



RUBBER
manufacturers
association

1400 K Street, NW • Washington, DC 20005 • tel (202) 682-4800 • fax (202) 682-4854 • www.rma.org

January 25, 2016

Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010
1001 I Street
Sacramento, CA 95812-4010

RE: PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6 –
CLEAR AND REASONABLE WARNINGS

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 November 27th, 2015, proposed Clear and Reasonable Warnings Regulations.

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 warning method or content specific to a consumer product, area, or chemical 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 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 an issue for tires. Including the process to petition OEHHA for rulemaking or for guidance on labeling 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.

B. §25600(d) – RMA recommends that OEHHA should not restrict what additional information a manufacturer may choose to provide to a customer or the public.

Section 25600(d) specifies “A person may provide information to the exposed individual that is supplemental to the warning” but that “in order to comply with this article, supplemental information may not contradict the warning.” The proposed regulation does not define what information would contradict a warning which could increase litigation regarding what information is seen as contradicting a label. For example, statements made in advertising or information used in advertising a product, may be seen as contradicting a warning label. Restricting what information a company can use in advertising their product, on the basis that the information can not contradict a Proposition 65 warning label may be seen as a First Amendment violation of free speech. RMA recommends that OEHHA should not go beyond Proposition 65’s mandate and restrict what additional information a business may choose to provide to a customer or the public.

II. §25600.2 Responsibility to Provide Consumer Product Exposure Warnings

A. RMA thanks OEHHA for clarifying 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 to amend warning sign regulations under the California Safe Drinking Water and Toxic Enforcement Act (“Proposition 65”), RMA expressed concern that the pre-regulatory proposal 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, 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. §25601(c) – RMA recommends that OEHHA revise the proposal to require a single warning label requirement that states, “This product can expose you to a chemical (or chemicals) known to the State of California to cause cancer and/or birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/product.”

The April 2015 proposed regulation required that the names of certain chemicals listed in this section be included in the text of a warning. The current proposal eliminates this requirement and instead requires that warnings include the name of one or more of the listed

chemicals for which the warning is being provided. Specifically, 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 warning is being provided is included in the text of the warning, to the extent that an exposure to that chemical or chemicals is at a level that requires a warning.” RMA has concern that the ambiguity in this section regarding what chemical should be included in a warning may create a situation where a business is required to provide a warning for two chemicals. It is unclear whether a business can decide to include one chemical in a warning even if the product contains more of the other chemical. RMA recommends that OEHHA provide one requirement for safe harbor language which states: “This product can expose you to a chemical (or chemicals) known to the State of California to cause cancer and/or birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/product.”

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).”

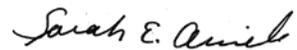
D. §25602(b) internet purchases – RMA recommends that if a product contains an on-product warning label, and is sold on the internet, the retail seller is not required to provide an additional warning for that product.

“Section 25602(b) specifies that for internet purchases, the warning must be provided by a clearly marked hyperlink using the word “WARNING” on the product display page or otherwise be prominently displayed to the purchaser before the purchaser completes his or her purchase of the product.” However, this section does not specify whether the internet retailer is responsible for posting and maintaining a warning provided via a hyperlink. Tire manufacturers produce thousands of types of tires that are each identified by a distinct sku number. The requirement to provide a warning on a tire retailer’s website for each individual sku numbered tire is overly burdensome. Additionally, RMA members are concerned that if an internet website does not properly provide the hyperlink on the product display page, tire manufacturers will be liable for failing to warn the consumer. We recommend that OEHHA clarify in the proposal that a retail seller that sells a product containing an on-product warning label via the internet is not required to provide an additional warning for that product via a hyperlink.

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,

A handwritten signature in cursive script that reads "Sarah E. Amick".

Sarah E. Amick
Senior Counsel
Rubber Manufacturers Association