

**BPA Signage Fact Sheet and FAQ**

*New Listing Recommendations for “Safe Harbor”*

**Overview**

Any manufacturer of products that is packaged in containers with BPA linings or seals must provide a “clear and reasonable” warning to the consumer. Some cans, bottle crowns and growler lids contain BPA. Check with your supplier to see if these products you are using contain BPA. Many manufacturers have already switched over to a non-BPA material. If none of your containers contain BPA, there is nothing you need to do.

If you are using containers that contain BPA, you must provide clear and reasonable warning to the consumer. Providing this warning to the consumer is not something that the Office of Environmental Health Hazard Assessment (OEHHA) is policing or enforcing. It is a method which allows you to be immune from lawsuits by providing was is called “safe harbor.” The state of California has stated that the following will provide safe harbor from lawsuits by providing a clear and reasonable warning:

* Posting the BPA sign at the point of sale (signs are being provided by the Beer Institute. Once the sign is provided to the retailer, it is the responsibility of the retailer to properly display the sign). There is no action required on your part to distribute signs to retailers.
* Having the product listed on the OEHHA database. This database allows the consumer to check to see if a product they want to buy contains BPA or not.

The “listing” of your products with OEHHA is optional but highly recommended. Listed products are given “safe harbor” by the state from any potential BPA-related Prop 65 lawsuits. If you choose not to list and are sued there is no safe harbor and it will be the courts who decide if you met the “clear and reasonable” test to inform the public of any potential exposure to BPA.

**Listing Products on the Database**

OEHHA requires that you submit your listing in a “searchable, electronic format.” They have provided a suggested template [here.](https://www.p65warnings.ca.gov/sites/default/files/bpatemplate.xlsx) To maximize your immunity, the CCBA recommends that you list every brand that you have in commerce or any brand that will enter into commerce and each container size for each brand. The only criteria that dictates if a product needs to be on the OEHHA list is what is on the store shelves in California after January 1, 2017. Product fill dates have no impact on this regulation, only what is on the store shelf. As you produce new brands and/or package sizes, you should add those to the database.

**Listing Guidelines**

For each brand of beer listed, the following information must be provided:

* **Business name and contact information** for person submitting data
* **Brand name**
* **Product description**: enter “alcoholic beverage.”
* **Product category**: enter “Beer.”
* **Size**: OEHHA has said that if you have a specific UPC code for each container size, then that will suffice and the container size is not needed. In absence of a UPC code you should list all brands and all sizes.

**Frequently Asked Questions from CCBA Members**

**Q. If we are not currently canning but will launch cans in 2017, do we need to submit our info for those canned beers by the 1/1/17 deadline or should we wait until the cans actually come out.**

A. You can wait until the beer is released. A brand does not need to be listed until it is entered into commerce.

**Q. I only sell growlers out of our tasting room. Do I need to list those on the web site?**

A. Yes you do if you want to ensure immunity from lawsuits.

**Q. I prefer to put the BPA warning directly on my packages instead of listing on the web site. Does that comply?**

A. Yes. Having the BPA warning on the package does ensure safe harbor by itself and do not need to list the product.

**Q. Do rubber gaskets on growler flip tops contain BPA?**

A. Check with the supplier of the growler.

**Q. I received declarations from our supplier of caps and seals stating the non-use of BPAs. Is this going to suffice for us since the package does not contain BPAs?**

A. Yes, the declaration would suffice and you do not have to list those products covered by that supplier. However, there is also an "as of" date when BPA stopped being used that needs to be listed. To the extent that you may have any product in the stream of commerce that might have been packaged in a previously BPA lined container you should list these. Enter the "as of" date on the form to indicate when BPA free container began to be used. This informs the public in a manner OEHHA desires and meets the test of compliance. This is only relevant if you still have BPA containers in commerce.

**Q. If I am only selling out of my tasting room, can I put a sign next to the BPA warning sign that says “all products sold here contain BPA” and then not list on the website?**

A. The only way to ensure safe harbor is to list the products. If you want to ensure immunity from lawsuits and you do not have confirmation from your growler supplier that there is no BPA in the flip tops, cap seals or anything else, you would need to list.

**Q. If I switch to a new container that does not contain BPA, do I still need to list?**

A. You may update the listing for any brands that no longer intentionally use BPA in the packaging to reflect “use-by” date printed on the product. If you do not have a “use-by” date, you should maintain the listing as long as you know that product is still in commerce.

**Q. Growler caps are the only component of our packaging that would require us to list products in the database, but we are switching to a BPA-free cap by Jan. 1st. If we make the switch can we avoid listing products in the database?**

A. If you have any growlers that are “in commerce” (still on sale for the consumer to purchase) after Jan. 1st then those would need to be listed. Since you probably sell your growlers out of your tasting room directly to the consumer, then you probably won’t have any BPA containers in commerce if you make the switch before Jan. 1st. Any growlers that you sold or sell directly to the consumer prior to Jan. 1st no longer need to be listed. The database is only for consumers to use as a guide when purchasing, not when consuming.

**Q. Why is this required?**

A. According to OEHHA, this listing gives consumers easy access to information about the products covered by Prop 65, which now includes BPA. The reasoning is that if a consumer wants to avoid purchasing any product that may contain BPA, they have the ability to know which products are BPA-free in the store. The BPA warning sign and listing is an avenue provided by OEHHA that allows manufactures to not have to put the warning on the label of the container. Remember, if you put the warning on your beer label, you do not have to list in order to ensure safe harbor from lawsuits. The listing allows the consumer to check the online database while shopping to see if specific product may contain BPA.

**Q. Do I need to list virtually all of the growler brands that I have sold out of our tasting room in the past?**

 A. You only need to list brands that are in commerce as of Jan. 1st. Growlers bought at your brewery tasting room prior to Jan. 1st are no longer in commerce.

*The CCBA will continue to update this FAQ as new questions come in from association members across California. Keep informed by checking out the “Current Regulations” page on the Members Only section of the CCBA website.*