FDA Labeling Changes: Impact on Food Packaging and Beyond

GT GreenbergTraurig

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Speaker:

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CHANGES TO LABELING REGULATIONS

REGULATORY PROCESS

- **FDA announced two proposed rules in March of 2014**
- **FDA announced slight revisions to one of the proposed rules in July of 2015**
- **FDA announced that two Final Rules had been approved on May 20, 2016**
- **Two Final Rules were published to the *Federal Register* on May 27, 2016**
  - Final Rule on Food Labeling: Revision of the Nutrition and Supplement Facts Labels; Changes to the RDIs and DRVs of nutrients
  - Final Rule on Serving Sizes and RACCs

REGULATORY PROCESS

- **Both Final Rules became effective as of July 26, 2016**
- **Initial Compliance period**
  - Two years (July 26, 2018) for companies with $10 million or more in annual sales
  - Three years (July 26, 2019) for companies with under $10 million in annual sales
- **On June 13, 2017, FDA indefinitely delayed the compliance dates; new dates TBD**

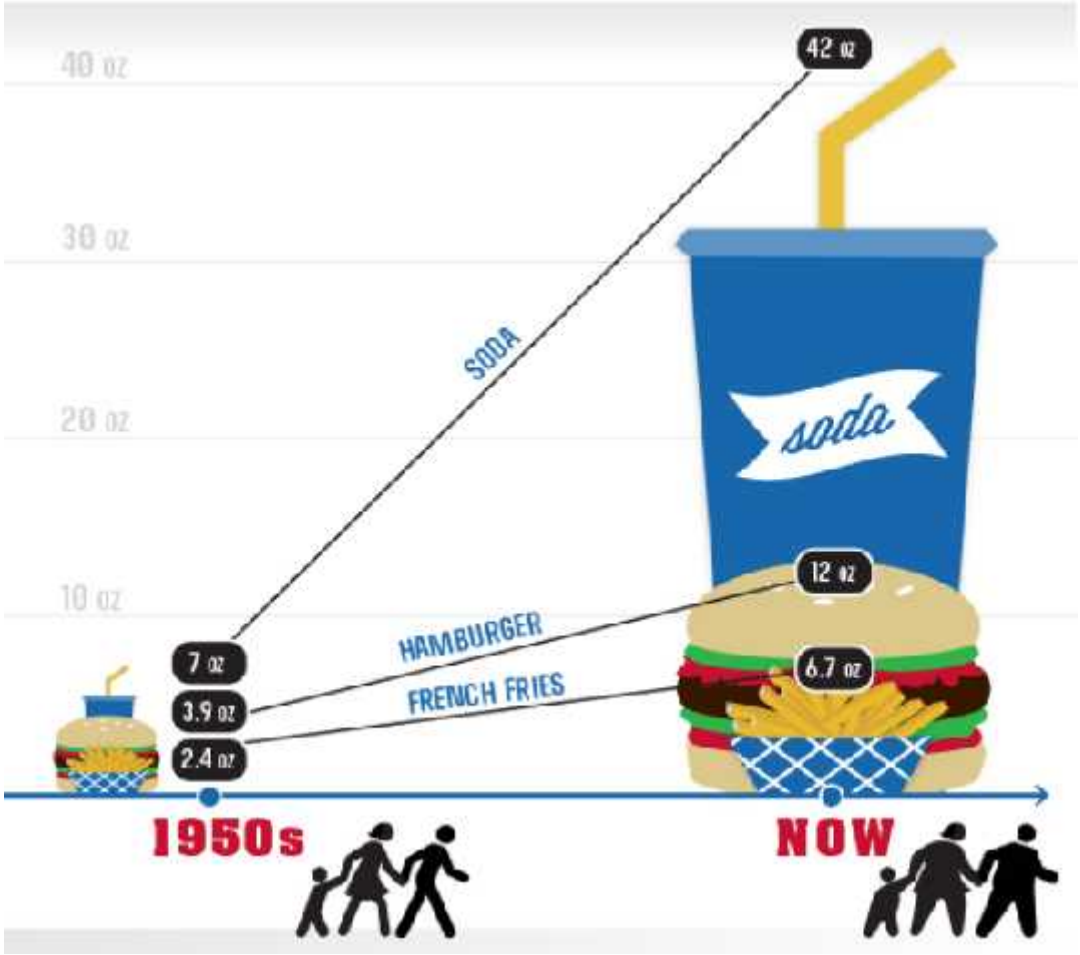
IMPACTFUL CHANGES

- **Changes to the RACC/Serving Size; RDIs and DRVs**
  - Serving Size for a single serving container is anything under 200% of the serving size
  - Containers at 200% to 300% of the serving size must display a dual column panel
  - RACC for a variety of products has changed, mostly upwards
  - RDIs for vitamins and minerals have changed
  - DRVs for nutrients have changed

IMPACTFUL CHANGES

- **Changes to the Nutrition Facts Panel and Supplement Facts Panel**
  - Prominent declaration of Calories
  - More emphasis on Servings per Container and Serving Size
  - Addition of Added Sugars
  - Removed Vitamin A and C as required nutrients
  - Added Vitamin D and Potassium as required nutrients
  - Must disclose actual amounts of vitamins and minerals
  - Table in the Nutrition Facts Panel has been eliminated
  - Footnote has been changed

CHANGES TO RACC / SERVING SIZE



SINGLE SERVING CONTAINERS

- **Containers with less than 200% of the RACC must be labeled as a single serving container**

2-3 SERVING CONTAINERS

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- If a unit weighs 200% or more up to and including 300%, the serving size must be the closest to the RACC
- Additionally, the Nutrition Facts Panel must be in a dual column format with the amount reflected per serving and per container
- Products that qualify for the small or intermediate exception and use the linear or tabular formats do not have to use the dual column format

