



# *Idaho Association of Commerce & Industry*

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*PO Box 389 Boise ID 83701    The Voice of Business In Idaho®  
(208)343-1849    fax (208) 338-5623    www.iaci.org*

June 6, 2005

Ms. Cynthia Oshita  
Office of Environmental Health Hazard Assessment (OEHHA)  
Proposition 65 Implementation Program  
P.O. Box 4010  
Sacramento, California 95812-4010  
[coshita@oehha.ca.gov](mailto:coshita@oehha.ca.gov)

**RE:    Support for Proposed Rulemaking; *Chemicals Formed From Natural  
Constituents in Foods/Acrylamide***

Dear Ms. Oshita:

I am writing to express support for rules that would *provide a limited exemption from the warning requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), under specified circumstances, for exposures to listed chemicals that form in food solely as a result of naturally occurring constituents in the food being cooked or heat processed.*

The Idaho Association of Commerce and Industry (IACI) is the largest business organization in Idaho, representing businesses and industry associations of all sizes and all types throughout Idaho. While our membership is diverse, IACI membership includes many farm organizations as well as companies in food processing and agricultural industries that market food products in California. Food processing companies alone employ 12,855 people (2003) in Idaho.

Idaho is a major agricultural state, probably best known for our production of potatoes. Idaho is first in the nation in potato production, totaling more than 13 billion pounds per year. Almost 60 percent of Idaho's crop is processed; and, because of the excellent storage characteristics of Idaho potatoes, the crop is shipped and processed throughout the year. The typical American consumes 140 pounds of potatoes yearly, either as fresh or processed products. Only wheat flour exceeds the consumption of potatoes in per capita use in the American diet.

In addition to potatoes, Idaho ranks in the top six nationally in production of milk, commercial trout, spring wheat, barley, dry beans, sugar beets, hops, spearmint, alfalfa hay, sweet cherries, prunes and plums, and summer storage onions. All of these products are marketed in California. It is clear that the application of California food labeling warnings under Proposition 65 has a direct economic impact on IACI members, as well as on the general economy of Idaho.

We agree with the concerns raised in your April 8, 2005 Notice to Interested Parties: “... providing Proposition 65 warnings on many common food products may cause some consumers to avoid foods that may be necessary for a balanced diet.” In particular, we are concerned with:

- “. . . over-warning or warning fatigue”
- “. . . potential for conflict with federal food labeling laws.”

This letter is not intended to provide specific comments on each rule you are considering. Rather, it is written in the spirit of OEHHA’s April 8 solicitation, requesting input on the issues to be considered in the rulemaking process. Following are some suggestions.

- Warning labeling is premature because the scientific knowledge about acrylamide is expanding rapidly. The acrylamide findings just three years ago by Swedish scientists have spawned over 200 new research projects worldwide. Results from these studies are coordinated and evaluated by governments, the European Union, the U.S. Food and Drug Administration and the United Nations. The public health risk is still being determined by these ongoing studies. For instance, a new study by the Harvard School of Public Health and the Karolinska Institute in Stockholm, Sweden, suggests the amount of acrylamide in the diet does not pose an increased risk of breast cancer. Further, early animal studies used acrylamide exposure rates of 1,000 to 10,000 times greater than exposures through human diets. Finally, besides new knowledge about risk, researchers are finding other important information, including new processing techniques that can reduce acrylamide levels.
- Determine which chemicals are to be included in warning exemptions. The OEHHA proposed regulations are pointed towards warning exemptions for certain levels of acrylamide found in food. There may be other unintended by-products of cooking that may also be logically included in the exemption rules.
- Be mindful of over-warning or warning fatigue. While its labeling requirements are helpful and beneficial to the people of California, too many warning labels on too many consumer products may become counterproductive to the goals of Proposition 65. As more and more labels are placed on more and more consumer products, there is likelihood that these labels will lose their effectiveness for the citizens of California. Additionally, given the unsettled nature of the scientific knowledge about acrylamide, the risk of over-warning or warning fatigue should not be taken at this time.
- Be sensitive and cautious regarding the legal issues surrounding California warning labeling under the Constitutional Commerce Clause and federal food labeling statutes and regulations. The nature of food marketing in the United States and our success in providing abundant and affordable food products to our citizens relies on an efficient distribution system. Further, there is current federal involvement in dealing with the acrylamide issue. For example, the U.S. Food and Drug Administration is actively working to develop procedures for detecting acrylamide in food products. These activities, in conjunction with the studies discussed above, are providing new insight into the nature and extent of naturally occurring acrylamide in foods like potatoes. Finally, there are many U.S. statutes and regulations that govern food labeling in interstate commerce. We would caution OEHHA to ensure that any regulations passed on this matter do not

improperly interfere with these requirements or with interstate commerce in general.

- Consider the economic impacts to consumers, state governments, farmers, processors and retailers. We understand that protecting public health is the main responsibility of OEHHA, and we support that mission. Likewise, Idaho's agricultural and food industry is committed to supplying safe and abundant food to consumers worldwide. However, regulation in the name of public health that does not improve food safety increases the cost of food to consumers, causes confusion and skepticism and makes it more difficult for the food industry to feed our citizens.

We appreciate the opportunity to participate in the "workshop" prior to formal rulemaking. This is a citizen friendly approach, and I am sure the agency, as well as industry and consumers will learn a great deal. Good science and good knowledge is the basis for good regulation.

Sincerely,

Richard R. Rush  
Vice President for Natural Resources