide certain information, when reasonably available, upon OEHHA's request and within the timeframe specified in the request. However, this section does not define what information is considered reasonably available. The ISOR for the Lead Agency Website explains that section 25202(b), "does not confer any responsibility on a business to do new testing or analysis in response to a request from OEHHA." (ISOR for the Lead Agency Website, Page 7 of 13.) The ISOR further specifies that, "if the business does not have the requested information, then it would be sufficient for it to respond to an information request by providing the responsive information that it does have and informing OEHHA that it does not possess the other requested information." *Id.* RMA recommends that the proposed lead agency website regulation should specify that businesses are not required to conduct new testing in response to a request for information and can respond to OEHHA's request for information by stating that they do not have the information requested.

- i. RMA recommends that OEHHA exclude section 25205(b)(7) from the proposed lead agency website regulation as this information is likely considered confidential business information (CBI) for many products.**

Section 25205(b)(7) requires businesses to submit information regarding the matrix in which the chemical is found in the product and "the concentration of the listed chemical(s) in the product matrix, if known." The concentration of a chemical in the rubber matrix for a tire is likely considered confidential business information. Providing this information to OEHHA will not provide the public with additional information regarding a chemical in a product because this information will be claimed as CBI. RMA recommends that OEHHA delete this section from the lead agency website proposed regulation.

- ii. RMA recommends that OEHHA clarify in Section 25205(b) that trade groups and other organizations are also able to provide the information requested in this section.**

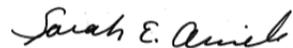
The ISOR for the Lead Agency Website specifies that, "businesses may coordinate reporting through their trade groups or other organizations since many exposures to listed chemicals occur throughout an industry, not from a single product, occupational or

environmental scenario.” (ISOR for the Lead Agency Website, Page 8 of 13). Section 25205(b) requires manufacturers, producers, or importers to provide certain information upon the lead agency’s request. As drafted, this section does not allow trade groups or other organizations to also respond to the lead agency’s request for information. RMA recommends that OEHHA clarify in the regulatory text of section 25205(b) that trade groups or other organizations can respond to a request for information from the lead agency on behalf of an industry.

**IV. Conclusion**

RMA again thanks OEHHA for this opportunity to comment on these proposed changes to the Lead Agency Website regulation. Please contact me at (202) 682-4836 if you have questions or require additional information.

Respectfully Submitted,



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Rubber Manufacturers Association