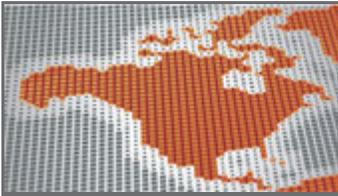


The North American Metal Packaging Alliance



nampa

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About NAMPA

The North American Metal Packaging Alliance, Inc. (NAMPA) is committed to promoting sound science in risk-based decision-making pertinent to the light metal packaging industry, advocating on behalf of the light metal packaging industry on issues pertinent to packaging technologies, and providing customers with needed information regarding light metal packaging technologies and the regulatory frameworks in which these technologies are assessed.

John M. Rost,

NAMPA News

FEDERAL ISSUES

Variations Seen in Recent BPA Legislative Proposals

Generally speaking, we have seen three variations of BPA legislation recently proposed at the state and federal levels. These include:

- **Proposals to Ban the Use of BPA in Baby Bottles and Sippy Cups** -- These proposals focus on solely containers that are sold empty but are intended to be filled with liquid food or beverage primarily for consumption from that container by children, usually three years or younger. Examples of this type of bill include the federal BPA-Free Kids Act of 2009, introduced by Senators Schumer (D-NY) and Feingold (D-WI) on March 31, 2009, and the New York Suffolk County legislation.
- **Proposals to Restrict the Use of BPA in Baby Bottles and Sippy Cups, and Packaging Containing Food or Beverage for Children** -- These bills ban the use of BPA in baby bottles and sippy cups, as well as packaging containing food or beverage for children. These bills specifically do not apply to food and beverage containers designed or intended primarily for consumption by the general population. California SB 797 is an example of this type of bill.
- **Proposals That Restrict the Use of BPA in Baby Bottles and Sippy Cups and Any Other Food or Beverage Container** -- These bills ban the use of BPA in reusable beverage containers (such as baby bottles) and any other food or beverage container, unless that container includes a warning label. Examples of this type of bill are the Feinstein Ban Poisonous Additive Act of 2009, introduced on March 13, 2009, by Senators Feinstein (D-CA) and Schumer and Representative Markey (D-MA), and Connecticut HB 6572.

Some proposals have included provisions that restrict the options available for replacing BPA in these uses, indicating that replacements cannot be listed as reproductive toxicants or carcinogens. In Connecticut, NAMPA successfully demonstrated that "prohibited alternative substances" listed in HB 6572 will also ban a wide range of alternatives to both polycarbonate plastic and epoxy resin can coatings. Potentially banned materials include glass, stainless steel, several types of common plastics, and several alternative types of can coatings, as well as many others.

Regardless of the type of BPA ban proposed, NAMPA has and will continue to oppose any legislation that calls into question the safety of BPA in food contact applications. This ignores the scientific evaluations conducted by regulatory agencies around the world. BPA in food contact uses has been determined to be safe by science-based regulatory agencies around the world,

Ph.D.
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including Health Canada, the U.S. Food and Drug Administration (FDA), Food Standards Australia New Zealand, and the European Food Safety Authority, as well as national health agencies in the United Kingdom, Germany, and Japan. Over and over again, scientists at these agencies have concluded that there is no significant health risk associated with BPA from food containers. Based on these evaluations, proposals to restrict BPA use are not justifiable.

STATE ISSUES

California

Review of BPA Under Proposition 65: An Update

As reported in the last several issues of *NAMPA News*, bisphenol A (BPA) is under review for possible inclusion under California's Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Prop 65. California's Office of Environmental Health Hazard Assessment (OEHHA) has scheduled a Developmental and Reproductive Toxicant Identification Committee (DARTIC) for July 15, 2009, at which BPA will be evaluated for inclusion on the Prop 65 list of chemicals known to the state to cause reproductive toxicity.

As background, Prop 65 was enacted as a ballot initiative in November 1986. The program was intended to protect drinking water sources and to provide public information on exposures to chemicals of concern. Prop 65 requires the Governor to publish a list of chemicals known to the state to cause cancer or reproductive toxicity. In addition to certain requirements related to releases of listed chemicals to drinking water sources, products sold in California that contain a listed chemical must provide a warning label -- *WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.* Prop 65 does include a provision for a safe harbor level, the maximum allowable dose level for reproductive toxicants, that could impact whether warning labels or prohibition of water discharges are required. Whether BPA levels in metal packaging would meet the safe harbor level, or whether metal packaging utilizing BPA epoxy coating would require warning labels, is unclear.

OEHHA has recently posted the BPA hazard identification document (HID), entitled "Evidence on the Developmental and Reproductive Toxicity of Bisphenol A." The DARTIC will use this document at its July 15 meeting to consider whether BPA should be added to the Prop 65 list as a chemical known to cause reproductive toxicity. The BPA HID, which is almost 300 pages, can be accessed at http://www.oehha.ca.gov/prop65/CRNR_notices/state_listing/data_callin/BisA043009.html. In past communications, NAMPA and other stakeholders urged OEHHA to use the final report by the National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) as the foundation for the HID.

