

1 *nunc pro tunc* to assert allegations as to alleged exposures to acrylamide in all Covered Products
2 sold by Settling Defendant that are sold or offered for sale to California consumers.

3 2.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
5 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
6 of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full
7 and final resolution of all claims which were or could have been raised in the Complaint based on
8 the facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
9 Settling Defendant.

10 2.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
11 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
12 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
13 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
15 other pending or future legal proceedings. This Consent Judgment is the product of negotiation and
16 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
17 resolving issues disputed in this Action.

18 **3. INJUNCTIVE RELIEF**

19 3.1 **Reformulation of Covered Products.** Beginning on the Compliance Date, Settling
20 Defendant shall not purchase or manufacture any Covered Product that will thereafter be sold or
21 offered for sale in California that exceeds the following acrylamide concentration limits (the
22 “Reformulation Levels”):

23 3.1.1 The average acrylamide concentration of Covered Products as used per
24 cooking instructions, shall not exceed, on average, 280 parts per billion (“ppb”) by weight (the
25 “Average Level”). The Average Level is determined by randomly selecting and testing at least 1
26 sample each from at least five (5) and up to thirty (30) different lots of a particular type of Covered
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1 Product (or the maximum number of lots available for testing if fewer than five (5)) during a testing
2 period of at least sixty (60) days. The mean and standard deviation shall be calculated using the
3 sampling data. Any data points that are more than three standard deviations outside the mean shall
4 be discarded once, and the mean and standard deviation recalculated using the remaining data
5 points. The mean determined in accordance with this procedure shall be deemed the “Average
6 Level.”

7 3.1.2 The acrylamide concentration of any individual unit, as used per cooking
8 instructions, shall not exceed 400 ppb by weight (the “Unit Level”), based on a representative
9 composite sample taken from the individual unit being tested.

10 3.2 **Compliance Testing.** Compliance with the Reformulation Levels shall be
11 determined by use of a test performed by an accredited laboratory using either GC/MS (Gas
12 Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or
13 any other testing method agreed upon by the Parties. Sampling shall be performed in accordance
14 with the sampling protocol attached hereto as Exhibit A, or any other sampling protocol agreed to
15 by Settling Defendant and CEH. Compliance with the Reformulation Levels shall be determined
16 after cooking a Covered Product as if prepared for consumption in accordance with the instructions
17 on the packaging label of that Covered Product. If the label’s recommended method includes a
18 range of cooking temperatures or times, the midpoint of those ranges shall be used in evaluating
19 compliance with the Reformulation Levels. Any samples of a Covered Product tested under
20 Sections 3.1.1 and 3.1.2 shall be homogenized before testing for acrylamide content.

21 **4. ENFORCEMENT**

22 4.1 **General Enforcement Provisions.** CEH may, by motion or application for an order
23 to show cause before this Court, enforce the terms and conditions contained in this Consent
24 Judgment. Any action to enforce alleged violations of Section 3.1 by Settling Defendant shall be
25 brought exclusively pursuant to this Section 4, and be subject to the meet and confer requirement of
26 Section 4.2.6, if applicable.

1 4.2.6 Meet and Confer. If a Notice of Violation is contested, CEH and Settling
2 Defendant shall meet and confer to attempt to resolve their dispute. Within fifteen (15) days of
3 serving a Notice of Election contesting a Notice of Violation, Settling Defendant may withdraw the
4 original Notice of Election contesting the violation and serve a new Notice of Election to not
5 contest the violation, provided, however, that, in this circumstance, Settling Defendant shall pay
6 \$2,500 in addition to any payment required under this Consent Judgment. At any time, CEH may
7 withdraw a Notice of Violation, in which case for purposes of this Section 4.2 the result shall be as
8 if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of
9 Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an
10 enforcement motion or application pursuant to Section 4.1. The Parties may extend this thirty (30)
11 day time period by an additional thirty (30) days by stipulation if they are making progress toward
12 resolving their dispute. In any enforcement proceeding, CEH may seek whatever fines, costs,
13 penalties, attorneys' fees, or other remedies are provided by law for failure to comply with the
14 Consent Judgment, including but not limited to an order by the Court requiring Settling Defendant
15 to implement corrective action to remedy any violations of this Consent Judgment. In the event
16 CEH proves a violation of Section 3.1 in an enforcement proceeding, the Court in its discretion may
17 order that Settling Defendant cease selling any affected Covered Products in California without a
18 clear and reasonable warning pursuant to Proposition 65. In any enforcement proceeding regarding
19 this Consent Judgment, Settling Defendant may assert any and all defenses that are available

