

**Initial Statement of Reasons  
Title 27, California Code of Regulations**

**Proposed Repeal of Sections 25607.30 and 25607.31**

**February 17, 2017**



**California Environmental Protection Agency  
Office of Environmental Health Hazard Assessment**

---

## Contents

Summary.....	3
Background.....	4
PROBLEMS BEING ADDRESSED BY THIS PROPOSED RULEMAKING.....	7
NECESSITY .....	7
BENEFITS OF THE PROPOSED REGULATIONS .....	8
TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON.....	8
REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.....	8
REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.....	8
EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.....	8
EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES .....	9
ECONOMIC IMPACT ASSESSMENT .....	9
Creation or Elimination of Jobs within the State of California .....	9
Creation of New Businesses or Elimination of Existing Businesses within the State of California.....	9
Expansion of Businesses Currently Doing Business within the State of California.....	10
Benefits of the Proposed Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment.....	10

---

## Summary

Proposition 65<sup>1</sup> requires that businesses with 10 or more employees give a clear and reasonable warning to individuals before knowingly and intentionally exposing them to a chemical listed as known to cause cancer or reproductive toxicity. The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency that implements Proposition 65. OEHHA maintains the list of chemicals known to the state to cause cancer or reproductive toxicity and has the authority to promulgate and amend regulations to further the purposes of the Act.<sup>2</sup> Existing regulations adopted by OEHHA's predecessor agency in 1988 (Title 27, Cal. Code of Regs., section 25601, et seq.) establish general criteria for providing "clear and reasonable" warnings.<sup>3</sup> These regulations also provide safe harbor<sup>4</sup>, non-mandatory guidance on general message content and warning methods for providing consumer product, occupational and environmental exposure warnings. The Article 6 regulations provide a "safe harbor" by giving a business the opportunity to use warning methods and content that OEHHA has deemed "clear and reasonable", in addition to the option of using any other warning method or content that is clear and reasonable under the Act. Section 25607, et seq. provides warning methods and content for specific types of exposures that are subject to the warning requirements of Section 25249.6 of the Act, also referred to as the "tailored warnings" provisions.

Sections 25607.30 and 25607.31 set out warning methods and content for certain exposures to bisphenol A (BPA) from canned and bottled foods and beverages. These provisions were initially incorporated within Article 6 as Section 25603.3, subsections (f) and (g); first as part of an emergency rulemaking and then through a subsequent regular rulemaking. Sections 25607.30 and 25607.31 were included in Article 6 as a temporary measure until the permanent rulemaking in Section 25603.3 subsections (f) and (g) was approved and adopted into Article 6. This proposed regulatory action would repeal Sections 25607.30 and 25607.31, as they are no longer needed. **It is important to note that OEHHA is not proposing to repeal the existing BPA**

---

<sup>1</sup> Health and Safety Code section 25249.5 et seq., The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as "Proposition 65". Hereafter referred to as "Proposition 65" or "the Act".

<sup>2</sup> Health and Safety Code section 25249.12(a).

<sup>3</sup> All further references are to sections of Title 27 of the California Code of Regulations, unless otherwise indicated.

<sup>4</sup> The term "safe harbor" is used throughout to refer to non-mandatory guidance provided by OEHHA for the methods and content of warnings the agency has deemed to meet the "clear and reasonable" standard required by Section 25249.6 of the Act.

---

---

**warning provisions in Section 25603.3, subsections (f) and (g), which are effective from January 1, 2017 until December 30, 2017.**

## **Background**

On April 1, 2016, OEHHA posted a Notice of Emergency Action proposing an amendment to Title 27, Cal Code of Regs., section 25603.3 that added subsections (f) and (g) to allow businesses to provide point of sale safe harbor warnings for exposures to BPA from bottled and canned food and beverages. The emergency rulemaking became effective on April 18, 2016 and was extended until December 31, 2016. On November 30, 2016, the Office of Administrative Law approved the Certificate of Compliance for the regular rulemaking to replace the BPA emergency regulations; the adopted regulation became effective on January 1, 2017, and will remain in effect until December 30, 2017. During the regular rulemaking for Section 25603.3(f), which addresses BPA warnings deemed by the lead agency to comply with the statute's warning requirements, subsection (f) was modified to require a manufacturer, producer, packager, importer or distributor of the canned and bottled food or beverage to provide the lead agency with certain information concerning products packaged in containers where BPA was intentionally used, in a searchable, electronic format to facilitate posting of the information on the lead agency website.<sup>5</sup>

In a separate rulemaking action, on August 30, 2016, OEHHA repealed and replaced the majority of the Article 6 Clear and Reasonable Warnings. The operative date of the new Article 6 Clear and Reasonable Warnings regulations is August 30, 2018, which is intended to allow businesses a two-year "phase-in" period to transition to the new safe harbor warnings. During the phase-in period, businesses have the option of using the safe harbor warning methods and content from either the existing Article 6 warnings or the newly adopted Article 6. Sections 25607.30 and 25607.31 were included as part of the Article 6