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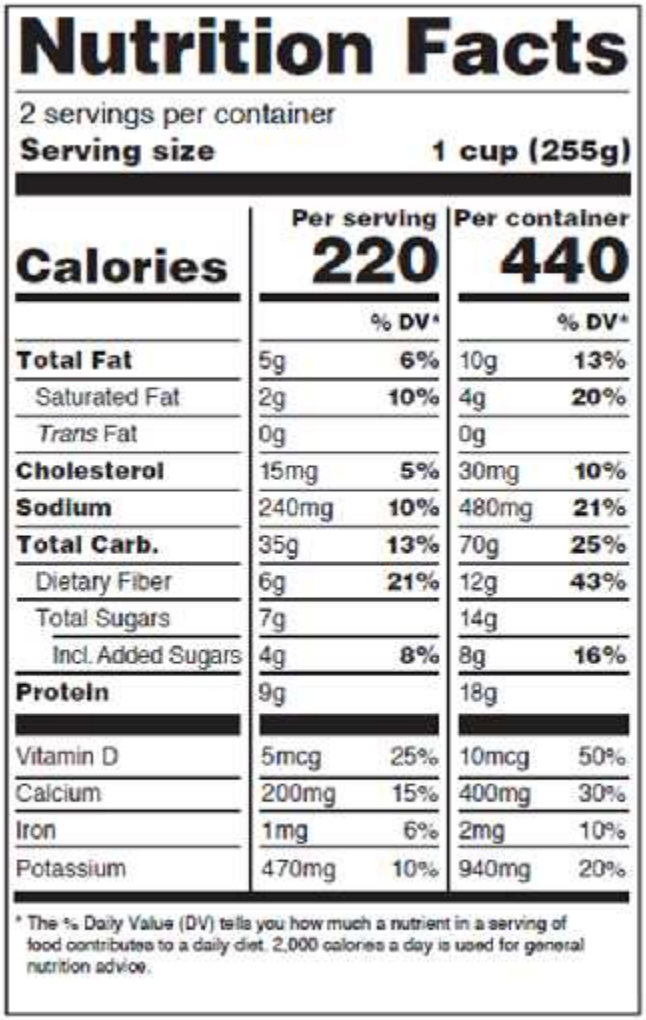
DUAL COLUMN FORMAT

- **Example:**



Nutrition Facts

2 servings per container

Serving size **1 cup (255g)**

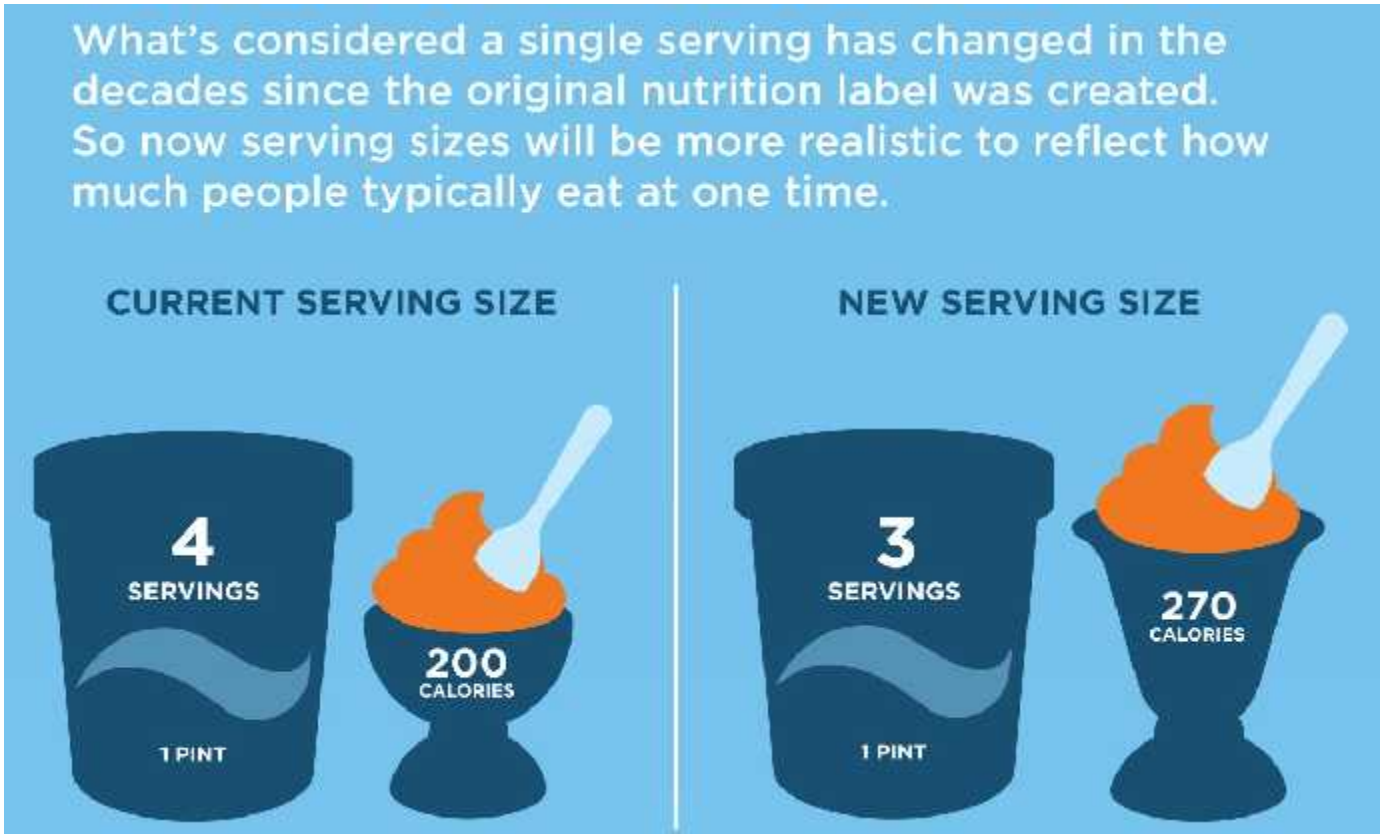
	Per serving		Per container	
Calories	**220**		**440**	
		% DV*		% DV*
Total Fat	5g	**6%**	10g	**13%**
Saturated Fat	2g	**10%**	4g	**20%**
Trans Fat	0g		0g	
Cholesterol	15mg	**5%**	30mg	**10%**
Sodium	240mg	**10%**	480mg	**21%**
Total Carb.	35g	**13%**	70g	**25%**
Dietary Fiber	6g	**21%**	12g	**43%**
Total Sugars	7g		14g	
Incl. Added Sugars	4g	**8%**	8g	**16%**
Protein	9g		18g	
Vitamin D	5mcg	25%	10mcg	50%
Calcium	200mg	15%	400mg	30%
Iron	1mg	6%	2mg	10%
Potassium	470mg	10%	940mg	20%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

DUAL COLUMN FORMAT

- If a nutrient content or health claim is made on a label with a dual column NFP, a statement must clarify the basis for the claim
- Nutrient Content Examples: “Low calorie per serving”or “Low calorie per 12 fluid ounces”
- Health Claim Examples: “A serving of 6 ounces of this product conforms to such a diet.”
- Clarifying statement not necessary if the product meets the claims for both the serving size and the full container

SERVING SIZE / RACC



RACC (RECOMMENDED AMOUNT CUSTOMARILY CONSUMED)

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- Per Nutrition Labeling and Education Act, serving sizes are calculated based on the Reference Amounts Customarily Consumed (RACCs) and are required on the Nutrition Facts label
- Approximately 30 out of 158 RACCs will change, e.g.,
- Approximately 25 new RACCs

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CHANGES TO RACCs

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- Carbonated and noncarbonated beverages, wine coolers and water (other than milk or fruit juice-based beverages) 360 mL / 12 fl oz
- Coffee or tea, flavored and sweetened 360 mL / 12 fl oz
- Drink mixes (without alcohol): All other types (flavored syrups and powdered drink mixes) Amounts to make 360 mL / 12 fl oz
- Milk, milk-substitute beverages, milk-based drinks, e.g., instant breakfast, meal replacement, cocoa, soy beverage 240mL / 8 fl oz
- Shakes or shake substitutes, e.g., dairy shake mixes, fruit frost mixes 240mL / 8 fl oz
- Fruit juices, nectar, fruit drinks 240mL / 8 fl oz
- Milk, milk substitute, and fruit juice concentrates Amounts to make 240 mL / 8 fl oz

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CHANGES TO RACCs

- Bagels, toaster pastries, muffins 110g (no previous RACC)
- Breakfast cereals, ready-to-eat, weighing 20g or more but less than 43g per cup; high fiber cereals containing 28g or more of fiber per 100g 40g (previously 30g)
- Breakfast cereals, ready-to-eat, weighing 43g or more per cup; biscuit types 60g (previously 55g)
- Yogurt 170g (previously 225g)

CHANGES TO RACCs

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- Ice cream, frozen yogurt, sherbet, frozen flavored and sweetened ice and pops, frozen fruit juices, novelties 2/3 cup (previously ½ cup)
- Fish, shellfish or game meat, canned 85g (previously 55g)
- Appetizers and hors d'oeuvres 85g, add 35g for products with gravy or sauce topping
- All other candies 30g (previously 40g)
- Sugar 8g (previously 4g)

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SIGNIFICANCE?

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- **Changes to RACCs can affect ability to make nutrient content claims**
- **Increased RACC sizes can hurt "low" claims**
  - Example: 40 calorie, 8 fl oz soda is low calorie; 60 calorie, 12 fl oz beverage is not low calorie
- **However, increased RACC sizes can help "high in" claims**
  - Example: 3g of iron in 55g serving is a "good source of" iron but not "an excellent source of" iron; change to 80g serving now makes it an "excellent source of" iron
- **Must revisit changes in RACCs and RDIs/DRVs to verify nutrient content claims**

RDIs and DRVs

- New table of RDIs
- 3 RDIs stay the same
- 7 RDIs increase
- 16 RDIs decrease
- 1 added (Choline 550mg)

RDIs (No Change)

- Iron 18mg
- Folate 400mcg
- Iodine 150mcg

RDIs (Increased)

- Vitamin C 60mg → 90mg
- Calcium 1,000mg → 1,300mg
- Vitamin K 80mcg → 120mcg
- Phosphorus 1,000mg → 1,250mg
- Magnesium 400mg → 420mg
- Manganese 2mg → 2.3mg
- Potassium 3,500mg → 4,700mg

RDIs (Decreased)

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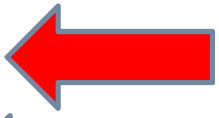
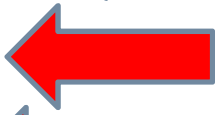
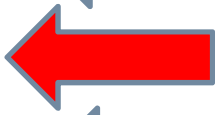
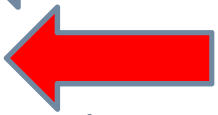
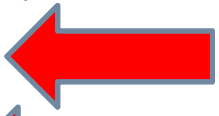
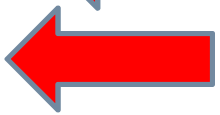
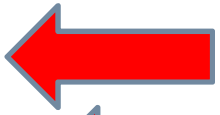
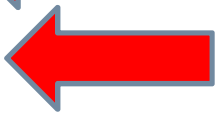
- 900 mcg  5,000 IU Vitamin A
- 20 mcg  400 IU Vitamin D
- 15 mg  30 IU Vitamin E
- 1.2 mg  1.5 mg Thiamin (B1)
- 1.3 mg  1.7 mg Riboflavin (B2)
- 16 mg  20 mg Niacin (B3)
- 1.7 mg  2 mg Vitamin B6
- 2.4 mcg  6 mcg Vitamin B12

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RDIs (Decreased)

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- 30 mcg ← 300 mcg Biotin
- 5 mg ← 10 mg Pantothenic Acid (B5)
- 11 mg ← 15 mg Zinc
- 55 mcg ← 70 mcg Selenium
- .9 mg ← 2 mg Copper
- 35 mcg ← 120 mcg Chromium
- 45 mcg ← 75 mcg Molybdenum
- 2,300 mg ← 3,400 mg Chloride

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DRVs (Changes)

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No Change

- Saturated Fat 20g
- Cholesterol 300mg
- Protein 50g

Increased

- Total Fat 65g → 78g
- Dietary Fiber 25g → 28g

Decreased

- 275g ← 300g Total Carbohydrate
- 2,300mg ← 2,400mg Sodium

New DRV

- Added Sugars 50g

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SIGNIFICANCE?

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- **Changes to RDIs and DRVs can also affect ability to make nutrient content claims**
- **Increased RDIs can affect "high" claims**
  - Example: 12mg of vitamin C is 20% of the DV of 60mg and "high in vitamin C"; however, at a DV of 90mg, it is only 13% of the DV and just a "good source of vitamin C"
- **However, decreased RDIs will elevate DV%s**
- **Must carefully review RDIs/DRVs to verify ability to make nutrient content claims**

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LABEL CHANGES

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LABEL CHANGES

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- **Nutrition Facts – Old vs. New**

Nutrition Facts

Serving Size 2/3 cup (55g)
Servings Per Container About 8

Amount Per Serving

Calories 230	Calories from Fat 72
	% Daily Value*
Total Fat 8g	**12%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 160mg	**7%**
Total Carbohydrate 37g	**12%**
Dietary Fiber 4g	**16%**
Sugars 1g	
Protein 3g	
Vitamin A	10%
Vitamin C	8%
Calcium	20%
Iron	45%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily value may be higher or lower depending on your calorie needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Nutrition Facts

