

**State of California
Office of Administrative Law**

In re:
**Office of Environmental Health Hazard
Assessment**

Regulatory Action:

Title 27, California Code of Regulations

Adopt sections:

Amend sections: 25603.3

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0408-02


OAL Matter Type: Emergency (E)

On May 11, 2015, the Office of Environmental Health Hazard Assessment (OEHHA) added bisphenol A (BPA) to the list of chemicals known to the state to cause reproductive toxicity for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). OEHHA submitted this emergency action to amend section 25603.3 of title 27 of the California Code of Regulations. The proposed amendments add provisions that, if followed, are deemed to comply with the Proposition 65 warning requirements for BPA contained in canned and bottled foods and beverages.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 4/18/2016 and will expire on 10/18/2016. The Certificate of Compliance for this action is due no later than 10/17/2016.

Date: April 18, 2016



Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Lauren Zeise
Copy: Monet Vela

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

EMERGENCY

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0408-02E
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 18 2016

2:52 PM

For use by Office of Administrative Law (OAL) only

2016 APR -8 A 10:45
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Office of Environmental Health Hazard Assessment

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Proposition 65 Bisphenol A - Notice of Emergency Regulation <i>Warning Requirements</i> per agency request	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 25603.3
TITLE(S) 27	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Monet Vela	TELEPHONE NUMBER (916) 323-2517	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) monet.vela@oehha.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Allan Hirsch</i>	DATE 4/8/2016
TYPED NAME AND TITLE OF SIGNATORY Allan Hirsch, Chief Deputy Director	

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ENDORSED APPROVED
APR 18 2016
Office of Administrative Law

Section 25603.3 Warnings for Specific Consumer Products Exposure.

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(f) Responsibility to Provide Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages.

(1) Notwithstanding any other provision of sections 25603, 25603.1, 25603.2, and 25603.3, canned and bottled foods and beverages that are offered for retail sale in California after May 10, 2016, that contain bisphenol A, are deemed to comply with the warning requirements of section 25249.6 of the Act if the following provisions are met:

(A) The manufacturer, producer, packager, importer or distributor of the canned and bottled food or beverage either:

1. Affixes a label to the product bearing a warning that complies with section 25603.2(a)2., or

2. Provides written notice directly or through an authorized agent or trade association to the retailer or its authorized agent. The written notice must:

a. State that the canned or bottled food or beverage may result in an exposure to bisphenol A; and

b. Include the name or description of the canned or bottled foods or beverages, such as a Universal Product Code or other identifying designation; and

c. Provide, or offer to provide, to the retail seller, at no cost, a sufficient number of point-of-sale warning signs that satisfy the requirements of subsection (g).

(2) If a retail seller receives a notice pursuant to subsection (1)(A)2., the retail seller must post a warning sign that satisfies subsection (g) at each point of sale in the retail facility. The placement and maintenance of warning signs is the responsibility of the retail seller.

(A) Where a retail seller complies with all the provisions of subsections (f) and (g), an opportunity to cure exists to correct the absence of the warning sign, which:

1. Is not the result of intentional neglect or disregard for the requirements of this section, and

2. Is not avoidable using normal and customary quality control or maintenance, and

3. Is corrected within 24 hours of discovery or notification.

(3) For purposes of subsection (f) and subsection (g), "canned and bottled foods and beverages" means foods and beverages packaged in hermetically sealed, durable metal or glass containers, including, but not limited to, those containing fruits, vegetables, soups, pasta products, milk, soda, and alcoholic beverages.

(4) For purposes of subsection (f) and subsection (g), "point of sale" means the area within a retail facility where customers pay for foods and beverages, such as the cash register or checkout line where the warning sign is likely to be seen and understood, prior to the consumer purchasing the canned or bottled food or beverage. Point of sale also includes electronic checkout functions on internet websites.

(5) This subsection shall become inoperative one year after the date of adoption unless reenacted by the lead agency.

(g) Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages.

(1) Method of Transmission:

Warnings for canned and bottled foods and beverages, as defined in subsection (f)(3), that contain bisphenol A shall be provided at each point of sale, as defined in subsection (f)(4), by posting a warning sign that includes the language set out in subsection (g)(2). Such warning signs must be no smaller than 5 by 5 inches and be displayed with such conspicuousness, as compared with other words, statements, designs, or devices at the point of sale, as to render it likely to be read and understood by an ordinary individual prior to purchase of the products that contain bisphenol A. For products sold over the internet, the warning must be prominently displayed to the purchaser either on the product display page or otherwise on a webpage prior to completing the purchase.

(2) Content of Warning Sign:

(A) The word "WARNING" in all capital letters and bold print, and

(B) The words: "Many food and beverage cans have linings containing bisphenol A (BPA), a chemical known to the State of California to cause harm to the female reproductive system. Jar lids and bottle caps may also contain BPA. You can be exposed to BPA when you consume foods or beverages packaged in these containers. For more information go to: www.P65Warnings.ca.gov/BPA.

(3) This subsection shall become inoperative one year after the date of adoption unless reenacted by the lead agency.

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