---

<sup>5</sup> As OEHHA noted in the Initial Statement of Reasons, "The emergency regulation did not contain the requirement that specific information be provided to OEHHA for posting on the website. OEHHA is adding this provision to this regular rulemaking proposal so interested consumers can visit OEHHA's website to learn where BPA is intentionally used in can linings, jar lids or bottle caps for food products. This is intended to address concerns that the emergency regulation did not provide a convenient way for consumers to access this information"; Initial Statement of Reasons, "Title 27, California Code of Regulations: Proposed Amendments to Title 27, California Code of Regulations Section 25603.3, Warnings for Specific Consumer Products Exposure Adding Subsections (f) Responsibility to Provide Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages and (g) Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages", ISOR, at p. 7.

---

rulemaking and substantially incorporated the version of Section 25603.3, subsections (f) and (g) that had been adopted as part of the emergency rulemaking.

However, Sections 25607.30 and 25607.31 were not updated to include the most recent version of the regulations contained in Section 25603.3, and therefore do not contain all of the operative provisions, including the requirement to provide the lead agency certain information in a searchable, electronic format and the sunset provisions of December 30, 2017.<sup>6</sup> Because the BPA provisions sunset in December 2017, before the newly adopted Article 6 becomes effective, Sections 25607.30 and 25607.31 are being repealed and not amended.

**This rulemaking will repeal Sections 25607.30 and 25607.31 but not the provisions of Section 25603.3, subsections (f) and (g).** Section 25603.3 (f) and (g) as currently in effect, reflect OEHHA's intent regarding the BPA warning responsibility, methods and content provisions and the inoperative date of December 30, 2017.

The specific Article 6 provisions proposed for repeal are set out below:

**§ 25607.30. Responsibility to Provide Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages. [Operative August 30, 2018]**

(a) 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:

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

(A) Affixes a label to the product bearing a warning that includes the following language:

“WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm”; or

---

<sup>6</sup> In the ISOR for the Section 25603.3 regular rulemaking OEHHA noted, “Subsection 25603.3(f)(5) provides a sunset for the regulation on December 30, 2017. This regulation will become inoperative on that date. As stated above, OEHHA's intent in providing this safe harbor warning process for BPA in canned foods and beverages is to provide a transition or sell-through period for products that were manufactured and distributed prior to or shortly after the May 2015 listing of BPA. It is not intended to allow for an on-going point of sale warning for these products. It is anticipated that, going forward, manufacturers will continue to reduce or eliminate exposures to BPA from canned and bottled foods and beverages. It is therefore anticipated that fewer food products will require warnings over time and it will be easier for consumers to differentiate products that cause exposures to BPA since warnings will eventually be provided on the product labels or near the products on shelf tags or signs”; ISOR, at p. 9.

---

---

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

1. State that the canned or bottled food or beverage may result in an exposure to bisphenol A; and
2. Include the name or description of the canned or bottled foods or beverages, such as a Universal Product Code or other identifying designation; and
3. 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 Section 25607.31.

(b) If a retail seller receives a notice pursuant to subsection (a)(1)(B), the retail seller must post a warning sign that satisfies Section 25607.31 at each point of sale in the retail facility. The placement and maintenance of warning signs is the responsibility of the retail seller.

(1) Where a retail seller complies with all the provisions of Section 25607.30 and Section 25607.31, an opportunity to cure exists to correct the absence of the warning sign, which:

(A) Is not the result of intentional neglect or disregard for the requirements of this section, and

(B) Is not avoidable using normal and customary quality control or maintenance, and

(C) Is corrected within 24 hours of discovery or notification.

(c) For purposes of Section 25607.30 and Section 25607.31, “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.

(d) For purposes of sections 25607.30 and 25607.31, “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.

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

### **§ 25607.31. Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages. [Operative August 30, 2018]**

(a) Method of Transmission: Warnings for canned and bottled foods and beverages, as defined in subsection 25607.30(c), that contain bisphenol A shall be provided at each point of sale, as defined in section 25607.30(d), by posting a warning sign that includes the language set out in section 25607.31(b). 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.