8 servings per container
Serving size **2/3 cup (55g)**

Amount per serving
Calories **230**

	% Daily Value*
Total Fat 8g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 160mg	**7%**
Total Carbohydrate 37g	**13%**
Dietary Fiber 4g	**14%**
Total Sugars 12g	
Includes 10g Added Sugars	**20%**
Protein 3g	
Vitamin D 2mcg	10%
Calcium 260mg	20%
Iron 8mg	45%
Potassium 235mg	6%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

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NUTRITION PANEL CHANGES

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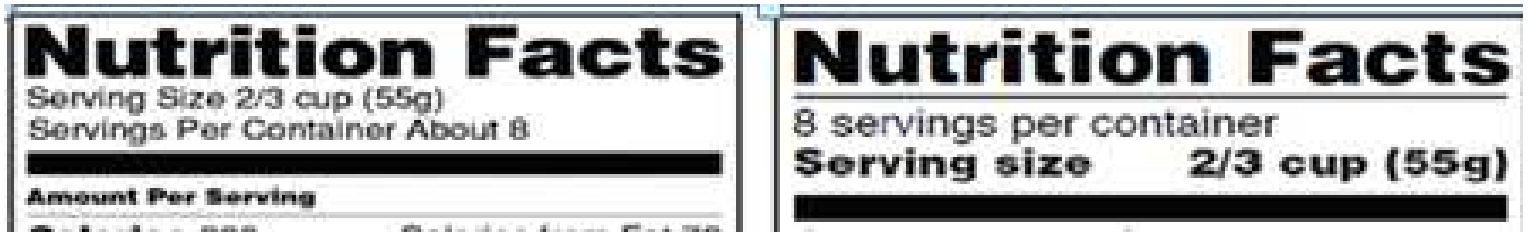

- Hairline below "Nutrition Facts"
- Servings Per Container moves up above Serving Size and is 10 pt type; # of servings is first
- Serving Size is also 10 pt type and in bold-face type; the actual serving size is right justified
- No similar changes for Supplement Facts

CALORIES

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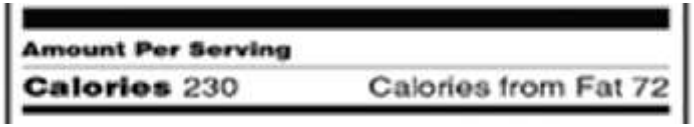

- No line separating "Amount Per Serving" from Calories
- Calories from Fat are eliminated
- "Calories" remains in boldfaced type but increases to 16 pt type
- The actual number of calories changes to boldfaced type and increase to 22 pt type
- No similar changes for Supplement Facts, other than Calories from Fat are also eliminated

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FLUORIDE

- **A statement of the number of mg of fluoride may be declared voluntarily, but if a claim about fluoride is made, it must be declared**
  - as zero when <.1mg
  - to the nearest .1mg when .8mg or less
  - to the nearest .2mg when more than .8mg
- **No DV established**

DIETARY FIBER

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- **New definition established**
  - Non-digestible soluble and insoluble carbohydrates and lignins that are intrinsic and intact in plants
  - Isolated or synthetic non-digestible carbohydrates determined by the FDA to have physiological effects that are beneficial to human health
  - Specific fibers are identified in the regulation to be included
- **Manufacturer must make and keep records to verify the amount of dietary fiber, soluble fiber, or insoluble fiber, when mixed with non-digestible carbs that don't meet the definition**

TOTAL & ADDED SUGARS

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- "Sugars" changes to "Total Sugars"
- Indicated as "Includes __g Added Sugars"

Includes sugars that are either added during processing of foods, or are packaged as such, and includes:

-syrups	-honey
-brown sugar	-molasses
-high fructose corn syrup	-sucrose
-invert sugar	-lactose
-maltose	-maltose sugar
-trehalose	-concentrated fruit juice*

*Sugars from concentrated fruit or vegetable juices in excess of what would be expected from 100 percent fruit or vegetable juice. Excludes fruit or vegetable juice concentrated from 100 percent fruit juice that is sold to consumers (e.g., frozen concentrated orange juice).

- Recordkeeping requirement
- Added Sugars must be added to the Supplement Facts Panel when present

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NUTRITION PANEL CHANGES

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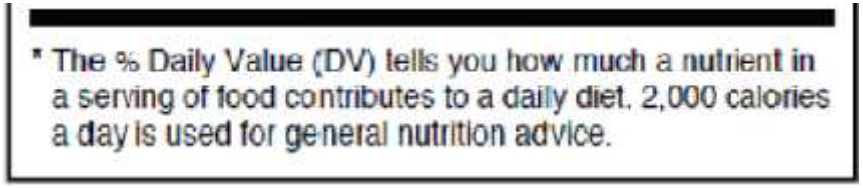
- **Footnote**
  - The previous footnote and the accompanying table in 21 CFR 101.9(d)(9) have been eliminated
  - The new footnote is the following:



  - That footnote is eliminated in the Simplified Nutrition Facts Panel and replaced with "*%DV = %Daily Value" (that footnote not necessary if the column heading is not abbreviated)
  - Also not needed for calorie free products
  - The footnotes don't change for Supplement Facts Panels

MANDATORY VITAMINS AND MINERALS

- The four mandatory vitamins and minerals were previous vitamin A, vitamin C, calcium and iron

Vitamin A	10%
Vitamin C	8%
Calcium	20%
Iron	45%

- Vitamin A and vitamin C have been demoted!
- The four vitamins and minerals now required to be accounted for are vitamin D, calcium, iron and potassium
- Must list actual amounts along with the DV

Vitamin D 2mcg	10%
Calcium 260mg	20%
Iron 8mg	45%
Potassium 235mg	6%

NUTRITION PANEL CHANGES

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- **Examples:**

Nutrition Facts

8 servings per container
Serving size **2/3 cup (55g)**

Amount per serving
Calories **230**

	% Daily Value*
Total Fat 8g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 160mg	**7%**
Total Carbohydrate 37g	**13%**
Dietary Fiber 4g	**14%**
Total Sugars 12g	
Includes 10g Added Sugars	**20%**
Protein 3g	
Vitamin D 2mcg	10%
Calcium 260mg	20%
Iron 8mg	45%
Potassium 235mg	6%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Nutrition Facts

8 servings per container
Serving size **2/3 cup (55g)**

Amount per serving
Calories **230**

	% Daily Value*
Total Fat 8g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 160mg	**7%**
Total Carbohydrate 37g	**13%**
Dietary Fiber 4g	**14%**
Total Sugars 12g	
Includes 10g Added Sugars	**20%**
Protein 3g	

