

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
TITLE 27, CALIFORNIA CODE OF REGULATIONS
NOTICE OF MODIFICATION OF TEXT
PROPOSED AMENDMENTS TO ARTICLE 5
SECTION 25505
EXPOSURES TO LISTED CHEMICALS IN COOKED OR HEAT PROCESSED
FOODS

April 16, 2021

Pursuant to the requirements of Government Code section 11346.8(c) and Title 1, section 44 of the California Code of Regulations, the Office of Environmental Health Hazard Assessment (OEHHA) is providing notice of changes made to the proposed regulations on exposures to Proposition 65 chemicals formed when food is cooked or heat processed, Title 27, California Code of Regulations, section 25505. The Notice of Proposed Rulemaking was published on August 7, 2020. Written comments were received during the public comment period, which was extended from the original date of October 6 to October 21, 2020.

After reviewing the comments received on this proposed regulation, OEHHA has modified the language as follows.

- The last sentence in subsection (a) was removed to clarify that a business is not required to make any further showing of feasibility or compliance with good manufacturing practices to rely on the levels established in subsection (d).
- The change to subsection (b) would replace the phrase “in the course of doing business,” with the phrase “otherwise responsible for an exposure to a listed chemical in a food” for clarity.
- Also, in subsection (b) the phrase “that is different from the concentrations provided in subdivision (d)” is added for purposes of clarity.
- In subsection (d)(1) the reference to roasted almond butter and prune juice was removed for further review and possible inclusion in a future rulemaking.

OEHHA is requesting comments on the modifications to the regulatory text, shown below. To be considered, **OEHHA must receive comments by May 7, 2021, which is the designated close of the comment period.** The comment

period was extended from 15 days to 21 days due to the COVID-19 emergency. All comments will be posted on the OEHHA website at the close of the public comment period.

Because of limited in-office staffing during the COVID-19 emergency, OEHHA strongly recommends that comments be submitted electronically through our website at <https://oehha.ca.gov/comments>. Comments submitted in paper form may still be mailed but delays may occur if staff are unable to timely access them.

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OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address, and e-mail may be available to third parties.

Modification to Proposed Amendment to 27 CCR § 25505

The modifications to the proposed regulation are provided in underline and strikeout format below.

27 CCR § 25505

§ 25505. Exposures to Listed Chemicals in Cooked or Heat Processed Foods.

- (a) A person otherwise responsible for an exposure to a listed chemical in a food does not “expose” an individual within the meaning of Section 25249.6 of the Act, to the extent the chemical was created by cooking or other heat processing if the producer, manufacturer, distributor, or holder of the food has utilized quality control measures that reduce the chemical to the lowest level currently feasible. ~~**If a person does not reduce the level of the chemical in a food to the lowest level currently feasible, the resulting exposure must be calculated without regard to the levels set out in subsection (d).**~~

- (b) Nothing in this section shall preclude a person **in the course of doing business otherwise responsible for an exposure to a listed chemical in a food** from using evidence, standards, risk assessment methodologies, principles, assumptions, or levels described in Articles 7 and 8 to establish an alternative concentration for a listed chemical in a food that is created by cooking or other heat processing **that is different from the concentrations provided in subdivision (d)**.
- (c) Nothing in this section shall apply to parties to an existing court-ordered settlement or final judgment to the extent that such settlement or judgment establishes a concentration of the chemical in a specific product covered in the settlement or judgment.
- (d) The concentration levels for chemicals in foods in this subsection are deemed to comply with subsection (a). In this subsection, 'average concentration' refers to the average of concentrations measured in multiple items or individual packaging units of the specific food product in the form the product is sold to California consumers. The unit concentration is the concentration measured in a single food item or individual packaging unit of the specific food product in the form the product is sold to California consumers.

(1) Acrylamide

Foods/Food groups	Maximum average concentration level (ppb)	Maximum unit concentration level (ppb)
Almonds, roasted, roasted almond butter , and chocolate-covered almonds	225	---
Bread, non-wheat-based products including loaves, rolls, buns, baguettes	100	---
Bread, wheat-based products including loaves, rolls, buns, baguettes	50	---
Cookies, animal and animal crackers (sweet)	75	100
Cookies, thin and crispy	281	300
Cookies, sandwich wafers	115	---

Foods/Food groups	Maximum average concentration level (ppb)	Maximum unit concentration level (ppb)
Crackers, savory, including crispbread	350	490
Potato products, French fried potatoes	280	400
Potato or sweet potato products, not otherwise specified, such as hash browns and potato puffs	350	490
Potato or sweet potato products, sliced chips	281	350
Prune juice, 100% (not from concentrate)	---	250
Prune juice, made with concentrate	---	150
Waffles	280	---

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.6, Health and Safety Code.