



August 28, 2026

Submitted Electronically

Director Kristina Thayer, Ph.D.
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Re: **Public Comments on OEHHA's July 2026 Omnibus Pre-Regulatory Proposals to Amend Proposition 65's Regulations**

Dear Director Thayer:

The National Confectioners Association (NCA) appreciates the opportunity to share feedback and recommendations with respect to the Office of Environmental Health Hazard Assessment's (OEHHA) request for public comments on the agency's [Proposition 65: Omnibus 2026 Pre-Rulemaking](#) proposals to amend Proposition 65 regulations. Although NCA supports OEHHA's intent to modernize and clarify Proposition 65 regulations, we strongly oppose the agency's proposed addition to the existing naturally occurring chemicals regulation found in Title 27, Section 25501, as discussed more thoroughly below.

NCA is the leading trade organization for the U.S. confectionery industry that employs nearly 58,000 workers in more than 1,600 manufacturing facilities across all 50 states and supports an additional 635,000 jobs in related fields. In California, NCA member companies support more than 100,000 jobs through direct and indirect economic activity and provide over \$7.7 billion in total economic output in the State. Food safety is a paramount concern to NCA member companies. NCA member companies value the opportunity to utilize natural ingredients to support California agriculture and create treats that provide moments of everyday joy to consumers across the state.

The substance of this comment is limited to OEHHA's proposal that includes the following addition to Section 25501(a)(3):

A listed chemical which has been extracted or concentrated from any source, such as a plant, may be present in a product as the result of human activity even if the extraction or concentration did not change the Chemical Abstract Services Registry Number.

1101 30th Street NW, Suite 200; Washington, DC 20007

(hereinafter “Proposed Language”). As detailed below, NCA believes that the Proposed Language would undermine the purpose of the naturally occurring exemption, create uncertainty, and result in narrowing the exemption without any basis. It would also create unintended liability for industry, including NCA members, that use naturally occurring ingredients in food formulations. We suggest that the agency either withdraw the Proposed Language, or alternatively, revise the language to be consistent with the objectives of the naturally occurring exemption (see Section VI., below for suggested language).

I. The Proposed Language ignores the distinction between chemicals that arise in nature and synthetic chemicals and could negatively impact the “naturally occurring” status of many food components.

Consistent with Section 25501(a), foods (e.g., vegetables, fruits, herbs) that contain natural constituents with the same chemical identity found in natural sources are naturally occurring and should be considered naturally occurring irrespective of any human activity, as long as the chemical is not being added from non-natural sources. Confectioners frequently utilize natural ingredients in product formulations, e.g., peppermint leaves and lemon extract to enhance product flavor. For example, peppermint leaves can be processed with steam distillation to release essential oil, pulegone which retains the underlying natural characteristics and constituents from the leaves. It is not the steam distillation by humans that produces the essential oil; it was already in the plant at the time of harvest.

Pursuant to the Proposed Language, an identical CAS number can no longer be relied on for extracted or concentrated chemicals, and any type of “Human activity” becomes an intervening variable, making the exemption itself meaningless. This broad language could have unintended consequences – e.g., it could be argued that the initial harvest of a plant is considered human activity. Producers have relied on OEHHA’s prior naturally occurring interpretation for decades; it is critical that constituents resulting from the natural process of plant growth not negatively impact the “naturally occurring” status.

The Proposed Language seems to ignore that the naturally occurring exemption was intended to differentiate between chemicals that arise in nature and are present in foods and those chemicals which are either newly created by the activities of man or added by man from other non-natural sources. Extraction and concentration of chemicals that arise naturally in plants is readily distinguishable from adding chemicals to foods from non-natural sources.

Indeed, the Proposed language is inconsistent with prior, authoritative determinations. In the California Health and Welfare Agency’s Final Statement of Reasons for Article 5, Sections 12501–12504 (hereinafter “FSOR”), the agency determined that it was unnecessary to include an amendment to the regulation to clarify that the addition of a food containing a naturally occurring chemical to another food does not constitute an exposure. The Agency stated that “once a chemical is exempt as a naturally occurring chemical in food, the exempt

status of that particular chemical will ‘carry over’ to any other food to which it is added.”¹ Consistent with the FSOR, OEHHA’s counsel subsequently rendered a similar opinion, concluding that adding naturally occurring methyleugenol derived from basil and other herbs and spices to another food or consumer product does not create an “exposure” under Section 12501.²

In addition, the Proposed Language would also undermine the objectives of the exemption, as recognized in the FSOR, which include: (1) differentiating between chemicals which are naturally occurring in foods and those which are added by man; (2) preserving the significance of warnings by not having them appear on large numbers of food products containing natural ingredients; and (3) avoiding confusion for the consumer who would be unable to differentiate between risks inherent in a food and those from unnatural added chemicals. The Proposed Language would erode the objectives of the exception by triggering warnings for chemicals which are naturally occurring in foods, substantially accelerate the prevalence of warnings on food products containing natural ingredients, and create confusion for consumers seeking to mitigate risk from unnatural added chemicals.