Vit. D 2mcg 10% • Calcium 260mg 20%
Iron 8mg 45% • Potas. 235mg 6%

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NUTRITION PANEL CHANGES

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- **Examples:**

Dual Column Display

Nutrition Facts

2 servings per container
Serving size **1 cup (255g)**

	Per serving		Per container	
Calories	**220**		**440**	
		% DV*		% DV*
Total Fat	5g	**6%**	10g	**13%**
Saturated Fat	2g	**10%**	4g	**20%**
Trans Fat	0g		0g	
Cholesterol	15mg	**5%**	30mg	**10%**
Sodium	240mg	**10%**	480mg	**21%**
Total Carb.	35g	**13%**	70g	**25%**
Dietary Fiber	6g	**21%**	12g	**43%**
Total Sugars	7g		14g	
Incl. Added Sugars	4g	**8%**	8g	**16%**
Protein	9g		18g	
Vitamin D	5mcg	25%	10mcg	50%
Calcium	200mg	15%	400mg	30%
Iron	1mg	6%	2mg	10%
Potassium	470mg	10%	940mg	20%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Tabular Dual Column Display

Nutrition Facts

2 servings per container
Serving size
1 cup (255g)

Calories
220 per serving | **440** per container

	Per serving	% DV*	Per container	% DV*		Per serving	% DV*	Per container	% DV*
Total Fat	5g	**6%**	10g	**13%**	**Total Carb.**	35g	**13%**	70g	**25%**
Saturated Fat	2g	**10%**	4g	**20%**	Dietary Fiber	6g	**21%**	12g	**43%**
Trans Fat	0g		0g		Total Sugars	7g		14g	
Cholesterol	15mg	**5%**	30mg	**10%**	Incl. Added Sugars	4g	**8%**	8g	**16%**
Sodium	240mg	**10%**	480mg	**21%**	**Protein**	9g		18g	
Vitamin D	5mcg	25%	10mcg	50%	Iron	1mg	6%	2mg	10%
Calcium	200mg	15%	400mg	30%	Potassium	470mg	10%	940mg	20%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

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NUTRITION PANEL CHANGES

- **Examples:**

Simplified Display

Nutrition Facts

64 servings per container

Serving size **1 tbsp (14g)**

Amount per serving

Calories **130**

	% DV*
Total Fat 14g	**18%**
Saturated Fat 2g	**10%**
Trans Fat 2g	
Polyunsaturated Fat 4g	
Monounsaturated Fat 6g	
Sodium 0mg	**0%**
Total Carbohydrate 0g	**0%**
Protein 0g	

Not a significant source of cholesterol, dietary fiber, total sugars, added sugars, vitamin D, calcium, iron, and potassium

*%DV = %Daily Value

NUTRITION PANEL CHANGES

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- **Examples:**

Tabular Display for Small Packages

Nutrition Facts	Amount/serving	% DV*	Amount/serving	% DV*
5 servings per container	**Total Fat** 2g	**3%**	**Total Carb.** 15g	**5%**
Serving size 1/6 cup (28g)	Sat. Fat 1g	**5%**	Fiber 0g	**0%**
	Trans Fat 0.5g		Total Sugars 14g	
	Cholesterol 10mg	**3%**	Incl. 13g Added Sugars	**26%**
	Sodium 200mg	**9%**	**Protein** 3g	
Calories per serving 90	Vitamin D 0% • Calcium 6% • Iron 6% • Potassium 10%			

Linear Display for Small Packages

Nutrition Facts Servings: 12, **Serv. size: 1 mint (2g),**
Amount per serving **Calories 5, Total Fat** 0g (0% DV), Sat. Fat 0g (0% DV), *Trans* Fat 0g, **Cholest.** 0mg (0% DV), **Sodium** 0mg (0% DV), **Total Carb.** 2g (1% DV), Fiber 0g (0% DV), Total Sugars 2g (Incl. 2g Added Sugars, 4% DV), **Protein** 0g, Vit. D (0% DV), Calcium (0% DV), Iron (0% DV), Potas. (5% DV)

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DIETARY SUPPLEMENTS

- Slight changes to 21 CFR 101.36(b)(2) to reflects additions of added sugars, as well as mandatory vitamins and minerals as vitamin D, calcium, iron and potassium
- Slight changes in order of vitamins and minerals with choline after pantothenic acid and fluoride after sodium and potassium
- Despite what the regulation currently states, no change in size of calories or bolding

SUPPLEMENT FACTS PANEL

(v) A proprietary blend of dietary ingredients

Supplement Facts

Serving Size 1 tsp (3g) (makes 8 fl oz prepared)
Servings Per Container 24

	Amount Per Teaspoon	% Daily Value
Calories	10	
Total Carbohydrate	2 g	<1%*
Total Sugars	2 g	†
Includes 2g Added Sugars		4%*
Proprietary Blend	0.7 g	
German Chamomile (flower)		†
Hyssop (leaf)		†

* Percent Daily Values are based on a 2,000 calorie diet.
† Daily Value not established.

Other ingredients: Fructose, lactose, starch, and stearic acid.

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Prop 65:

An Ambulance Chaser's Dream.

CALIFORNIA'S PROPOSITION 65

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PROP 65 BACKGROUND

- Health & Safety Code Section 25249.6
- "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual…."

PROP 65 BACKGROUND

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- Officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986
- Enacted as a ballot initiative in November 1986.
- Purpose is to protect the state's drinking water sources from being contaminated with chemicals known to cause cancer, birth defects or other reproductive harm, and requires businesses to inform Californians about exposures to such chemicals.
- Proposition 65 requires the state to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity.

