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June 1, 2005

Via Facsimile: 916-323-8803

Ms. Susan Luong  
 Office of Environmental Health Hazard Assessment  
 Proposition 65 Implementation Program  
 1001 I Street, 19th Floor  
 Sacramento, CA 95814

Re: *Comments: Proposed Changes in Title 22, Section 1260*

Dear Ms. Luong:

On behalf of the California Grocers Association, I would like to submit comments and express our concerns regarding the proposed amendment of Section 12601 to provide for a specific "safe harbor" warning for acrylamide in food.

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 on our shelves, virtually every retail member of CGA will be impacted by the Office of Environmental Health Hazard Assessment's decisions about how Proposition 65 warnings may be conveyed to our customers.

First, the proposed regulation is vastly preferable to any notion that warnings should be applied to individual products. Experts say that as many as 35%-40% of products on grocery shelves may contain acrylamide, and it would be oppressive to require warnings for each individual product or group of products. Moreover, retailers have no way of knowing whether a specific product contains acrylamide or whether it contains acrylamide at a level above the current or proposed "no significant risk" level. Even though the regulations generally provide that warnings should be supplied by the manufacturer rather than the retailer, we recognize that as a practical matter the "point of sale" warning by the retailer may be the best answer in this particular circumstance.

We are concerned, however, by the continuing proliferation of government-mandated signage throughout our stores. Our check-out aisles are required to have a number of notices that are mandated – for example, STAKE Act signs for tobacco, check cashing policies, and return/exchange policies. This signage is not just expensive to mount and maintain – the very proliferation

Ms. Susan Luong  
June 1, 2005  
Page 2

tends to confuse the customer and dilute the effectiveness of individual messages.

We are also concerned that acrylamide will not be the last Proposition 65 chemical to be found in a number of foods, nor will it be the last Proposition 65 chemical to be produced in food as a result of cooking. If the warning approach in the proposed revision of Section 12601 is applied to other such chemicals, the checkout areas of our stores will see additional signage that will overload the customer and be ineffective at conveying the necessary messages.

We believe it is time for OEHHA to revisit the whole issue of how Proposition 65 warnings should be conveyed in retail grocery establishments. Issuing regulations on a chemical-by-chemical basis largely as a result of litigation is not a rational way to craft a warning program. It perpetuates the anomalous and irrational disparate treatment of restaurants and grocery stores. We believe that a "clear and reasonable" warning program for grocery items calls for centralized availability of Proposition 65 warnings in a visible and accessible location. The form of the regime should be flexible, with several options. For example:

1. A kiosk or other customer information center where literature, pamphlets, electronic media, signs, or other methods could convey the necessary warnings;
2. A prominent wall or door sign or signs visible to all customers; or
3. Handouts supplied to all customers on checkout upon request.

These suggestions also appear consistent with OEHHA's apparent decision to require, as a part of "safe harbor" warnings, far more information than is required by Proposition 65. We do not suggest that this additional information is not helpful to the consumer – we do suggest that retailers should be able to make it available in a form other than pasted to the back of a check stand.

Again, thank you for all of your work on this issue. We appreciate having the opportunity to comment.

Sincerely,



PAUL A. SMITH  
Vice President, Government Relations

PS:jb  
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Cc: Dr. Joan Denton, Office of Environmental Health Hazard Assessment  
Ms. Cynthia Oshita, Office of Environmental Health Hazard Assessment  
Val Siebel, Office of Environmental Health Hazard Assessment