



April 8, 2016

Via email: OAL Reference Attorney, ReferenceAttorney@oal.ca.gov; staff@oal.ca.gov;

Office of Administrative Law Reference Attorney
300 Capitol Mall
Suite 1250
Sacramento, California 95814

Re: OEHHA Notice of Emergency Action proposal for “Warnings for Exposures to Bisphenol A from Canned and Bottled Foods and Beverages,” dated April 1, 2016

Dear Sir or Madam:

The Can Manufacturers Institute (CMI) submits these comments on the California Environmental Protection Agency Office of Environmental Health Hazard Assessment (OEHHA) “Notice of Emergency Action” proposal for “Warnings for Exposures to Bisphenol A from Canned and Bottled Foods and Beverages” by amending Section 25603.3 of Title 27 of the California Code of Regulations, pursuant to Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. This notice supersedes the notice posted on March 17, 2016. CMI is the national trade association of the metal can manufacturing industry and its suppliers in the United States. The can industry annually produces approximately 120 billion food, beverage and other metal cans; together they employ some 22,000 people with plants in 35 states. CMI member companies have more plants, 15, and more employees, 1800, in the state of California than in any other state in the nation. Our members are committed to providing safe, nutritious and refreshing canned foods and beverages to consumers.

Summary

CMI believes the proposed language would negatively impact consumer confidence in foods and beverages packaged in metal cans sold in the state of California and is an unnecessary negative regulation on packaging coatings deemed safe by the Food & Drug Administration (FDA) and food safety experts around the globe. The rule will add to consumer confusion, perpetuate a misconception concerning BPA safety, and can have the reverse impact on consumer confidence of the general public and low income communities which rely on canned foods. We urge you to adopt an appropriate safe harbor MADL for oral exposure to BPA.

(1) Oppose UPC and inventory database listing of potential BPA products

The Notice of Emergency Action contains an unworkable provision that provides:

(B) ... written notice directly or through an authorized agent or trade association to the retailer or its authorized agent. The written notice must include the following:

(ii) Include the exact name or description of the canned or bottled food or beverage that requires a warning such as a Universal Product Code or other identifying designation

CMI Response: This requirement is an overly burdensome and unworkable provision and should be deleted. These lists serve no purpose other than to create burdens on food suppliers and provide target lists for bounty hunters who wish to pursue legal action against the food industry. It will simply not be possible for all of this data to be collected from all food suppliers and then distributed in writing to all food retailers in California before May 11, and even then the information serves no purpose.

(2) The Agency has been provided ample documentation to generate a safe and reasonable MADL but failed to do so

The Notice of Emergency Action states it “continues to review the scientific studies of BPA as they become available and may be able to establish a Maximum Allowable Dose Level (MADL) for oral exposure, such as occurs when food is consumed, that would help businesses determine which exposures are significant enough to require a warning; the timing of that regulatory action is dependent on the availability of necessary scientific information....”

OEHHA attempted to address the emergency situation through non-emergency regulations, but encountered technical and practical problems with that approach. OEHHA attempted to develop a MADL for oral exposure that would have been enacted through the normal regulatory process. In the course of that process, OEHHA scientists found that the issue was technically complex. At the same time, the federal government is sponsoring a large series of studies intended to clarify the effects of BPA at low doses. Some of these studies, expected to be complete in 2017 or 2018, could form the basis of an oral MADL.”

CMI Response: CMI along with other industry coalition members presented a very strong case for issuing a MADL based on the *2014 National Center for Toxicological Research BPA study – Delclos et al., 2014*. We presented evidence rebutting many of the low-dose, low quality studies which OEHHA considered. In the absence of a MADL we strongly urge CalEPA/OEHHA leadership to ensure a BPA oral MADL is issued by the expiration of the warning sign regulation(s). Otherwise, many other foods, not just canned foods and beverages, may be subject to legal challenge.

(3) BPA Alternatives

The Notice of Emergency Action states it “understands that many canned and bottled food and beverages can cause exposures to varying amounts of BPA. These canned and bottled foods and beverages do not currently carry Proposition 65 warnings because no warning is required for BPA exposures until May 11, 2016. OEHHA also understands that some canned food and beverage manufacturers are moving toward the reduction or elimination of the use of BPA, or have recently done so, and the need for warnings for these products will likely decrease over time

CMI Response: Many food and beverage producers have already switched to BPA alternative coatings but still find themselves swept up and penalized in the signage requirements, leading to further confusion. We are concerned that this patina of negativity will unfairly tarnish these food and beverage cans that have switched in the past, and for long as the signage appears at retail counters.

Conclusion

In sum, as a leading organization committed food safety and consumer confidence, and especially in light of overwhelming worldwide scientific evidence regarding BPA safety by international and government organizations which concluded that the weight of scientific evidence indicates that BPA does not pose a reproductive or developmental health risk to people, including infants and children, it is evident that this BPA rulemaking under Proposition 65 will not result in a public health or right-to-know benefit, and therefore we oppose. Please contact me at 202-232-4677 or gcullen@cancentral.com with any questions.

Sincerely,

A handwritten signature in black ink that reads "Geoffrey Cullen". The signature is written in a cursive style with a large, prominent "G" and "C".

Geoffrey Cullen
Vice President of Government Relations, CMI

CC: Mr. Gordon Burns, Ms. Lauren Zeise and Ms. Carol Moynihan Cummins
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