(b) Content of Warning Sign:

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

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

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

## **PROBLEMS BEING ADDRESSED BY THIS PROPOSED RULEMAKING**

Sections 25607.30 and 25607.31 were adopted prior to the final adoption of Section 25603.3, subsections (f) and (g) through a separate, regular rulemaking. The regulatory language in Sections 25607.30 and 25607.31 deviates from the language in Section 25603.3(f) and (g) and will likely confuse businesses wishing to provide a warning for exposures to BPA from canned and bottled foods and beverages. Sections 25607.30 and 25607.31 are no longer consistent with OEHHA's intent, which is to allow the BPA provisions to sunset by the end of 2017. The provision requiring submittal of certain information to OEHHA concerning the intentional use of BPA in cans and bottle seals and caps is also not included in this version of the regulations. The regular rulemaking for Section 25603.3, subsections (f) and (g) which became effective on January 1, 2017, creates a conflict with the regulatory provisions Sections 25607.30 and 25607.31, increases the possibility of confusion among the regulated community, and renders Sections 25607.30 and 25607.31 unnecessary. This proposed regulatory action is intended to address these issues by repealing the older version of the regulations.

## **NECESSITY**

The emergency and regular rulemakings were initiated to further the purposes of the Act by providing interim guidance on the methods for providing warnings for BPA exposures from canned and bottled foods and beverages that can be posted at the point of sale. Retaining the BPA warning provisions in Sections 25607.30 and 25607.31 now that Sections 25603.3 (f) and (g) are effective would be contrary to OEHHA's intent. The repeal of Sections 25607.30 and 25607.31

---

is necessary to ensure consistency within the California Code of Regulations and to reduce the possibility of confusion within the regulated business community.

## **BENEFITS OF THE PROPOSED REGULATIONS**

Repealing Sections 25607.30 and 25607.31 would benefit the public by reducing public confusion that could result from inconsistent regulatory provisions concerning the responsibility to provide warnings for certain exposures to BPA. Affected businesses would benefit because the repeal of the now-unnecessary sections would increase the ability to understand and correctly use the safe harbor provisions in Article 6.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON**

OEHHA did not rely on any technical, theoretical, and/or empirical studies, reports, or documents as part of this rulemaking.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

There are no reasonable alternatives to the repeal of these regulations that would carry out the purposes of the Act. The provisions in Section 25603.3, subsections (f) and (g) carry out the intent of the lead agency in furtherance of the Act. Retaining Sections 25607.30 and 25607.31 would create a conflict with the recently adopted Section 25603.3, subsections (f) and (g) which became effective on January 1, 2017.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The proposed regulatory action will not adversely impact very small businesses because Proposition 65 is limited by its terms to businesses with 10 or more employees (Health and Safety Code Sections 25249.5, 25249.6, and 25249.11(b)).

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California

---



---

businesses to compete with businesses in other states. The proposed repeal does not impose any new requirements upon private persons or business because it removes regulatory provisions that are inconsistent with similar, more recently adopted regulations.

## **EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES**

Proposition 65 is a California law that has no federal counterpart. OEHHA has determined that the repeal of the BPA warning provisions will not duplicate and will not conflict with federal regulations. In fact, the statute specifically provides that warnings are only required to the extent they do not conflict with federal law.<sup>7</sup>

## **ECONOMIC IMPACT ASSESSMENT**

### **Gov. Code section 11346.3(b)**

OEHHA finds there will be no significant economic impact related to this proposed regulatory action. The proposed repeal of the regulations would not impose any significant costs because businesses are already subject to the warning requirements of Proposition 65 and the sections proposed for repeal are inconsistent and unnecessary in light of the recently adopted BPA warning regulations. The proposed repeal does not impose any mandatory requirements that would significantly increase costs for businesses.

### **Creation or Elimination of Jobs within the State of California**

This regulatory action will not impact the creation or elimination of jobs within the State of California. The repeal of Sections 25607.30 and 25607.31 will remove regulations that are now inconsistent with the recently adopted regulations in Section 25603.3, subsections (f) and (g).

### **Creation of New Businesses or Elimination of Existing Businesses within the State of California**

This regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California. The repeal will simply ensure consistency with the provisions of Section 25603.3, subsections (f) and (g).

---

<sup>7</sup> Health and Safety Code Section 25249.10(a) (Exempting warnings governed by federal law).

---

## **Expansion of Businesses Currently Doing Business within the State of California**

This regulatory action will not impact the expansion of businesses within the State of California. The rulemaking will simply remove Sections 25607.30 and 25607.31 which are inconsistent with the provisions of Section 25603.3, subsections (f) and (g).

## **Benefits of the Proposed Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The proposed repeal of Sections 25607.30 and 25607.31 would benefit California residents by providing clarity regarding the options available to businesses for providing warnings for certain exposures to BPA. This furthers the “right-to-know” purposes of the statute and promotes public health and safety. Increased clarity regarding the mandatory reporting requirements and the sunset provision of Section 25603.3, subsections (f) and (g) will benefit the public, as it is anticipated that the point of sale warnings and information that manufacturers provide to OEHHA on canned and bottled foods and beverages that cause BPA exposures will help Californians make informed choices on the products they purchase and consume.