



INDUSTRY ADVISORY

BPA WARNING SIGNAGE

UPDATES: FEBRUARY 16, 2018

Beer manufacturers selling products in California are required by Proposition 65 to provide consumers with a “*clear and reasonable*” warning if Bisphenol-A (BPA) is present in their cans, bottles, crowns or growlers. These requirements exist for your company until all your products in commerce (on-sale and off-sale) are packaged in certified BPA Non-Intent (BPANI) containers. A company with nine or less employees is exempt from Prop 65 requirements.

The CCBA has been working with the Brewers Association (BA) and the Beer Institute (BI) to assist our members in meeting the “clear and reasonable warning” requirement. This includes the distribution of BPA warning signs to all licensed retailers in the State of California and the maintenance of a searchable database for consumers, which lists all products in containers that may contain BPA. If you would like to add new products to the BPA database, please follow the steps outlined below:

Upload information on NEW products that contain BPA via the Online Product Update Form

You should have already uploaded all of your products that contain BPA into the database prior to Dec. 30th, 2017. [Any products that have been entered into commerce after that date can be added to the searchable database for consumers through this online BPA PRODUCT UPDATE FORM.](#)

Each product must be entered individually and identified by the following:

- Brand name
- Product description, including the federal Food and Drug Administration product category for the food
- Universal Product Code or where a UPC code is not available, other specific identifying designation
- In products where bisphenol A is no longer used in the manufacturing of the packaging but the product is still available in commerce, the last expiration or “use by” date for the product where bisphenol A was intentionally used in the can linings or seals

This [PRODUCT UPDATE FORM](#) will be uploaded to the searchable BPA database each month.

Hang BPA Warning Sign(s) at your Taproom

All beer manufacturers that sell beer through their tasting room in packaging that contains BPA (including most cans, some growler lids and some bottle lids) must hang a BPA-warning sign at EVERY point-of-sale station where packaged beer is purchased – including growlers - AND every point-of-display (separate fridge or shelf accessible to consumers displaying packaged beer). This will be required until all your containers are in BPANI packaging. Download signs using links below:

- [Point of Display](#)
- [Point of Sale](#)



Make Sure You Are Working Towards BPANI Products ASAP

The transition to BPANI containers in California is happening slowly as manufacturers are taking appropriate care to ensure the BPA replacements they offer do not suffer from integrity issues or impact food/beverage flavors, etc. CCBA encourages you to contact your supplier to make the transition to 100% BPANI containers ASAP.

FREQUENTLY ASKED QUESTIONS

- **Can I put the BPA warning on my label?**

Although legal counsel for the BI, BA and CCBA believe that the BPA warning sign posted at the retailer's location in combination with the consumer database meets the "clear and reasonable" standard as set forth by the state of California, manufacturers may also put the BPA warning on the product label. This has been avoided with alcoholic beverages because we still do not have clear direction from the TTB if the BPA warning may conflict with the federally mandated alcohol warning required on all alcohol beverage labels. Putting the warning on the product label may also not cover your brands that do not have the warning on the label which may still be in commerce. Putting the BPA warning on your product label does ensure that you are meeting the "clear and reasonable" warning.

- **Does this regulation apply to all breweries in CA?**

This regulation does not apply to you if:

You employ 9 or fewer employees.

You only sell beer in containers that do not contain BPA. (In addition to cans, some bottle crowns and growler lids also contain BPA. Check with your supplier.)

You have switched to BPANI containers and all products out in the marketplace are packaged in BPANI containers.

- **How do I know if my beer contains BPA?**

Check with your container supplier. BPA is not a chemical in beer liquid but is a chemical used in the production of rubber and plastic materials. BPA is found in the liner of cans and can lids. Some bottle crowns and growlers lids also have a material that includes BPA. The industry is moving towards a new material called BPANI.

- **What is a BPANI container?**

BPA Non-intent (BPANI) is a new material developed by the can manufacturing industry to replace BPA which was recently listed by the State of California as a Proposition 65 contaminant. The BPANI material does not contain any BPA in the manufacturing of the material. The industry is moving towards BPANI in all cans, can lids, crown seals and growlers screw caps. Some suppliers have already switched over to BPANI packaging. Because packages with BPANI conform with Prop 65, there is no warning required. Check with your suppliers to see if and when they will switch to BPANI Packaging.

- **I need to comply with this regulation if I only sell bottled beer in the marketplace?**

This ONLY applies to products that contain BPA, which is found in some bottle lids. Contact your supplier for clarity on your packaging and ask for written



documentation that the bottle crowns and growler lids are BPA-free or BPANI.

- **What if I only sell growlers out of my tasting room?**

BPA is found in some growler lids. Contact your supplier to clarify and ask for written documentation.

- **Once all of my products are in BPANI containers, can I stop listing products on the database?**

As long as a product that contains BPA is still in the marketplace, you will need to have that product listed on the database. If you release a new product in a BPANI container and it has never been sold in a BPA container, then you would not need to list that product. Only products that contain BPA that still may be in the marketplace need to be listed

- **Are part time staff counted in the “9 or less employees” that would make our brewery exempt from these requirements?**

OEHHA applies a liberal definition to “employee” that includes anyone on your brewery payroll regardless of hours worked. Part time staff should be included in the “9 or less” count.

- **Do I need to have a point of sale sign for online purchases direct-to-consumer?**

The BPA warning should be at every point of sale, so if you sell beer through your website, you should include the BPA warning somewhere in the eCommerce transaction.

- **Why should I care if I am in compliance by 2018?**

Because penalties up to \$2,500/day per violation could apply if your company is found in non-compliance.

- **Who enforces Proposition 65?**

The California Attorney General's Office enforces Proposition 65. Any district attorney or city attorney (for cities whose population exceeds 750,000) may also enforce Proposition 65. In addition, any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law. Lawsuits have been filed by the Attorney General's Office, district attorneys, consumer advocacy groups, and private citizens and law firms. Penalties for violating Proposition 65 by failing to provide notices can be as high as \$2,500 per violation per day.

- **Why can't I place the warning directly on my packaging?**

That is up to you, but the TTB may not approve a state-specific warning on beer labels. Other states may not approve a California warning for their state. Lastly, putting a warning on your label will not cover any of your products that may still be in the marketplace, which do not contain a warning on the label.