

MEMORANDUM

TO: Roy Littlefield, III
Tire Industry Association

FROM: Peter H. Gunst, Esquire

DATE: August 16, 2018

RE: Proposition 65 Compliance

You raised a question concerning the sufficiency of USTMA's response to questions raised regarding compliance with California's Proposition 65 requirements. In sum, USTMA's response states that, because all identified chemicals do not exceed the safe harbor exposure level, there is no requirement for placing a Proposition 65 warning on any affected passenger vehicle tires. That response would appear to be sufficient, subject to the exceptions noted below.

The new California regulation relating to the responsibility to provide consumer product exposure warnings, § 25600.2 Cal. Code of Regs., places the warning requirement on the manufacturer or supplier, not the retailer. The manufacturer or supplier may satisfy the warning requirement either by providing a warning on the product label itself, or by providing written notice to the retailer identifying the listed chemicals and including all necessary warning materials, such as labels and the like. Here, not only have the tire manufacturers seen no need to comply with those requirements at all, but they have also provided written assurance through the USTMA's response that their tires do not exceed the safe harbor exposure level.

The sole exceptions where the retail seller has primary responsibility are contained in subsection (e) of the Regulation. Pertinent here, the retailer bears warning responsibility where it is selling product under a trademark that it owns or licenses, or if it has introduced a listed chemical into the product. The USTMA response is inapplicable to those exceptions by their very nature.

A copy of the Regulation is attached to this memorandum. Please let me know if anything further is required on this issue.

cc: Sandra Martinez
Roy Littlefield, IV

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27 CA ADC § 25600.2

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONSBarclays Official California Code of Regulations [Currentness](#)

Title 27. Environmental Protection

Division 4. Office of Environmental Health Hazard Assessment

Chapter 1. Safe Drinking Water and Toxic Enforcement Act of 1986

Article 6. Clear and Reasonable Warnings [Operative August 30, 2018. For Current Law, See Sections Under Article 6,

Operative Until August 30, 2018.]

Subarticle 1. General

27 CCR § 25600.2

§ 25600.2. Responsibility to Provide Consumer Product Exposure Warnings. [Operative August 30, 2018]

(a) Section 25249.11 of the Act requires the lead agency to minimize the burden on retail sellers of consumer products, to the extent practicable, when it adopts regulations concerning clear and reasonable warnings, except where the retail seller itself is responsible for introducing a listed chemical into the product.

(b) The manufacturer, producer, packager, importer, supplier, or distributor of a product may comply with this article either by providing a warning on the product label or labeling that satisfies Section 25249.6 of the Act, or by providing a written notice directly to the authorized agent for a retail seller who is subject to Section 25249.6 of the Act, which:

- (1) States that the product may result in an exposure to one or more listed chemicals;
- (2) Includes the exact name or description of the product or specific identifying information for the product such as a Universal Product Code or other identifying designation;
- (3) Includes all necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for products sold on the internet, that satisfies Section 25249.6 of the Act;
- (4) Has been sent to the authorized agent for the retail seller, and the manufacturer, producer, packager, importer, supplier, or distributor has obtained confirmation electronically or in writing of receipt of the notice.

(c) If the manufacturer, producer, packager, importer, supplier, or distributor of a product is complying with this section by providing a written notice directly to the authorized agent for the retail seller:

- (1) The notice must be renewed, and receipt of the renewed notice confirmed electronically or in writing by the retail seller's authorized agent no later than February 28, 2019, then annually thereafter during the period in which the product is sold in California by the retail seller.
- (2) An additional notice is required within 90 days when a different or additional chemical name or endpoint (cancer or reproductive toxicity) is included in the warning.

(d) The retail seller is responsible for the placement and maintenance of warning materials, including warnings for products sold over the internet, that the retail seller receives pursuant to subsections (b) and (c).

(e) The retail seller is responsible for providing the warning required by Section 25249.6 of the Act for a consumer product exposure only when one or more of the following circumstances exist:

- (1) The retail seller is selling the product under a brand or trademark that is owned or licensed by the retail seller or an affiliated entity;
- (2) The retail seller has knowingly introduced a listed chemical into the product, or knowingly caused a listed chemical to be created in the product;
- (3) The retail seller has covered, obscured or altered a warning label that has been affixed to the product pursuant to subsection (b);
- (4) The retail seller has received a notice and warning materials for the exposure pursuant to subsections (b) and (c) and the retail seller has sold the product without conspicuously posting or displaying the warning; or

(5) The retail seller has actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the product who:

- (A) Is a "person in the course of doing business" under Section 25249.11(b) of the Act, and
- (B) Has designated an agent for service of process in California, or has a place of business in California.

(f) For purposes of subsection (e)(5), "actual knowledge" means specific knowledge of the consumer product exposure received by the retail seller from any reliable source. If the source of this knowledge is a notice served pursuant to Section 25249.7 (d)(1) of the Act, the retail seller shall not be deemed to have actual knowledge of any consumer product exposure that is alleged in the notice until five business days after the retail seller receives a notice that provides a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2) (D).

(g) The retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to the following persons on written request, to the extent that this information is reasonably available to the retail seller:

- (1) The lead agency;
- (2) The Attorney General, any district attorney, or any city attorney or city prosecutor with authority to bring an action under the Act; or
- (3) Any person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act.

(h) A person or entity making a written request pursuant to subsection (g) must provide a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D).

(i) Provided that the consumer receives a warning that meets the requirements of Section 25249.6 of the Act prior to exposure, the manufacturer, producer, packager, importer, supplier, or distributor of a product that may cause a consumer product exposure may enter into a written agreement with the retail seller of the product to allocate legal responsibility among themselves for providing a warning for the product, which shall bind the parties to that agreement and which shall supersede the requirements of subsections (b), (c), (d), and (e).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.6, 25249.7 and 25249.11(f), Health and Safety Code.

HISTORY

1. New section filed 8-30-2016; operative 8-30-2018 pursuant to Government Code section 11343.4(b)(2) (Register 2016, No. 36).
2. Change without regulatory effect amending subsections (a), (b)(3) and (d) filed 1-9-2017 pursuant to section 100, title 1, California Code of Regulations (Register 2017, No. 2).
3. Amendment of subsections (b), (b)(4), (c) and (c)(1) filed 11-20-2017; operative 8-30-2018 pursuant to Government Code section 11343.4(b)(2) (Register 2017, No. 47).

This database is current through 8/3/18 Register 2018, No. 31

27 CCR § 25600.2, 27 CA ADC § 25600.2

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