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November 12, 2021

SUBMITTED VIA ONLINE PORTAL

Attn: Monet Vela

Office of Environmental Health Hazard Assessment

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**Re: NAFEM Comments on OEHHA's Proposed Rulemaking:
New Subsection 25607.2(b) Warning Content for
Acrylamide Exposure from Food (Sept. 17, 2021)**

Dear Ms. Vela:

The North American Association of Food Equipment Manufacturers (NAFEM) submits the following comments to the Office of Environmental Health Hazard Assessment (OEHHA) regarding its Proposed Rulemaking: New Subsection 25607.2(b) Warning Content for Acrylamide Exposure from Food (Proposed Rulemaking). The Proposed Rulemaking would "adopt new safe harbor warning content for exposure to acrylamide from food" because, in OEHHA's view, "tailored safe harbor warnings for acrylamide exposures from food would assist affected businesses and consumers of those products." (Notice of Proposed Rulemaking.)

NAFEM is a trade association of more than 600 commercial foodservice equipment and supplies manufacturers – a \$13 billion industry. These businesses, their employees and the products they manufacture, support the food-away-from-home market – which includes more than one million locations in the U.S. and countless more around the world. These member companies sell either directly or through distribution relationships indirectly into California, and therefore are subject to regulation by OEHHA, including Proposition 65 labeling mandates.

NAFEM supports Proposition 65's goals but wishes to express a concern about the Proposed Rulemaking, and request clarification that its members that make commercial cooking equipment are not implicated.

At present, Section 25607.2 and the Proposed Rulemaking concern "food exposures to acrylamide." "Acrylamide is a chemical that is formed in certain plant-based foods **during cooking or processing at high temperatures**, such as frying, roasting, grilling, and baking." (Initial Statement of Reasons (ISOR) at 8 (emphasis added).) Food is defined as any "article used or intended for use for food, drink, confection, condiment,

or chewing gum by man or other animal.” (Cal. Code Regs., tit. 27, § 25600.1(g); Health & Saf. Code, § 109935.)

Some context is helpful. NAFEM's manufacturer members cover the spectrum of foodservice equipment and supplies products, including food preparation and primary cooking equipment. However, NAFEM's manufacturer members do not create food products; rather, their customers span the needs of the food-away-from-home market, including restaurants. NAFEM's manufacturer members do not actually control the specific cooking methods of their customers, nor would it be customary industry practice to do so.

As OEHHA itself recognizes, “[t]he content of acrylamide in foods is **quite variable** and **depends on a number of factors**, including ingredients, cooking method, length of cooking, temperature at which foods were processed, storage of food, micronutrient composition of the raw food, and other factors.” (ISOR at 20 (emphasis added).)

It is thus conceivable that NAFEM's manufacturer members' customers, like restaurants, could use certain of NAFEM's members' products in a manner that can generate acrylamide in the food products that they subsequently serve and/or package for later sale. But, NAFEM's manufacturer members have no control over the “ingredients, cooking method, length of cooking, temperature at which foods were processed, storage of food, micronutrient composition of the raw food, and other factors” that a customer, such as a restaurant, might use to makes its products.

NAFEM's Suggested Revision: In light of the imprimatur that OEHHA's safe harbor provisions carry, NAFEM encourages OEHHA to clarify the scope of necessary Proposition 65 warnings to those entities that actually are cooking, preparing, or otherwise creating food products, and not the entities that manufacture the commercial equipment used in the creation of such products.

* * *

Please contact the undersigned if NAFEM can provide any additional insight or assistance. We would be happy to work with OEHHA on further development of the Proposed Rulemaking.

Respectfully submitted,



Charlie Souhrada, CFSP
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