20 4.2.7 Non-Contested Notices. If Settling Defendant elects to not contest the
21 allegations in a Notice of Violation, it shall undertake corrective action(s) and make payments, if
22 any, as set forth below. Settling Defendant shall include in its Notice of Election a detailed
23 description with supporting documentation of the corrective action(s) that it has undertaken or
24 proposes to undertake to address the alleged violation. Any such correction shall, at a minimum,
25 provide reasonable assurance that all Covered Products having the same lot number or lot code as
26 that of the Covered Product identified in CEH's Notice of Violation (the "Noticed Covered
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1 Products”) will not thereafter be sold or offered for sale to consumers in California by retailer or
2 distributor customers of Settling Defendant, nor shipped for sale in California by Settling Defendant
3 without a clear and reasonable warning. Any such warning shall contain the following statement:

4 **WARNING:** Consuming this product can expose you to chemicals including
5 acrylamide, which is known to the State of California to cause cancer [and
6 birth defects or other reproductive harm]. For more information go to
7 www.P65Warnings.ca.gov/food.

8 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
9 statement shall be prominently displayed on the Noticed Covered Product, on the packaging of the
10 Noticed Covered Product, or on a placard, shelf tag, or sign, provided that the statement is displayed
11 with such conspicuousness, as compared with other words, statements, or designs as to render it likely
12 to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed
13 on the Noticed Covered Product’s label, it must be set off from other surrounding information and
14 enclosed in a text box. If the warning statement is displayed on a placard, shelf tag, or sign where the
15 Noticed Covered Product is offered for sale, the warning placard or sign must enable an ordinary
16 individual to easily determine which Noticed Covered Products the warning applies to, and to
17 differentiate between the Noticed Covered Products and other products to which the warning
18 statement does not apply. For sales by Settling Defendant on the internet or by catalog where the
19 consumer is not physically present, the warning statement shall be displayed in such a manner that it
20 is likely to be read and understood by an ordinary individual prior to the authorization of or actual
21 payment.

22 4.2.8 Settling Defendant shall make available to CEH for inspection and copying
23 records of non-privileged correspondence sufficient to show market withdrawal of and/or the
24 provision of warnings on the Noticed Covered Products to the extent it has such documents on file.
25 If the Notice of Violation is based on a violation of the Unit Level with respect to a single Covered
26 Product, Settling Defendant will be excused from the corrective action obligation if Settling
27 Defendant produces test results or other evidence showing that the Noticed Covered Products
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1 total Notices of Violation to Settling Defendant in the first twelve (12) months after the Compliance
2 Date.

3 4.2.9 Payments. Any payments under Section 4.2 shall be made by check payable
4 to the “Lexington Law Group” and shall be paid within thirty (30) days of service of a Notice of
5 Election triggering a payment and which shall be used as reimbursement for costs for investigating,
6 preparing, sending, and prosecuting Notices of Violation, and to reimburse attorneys’ fees and costs
7 incurred in connection with these activities, and shall be the extent of all monetary remedies
8 available to CEH under this Consent Judgment for a non-contested Notice of Violation.

9 4.2.10 **Repeat Violations**. If Settling Defendant has received three (3) or more
10 Notices of Violation concerning the same type of Covered Product that were not successfully
11 contested or withdrawn, as to the third and subsequent Notices of Violation, at CEH’s option, CEH
12 may seek from Settling Defendant whatever fines, costs, penalties, attorneys’ fees, or other
13 remedies that are provided by law for failure to comply with the Consent Judgment, including but
14 not limited to issuing an order requiring that Settling Defendant cease selling any affected Covered
15 Products in California without a clear and reasonable warning pursuant to Proposition 65. Prior to
16 seeking such relief, CEH shall meet and confer with Settling Defendant for at least thirty (30) days
17 to determine if Settling Defendant and CEH can agree on measures that Settling Defendant can
18 undertake to prevent future violations. In any enforcement proceeding regarding this Consent
19 Judgment, Settling Defendant may assert any and all defenses that are available.

20 **5. PAYMENTS**

21 5.1 **Payments by Settling Defendant**. Within thirty (30) calendar days of the Effective
22 Date, Settling Defendant shall pay the total sum of \$180,000 as a settlement payment as further set
23 forth in this Section.

