

COFFEE DEFENDANTS LIKELY TO SEEK STAY OF PROP. 65 ACTION FOLLOWING OEHHA'S PROPOSAL TO EXEMPT COFFEE FROM CANCER WARNING REQUIREMENT

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Defendants in the Proposition 65 case against Starbucks and numerous other coffee manufacturers and retailers have indicated that they intend to file a motion to stay that action following a proposal by the California agency that administers Prop. 65 to exempt coffee from the cancer warning requirement for certain types of exposures.

Judge Elihu Berle has issued an order in *Council for Education and Research on Toxics v. Starbucks, et al.*, Los Angeles Superior Court Case No. BC435759, setting a hearing date on defendants' contemplated request for a stay of the action for July 31 – the same day as the hearing on the plaintiff's motion seeking a permanent injunction which could potentially result in defendants being required to sell their coffee products with a Prop. 65 warning in California.

On June 15, California's Office of Environmental Health Hazard Assessment (OEHHA) issued a [notice of proposed rulemaking](#) to exempt coffee from the warning requirement when the Prop. 65 chemicals are created "as part of an inherent in the processes of roasting coffee beans and brewing coffee." The notice further states that "[c]offee, a unique and complex chemical mixture made from the roasted seeds of the coffee plant, contains many different compounds, including carcinogens listed under Proposition 65, and anticarcinogens."

According to OEHHA, the proposed regulation is based on extensive scientific evidence that drinking coffee has not been shown to increase the risk of cancer, and may reduce the risk of some types of cancer.

OEHHA notes that in a review of more than 1,000 studies, the World Health Organization's International Agency for Research on Cancer (IARC) concluded that there is "inadequate evidence" that drinking coffee causes cancer. IARC found that coffee is associated with reduced risk for cancers of the liver and uterus, and does not cause cancers of the breast, pancreas and prostate. IARC also found that coffee drinking exhibits strong antioxidant effects related to reduced cancer risk.

While the proposed regulation would largely exempt coffee from Prop. 65 cancer warnings, it does not address exposures to listed chemicals that may be created in some way other than the process of roasting and brewing.

OEHHA's proposed rulemaking follows a recent ruling by Judge Berle in the Starbucks case that the defendants did not establish that acrylamide in coffee was exempt from Prop. 65's warning requirement under an exception for chemicals created "by cooking necessary to render the food palatable" or safe for consumption.

A public hearing on the proposed rulemaking is scheduled for August 16, and public comment will close on August 30. OEHHA encourages submission of comments through its website, at [this link](#).

For questions or more information, contact a member of our [Prop. 65 team](#).

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