There is a 60-day public comment period for the document. As noted on the OEHHA website, to be considered by DARTIC members, written comments on the HID must be received at OEHHA by 5:00 p.m. on **Tuesday, June 30, 2009**. Verbal comments by the public can be made at the meeting. NAMPA intends to submit both written and oral comments on the HID.

We once again encourage all entities potentially impacted by the listing of BPA to engage in advocacy efforts. It will be important for OEHHA to hear from numerous parties on their concerns, and for parties to provide a comprehensive and scientifically compelling response to the HID. NAMPA has and will continue to coordinate closely and regularly with representatives from the Grocery Manufacturers Association and the American Chemistry Council. We are also communicating with stakeholders in California, including NAMPA members' facilities, customers, and grower groups on this critical issue. We will be posting more detailed information on the

NAMPA website as it is released, including the issuance of the HID.

Legislative Update: State of the States

State legislative proposals on BPA are numerous and moving quickly. Below is a tally of BPA bills in which NAMPA is engaged, and where they stand:

BPA Bills Passed into Law

- **Suffolk County** -- On April 2, 2009, County Executive Steve Levy signed the Suffolk County BPA bill, representing the first-in-the-nation ban on baby bottles and cups that contain BPA. Although this legislation does not directly impact metal packaging, NAMPA opposed this legislation because it was not supported by the science.
- **Annapolis City Council** -- NAMPA understood that the Annapolis BPA bill had been withdrawn, but apparently it was reintroduced as a voluntary program and passed on April 13, 2009. The final ordinance provides that retailers that sell any form of food or beverage in a container that may contain BPA can voluntarily notify customers by posting a visible sign on the premises. It is unclear whether retailers are opting into the program.
- **Minnesota** -- The proposal, which has been amended to include only sippy cups and baby bottles, passed on a floor vote (126 to 5) on May 5, 2009. The Governor signed the bill on May 7, 2009.

BPA Proposals That Failed to Pass

- **Illinois** -- On April 2, 2009, the proposed BPA bill failed to pass, getting 55 of the 60 votes needed.
- **Washington** -- Both BPA bills (HB 1180 and SB 5282) failed to pass before the end of the legislative session on April 27, 2009.
- **Maryland** -- On April 10, 2009, Maryland's HB 15 was voted unfavorable by the Senate Finance Committee on a vote of 7-4.
- **Vermont** -- There were two bills in Vermont impacting BPA. Neither bill cleared their respective chambers before the Vermont crossover deadline in late March. Therefore, they are dead for this year, but could continue later.

BPA Bills Still under Consideration

- **New York** -- This bill includes provisions for a ban of BPA in food or beverage containers, with a provision that allows continued use subject to warning labels on the food/beverage items. NAMPA and other trade groups are working hard to set up meetings with key staff and interested stakeholders.
- **Connecticut** -- This bill is similar to the New York bill. Again, NAMPA and other members of the Joint BPA Trade Association are working together on advocacy efforts.
- **California** -- SB 797, which would prohibit the manufacture, sale, or distribution in commerce of any bottle, cup, or liquid food or beverage in a can or jar that contains BPA at a level above 0.1 ppb, has passed through the Senate House Committee.
- **Massachusetts** -- NAMPA and other trade groups testified against HB 2068 on May 5,

2009. NAMPA also is actively tracking SB 432.

INTERNATIONAL ISSUES

NAMPA Comments to Health Canada on BPA Use

On March 31, 2009, NAMPA submitted comments to the Healthy Environments and Consumer Safety Branch of Health Canada in response to that agency's request for information pertaining to use and release of BPA in Canada. Specifically, in communications sent to certain companies in February 2009, Health Canada requested information regarding BPA uses, manufacturing processes, products, and environmental releases. NAMPA members with can manufacturing facilities in Canada provided information on types of cans produced, potential alternatives, mitigation processes for air and water releases, and other information.

As Health Canada continues its review of BPA under the Canadian Environmental Protection Act (CEPA), NAMPA will continue to monitor these activities and work with Health Canada, as appropriate.

Denmark Proposes to Ban BPA in Consumer Products

NAMPA has learned that the Danish Parliament has proposed a law to ban BPA in baby bottles and other consumer products. The proposal acknowledges the European Food Safety Agency's (EFSA) approval of the use of BPA in 2008, but dismisses this finding and indicates its unsuccessful efforts to have EFSA apply more severe rules governing BPA. The proposal suggests that Denmark should proceed with its own regulations, while advocating changes within the European Union (EU) until the EU harmonizes with Denmark's views. The Parliament reading is scheduled for May 14, 2009. The European PC BPA Group is reportedly working on an advocacy strategy along with other stakeholders.

UPCOMING MEETINGS

June 2009

Society of the Plastics Industry (SPI) Food, Drug, and Cosmetic Packaging Materials Committee 9th Biennial International [Symposium](#), June 11-12, 2009, Baltimore, Maryland

International Plastics [Showcase](#), June 22-26, 2009, Chicago, Illinois

December 2009

Society of the Plastics Industry (SPI) Food, Drug, and Cosmetic Packaging Materials Committee Semi-Annual Meeting

NAMPA WEBSITE

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