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May 27, 2005

Via Facsimile: 916-323-8803

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Re: Comments: Workshop on Potential Regulatory Action Exempting from the Proposition 65 Warning Requirements, Exposures from Chemicals that Form from Natural Constituents in Food during Cooking or Heat Processing

Dear Ms. Oshita:

On behalf of the California Grocers Association, I would like to express our views and concerns regarding the "conceptual regulation" discussed in OEHHA's May 9 workshop. The potential regulation would exempt from Proposition 65's warning requirements certain exposures from chemicals formed naturally during the cooking process. We appreciate the time that you and your staff have expended on this important issue.

The California Grocers Association is a non-profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail members operating over 6,000 stores in California and Nevada, and approximately 300 grocery supplier companies. Because of the thousands of products that sit on our shelves, virtually every retail member of CGA will be impacted by the OEHHA's regulation of this important issue.

CGA believes that chemicals which are by-products of cooking or heating should not be regulated under Proposition 65. It is well known that traditional cooking methods create a number of chemicals from naturally occurring constituents in foods. CGA believes the presence of a chemical in foods should not constitute an exposure under Proposition 65 if the chemical is the unintended byproduct of cooking or heating the natural constituents of the food. We now know that acrylamide and other Proposition 65 chemicals are formed as natural byproducts of that cooking process.

CGA would strongly support a regulation recognizing that a food which would not be subject to Proposition 65 in its raw form should not be regulated by the statute solely because it is cooked or heated. Anything else would be contrary to public health, the policy of the statute, sound

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science and common sense.

In addition, we have strong concerns regarding a specific aspect of the "conceptual regulation", which in its current form would provide:

> "For purposes of Health and Safety Code section 25249.6, an exposure does not occur if the person otherwise responsible can show that the chemical in question formed solely from constituents naturally present in food and as a result of the
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> food being cooked or heat processed, and that the concentration of the chemical in question has been reduced to the lowest level currently feasible using good cooking and manufacturing processes."

We believe that this "exemption" is virtually useless to retailers. Simply put, retailers would have the burden of proving not only that the chemical in question was formed from the cooking of constituents naturally present in the food, but also that the concentration of the chemical in question has been reduced to the lowest level currently feasible using good cooking and manufacturing processes. For retailers there is no way of knowing how a product sitting on our shelves was cooked. Retailers sell products that are cooked by our suppliers in all areas of our country and throughout the world. Placing this burden of proof on retailers of food items effectively means that the "exemption" as to them is illusory. The cost of marshalling such proof would be prohibitive in most instances, and simply ensure that "bounty hunters" could continue to extract settlements irrespective of the merits of the alleged violation.

The "conceptual regulation" would be vastly improved by striking the last clause and leaving the burden of proof to be allocated by the courts, so that the regulation would read:

> "For purposes of Health and Safety Code section 25249.6, an exposure does not occur if the chemical in question formed solely from constituents naturally present in food and as a result of the food being cooked or heat processed."

An alternative would be the following:

> "For purposes of Health and Safety Code section 25249.6, an exposure does not occur if the chemical in question formed solely from constituents naturally present in food and as a result of the food being cooked or heat processed, unless the person or party alleging a violation can show that the concentration of the

> chemical in question has not been reduced to the lowest level currently feasible using good cooking and manufacturing processes."

Either of these would represent a fair and scientifically responsible way of dealing with the issue in question. Again, thank you for all of your work on this important subject. We appreciate having the opportunity to comment.

Sincerely,

PAUL A. SMITH
Vice President, Government Relations

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cc: Dr. Joan Denton, Office of Environmental Health Hazard Assessment
Val Siebel, Office of Environmental Health Hazard Assessment