Prop 65 List

- Over 900+ chemicals listed
- Wide range of naturally occurring and synthetic chemicals that have been designated by the state of California to cause cancer or birth defects or other reproductive harm
- Includes additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents
- Also includes ingredients used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust
- List can be found at: http://oehha.ca.gov/proposition-65/proposition-65-list

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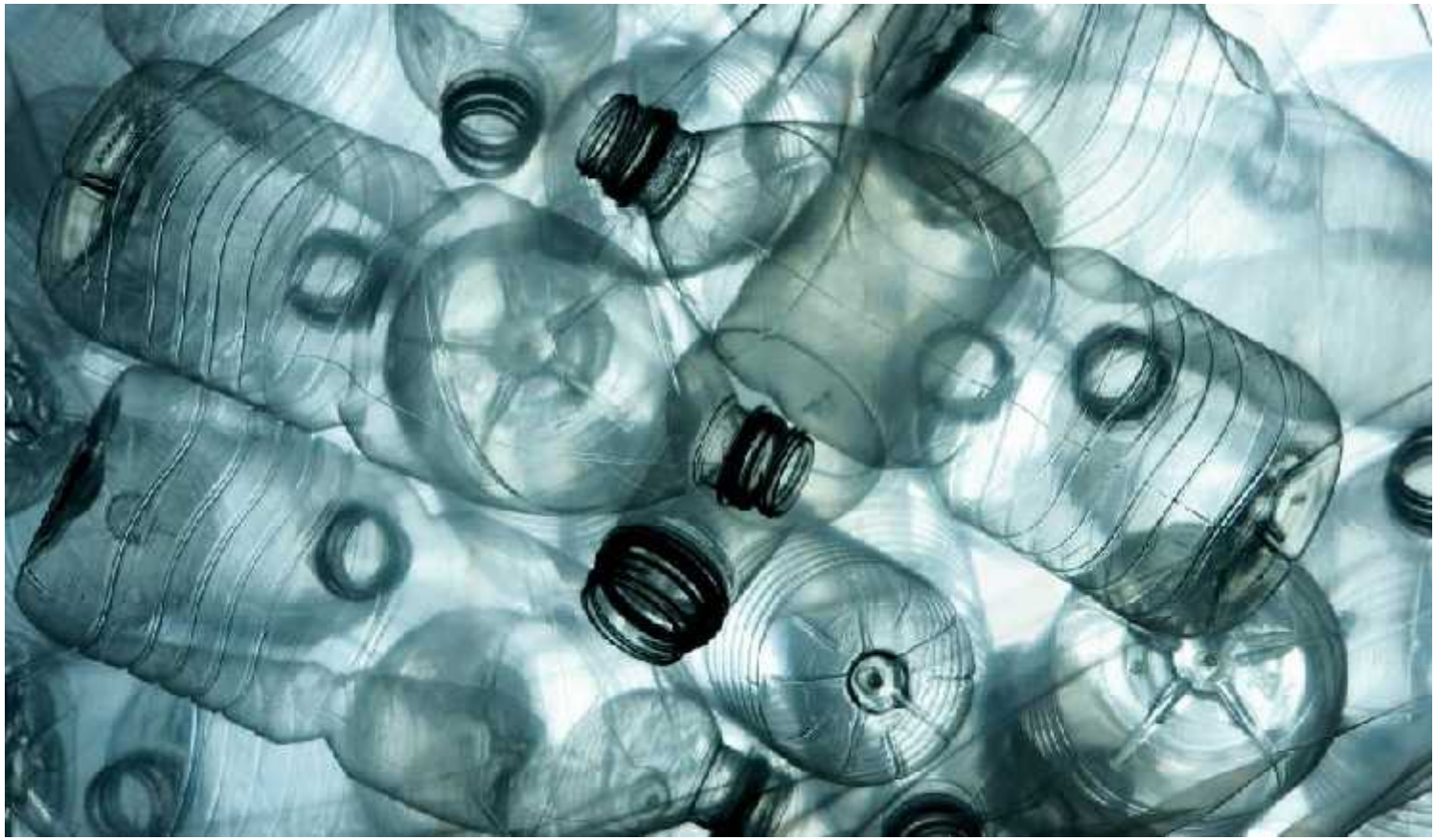

BISEPHENOL A (BPA) AND PROP 65

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BISPHENOL A (BPA)

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- Used to make certain plastics and epoxy resins
- BPA-based plastic is made into a variety of common consumer goods, such as water bottles, sports equipment, CDs, and DVDs.
- Epoxy resins containing BPA are used as coatings on the inside of many food and beverage cans and in making thermal paper such as that used in sales receipts.

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BISPHENOL A (BPA)

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Bisphenol A (BPA)

Why am I being warned about potential exposure to bisphenol A?

- Bisphenol A is on the Proposition 65 list because it can harm the female reproductive system, including effects on ovaries and eggs.
- Proposition 65 requires businesses to determine if they must provide a warning about exposures to listed chemicals.

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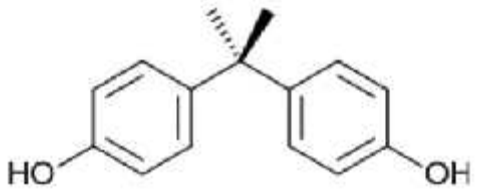
BISPHENOL A (BPA)

- OEHHA first requested information relevant to possible listed of BPA in California Regulatory Notice Register on February 12, 2010
- OEHHA issued Notice of Intent to List BPA on January 25, 2013
- BPA added to list of Prop 65 chemicals on April 11, 2013
- BPA was delisted on April 19, 2013 by order of Sacramento County Superior Court Judge



PROP 65 AND BPA

- **BPA relisted May 11, 2015.**
  - Warnings are required for all exposures to BPA unless the person causing the exposure can show that the exposure when multiplied by 1,000 times has no observable effect
- **Warning requirement became effective May 11, 2016.**
- **BPA used to manufacture the linings of most metal cans and lids of glass bottles containing food and beverages.**
- **Imminent problem of cans and jars with 3 year lifespan that were already in the stream of commerce –how to avoid a plethora of warning signs throughout retail stores?**
- **In April 2016, OEHHA gave notice and adopted an emergency regulation to address these issues through temporary use of point-of-sale warnings.**

PROP 65 EMERGENCY REGULATION

- Notice of Emergency Action to Amends Section 25603.3 - Warnings for Exposures to Bisphenol A from Canned and Bottled Foods and Beverages
- Amended section 25603.3 of the California Code of Regulations, adding subsections (f) and (g).
- Effective April 18, 2016 and will expire October 18, 2016.
- Full text can be found at: http://oehha.ca.gov/media/downloads/crnr/040116emergbpawarninglang.pdf

PROP 65 EMERGENCY REGULATION

- 25603.3 (f) provides a non-mandatory safe harbor to businesses to comply with the BPA warning requirements for canned and bottled foods and beverages by placing warnings at each point of sale in the retail facility. This section also provides businesses with an opportunity to correct the inadvertent, short term absence of a warning under specific circumstances.
- **25603.3 (g) specifies the content of warning signs**
- **Full text - http://oehha.ca.gov/media/downloads/crnr/071920 16bparegs.pdf**

PROP 65 BPA RETAIL WARNING

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WARNING

Many food and beverage cans have linings containing bisphenol A (BPA), a chemical known to the State of California to cause harm to the female reproductive system. Jar lids and bottle caps may also contain BPA.

You can be exposed to BPA when you consume foods or beverages packaged in these containers.

