

# Proposition 65 BPA Warnings for Exposures from Canned and Bottled Foods

Office of Environmental Health Hazard Assessment

Public Hearing

September 12, 2016



**OEHHA**  
SCIENCE FOR A HEALTHY CALIFORNIA

# Proposition 65

“No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual....”

Health & Safety Code Section 25249.6



# Background:

- ▶ BPA listed May 11, 2015.
- ▶ Warning requirement became effective May 11, 2016.
- ▶ BPA used to manufacture the linings of most metal cans and lids of glass bottles containing food and beverages.
- ▶ Imminent problem of cans and jars with 3 year lifespan that were already in the stream of commerce - how to avoid a plethora of warning signs throughout retail stores?
- ▶ In April 2016 OEHHA adopted an emergency regulation to address these issues through temporary use of point-of-sale warnings.
  - ▶ Gov. Code §11346.1 (e) - emergency regulations cannot remain in effect over 180 days.



# Emergency regulation summary:

## Warnings for Exposures to Bisphenol A from Canned and Bottled Foods and Beverages

- ▶ Emergency regulation:
  - ▶ Amended section 25603.3 of the California Code of Regulations, adding subsections (f) and (g).
  - ▶ Effective April 18, 2016 and will expire October 18, 2016.
  - ▶ Full text:

<http://oehha.ca.gov/media/downloads/crn/040116emergbpawarninglang.pdf>



# Emergency regulation:

- ▶ 25603.3 (f) provides a non-mandatory safe harbor to businesses to comply with the BPA warning requirements for canned and bottled foods and beverages by placing warnings at each point of sale in the retail facility.
  - ▶ This section also provides businesses with an opportunity to correct the inadvertent, short term absence of a warning under specific circumstances.
- ▶ 25603.3 (g) specifies the content of warning signs:

## **WARNING**

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](http://www.P65Warnings.ca.gov/BPA).



# New OEHHA Warnings Website



## ▶ Currently on website:

- ▶ Factsheets on chemicals, products, and places
- ▶ Downloadable point-of-sale warning signs for BPA in canned and bottled foods and beverages (in 9 languages)



