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February 27, 2026

The Honorable Delegate Heather Bagnall, Chair
House Committee on Health
241 Taylor House Office Building
Annapolis, Maryland 21401

RE: Opposition to HB 1004 - Prohibited Ingredients in Food

Dear Chair Bagnall:

I am writing on behalf of the Consumer Healthcare Products Association (CHPA)[1] to raise concerns about HB 1004, a proposed bill that would ban the manufacture, sale, and distribution of food products and dietary supplements containing specific Food and Drug Administration (FDA) approved color additives — namely brominated vegetable oil, potassium bromate, propylparaben, and Red Dye 3.

While we share in the commitment to protecting public health, this legislation encroaches on a regulatory domain that Congress has expressly reserved for the federal government — and in doing so, risks creating serious unintended consequences for consumers, and manufacturers alike.

Federal Law Already Governs This Space

The safety of food ingredients and additives is governed comprehensively by the Federal Food, Drug, and Cosmetic Act, which vests the FDA with exclusive authority to evaluate and approve substances used in food. Before any additive may be used, manufacturers must submit rigorous scientific evidence demonstrating safety at intended levels of use. The FDA's review process is among the most thorough in the world, and its authority does not end at the point of approval. The agency continuously monitors new scientific evidence and retains full power to revisit prior decisions.

That responsiveness is not theoretical. In January 2025, the FDA revoked authorization for Red Dye 3 (Red 3) — one of the very substances targeted by this bill — after determining that animal data triggered the Delaney Clause standard under federal law. This action demonstrates that the existing federal framework is working as intended. Maryland need not act where federal regulators already have.

State Action Creates a Problematic Patchwork

By establishing its own list of prohibited ingredients — some of which remain federally approved — Maryland would effectively substitute the judgment of the General Assembly for the science-based determinations of federal regulators. This sets a troubling precedent. If states may unilaterally override FDA safety determinations, the result will inevitably be a patchwork of conflicting standards across the country. Manufacturers operating in multiple states would face inconsistent compliance requirements, leading to supply chain disruptions, increased costs, and —

[1] The Consumer Healthcare Products Association is the Washington, D.C. based national trade organization representing the makers of over-the-counter (OTC) medications, dietary supplements and OTC medical devices

ultimately — higher prices for Maryland consumers. Smaller producers, in particular, would bear a disproportionate burden.

The Right Forum for These Concerns

We do not dismiss concerns about the safety of specific food additives. Where credible new scientific evidence emerges, those concerns deserve serious attention — through the FDA's formal petition and review process, which is specifically designed to weigh the totality of available evidence. That process ensures consistency, scientific rigor, and national applicability. State-level bans, by contrast, risk acting on incomplete or selectively applied data without the benefit of the FDA's comprehensive evaluation framework.

Conclusion

Food safety regulation is a federal function by design. The FDA's system is both rigorous and adaptive, as recent actions on Red Dye 3 confirm. Rather than enacting legislation that conflicts with or preempts the federal framework, Maryland would better serve its constituents by engaging federal regulators directly when specific safety concerns arise. We urge the Committee to oppose House Bill 1004 and instead support efforts to strengthen and resource federal oversight of food ingredient safety.

We welcome the opportunity to discuss these concerns further and appreciate the Committee's consideration.

Respectfully submitted,

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