



DEPARTMENT OF HEALTH

Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 7, 2024

The Honorable Joseline A. Peña-Melnyk
Chair, Health and Government Operations Committee
Room 241, House Office Building
Annapolis, MD 21401-1991

RE: House Bill 97 – Baby Food – Toxic Heavy Metals – Testing and Labeling — Letter of Information

Dear Chair Peña-Melnyk and Committee Members:

The Maryland Department of Health (MDH) is submitting this letter of information for House Bill (HB) 97 —Baby Food – Toxic Heavy Metals – Testing and Labeling. The bill requires a manufacturer of baby food to test a sample of the manufacturer’s final baby food product for toxic heavy metals before packaging individual units of food for sale or distribution in Maryland, and then to share the results on the product label or manufacturer’s website. The bill defines “toxic heavy metals” as arsenic, cadmium, lead, and mercury.

MDH regulates food manufacturing and distribution of food within Maryland, and each local health department is delegated authority by the Secretary to regulate retail food businesses. This authority includes the ability to control food that is considered adulterated under the Health General Article – Title 21. Food with unacceptable levels of heavy metals (or other contaminants) are considered adulterated.

MDH’s Laboratories Administration and Office of Food Protection work closely with the FDA and other State partners to investigate the contamination of food with toxic heavy metals. Potential health effects are determined using clinical data, risk assessments, and consumption information to determine regulatory follow up. MDH supports the U.S. Food and Drug Administration’s (FDA’s) *Closer to Zero* initiative to assist in educating consumers.

For certain foods intended for infants and young children, the FDA has finalized action levels for arsenic and issued draft guidance for action levels for lead.¹ The FDA is evaluating the foundational science for cadmium so that it can establish interim reference levels, and is hoping to have action levels and draft guidance for interagency review some time this year. The FDA is also discussing research on the risks of mercury in foods intended for infants and young children,

¹ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-action-level-inorganic-arsenic-apple-juice>

but has not released any intention to develop specific guidance to date.² This bill would provide some details to consumers regarding the content of toxic heavy metals in food; however, given the lack of actionable levels at the federal level, it is unclear how consumers would accurately interpret the information to determine potential health impacts.

MDH notes that toxic heavy metals can have both acute and chronic health effects in infants and young children. MDH supports federal efforts to eliminate chemical contaminants in food products for infants and young children through the *Closer to Zero* program.² As the FDA continues to develop data and a regulatory framework for heavy metals, MDH is committed to supporting and implementing these national standards. Without this national framework, MDH and retailers could be in the position of responding to consumer questions, complaints, and concerns about baby food sold in the State with no clear guidance on what actions to take.

Recent events have focused attention on the importance of a robust and responsive national food safety system that includes adequate monitoring of foods for chemical and infectious contaminants that can adversely affect large numbers of people, especially young children and infants. MDH notes that the state of California recently adopted legislation similar to HB 97, which became effective on January 1, 2024.³

Food, labels, and product information are standardized for interstate commerce, and the requirements of HB 97 would put Maryland retailers and the food industry at the disadvantage of having a labeling standard that differs from other states. This would be expensive and logistically difficult for the food industry both inside and outside Maryland to comply with the disparate and complicated labeling requirements, and potentially burdensome for retailers and suppliers to ensure products met the requirements. Additionally, compliance would be difficult for MDH to implement.

This bill would have a fiscal impact on MDH, which would be required to enforce the provisions of the bill in response to consumer complaints, and to independently evaluate data from the mandated testing program. I hope this information is useful. If you would like to discuss this further, please contact Sarah Case-Herron, Director of the Office of Governmental Affairs, at sarah.case-herron@maryland.gov.

Sincerely,



Laura Herrera Scott, MD, MPH
Secretary

² <https://www.fda.gov/food/environmental-contaminants-food/closer-zero-reducing-childhood-exposure-contaminants-foods>

³ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB899