

November 8, 2021

Monet Vela  
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Dear Monet Vela,

The Center for Environmental Health is pleased to provide these comments in support of the California's Office of Environmental Health Hazard Assessment (OEHHA) proposed amendment to warnings for exposure to acrylamide from food products<sup>1</sup>. While generally expressing our support for the new proposed Section 25607.2(b), our comments also detail our reservations about the precedent that these changes may set. Overall, we acknowledge that the proposed alternative warning language strikes a good balance between using the most health-protective language possible while also protecting Proposition 65 (Prop 65) from legal challenges like the pending Chamber of Commerce case.

OEHHA's proposed rulemaking adds a subsection to the safe harbor Prop 65 warning language for acrylamide exposure from food, providing an optional alternative warning for businesses. This alternative warning, which can be used in place of the general food warning language in Section 25607.2(a), reads as follows:

Consuming this product can expose you to acrylamide, a probable human carcinogen formed in some foods during cooking or processing at high temperatures. Many factors affect your cancer risk, including the frequency and amount of the chemical consumed. For more information including ways to reduce your exposure, see <https://oehha.ca.gov/media/downloads/cnrn/isoracrylamide091721.pdf>

**We support OEHHA in adopting the proposed alternative warning language as a means to protect Prop 65 from First Amendment legal challenges.**

As explained in the Initial Statement of Reasons, OEHHA has put forward alternative warning language as a way to “facilitate provision of safe harbor warnings for food in a manner that avoids the First Amendment concerns that have been raised about the more general consumer product warnings when used in the context of acrylamide exposure from foods (Initial Statement of Reasons, p.13).” We recognize that an ongoing legal First Amendment challenge to safe harbor warnings for exposure to acrylamide from foods (*California Chamber of Commerce v Bonta*) centers around the use of the language “known to the state of California to cause cancer.”

[1] See OEHHA, Initial Statement of Reasons: Proposed Amendments to Article 6: Safe Harbor Clear and Reasonable Warnings for Acrylamide Exposures from Food (September 24, 2021), <https://oehha.ca.gov/media/downloads/cnrn/isoracrylamide091721.pdf>, [hereafter “OEHHA, Initial Statement of Reasons”].

The proposed alternative warning replaces this language with the use of the phrase “probable human carcinogen.” We acknowledge that this change to the acrylamide warning language will better protect Prop 65 from First Amendment challenges like the pending Chamber of Commerce case. While we support OEHHA in providing more nuanced warning language for acrylamide exposure from food in this case, we would like to make clear that we do not necessarily support using the same approach for other chemicals or in other future instances.

Furthermore, we would like to explicitly state that we believe there is clear and irrefutable evidence that acrylamide is a human carcinogen. We are in full agreement with OEHHA’s determination that:

There is no serious scientific debate about the carcinogenicity of acrylamide, or its potential for carcinogenicity in humans. There is extensive evidence of carcinogenicity from studies in animals and detailed mechanistic studies of humans and animals. Acrylamide is unequivocally a carcinogen in animals that causes tumors at multiple sites in rats and mice of both sexes (Initial Statement of Reasons, p. 9).

The extensive evidence of carcinogenicity of acrylamide in animals, and the identification of the same genotoxic mechanism in both animals and humans, make clear that the findings of acrylamide’s carcinogenicity in animals is also applicable to humans. In providing alternative safe harbor warning language for acrylamide exposure from food, we recognize the delicate balance that OEHHA has struck between providing a clear and reasonable warning to the public while also heading off obstructive and unfounded legal challenges.

**The proposed language provides more information to consumers about acrylamide exposure from food, empowering more informed decision-making.**

In comparison to the general warning language for food products in Section 25607.2(a), the proposed alternative warning language provides more information to consumers on the cooking processes that form acrylamide, making it clear that acrylamide is not an additive, and that consumers can take steps to reduce their exposure by limiting their intake of certain foods. This additional information will allow consumers to make more informed decisions regarding their exposure to acrylamide from food.

For the reasons listed above, we support OEHHA’s adoption of the proposed amendment as an important measure to protect Prop 65 while also clearly and reasonably communicating the risks of acrylamide exposure from food.

Thank you for your consideration of these comments.

Sincerely,



Kathryn Alcantar, Interim Policy Director  
Center for Environmental Health