24 5.2 **Allocation of Payments**. The total settlement amount for Settling Defendant shall
25 be paid in four (4) separate checks in the amounts specified below and delivered as set forth below.
26 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a
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1 stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each day the full
2 payment is not received after the applicable payment due date set forth in Section 5.1. The late fees
3 required under this Section shall be recoverable, together with reasonable attorneys' fees, in an
4 enforcement proceeding brought pursuant to Section 4.1 of this Consent Judgment. The funds paid
5 by Settling Defendant shall be allocated as set forth below between the following categories and
6 made payable as follows:

7 5.2.1 \$31,440 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

8 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
9 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard
10 Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for
11 \$23,580 shall be made payable to OEHHA and associated with taxpayer identification number 68-
12 0284486. This payment shall be delivered as follows:

13 For United States Postal Service Delivery:

14 Attn: Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010, MS #19B
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street, MS #19B
24 Sacramento, CA 95814

25 The CEH portion of the civil penalty payment for \$7,860 shall be made payable to the
26 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
27 This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
28 CA 94117.

 5.2.2 \$23,580 as an Additional Settlement Payment ("ASP") to CEH pursuant to
Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH

1 Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted by
2 regulation or court decision) are changed from their terms as they exist on the date of entry of this
3 Consent Judgment in a manner that impacts the Reformulation Levels, or if OEHHA takes some
4 other final regulatory action for products similar to the Covered Products in a manner that impacts
5 the Reformulation Levels or determines that warnings for acrylamide are not required for such
6 products, then Settling Defendant may seek to modify this Consent Judgment to modify the
7 Reformulation Levels. The Parties recognize that the Reformulation Levels are based on a
8 compromise of a number of issues, and that a change to the “safe harbor no significant risk level”
9 for acrylamide would not necessarily entitle a Party to a modification of the terms of this Consent
10 Judgment corresponding to a linear relationship with such a change.

11 **6.4 Other Court Decisions.** If a final decision of a court determines that warnings for
12 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are
13 preempted or otherwise unlawful or unconstitutional with respect to products similar to the Covered
14 Products, then Settling Defendant may move to modify this Consent Judgment to conform to such
15 ruling in order to avoid unfair, inconsistent, or anti-competitive results.

16 **6.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an
17 agency of the federal government, including, but not limited to, the U.S. Food and Drug
18 Administration, states through any guidance, regulation or legally binding act that federal law has
19 preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment
20 may be modified in accordance with the procedure for noticed motions set forth in Section 6.1 to
21 bring it into compliance with or avoid conflict with federal law. Any such modification shall be
22 limited to those changes that are necessary to bring this Consent Judgment into compliance with or
23 avoid conflict with federal law.

24 **6.6** Before filing any motion to modify the Consent Judgment, Settling Defendant shall
25 provide written notice to CEH to initiate the meet and confer procedure in Section 6.2. If the
26 Parties do not agree on the proposed modification during informal meet and confer efforts, Settling
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1 Defendant may file a motion to modify the Consent Judgment within sixty (60) days of the date of
2 the written notice that Settling Defendant provides to CEH under this Section 6.

3 **7. CLAIMS COVERED AND RELEASE**

4 7.1 Provided that Settling Defendant complies in full with its obligations under Section 5
5 hereof, this Consent Judgment is a full, final, and binding resolution between CEH on behalf of
6 itself and the public interest and Settling Defendant and Settling Defendant's parents, subsidiaries,
7 affiliated entities that are under common ownership, directors, officers, employees, agents,
8 shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which
9 Settling Defendant directly or indirectly distributes or sells Covered Products, including but not
10 limited to distributors, wholesalers, customers, retailers (including but not limited to Aldi Inc. and
11 Aldi Foods Inc.), franchisees, licensors, and licensees ("Downstream Defendant Releasees"), of any
12 violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide contained
13 in Covered Products that were sold, distributed, or offered for sale by Settling Defendant prior to
14 the Compliance Date.

15 7.2 Provided that Settling Defendant complies in full with its obligations under Section 5
16 hereof, CEH, for itself, its agents, successors, and assigns, releases, waives, and forever discharges
17 any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant
18 Releasees arising from any violation of Proposition 65 or any other statutory or common law claims
19 that have been or could have been asserted by CEH individually or in the public interest regarding
20 the failure to warn about exposure to acrylamide arising in connection with Covered Products
21 manufactured, distributed, or sold by Settling Defendant prior to the Compliance Date.

