



July 29, 2019

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P. O. Box 4010
Sacramento, California 95812-4010
Email: P65Public.Comments@oehha.ca.gov

RE: MODIFICATION TO PROPOSED AMENDMENT TO SECTIONS 25821(a) LEVEL OF EXPOSURE TO CHEMICALS CAUSING REPRODUCTIVE TOXICITY: CALCULATING INTAKE BY THE AVERAGE CONSUMER OF A PRODUCT

Dear Ms. Vela:

On behalf of the state's 2500 rice farmers and 40 marketers of rice, the California Rice Commission ("Commission") offers the following comments regarding the proposed amendments to sections 25821(a) of the California Code of Regulations relating to level of exposure and calculating intake.

Pursuant to the modification notice dated July 5, 2019, the Office of Environmental Health Hazard Assessment ("OEHHA") seeks to add the following language to section 25821(a).

Where a business presents evidence for the "level in question" of a listed chemical in a food product based on the average of multiple samples of that food, the level in question may not be calculated by averaging the concentration of the chemical in food products from different manufacturers, or that were manufactured or packaged in different manufacturing facilities from the product at issue. The level in question may be based on the concentration of the chemical in a food product as it is offered for sale to the end consumer, even if that product contains ingredients sourced from different manufacturers or producers.

In our previous comments to OEHHA, the Commission had asserted that due to the widespread practice of comingling or mixing raw agricultural products between the farm and the final consumer package, production at the grower level should not be included when considering the

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level of exposure at the manufacturing level. For example, rice from one farm is mixed with rice from many farms during the drying and storage process. Rice is further mixed at the mill when shipments from several storage facilities are received to process a customer order. These practices are common within the production and movement of all raw agricultural products. It would be impossible to accurately address the level of any Prop 65 chemical within a raw agricultural commodity without some element of averaging a product from different producers.

In the modification notice dated July 5, 2019, OEHHA notes that “where grains are harvested from multiple farms and are then mixed together at a manufacturing facility, the concentration of a listed chemical in the mixture can be measured in the finished product as it is offered for sale to the consumer (i.e., in a bag, box or other container).”

As noted previously by the Commission, a bag of rice offered for sale (i.e. a finished product) will contain rice from many different producers and the defendant in any given case (mill, handler, distributor or retailer) should be allowed to produce evidence regarding the level in question of the chemical in the source for that particular product. Practically speaking, the defendant will not have access to the actual rice product plaintiff has used for sampling and will be required to rely upon testing of the raw agricultural source product. This type of testing is frequently done for export purposes and the sampling survey is designed to determine the content level of chemicals in the final product offered for sale.¹

Finally, we want to thank OEHHA for considering the comments related to §25821(c) and removing the arithmetic mean requirement proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy A. Johnson". The signature is fluid and cursive, with a large initial "T" and "J".

Timothy A Johnson
President and CEO
California Rice Commission

¹ See 27 CCR 25900. This testing would be within the scope of the Specified Methods of Detection and Analysis as a Defense to an Enforcement Action.