# WARNINGS TIMELINE

Article 6 Clear & Reasonable regulation ongoing since 2013

Approved by OAL August 30

Effective August 2018

Article 6 Clear & Reasonable Regulation

Emergency regulation effective April 18

BPA Warning Required May 11, 2016

Article 6 regulation moves BPA language from 25603.3 to 25607.30 and 25607.31

Ends Oct 18

Emergency BPA Regulation

Extension

Target effective date January 2017

Rulemaking Notice July 29

Hearing Sept 12

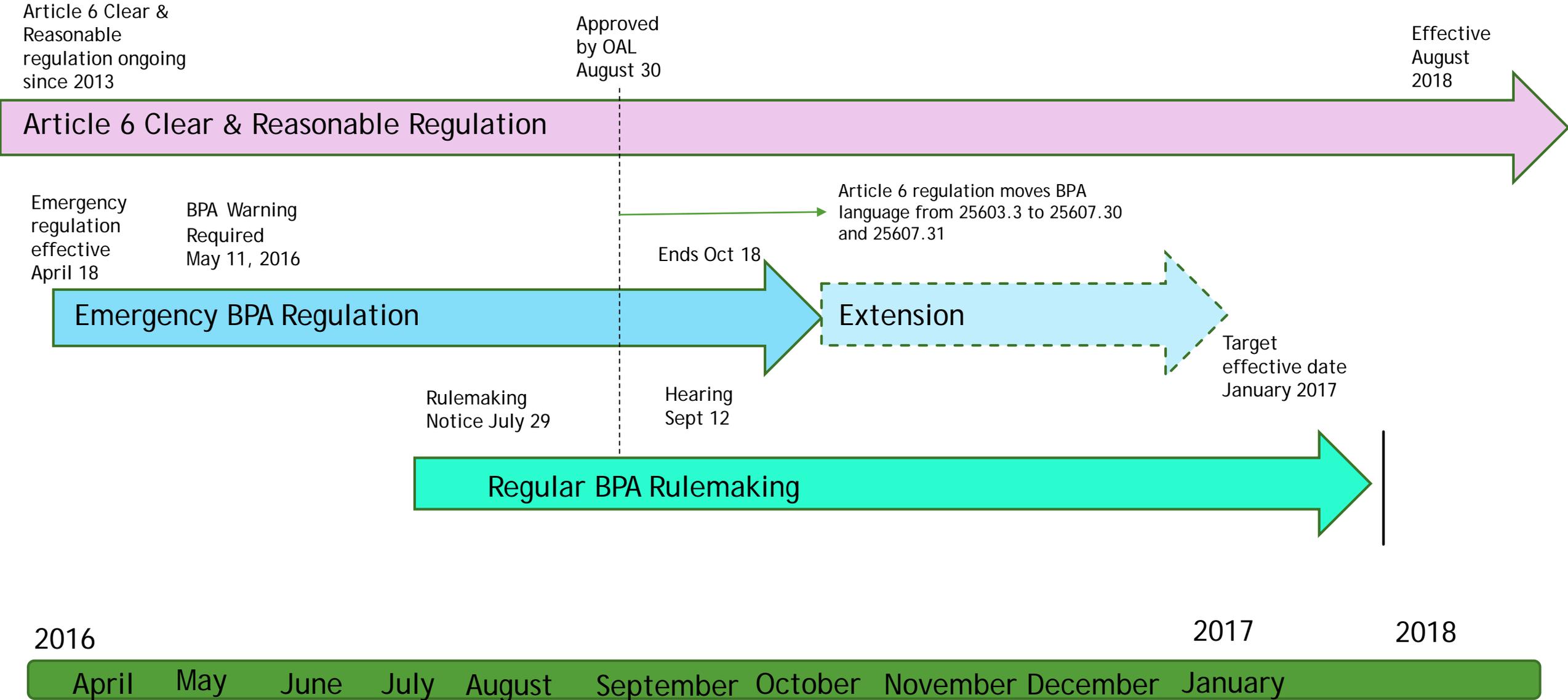
Regular BPA Rulemaking

2016

2017

2018

April May June July August September October November December January



# Regular Rulemaking Summary:

- ▶ Regular rulemaking proposed regulation:
  - ▶ Modifies the existing provisions of Section 25603.3(f) and (g).
    - ▶ Subsection (f) has substantive amendments described in the next slides.
    - ▶ Subsection (g) has no major substantive amendments
  - ▶ Both sections specify that the regulation sunsets on December 30, 2017.
  - ▶ Full text:  
<http://oehha.ca.gov/media/downloads/crnrr/07192016bparegs.pdf>



# Proposed regulation:

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

- ▶ Safe Harbor warning requirements:
  - ▶ Provide a compliant warning on the label; or;
  - ▶ (NEW) Provide OEHHA with list of products where BPA was intentionally used in manufacture of can linings or jars or bottle seals. List must identify product by: (1) brand name, (2) description and FDA category, (3) UPC or other identifying information. If BPA is no longer used in the product container but previous containers are still in commerce, must provide last expiration or “use by” date; and
  - ▶ (Existing language) Provide written notice to retailer or its authorized agent. Notice must: (1) state that product may result in BPA exposure, (2) include brand name or description and UPC or other identification, and (3) provide point-of-sale warning signs in accordance with subsection (g) and
  - ▶ (Existing language) Point-of-sale warning as provided in emergency regulation.



# Proposed regulation: Subsection (f) continued

- ▶ Retailers
  - ▶ If retailer receives notice from manufacturer, retailer is responsible for placement and maintenance of warning signs.
    - ▶ If retailer complies with subsections (f) and (g), there is an opportunity to cure if absence of sign: (1) is not due to neglect or disregard of this regulation (2) not avoidable with normal quality control or maintenance, and (3) is corrected within 24 hours.
- ▶ Includes definitions of “canned and bottled foods and beverages” and “point of sale” .
- ▶ Regulation sunsets December 30, 2017.



# OEHHA BPA Product Database

## Product submission sample page

[Home](#) | [For Businesses](#) | [BPA Product Submission](#)



### BPA Product Submission

#### Company

##### Company Name \*

##### E-mail Contact Information \*

##### Add a File \*

No file selected.

Files must be less than 2 MB.  
Allowed file types: xls xlsx xml csv.



# OEHHA BPA Product Database Information retrieval sample page

	A	B	C	D
1	Brand name	Product description	Universal Product Code	Use by date
17	Brand 7	Original Pasta Sauce	85239-22089	
18	Brand 7	Tomato Sauce	85239-22409	
19	Brand 8	Tomato Sauce	85239-22111	
20	Brand 9	Tomato Sauce	85239-22117	8/25/2016
21	Brand 9	Diced Tomatoes	85239-22237	8/25/2016
22	Brand 10	Chili Sauce	85239-28443	
23	Brand 11	Crushed Tomatoes	85239-29040	
24	Brand 12	Sloppy Joe Sauce	85239-33040	4/3/2016
25	Brand 13	Seafood Sauce	85239-17340	
26				
27				
28				
29				
30				
31				



# OEHHA BPA Product Database

## Product search

### BPA Product List Demo

 BPA Product List (Downloadable XLSX)

Show  entries

Search:

Brand name	Product description	Universal Product Code	Use by date
Brand 13	Seafood Sauce	85239-17340	
Brand 7	Original Pasta Sauce	85239-22089	
Brand 8	Tomato Sauce	85239-22111	
Brand 9	Tomato Sauce	85239-22117	<b>8/25/2016</b>
Brand 9	Diced Tomatoes	85239-22237	11/25/2016
Brand 7	Tomato Sauce	85239-22409	
Brand 10	Chili Sauce	85239-28443	
Brand 11	Crushed Tomatoes	85239-29040	
Brand 12	Sloppy Joe Sauce	85239-33040	<b>4/3/2016</b>
Brand name	Product description	Universal Product Code	Use by date



# Next Steps:

- ▶ Public comment period closes September 26, 2016
  - ▶ Submit comments via e-mail to [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)
    - ▶ Include “BPA Warnings” in subject line
- ▶ OEHHA will review comments and determine whether additional changes are needed.
  - ▶ Potential effective date: January 1, 2017
  - ▶ Sunset December 30, 2017



# Additional information and contact:

- ▶ Notice, Initial Statement of Reasons and proposed regulatory language:

<http://oehha.ca.gov/proposition-65/crnrr/notice-proposed-rulemaking-and-announcement-public-hearing-amendment-section>

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