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Public Comment

*To Proposition 65 Initial Statement of Reasons
Title 27, California Code of Regulations Proposed Amendments to Article
6: Safe Harbor Clear and Reasonable Warnings for Acrylamide Exposures
from Food New subsection 25607.2(b)
September 24, 2021 California Environmental Protection Agency Office
of Environmental Health Hazard Assessment*

OEHHA has no basis for proposing and creating the first-ever carve-out for a chemical in food warnings. This decision is the first such for label warnings on a specific chemical. It sets a dangerous precedent for OEHHA and its mission to protect the people by upholding the certainty and integrity of the science on which the Safe Drinking Water and Toxic Enforcement Act is based. Next, OEHHA will be forced to rewrite warnings for the rest of the 838 chemicals in the same group of “probable” carcinogens as acrylamide, which include lead, among others, or for developmental and reproductive toxicants that lack a human body count.

Prop. 65 enforcers, such as Healthy Living Foundation, routinely test a vast amount of school snacks and foods targeted to children, like potato chips, nut butters, pretzels that can contain high amounts of acrylamide, and have found that most of them do not contain violative amounts, proving the feasibility of safe and responsible manufacturing.

The proposed regulation benefits the world’s biggest corporations and violators of California public health law, like Coca Cola, Hormel, General

Mills, whose products are egregiously violative due to irresponsible manufacturing by overprocessing, while are targeted to children and young mothers, and used as school snacks. It also rewards corporate giants for unfair competition achieved by cheaper methods involving overprocessing, delivering to them bigger margins by sacrificing the people's health.

It is unfounded to think that because acrylamide is found in foods, this makes any difference in its carcinogenic effect or the probability that it will cause human cancer. Acrylamide is a carcinogen found in cigarettes and used to manufacture polymers and dyes. It is not naturally occurring. It is an industrial chemical that is now being found in cosmetics and water resources.

What will be next? The unfounded science that OEHHA used in the past to exempt coffee and cereal from acrylamide warnings because they contain other nutrients will lead it to a soft carve-out for carbaryl in apples? Yes, carbaryl is dangerous but apples are healthy so carbaryl is safe when it's delivered in an apple? And so is smoking when it is accompanied by eating an apple? Should we exempt lead from shellfish because they provide essential minerals? Overprocessed school snacks undeniably contain some nutrients, therefore cancer risk from acrylamide can be disregarded? Carbaryl in olive oil won't increase risk of infertility because olive oil is a food? Lead in ginseng isn't harmful because ginseng is healthy?

Whether the carrier is a cigarette, contaminated almond butter, or snack mix, smoking a cigarette while eating an apple does not reduce cancer risk. Studies show everyday foods like almond butter and snack mixes are

contaminated with acrylamide at exorbitant and reckless levels that will move consumers from low- to high-exposure groups. The consumer has a right to know when a chemical like acrylamide is found in foods at harmful levels. OEHHA has an obligation to protect citizens and the integrity of the science on which that protection depends.

Instead of bending to the mighty corporate lobby putting millions into stigmatizing enforcers of the people's health law, OEHHA should be wary of rendering the people's law toothless, allowing themselves to be led by the debunked "science" paid for by acrylamide producers.

There was never the basis for a First Amendment attack on this well designed, powerful, and foundational law.