For more information, go to: www.P65Warnings.ca.gov/BPA.

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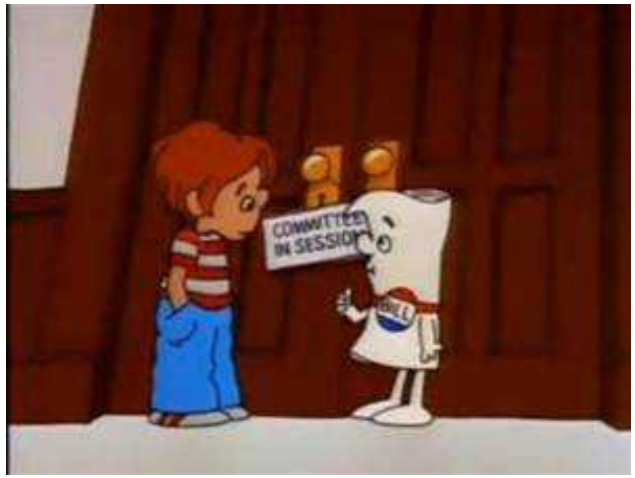
PROPOSED RULEMAKING - BPA

- Gov. Code § 11346.1 (e) -emergency regulations cannot remain in effect over 180 days
- On July 29, 2016, OEHHA announced a Notice of Proposed Rule Making to continue the emergency regulation



- http://oehha.ca.gov/media/downloads/crnr/07192016bparegs.pdf

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PROPOSED RULEMAKING - BPA

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- **Subsection (f) - Responsibility to Provide Warnings for Exposure to Bisphenol A from Canned and Bottled Foods and Beverages**
  - Safe Harbor warning requirements:
    - Provide a compliant warning on the label; **or**;
    - (NEW) Provide OEHHA with list of products where BPA was intentionally used in manufacture of can linings or jars or bottle seals. List must identify product by: (1) brand name, (2) description and FDA category, (3) UPC or other identifying information. If BPA is no longer used in the product container but previous containers are still in commerce, must provide last expiration or "use by" date; **and**
    - (Existing language) Provide written notice to retailer or its authorized agent. Notice must: (1) state that product may result in BPA exposure, (2) include brand name or description and UPC or other identification, and (3) provide point-of-sale warning signs in accordance with subsection (g) **and**
    - (Existing language) Point-of-sale warning as provided in emergency regulation.

PROPOSED RULEMAKING - BPA

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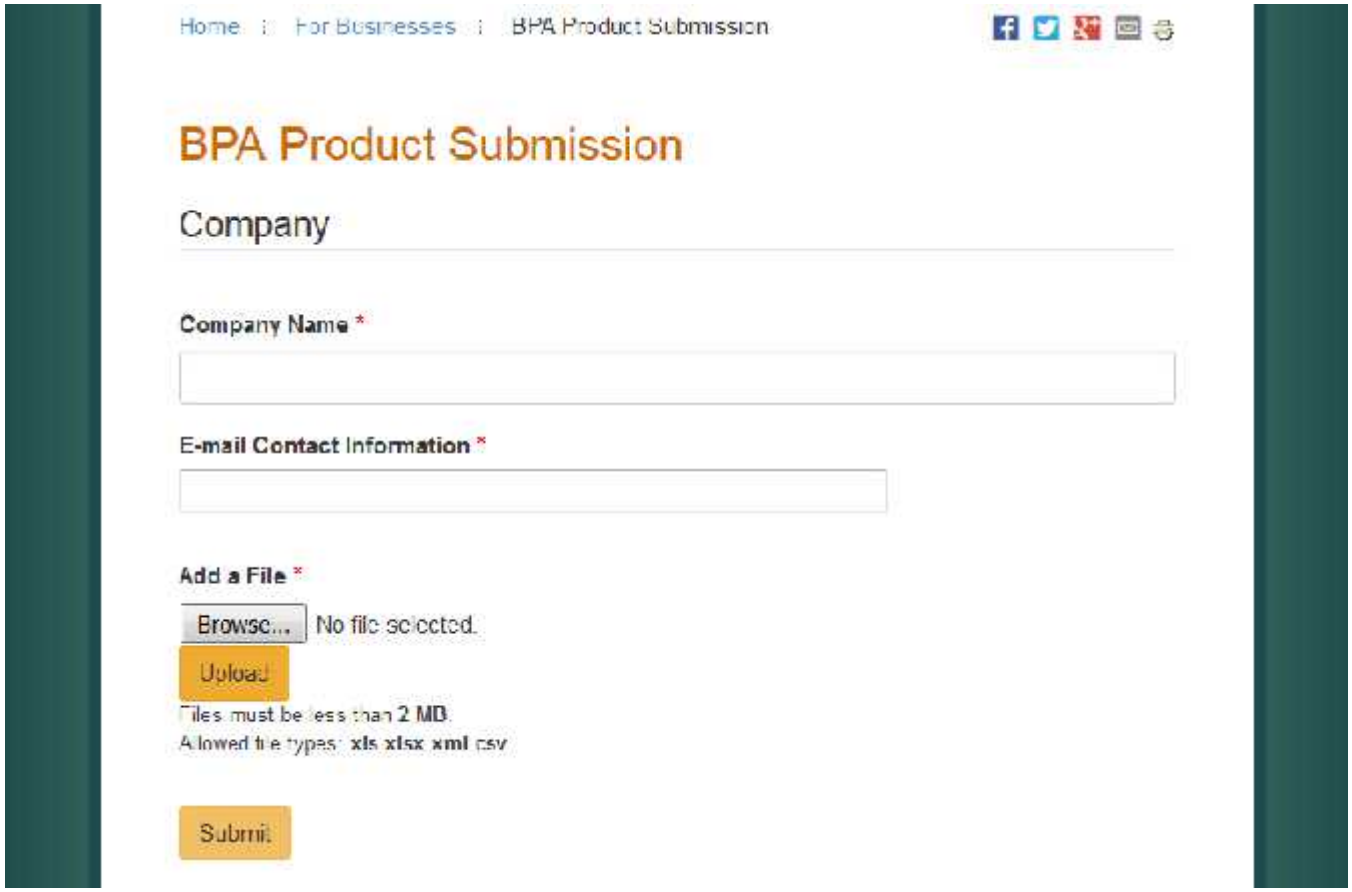

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PROPOSED RULEMAKING - BPA

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- **Subsection (f) continued**
  - Retailers
    - If retailer receives notice from manufacturer, retailer is responsible for placement and maintenance of warning signs.
    - If retailer complies with subsections (f) and (g), there is an opportunity to cure if absence of sign:
      - (1) is not due to neglect or disregard of this regulation
      - (2) not avoidable with normal quality control or maintenance, and
      - (3) is corrected within 24 hours.
  - Includes definitions of “canned and bottled foods and beverages” and “point of sale”.
  - Regulation sunsets December 30, 2017.

