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Monet Vela
Office of Environmental Health Hazard Assessment
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E-mail: P65Public.Comments@oehha.ca.gov

Re.: Prop 65 – Lead Agency Website Regulation

Dear Ms. Vela:

The Frozen Potato Products Institute (FPPI) is pleased to submit these comments to the California's Environmental Protection Agency Office of Environmental Health and Hazard Assessment (OEHHA) regarding its Notice of Proposed Rulemaking to Article 2 in Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65"). 1/ FPPI is the national trade association representing the producers and processors of frozen potato products, committed to representing their specific interests. The frozen potato products industry is committed to producing safe, wholesome, and nutritious products that consumers enjoy.

FPPI provided comments in 2014 in response to OEHHA's pre-regulatory draft proposal to amend warning sign regulations. 2/ We are pleased that OEHHA has made revisions to the pre-regulation draft and support the flexibility afforded to businesses in providing the requested information upon OEHHA's request. FPPI thanks OEHHA for taking into consideration the following comments on its proposed rulemaking to Article 2 and additionally generally supports the California Chamber of Commerce's comments.

Proposed § 25205 Lead Agency Website

The reporting requirement under the proposed § 25205 would require substantial industry resources without providing the clarity or any other tangible benefits to California consumers. Instead, the requested information will likely open up new

1/ January 16 (2015) Notice for Title 27, Proposed Adoption of Section 25205 (http://oehha.ca.gov/prop65/CRNR_notices/pdf_zip/NPR_WebsiteWarningsJan2015.pdf); Proposition 65 - Safe Drinking Water and Toxic Enforcement Act of 1986 (http://www.oehha.org/prop65/law/P65law72003.html).
2/ March 7 (2014) Notice for Title 27, California Code of Regulations Proposition 65 Potential Amendments to Article 6 Clear and Reasonable Warnings (http://oehha.ca.gov/prop65/warnings/pdf/DraftWarningRegs030714.pdf);

avenues for "shake down" lawsuits. FPPI respectfully asks OEHHA to consider substantially revising the proposed provision § 25205(b).

The information being sought for web reporting is duplicative and redundant with the existing product label and required warning label in that:

- The location of the chemical and anticipated route or pathway of exposure is self-evident based on product use, especially for acrylamide in food products;

- The contact information for the manufacturer is already provided on the product;

- The name of the listed chemical or chemicals for which a warning is being provided may already be provided for under a court-approved settlement;

- Regarding acrylamide, FDA has a dedicated webpage for acrylamide that should serve as the single authoritative reference source for consumers. 3/ OEHHA should direct consumers to FDA's website to obtain consistent and authoritative information.

The information being sought requires substantial industry resources while providing no tangible benefit to consumers in that:

- The concentrations being sought include the mean, minimum, and maximum concentrations of the chemical or chemicals in the final product. From a practical perspective, as product specifications may differ from batch to batch, the proposed provision would require constant testing by the manufacturers and producers. Direct, analytical testing for acrylamide is expensive and time-consuming. Further, final acrylamide levels can vary widely between products prepared following identical processes, necessitating the collection and testing of a large number of samples to determine reliably an average acrylamide level.

- It is not readily apparent how consumers would use the mean, minimum, and maximum concentrations of a chemical or chemicals for the final product to determine the level of chemical presence. Under Title 27, California Code of Regulations, section 25821(c)(2), the level of exposure shall be calculated using the reasonably anticipated rate of intake or exposure for average users of the consumer product. The provision of three different concentrations, instead of just the average, will likely confuse consumers. Further, consumers likely will not understand the distribution of concentrations across the range provided. This may lead to unnecessary alarm based on reported maximum concentration levels even though most products are not likely to result in exposures at maximum levels. This concern is especially true for substances subject to Prop 65 based on chronic exposure, for which one-off

3/ http://www.fda.gov/food/foodborneillnesscontaminants/chemicalcontaminants/ucm2006782.htm

exposures at the listed maximum likely would not materially affect potential risks.

- Specific concentrations of chemicals in products would not be meaningful to the consumer; this is especially true for naturally-occurring chemicals that are mainly formed during the cooking process over which manufacturers or producers have little control. It is almost impossible to provide meaningful estimates of the exposure when the cooking process is dominantly under the purview of the consumers or food preparation services.

Finally, the information being sought encourages opportunistic lawyer-driven frivolous lawsuits:

- Information such as specific chemical concentrations, although not meaningful to California consumers, would enable "shake-down" lawsuits. It is particularly concerning since certain information requested under the proposed provision (e.g., maximum chemical concentration), when taken out of the context, could be utilized to mislead the public about the actual average dietary intake of a particular chemical or chemicals.

Thank you for your consideration and for this opportunity to provide comments.

Respectfully submitted,

Sanjay Gummalla, Ph.D.
Vice President, Regulatory and Technical Affairs
Frozen Potato Products Institute

cc: The Honorable Richard Bloom, Chair,
Assembly Budget Subcommittee No. 3
The Honorable Lois Wolk, Chair, Senate Budget Subcommittee No. 2
George Alexeeff, Ph.D., OEHHA Director
Karen Ross, CDFA Secretary
Kristin Stauffacher, CalEPA Deputy Secretary for Legislative Affairs
Dana Williamson, Office of the Governor
Cliff Rechtschaffen, Office of the Governor
Martha Guzman-Aceves, Office of the Governor