



November 12, 2015

Ms. Monet Vela
Regulations Coordinator
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812

Submitted via e-mail to monet.vela@oehha.ca.gov

RE: Pre-regulatory Proposal Regarding Possible Addition of Section 25501.1 – Naturally Occurring Concentration of Chemicals and Naturally Occurring Concentrations of Arsenic in Rice and Lead in Some Foods

Dear Ms. Vela:

Agricultural Council of California, California Farm Bureau Federation and the California League of Food Processors appreciate the opportunity to comment on the Office of Environmental Health Hazard Assessment's (OEHHA's) Pre-Regulatory Proposal Regarding Possible Addition of Section 25501.1 – Naturally Occurring Concentration of Chemicals and Naturally Occurring Concentrations of Arsenic in Rice and Lead in Some Foods (Naturally Occurring Proposal) posted on August 28, 2015. We endorse the comments submitted by the California Chamber of Commerce but wanted to underscore and highlight a few additional matters pertaining to the potential regulation.

Except for a few very specific instances, the existing exemption for naturally occurring chemicals is not usable in its current form. We thank OEHHA for working to improve this regulation and look forward to assisting in providing a more meaningful process to utilize the intent behind the Naturally Occurring Proposal.

Addressing Variability of Naturally Occurring Chemicals within Food Products

OEHHA is currently attempting to update Prop. 65 through a number of avenues. While this is a stand-alone proposal, it is difficult to comment on one regulation

without fully understanding how potential changes within other parts of the regulation are going to impact this current proposal.

As an example, OEHHA states in the Naturally Occurring Proposal on page 7 that after analyzing several studies that, "OEHHA's analysis showed that the relationship is highly variable across studies. OEHHA found that predicting crop lead levels using estimated uptake factors derived from study data in control soils and plants led to higher values than what was measured in the TDS."

OEHHA then goes on to utilize the U.S. Food and Drug Administration's Total Diet Study (TDS) to establish background levels and a correction factor for lead levels in certain foods, therefore disregarding the underlying variability issue. There needs to be a range instead of using a single number to address this contradiction.

There has been some discussion that with the Naturally Occurring Proposal and allowing the use of a safe harbor or MADL, the variability could be covered. However, if OEHHA continues with its other plans to change the way in which exposure is measured over a certain amount of days, any MADL or safe harbors developed by OEHHA may not be useable in conjunction with the Naturally Occurring Proposal. The variability we could see in some food products would not be addressed. We are very concerned that there is no certainty that this formula will work.

There is no way to clearly assess how changing the mean to an arithmetic mean, the creation of ability to test lots and other proposed changes suggested by OEHHA will fully impact this Naturally Occurring Proposal. We support the proposal in the Chamber's comments that recommends OEHHA create a range found in the various studies that OEHHA reviewed because it is likely to reflect the full span of variability. Additional consideration should also be given to the California Department of Food and Agriculture's (CDFA's) findings that lead levels in soil seem to be increasing over time. Therefore, studies need to be updated periodically to fully track with life cycle systems in the environment.

Utilizing the Naturally Occurring Proposal for "Unprocessed" or "Raw" Products

By utilizing the terms "unprocessed" or "raw," OEHHA creates confusion as to how this proposal will work with products that are processed. Many of California's crops are processed and the levels discussed throughout the proposal would still be found in those products because they are naturally occurring. By striking these terms, OEHHA would clarify that it is expected to find naturally occurring levels of chemicals in products, even in their final form. Otherwise, it could increase litigation for products that are processed because the background levels developed could potentially not be allowed for those products.

Presence of Other Chemicals in Food and Agricultural Products

On Page 3 of the proposal, OEHHA states, "Additional levels for other chemicals or types of foods may be adopted over time."

We strongly support this language as there are other chemicals on the Prop. 65 list that are naturally occurring. It would be immensely helpful if OEHHA offered a process and/or expected timeline of future developments on additional chemicals so we can engage appropriately.

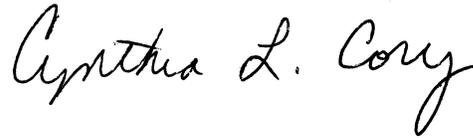
Even with OEHHA's work on the Naturally Occurring Proposal, we do remain highly concerned that other changes to the regulation could negatively impact the good intent on improving this piece of Prop. 65. We do appreciate OEHHA's work on the Naturally Occurring Proposal and are hopeful we can find a workable solution for food and agricultural production.

Thank you for the opportunity to comment. We look forward to working with you on improving Prop. 65.

Sincerely,



Emily Rooney
President
Agricultural Council of California



Cynthia L. Cory
Director, Environmental Affairs
California Farm Bureau Federation



Trudi Hughes
Government Affairs Director
California League of Food Processors