22 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof,
23 CEH, in its individual capacity only and not in its representative capacity, also provides a release to
24 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees which shall be
25 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
26 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of
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1 CEH of any nature, character, or kind, whether known or unknown, suspected or unsuspected,
2 arising out of alleged or actual exposures to acrylamide in the Covered Products manufactured,
3 distributed, or sold by Settling Defendant prior to the Compliance Date.

4 7.3 Provided that Settling Defendant complies in full with its obligations under Section 5
5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant and Defendant
6 Releasees shall constitute compliance with Proposition 65 by Settling Defendant, Defendant
7 Releasees, and Downstream Defendant Releasees with respect to any alleged failure to warn about
8 acrylamide in Covered Products manufactured, distributed, or sold by Settling Defendant after the
9 Compliance Date.

10 **8. PROVISION OF NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice
12 shall be sent by first class and electronic mail to:

13 Howard Hirsch
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 hhirsch@lexlawgroup.com

18 8.2 When Settling Defendant is entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Ian Mitchell
21 McCain Foods USA, Inc.
22 One Tower Lane
23 Oakbrook Terrace, Illinois 60181
24 ian.mitchell@mccain.com

25 and

26 Sarah Esmaili
27 Arnold & Porter Kaye Scholer LLP
28 3 Embarcadero Center, Suite 1000
San Francisco, CA 94111
Sarah.Esmaili@arnoldporter.com

8.3 Any Party may modify the person and/or address to whom the notice is to be sent by

1 sending the other Parties notice by first class and electronic mail.

2 **9. COURT APPROVAL**

3 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
4 Settling Defendant, whichever is later, provided, however, that CEH shall prepare and file a Motion
5 for Approval of this Consent Judgment and Settling Defendant shall support approval of such
6 Motion.

7 This Consent Judgment is not effective until it is approved and entered by the Court. The
8 Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
9 noticed motion is required for judicial approval of this Consent Judgment, which motion CEH shall
10 draft and file and Settling Defendant shall support, appearing at the hearing if so requested. If any
11 third party objection to the motion for approval is filed, CEH and Settling Defendant agree to work
12 together to file a response and appear at any hearing.

13 If the Court does not approve the Consent Judgment, the Parties agree to meet and confer as
14 to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a
15 course of action to take, then the case shall proceed in its normal course on the Court's trial
16 calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall
17 meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not
18 jointly agree on a course of action to take then the case shall proceed in its normal course on the
19 Court's trial calendar. In the event that this Consent Judgment is entered by the Court and
20 subsequently overturned by any appellate court, then any monies that have been provided to CEH or
21 its counsel under this Consent Judgment shall be refunded within fifteen (15) days of the appellate
22 decision becoming final and the Parties shall reasonably cooperate to obtain a timely refund of
23 monies paid to OEHHA under this Consent Judgment.

24 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
25 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose other
26 than to determine whether there was a material breach of Section 9.1.

1 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be
2 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or
3 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such
4 waiver constitute a continuing waiver.

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
7 Judgment. Notwithstanding the provisions of Section 6, nothing in this Consent Judgment limits or
8 affects the Court's authority to modify this Consent Judgment as provided by law.

9 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

10 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute
12 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

13 **15. NO EFFECT ON OTHER SETTLEMENTS**

14 15.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
15 against any entity other than Settling Defendant on terms that are different from those contained in
16 this Consent Judgment. Settling Defendant may move to modify this Consent Judgment pursuant to
17 Section 6 to substitute higher Reformulation Levels that CEH agrees to in a future consent judgment
18 applicable to products substantially similar to the Covered Products, and CEH agrees not to oppose
19 any such motion except for good cause shown.

20 **16. SUCCESSORS AND ASSIGNS**

21 16.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
22 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
23 assigns of any of them.

24 **17. COMPLIANCE WITH REPORTING REQUIREMENTS; DISMISSAL**

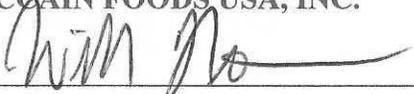
25 17.1 CEH agrees to comply with the reporting form requirements referenced in Health
26 and Safety Code section 25249.7(f).

1 17.2 Within ten (10) days of receiving the payments required by Section 5, CEH shall file
2 a request for dismissal without prejudice as to Defendant Aldi, Inc. from this action, and Aldi, Inc.
3 shall waive all costs in this action.

