

Q&A on New Reporting Requirements for Businesses Using the Point-of-Sale Safe Harbor Warning for BPA Exposures from Canned and Bottled Foods

December 7, 2016

Q. Why is there a new reporting requirement?

A. It furthers the right-to-know purposes of Proposition 65 to give consumers easy access to information about the products covered by the [temporary point-of-sale warnings](#) for [bisphenol A \(BPA\)](#). OEHHA is creating a searchable database for consumers to use to determine whether a product they intend to purchase or use is packaged in a can or with a bottle cap or seal in which BPA was intentionally used.

Q. Who is required to report product information to OEHHA?

A. Manufacturers, producers, packagers, importers or distributors subject to Proposition 65¹ must report the requested information if they want their canned or bottled food or beverage product to be covered by the point-of-sale warning, and BPA is intentionally used in the manufacture of the can, jar seal or cap.

Q. When must a business report?

A. Businesses that want a canned or bottled food or beverage product to be covered by the point-of-sale BPA warning [must, effective January 1, 2017](#), report to OEHHA certain information about the product. In order to ensure that OEHHA has all the required information available and ready to post on its website on January 1, 2017, OEHHA is encouraging businesses to provide their data prior to December 30, 2016.

Q. What must the business report?

For each canned or bottled food or beverage product to be covered by the point-of-sale warning and where BPA was intentionally used in the manufacture of the container, the following information must be provided to OEHHA in a searchable, electronic format:

- Business name and contact information for person submitting data
- Brand Name
- Product description (name of food (e.g., green beans, diced tomatoes– no abbreviations, include can or bottle size). The product description must be in plain language that is readily understandable to the consumer.
- FDA food category (e.g., vegetables, fruit, milk)

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. (See: <http://oehha.ca.gov/proposition-65/proposition-65-faqs> for more information)

- UPC Code (or if no UPC is used on the product, other specific identifying information that is printed on the can or bottled food)
- Where BPA is no longer used in the product, the last sell-by or use-by date printed on the product where BPA was intentionally used in the can lining, bottle cap or lids.

Q. How may a business report?

A. OEHHA has developed a simple on-line reporting [form](#) for businesses to use to submit their data. A template is also available [here](#). OEHHA can accept the following types of electronic files through this on-line form: **txt, pdf, xls, xlsx, ods, xml, csv, tsv, tab, or fods**. If you are unable to submit your information via the online form, you may email it to us at:

P65.BPA@oehha.ca.gov

Q. How often must a business report?

A. A business need only report its information once, unless new products are sold in California that it intends to be covered by the point-of-sale warning. However, if a business no longer intentionally uses BPA in the packaging for its products, it may update its submission to reflect the last “use-by” or sell-by” date printed on the product where BPA was intentionally used in the manufacture of the can lining bottle cap or lid. OEHHA will update the web posting with the new information.

Q. How long will the database be posted?

A. The temporary regulation will become inoperative on December 30, 2017. At that time, OEHHA will remove the database from the website as the point-of-sale warning will no longer be available for businesses to use. OEHHA will also post a statement on its website clarifying that the database will no longer be a reliable source of information after December 30, 2017.

Q. Where does a business get more information?

A. For help submitting information please contact: P65.BPA@oehha.ca.gov

For questions regarding the application of this new reporting requirement contact: Fran Kammerer, Staff Counsel at fran.kammerer@oehha.ca.gov or (916) 445-4693

For other questions about Proposition 65 contact: P65.Questions@oehha.ca.gov or by phone at (916) 445-6900.

Q. Where will the new BPA database be located?

A. OEHHA will strive to have the BPA database available on its Proposition 65 warnings website at <https://www.p65warnings.ca.gov/> as early as January 1, 2017, or on the earliest possible date afterwards. Consumers and other interested persons will be able to access the database of products here: <https://www.p65warnings.ca.gov/bpalist>

Q. Can a business opt out of providing this information to OEHHA?

A. Businesses need only report BPA-related information on their canned and bottled food and beverage products to OEHHA if they want a product to be covered by the point-of-sale warning under the new regulation. However, the business must still provide a compliant Proposition 65 warning if it chooses not to provide the requested information and a warning is otherwise required. There are three options for doing this:

a) The business can provide a warning on the product label that says, “WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.”; or

b) The business may provide a warning on the product that says “WARNING: Consuming this product can expose you to chemicals including bisphenol A (BPA), which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov/food”, or:

c) The business can provide an alternative warning that is clear and reasonable. However, the business could be subject to legal challenges from public or private enforcers as to whether the warning is clear and reasonable.