Ultimately, OEHHA has not explained to stakeholders the basis of the Proposed Language, or a reason that it is appropriate to deviate from the goals of the objectives of the exception. OEHHA has offered no evidence of a public health issue arising from the use of natural plant-based listed chemicals or associated constituents in foods. Absent a reasonable basis for the proposal, NCA requests that OEHHA withdraw the proposed sentence.

II. The proposal will trigger private action claims, placing significant burden on companies that are already struggling to maintain their business amidst ongoing economic challenges and uncertainty in the state.

Proposition 65 claims concerning naturally occurring chemicals that can be detected in products at very low concentration levels, notwithstanding the application of good agricultural and manufacturing practices, are already impacting large and small confectionery companies. For example, recent Proposition 65 60-Day intent-to-sue notices have been issued involving naturally flavored mint gums and candies, which could result in businesses agreeing to costly settlements and/or incurring excessive litigation costs to combat claims.

The notices have emerged, in part, because the naturally occurring regulation is already difficult and costly to apply in practice. OEHHA’s proposal would further erode the exception, further undermine the agency’s longstanding legal opinion on the subject of extraction and use of naturally occurring chemicals in other foods, and increase litigation by creating new incentives for private enforcement claims on foods containing naturally occurring ingredients.

¹ California Health and Welfare Agency, *Final Statement of Reasons, Article 5: Sections 12501–12504*, 22 Cal. Code Regs., § 12501, at 9 (June 1989), <https://oehha.ca.gov/media/downloads/cmr/1250112504fsorjune1989.pdf>.

² Letter from Colleen Heck, Chief Counsel, Office of Environmental Health Hazard Assessment, to Gary M. Roberts, O’Donnell & Shaeffer LLP, at 1–2 (Jan. 8, 2002) (re: Methyleugenol).

III. Proposed changes also conflict with the goals of the California Food Safety Act and the California School Food Safety Act to limit artificial colors and additives in foods in the state.

With the recent enactment of *California Food Safety Act* and the *California School Food Safety Act*, many foods sold in California will have to be reformulated to remove certain synthetic dyes and artificial ingredients. As a result, food manufacturers have been moving to natural ingredients and colors.³ OEHHA's proposal to weaken the existing naturally occurring exemption under Proposition 65 regulations could discourage manufacturers from substituting natural ingredients for synthetics if a natural substance triggers a warning that is not triggered by a synthetic equivalent.

Natural ingredients are typically more expensive than synthetic ingredients. If it is not clear whether a natural ingredient falls within the naturally occurring exemption, use may be more challenging for businesses to justify. The prospect of Proposition 65 warnings on gums, mints, and a variety of other confections due to the use of natural flavoring ingredients instead of synthetics could directly undermine the state's efforts to prioritize natural ingredients in foods.

IV. OEHHA should consider alternative regulatory language that is consistent with the goals of Proposition 65 and the history of the naturally occurring exemption regulation.

If OEHHA believes changes to the regulation are necessary, to be consistent with the goals and history of the rule, NCA respectfully suggests replacing the proposed language with the following:

The lack of a change in the Chemical Abstract Service Registry Number of a chemical following extraction or concentration from a source, such as a plant, is not by itself dispositive that the chemical is naturally occurring for purposes of this section; a further demonstration that the chemical has not been added to the extract, concentrate or product in which it is used from another, non-natural source must also be made for the entire amount of the chemical to be considered naturally occurring under this section.

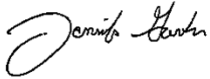
Further, NCA specifically requests that OEHHA not wait to complete a formal rulemaking and to instead immediately issue a clarification of its December 2025 letter as set forth above. As discussed above, the letter and the Proposal will inevitably result in more Proposition 65 intent to sue notices to companies for their naturally flavored foods, creating needless burden, cost, and uncertainty.

³ U.S. Food and Drug Administration, "Tracking Food Industry Pledges to Remove Petroleum Based Food Dyes," updated August 11, 2026, <https://www.fda.gov/food/color-additives-information-consumers/tracking-food-industry-pledges-remove-petroleum-based-food-dyes>

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NCA and its members appreciate the opportunity to offer comments. Please do not hesitate to let us know if any additional information would be helpful or if you would like to further discuss our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Gardner". The signature is fluid and cursive, with the first name "Jennifer" being more prominent than the last name "Gardner".

Jennifer Gardner
Vice President of State Government Affairs
National Confectioners Association

cc: David Edwards, Ph.D., Chief Deputy Director for OEHHA
Gabriel Allen, Chief Counsel for OEHHA
Scott Lichtig, Deputy Secretary for Environmental Policy, CalEPA