

BREAKING NEWS: Prop 65 Warning Exemption Approved for Coffee (UPDATE)

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UPDATE: OEHHA officially published adoption of the Prop 65 exemption for coffee on June 7, 2019, announcing that the new rule is effective as of October 1. Further details on and copies of the rulemaking documents can be found [here](#), as well as in my earlier post below.

Coffee drinkers of the world rejoice! California's Office of Administrative Law (OAL) has signed off on a proposed rule that exempts coffee from the need to bear a cancer warning under Proposition 65 with every cup sold.

Originally proposed by the Office of Environmental Health Hazard Assessment (OEHHA) last June, the exemption responds to the justified criticism and backlash against a March 2018 California court decision in favor of the plaintiff, the Council for Education and Research on Toxics (CERT), holding that dozens of coffee-serving defendants in the state violated Prop 65 by failing to provide warnings about exposure to acrylamide, despite the fact that the science shows that drinking coffee does not increase cancer risk.

The new exemption reads as follows:

§ 25704. Exposures to Listed Chemicals in Coffee Posing No Significant Risk

Exposures to chemicals in coffee, listed on or before March 15, 2019 as known to the state to cause cancer, that are created by and inherent in the processes of roasting coffee beans or brewing coffee do not pose a significant risk of cancer.

Approval of the exemption by OAL is the last stage in the process before the new regulation is formally adopted, which should happen shortly.

Adoption of the exemption shows that California/OEHHA can react (relatively) quickly to correct absurd results. While the new rule is a rational resolution of the coffee matter (at least for now, as the plaintiff, CERT, is challenging the rule and the case holding coffee roasters liable for Prop 65 violations technically is still pending in the courts), by no means is coffee the only situation where Prop 65 requires warnings on products that pose no real risk to human health. Far from it. While Prop 65 has delivered some results that truly enhance public health (such as getting lead out of places it shouldn't be and spurring businesses to think more about the chemicals in their products and supply chain), the large majority of cases tend to provide little public benefit or address any actual risks. Most of all, Prop 65 has resulted in a "boy who cried wolf" phenomenon and the proliferation of largely ignored warnings that crowd out those that are truly warranted and merit consumer

attention.

As I have repeatedly emphasized in this space, ultimately, the coffee case highlights why it is imperative that OEHHA revisit the regulations governing when exposure to a listed chemical requires a warning, including with respect to chemicals formed as a result of necessary cooking of food and beverages. The status quo does little to provide consumers with helpful and accurate information.

For further details on the court case and rule background, please check out my prior blog posts [here](#) and especially [here](#).

Now go enjoy that grande latte with an extra shot of espresso... hold the alarmist cancer warning.