4 **18. EXECUTION IN COUNTERPARTS**

5 18.1 The stipulations to this Consent Judgment may be executed in counterparts and by
6 means of facsimile or portable document format (pdf), which taken together shall be deemed to
7 constitute one document.

8 **IT IS SO STIPULATED:**

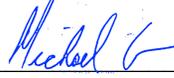
Dated: _____, 2020	CENTER FOR ENVIRONMENTAL HEALTH _____ Signature _____ Printed Name _____ Title
Dated: <u>9/25</u> , 2020	MCGAIN FOODS USA, INC.  _____ Signature <u>William Neider</u> Printed Name <u>VP Retail Sales US</u> Title

1 17.2 Within ten (10) days of receiving the payments required by Section 5, CEH shall file
2 a request for dismissal without prejudice as to Defendant Aldi, Inc. from this action, and Aldi, Inc.
3 shall waive all costs in this action.

4 **18. EXECUTION IN COUNTERPARTS**

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6 means of facsimile or portable document format (pdf), which taken together shall be deemed to
7 constitute one document.

8 **IT IS SO STIPULATED:**

Dated: <u>September 28</u> , 2020	CENTER FOR ENVIRONMENTAL HEALTH  _____ Signature <u>Michael Green</u> _____ Printed Name <u>CEO</u> _____ Title
Dated: _____, 2020	MCCAIN FOODS USA, INC. _____ Signature _____ Printed Name _____ Title

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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____

Judge of the Superior Court

EXHIBIT A
Sampling and Testing Methodology – Oven Baked Products

Note: where more than one preparation method is included in addition to the conventional oven preparation method, the product should be tested using the conventional oven method.

- I. Sample
 - a. A single retail package, as prepared under Section IV below.

- II. Sampling Frequency and Mathematical Averaging for “Average Level” Analysis
 - a. Collect and prepare, per the instructions below, at least 1 sample each from 5 or more different lots of a particular SKU of Covered Product (or the maximum number of lots available for testing if fewer than 5). A product lot is defined as a 24-hour production period.
 - b. As provided in Section 3.1.1 of the consent judgment, average the results of all samples to determine the “Average Level” for the specific product identified in the Notice of Violation. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded once, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the “Average Level.”

- III. Equipment Preparation

A conventional household 30 inch electric standard size oven should be used to prepare all samples for acrylamide analysis.

 - a. Oven Calibration
 - i. The oven is to be preheated to the baking temperature specified in the cooking instruction for the product, and then calibrated through three heating cycles. The midpoint of the heating cycle should be the recommended preparation temperature. The oven’s heating cycles range must not exceed 50°F. The ovens must be calibrated monthly.
 - ii. Thermometers used to calibrate ovens should be calibrated prior to use according to a standard ice point and boiling point method.
 - b. Preheat a calibrated oven for at least 30 minutes prior to preparing products.
 - c. Use 17” x 11” baking sheet and follow all cooking instructions provided on the packaging for the product being tested.
 - d. Use oven rack in the middle of the oven.
 - e. Allow oven to return to baking temperature 10 minutes after removing prior sample product from oven prior to baking next sample

- IV. Product Preparation
 - a. Record temperature of product prior to cooking. All products must be between 0°F and 15°F when preparation is begun.

- 1 b. Distribute the product evenly on the baking tray.
- 2 c. Remove any fragments from the baking tray.
- 3 i. Fragments are defined as:
- 4 1. French fries - a strip that is < 2” in length, or any strips less than half
- 5 of a full cut dimension.
- 6 2. Formed products, if applicable – units not exhibiting the full shape
- 7 dimensions shown on the product packaging.
- 8 d. Bake according to the cooking instructions for the specific quantity of product
- 9 selected. If a label’s recommended method includes a range of cooking temperatures
- 10 or times, the midpoint of those ranges shall be used.
- 11 e. When cooking time expires, immediately remove product from oven, and transfer
- 12 from the baking sheet to a container that is at room temperature. Cool product 5
- 13 minutes at room conditions and then place uncovered in a freezer.
- 14 f. Once product is frozen, if the sample is to be transported to a laboratory, transfer to
- 15 an appropriately labeled, sealed container and keep frozen until analyzed for
- 16 acrylamide.
- 17 g. The directions to the testing laboratory shall provide for the sample to be
- 18 homogenized prior to analysis.

19 The Unit Level or levels in samples grouped for Average-Level computation shall be determined

20 based on a representative, composite sample taken from each unit tested.

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