



September 23, 2016

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Re: Proposition 65: Warnings for Exposures to Bisphenol A from Canned and Bottled Food and Beverages.

The Agricultural Council of California (“Ag Council”), the California League of Food Processors (“CLFP”), and the California Farm Bureau Federation (“CFBF”) appreciate the opportunity to comment on the Office of Environmental Health Hazard Assessment’s (“OEHHA”) proposed rulemaking to provide a continuance of the emergency regulation for warnings for exposures from bisphenol A (BPA) from canned and bottled food and beverages (Section 25603.3, Title 27 of the California Code of Regulations). In addition to the requirement to provide to retailers a list of products to be covered by the warning sign program, the proposed rulemaking also would require food and beverage manufacturers to provide OEHHA with a list of all food products for the BPA that was used in the manufacture of the can lining or jar or bottle seals.

Together, Ag Council, CLFP and CFBF represent farmers and food processors across California, ranging from small, farmer-owned businesses to some of the world’s best-known brands. BPA is commonly utilized throughout the food industry because it was an ingredient in epoxy lining that was the most effective for food safety and protection of the consumer. Ag Council, CLFP and CFBF have been engaged in discussions with OEHHA since it listed BPA in May 2015 and continue to work with OEHHA on all issues for the food industry as it relates to Prop. 65.

We appreciate OEHHA’s efforts to provide a warning sign program through the emergency rule making process in April of 2016, and we support the continuation of this program through 2017. OEHHA has yet to develop a safe harbor or Maximum Allowable Dose Level (“MADL”) for food companies to measure against in order to ascertain whether to warn for BPA. For practical purposes, the lack of a MADL means that there is no tolerance for BPA in food products. Consequently, if the emergency warning sign program is not extended, the food industry will be exposed to litigation from private enforcers. This would affect not only those who continue to use BPA voluntarily, but also those who have worked to remove BPA from their products, yet have inventory in the supply chain.

While we understand that OEHHA would like to respond to consumer interest in having access to information related to can coatings and the use of BPA, we have serious concerns with OEHHA proposed website listing. This requirement will not provide consumers any new

information that is not already publicly available and may, in fact, cause consumer confusion. The current warning program includes a list of all products for which a warning is being provided. Consumers wishing to know which products are covered can review the list on a publicly available website. Further, a searchable version of the product list has been generated by a non-governmental organization (NGO), which is also publicly available. There is no reason for OEHHA to pursue a secondary list, given that the information that allows consumers to differentiate what is on the list and what is not is already readily available. This is especially true where the regulation will expire, and the OEHHA website will not only be unnecessary, but potentially misleading, where products currently manufactured do not contain BPA any longer.

We would, however, support a voluntary effort in which companies that have transitioned or are currently transitioning to coatings or seals without BPA intentionally added can identify themselves and their products. OEHHA could provide a link to the list on its website for those public stakeholders looking for this type of information. This list would be far more accurate and helpful to consumers, and much more convenient to persons concerned about BPA.

Ag Council, CLFP and CFBF look forward to working with OEHHA on a solution to meet the mutual needs of OEHHA and the industry on the website issue. We appreciate the steps already taken in providing a warning sign at the cash register under emergency regulation and are hopeful we can continue to find workable solutions in the future.

Sincerely,



Emily Rooney
Agricultural Council of California



Trudi Hughes
California League of Food Processors



Cynthia Cory
California Farm Bureau Federation