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Subject: Pre-Regulatory Draft – For Discussion Purposes Only

I. Introduction

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 March 7, 2014 Pre-Regulatory draft proposal (“Pre-Regulatory Proposal”) to amend warning sign regulations under the California Safe Drinking Water and Toxic Enforcement Act (“Proposition 65”).

RMA members have a number of concerns regarding the warning requirements contained in the pre-regulatory proposal. We support Governor Brown’s Proposition 65 reforms to end frivolous law suits, improve how the public is warned about chemicals and strengthen the scientific basis for warning levels. However, as drafted the pre-regulatory proposal raises concerns that: (1) the reporting obligations under the pre-regulatory proposal do not provide protection for confidential business information; (2) the change in labeling requirements from “this product contains a chemical” to “this product will expose” will not provide accurate information about chemicals in products; (3) the data that must be reported to OEHHA under section 25604 should not be included in the warning requirements; (4) none of the warning label options are feasible for tires; and (5) OEHHA has not provided any scientific criteria by which the twelve chemicals that must be disclosed by name were chosen.

II. The pre-regulatory proposal does not provide protection for confidential business information.

The pre-regulatory proposal does not provide protection for data that must be reported to OEHHA which may be considered confidential business information. Every product that requires a warning under the pre-regulatory proposal has the obligation to report detailed
information to OEHHA. Some of the information in section 25604 that must be reported includes: the name of the chemical or chemicals for which a warning is required; the anticipated route, routes or pathways of exposure to the listed chemical; reasonably available information concerning the anticipated level of human exposure to the listed chemical; and whether information concerning actions a person can take to minimize or eliminate exposure to the listed chemical, if any. All of the information that is required to be reported under section 25604 will be published on a publically available database managed by OEHHA.

For some manufacturers, the information that must be reported under section 25604 may include confidential business information. The pre-regulatory proposal does not include provisions for submitting data to OEHHA confidentially. RMA recommends that OEHHA include protection for information that is considered confidential business information.

III. RMA does not support the change in labeling requirements from “this product contains…” to “this product will expose you to”

Section 25603.2 in Proposition 65 specifies that “the warning message must include the following language: (1) For consumer products that contain a chemical known to the state to cause cancer: Warning: This product contains a chemical of known to the State of California to cause cancer; (2) For consumer products that contain a chemical known to the state to cause reproductive toxicity: Warning: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.”

Section 25607.2 in the pre-regulatory proposal changes the labeling requirements to require that a warning include the following language: (A) For exposures to listed carcinogens, the words “This product will expose you to a chemical (or chemicals) known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov;” or (B) For exposures to reproductive toxins, the words “This product will expose you to a chemical (or chemicals) known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

The requirement to determine whether “average users of a consumer product” are or will be “exposed” to a chemical based on their “average rate of intake” is burdensome and costly to manufacturers of consumer goods sold in California. Manufactures will be required to hire technical consultants to perform risk assessments on listed chemicals in order to defend their decision not to provide a warning. Additionally, the warning requirements in the pre-regulatory proposal are a distinct change from the requirements in Proposition 65 because they require a warning specify that the consumer will be exposed to a listed chemical rather than the product contains a listed chemical. RMA does not support the requirement in the pre-regulatory proposal to provide a statement that a product “will expose you” to a listed chemical.

For tires, the requirement to include language on a warning that states “this product will expose you to” a listed chemical may not be accurate. As with most products available for sale in California, tires contain chemicals. However the process of manufacturing a tire involves vulcanization, which changes the chemical composition of the chemicals formulated into the tire in the initial stages of the manufacturing process. As a result, the risk for exposure to chemicals
in tires is reduced or eliminated as the chemicals in tire formulations undergo a chemical reaction during the vulcanization or heating of a tire during the manufacturing process. Products should not be required to provide a warning for chemicals that may have been an ingredient in the product, but are no longer present in the product after manufacturing. We recommend OEHHA should not require warnings to include the language “will expose you to” and should maintain the “contains” language in Proposition 65.

IV. **Information required to be reported, and then posted on OEHAA’s website, should be exempt from the warning requirements.**

Section 25601 of the pre-regulatory proposal requires that “in order for a warning to be considered “clear and reasonable” for purposes of Health and Safety Code section 25249.6, the warning must, at a minimum comply with all applicable requirements of this Article,” which includes the requirement to report certain information that will be published on OEHAA’s website. For a warning to be considered “complete” under the pre-regulatory proposal the information listed in section 25604 must be reported to OEHHA within 30 days after a warning is provided.

The information in section 25604 that must be reported to OEHHA is burdensome to compile and report. It will be difficult for businesses to provide the information within 30 days on a reported chemical. Furthermore, the data required in section 25604 may not be available without additional testing. RMA recommends that the information that must be reported to OEHHA under section 25604, should not be included as part of the requirements to make a warning “complete.”