PROPOSED RULEMAKING - BPA

- Public comment period closed September 26, 2016
- OEHHA will review comments and determine whether additional changes are needed.
- Potential effective date: January 1, 2017
- Sunset: December 30, 2017

MORE INFORMATION - BPA

- **For more information, go to: https://www.p65warnings.ca.gov/chemicals/bisphenol-bpa**
  - Fact sheets on chemicals, products, and places
  - FAQs on BPA
  - Downloadable point-of-sale warning signs for BPA in canned and bottled foods and beverages (in 9 languages)

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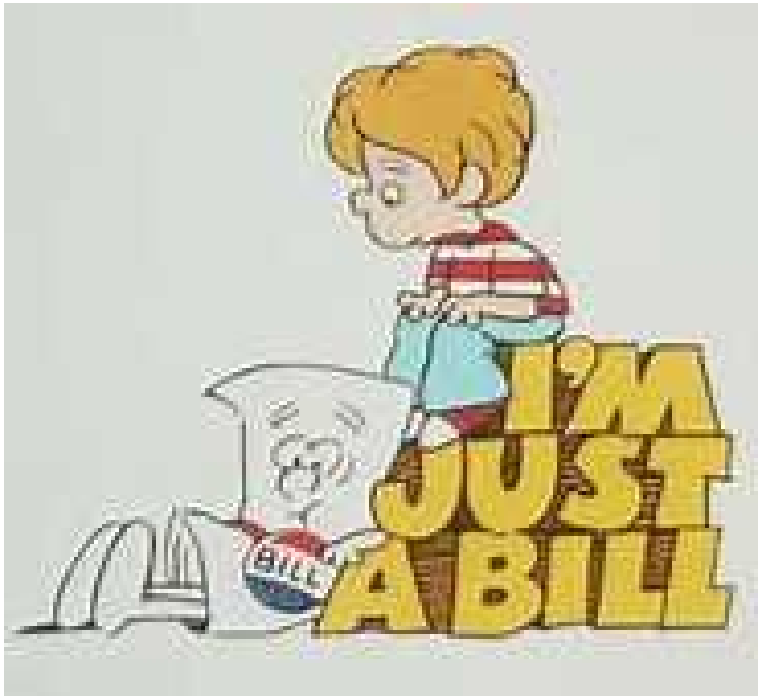

BOTTLE BILLS

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BOTTLE BILLS

- Bottle bills aka “Container Deposit Laws”
- 10 states and 1 territory (Guam)
- Refundable deposit on beer, soft drink and other beverage containers
- www.bottlebill.org

BOTTLE BILLS

- **5¢**
  - Connecticut (CT)
  - Hawaii (HI)
  - Iowa (IA)
  - Maine (ME)
  - Massachusetts (MA)
  - New York (NY)
  - Vermont (VT)
  - Guam (GU)
- **10¢**
  - Michigan (MI)
  - Oregon (OR)
- **California**
  - 5¢ under 24 fl oz; 10¢ over 24 fl oz.

BOTTLE BILLS

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- **Each bottle bill has different parameters for types of beverages and containers**
  - All bottle bills cover carbonated beverages
  - CA, CT, HI, ME, NY and OR cover unflavored and/or unsweetened waters; NY doesn't cover sweetened waters
  - Hawaii only covers PET and HDPE plastics
  - CT excludes noncarbonated beverages over 3L; ME covers all class, metal or plastic 4L or less; MI covers under 1 gallon
- **CA can be displayed as:**
  - CA Redemption Value
  - California Redemption Value
  - CA Cash Refund
  - California Cash Refund
  - CA CRV
- **State abbreviations must be 1/8" in size; CA must be 3/16" in size or 1/8" in size and a different color**

OREGON

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- On April 17, 2017, Oregon's redemption value increased from 5 cents to 10 cents
- There is grace period for containers with 5¢ to be on shelves through 9/30/18 - refund value will be 10¢ regardless

- Currently, beer, soft drinks, and water 3L or less are covered by Oregon bottle bill
- Starting 1/1/18, all beverages from 4 oz to 1.5 L except wine, liquor, dairy or milk substitutes will be covered

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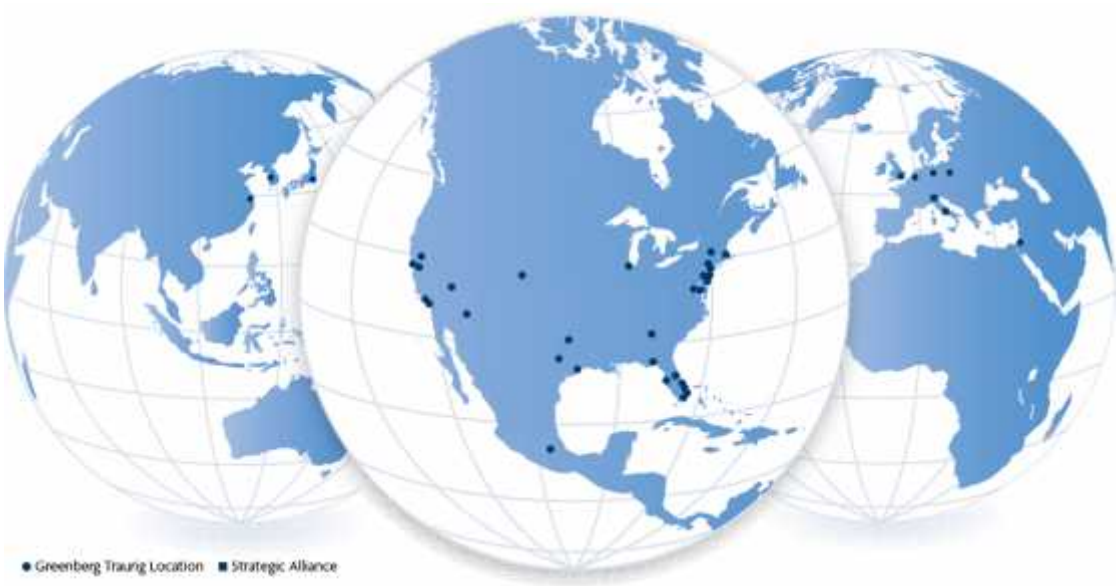

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QUESTION AND ANSWER

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