V. **Tires may be unable to comply with the labeling requirements contained in section 25607.1.**

Section 25607.1 of the pre-regulatory proposal specifies labeling requirements for consumer products other than foods, prescription drugs, medical devices and dental care. This section provides five options for labeling consumer products; however none of the options present a feasible labeling option for tires. RMA’s concerns with each of the five labeling options as applied to tires are discussed below.

A. **“The warning message is on a product’s labeling that is provided directly to the purchaser of the consumer product using the format, content and size specified in subsection 25607.2 (b).”**

Section 25606 specifies that “except in the case where a retail seller is selling a product under its own in-house label, any consequences for failure to comply with this article shall be the primary responsibility of the manufacturer, producer, distributor or packager of the consumer product, provided that the retail seller makes reasonable efforts to post, maintain, or periodically replace the warnings provided.” This option for providing a warning is problematic for manufactures because they must rely on the retail seller to provide the label to the consumer.
Comments by the Rubber Manufacturers Association

Tires are typically not on display for a consumer to view before purchase. As a result, consumers are unlikely to see the tires they purchase, or any label on the tire, at the time of purchase. RMA has concern that if a sticker label is included on a tire, but the retailer does not show the consumer the label before or at the time of purchase, the manufacturer will be liable for failure to provide the warning to the consumer.

**B. “For internet purchases, the warning message is provided on the internet prior to the time the consumer completes its purchase of the product.”**

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 transmit the warning information to consumers, tire manufacturers will be liable for failing to warn the consumer.

**C. “For catalog purchases, the warning message is provided in the catalog in a manner that clearly associates it with the item being purchased.”**

Tires are typically not sold in catalogs. However, catalog is not defined in the pre-regulatory proposal. RMA members have concern regarding whether a catalog that contains various types of tires, but does not provide the option to purchase the tires, require warnings under the pre-regulatory proposal.

**D. “A product-specific warning is provided on the shelf-tag or on a shelf-sign for the product at each point of display of the product. The entire warning message must be in a print font no smaller than the largest type size used for other information on shelf-tag or signs used for advertising purposes for the same or similar products.”**

The pre-regulatory proposal does not specify who is responsible for providing the shelf-tag or self-sign for the product at each point of display. For example, are manufacturers responsible for providing the shelf tags to every tire retail center? Retail stores often have label requirements for shelf-tags and shelf-signs. RMA has 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.

The requirement to provide a warning on a shelf-tag or on a shelf-sign is also problematic for tires because tire retail stores often display only a small number of the actual tires available for sale in the store. For tires that are not on display in a retail store, RMA members question how they might comply with this labeling requirement.
E. “A product-specific warning is provided via any electronic device or process that automatically provides the warning to the consumer while the consumer is making a purchase, without requiring the consumer 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.

VI. The pre-regulatory proposal does not address used products.

RMA has concern that used products are not addressed in the pre-regulatory proposal. Used tires are resold at retail stores. If used products are covered in the regulation, it is not clear in the pre-regulatory proposal who is responsible for providing the warning label for used products.

VII. OEHHA has not provided the scientific criteria or rationale by which the twelve specific chemicals included in section 25605 were chosen.

Section 25605 requires that “where a warning is being provided pursuant to Health and Safety Code section 25249.6 for any of the following listed chemicals, substances or mixtures, the name of the chemical, substance or mixture shall be specified on the warning.” The twelve chemicals that must be included by name in a warning are: Acrylamide, Arsenic, Benzene, Cadmium, Chlorinated Tris, 1,4-Dioxane, Formaldehyde, Lead, Mercury, Phthalates, Tobacco smoke, and Toluene. The pre-regulatory proposal does not provide any scientific criteria or rationale as to why these twelve chemicals must be listed by name on a warning. RMA does not see a need to include the name of a specific chemical on a warning label and recommends that the warning itself should be sufficient to a consumer.

VIII. Conclusion

RMA recommends that the entire pre-regulatory proposal should be stricken. While we support the Governor’s goals for reforming Proposition 65, we do not believe the pre-regulatory proposal accomplishes those goals.

Proposition 65 requires warnings on products “that contain a chemical known to the state to cause cancer or reproductive toxicity in an amount that requires a warning.” §25603. This regulation identifies “safe harbor” levels of exposure for some of the listed chemicals and also provides a process to calculate a safe harbor level is one has not been established by OEHHA. Section 25601(c), in the pre-regulatory proposal, requires a warning for a given exposure. A product that contains a listed chemical must determine whether “average” users of the consumer product are “exposed” to the chemical based on their “average rate of intake” under 27 Cal. Code Regs. Sections 25721(d)(4) and/or 25821(c)(2). While it may be sometimes difficult to determine if a product contains a chemical, it is much more onerous to determine the anticipated...
level of exposure to a listed chemical contained in a consumer product. RMA recommends that OEHAA maintain the current safe harbor levels in Proposition 65 rather than moving ahead with the pre-regulatory proposal.

RMA again thanks OEHHA for this opportunity to comment on the pre-regulatory proposal. Please contact me at (202) 682-4836 if you have questions or require additional information.

Respectfully Submitted,

[Signature]

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