

Chapter 953

(House Bill 97)

AN ACT concerning

**Baby Food – Toxic Heavy Metals – Testing and Labeling
(Rudy’s Law)**

FOR the purpose of requiring, beginning on a certain date, manufacturers of baby food to conduct certain testing on baby food for toxic heavy metals before packaging individual units of baby food for sale or distribution in the State; requiring, beginning on a certain date, manufacturers of baby food to include certain information related to toxic heavy metals on the manufacturer’s website and on the baby food product label; requiring a consumer to report baby food to the Maryland Department of Health if the consumer believes, based on certain information, that the baby food is being sold in the State with toxic heavy metals that exceed limits established by the U.S. Food and Drug Administration; and generally relating to baby food and toxic heavy metals.

BY adding to
Article – Health – General
Section 21–330.4
Annotated Code of Maryland
(2023 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health – General

21–330.4.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “BABY FOOD” MEANS FOOD PACKAGED IN A JAR, POUCH, TUB, OR BOX SOLD SPECIFICALLY FOR BABIES AND CHILDREN UNDER THE AGE OF 2 YEARS.

(II) “BABY FOOD” DOES NOT INCLUDE INFANT FORMULA, AS DEFINED IN 21 U.S.C. § 321(Z).

(3) “MANUFACTURER” INCLUDES A FOOD MANUFACTURER, FOOD PROCESSOR, AND FOOD PACKER.

(4) “PRODUCTION AGGREGATE” MEANS A QUANTITY OF PRODUCT THAT IS INTENDED TO HAVE UNIFORM COMPOSITION, CHARACTER, AND QUALITY AND IS PRODUCED ACCORDING TO A MASTER MANUFACTURING ORDER.

(4) (5) “PROFICIENT LABORATORY” MEANS A LABORATORY THAT:

(I) IS ACCREDITED UNDER THE STANDARDS OF THE INTERNATIONAL ORGANIZATION FOR ~~STANDARDIZATION~~ STANDARDIZATION/INTERNATIONAL ELECTROTECHNICAL COMMISSION 17025:2017;

(II) USES AN ANALYTICAL METHOD AT LEAST AS SENSITIVE AS THE ANALYTICAL METHOD DESCRIBED IN SECTION 4.7 OF THE U.S. FOOD AND DRUG ADMINISTRATION ELEMENTAL ANALYSIS MANUAL FOR FOOD AND RELATED PRODUCTS; AND

(III) DEMONSTRATES PROFICIENCY IN QUANTIFYING EACH TOXIC ELEMENT TO AT LEAST 6 MICROGRAMS OF THE TOXIC ELEMENT TO KILOGRAM OF FOOD THROUGH AN INDEPENDENT PROFICIENCY TEST BY ACHIEVING A Z-SCORE THAT IS LESS THAN OR EQUAL TO PLUS OR MINUS TWO.

(5) (6) “QR CODE” MEANS A MACHINE-READABLE CODE, CONSISTING OF AN ARRAY OF SQUARES, USED FOR STORING AN INTERNET WEBSITE IN ORDER TO ACCESS A WEBPAGE.

(7) “REPRESENTATIVE SAMPLE” MEANS A SAMPLE THAT CONSISTS OF A NUMBER OF UNITS THAT ARE DRAWN BASED ON RATIONAL CRITERIA, SUCH AS RANDOM SAMPLING, AND INTENDED TO ENSURE THAT THE SAMPLE ACCURATELY PORTRAYS THE MATERIAL BEING SAMPLED.

(6) (8) “TOXIC HEAVY METAL” MEANS ARSENIC, CADMIUM, LEAD, OR MERCURY.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ON OR AFTER JANUARY 1, 2025, A PERSON MAY NOT SELL, DISTRIBUTE, OR OFFER FOR SALE BABY FOOD IN THE STATE THAT CONTAINS TOXIC HEAVY METALS THAT EXCEED THE LIMITS ESTABLISHED BY THE U.S. FOOD AND DRUG ADMINISTRATION.

(2) A PERSON MAY SELL, DISTRIBUTE, OR OFFER FOR SALE BABY FOOD MANUFACTURED BEFORE JANUARY 1, 2026.

(B) (C) (1) BEGINNING JANUARY 1, 2025, EACH MANUFACTURER OF BABY FOOD SHALL TEST A REPRESENTATIVE SAMPLE OF EACH PRODUCTION

AGGREGATE OF THE MANUFACTURER’S FINAL BABY FOOD PRODUCT FOR EACH TOXIC HEAVY METAL ~~BEFORE PACKAGING INDIVIDUAL UNITS OF BABY FOOD FOR SALE OR DISTRIBUTION IN THE STATE.~~

(2) THE TESTING REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONDUCTED BY A PROFICIENT LABORATORY AT LEAST ONCE PER MONTH.

(3) A MANUFACTURER MAY TEST THE FINAL BABY FOOD PRODUCT IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION BEFORE PACKAGING INDIVIDUAL UNITS OF BABY FOOD FOR SALE OR DISTRIBUTION.

~~(C)~~ (D) ON THE REQUEST OF THE DEPARTMENT, A MANUFACTURER OF BABY FOOD SHALL PROVIDE THE RESULTS OF THE TESTING CONDUCTED UNDER SUBSECTION ~~(B)~~ (C) OF THIS SECTION TO AN AUTHORIZED AGENT OF THE DEPARTMENT.

~~(D)~~ (E) BEGINNING JANUARY 1, 2026, EACH MANUFACTURER OF BABY FOOD SHALL:

(1) MAKE PUBLICLY AVAILABLE ON THE MANUFACTURER’S WEBSITE FOR EACH BABY FOOD PRODUCT SOLD, MANUFACTURED, DELIVERED, HELD, OR OFFERED FOR SALE IN THE STATE:

(I) THE NAME AND LEVEL OF EACH TOXIC HEAVY METAL PRESENT IN THE FINAL BABY FOOD PRODUCT AS DETERMINED BY THE TESTING CONDUCTED UNDER SUBSECTION ~~(B)~~ (C) OF THIS SECTION; ~~AND~~

(II) SUFFICIENT INFORMATION, SUCH AS THE PRODUCT NAME, UNIVERSAL PRODUCT CODE, OR LOT OR BATCH NUMBER, TO ENABLE CONSUMERS TO IDENTIFY THE FINAL BABY FOOD PRODUCT; AND

~~(H)~~ (III) A LINK TO THE U.S. FOOD AND DRUG ADMINISTRATION’S WEBSITE THAT INCLUDES THE MOST RECENT U.S. FOOD AND DRUG ADMINISTRATION GUIDANCE AND INFORMATION ABOUT THE HEALTH EFFECTS OF THE TOXIC HEAVY METALS ON CHILDREN; AND

(2) ~~INCLUDE~~ IF THE BABY FOOD IS TESTED FOR A TOXIC HEAVY METAL SUBJECT TO AN ACTION LEVEL, REGULATORY LIMIT, OR TOLERANCE ESTABLISHED BY THE U.S. FOOD AND DRUG ADMINISTRATION UNDER 21 C.F.R. § 109, INCLUDE ON THE BABY FOOD PRODUCT LABEL;

(I) THE FOLLOWING STATEMENT: “FOR INFORMATION ABOUT TOXIC HEAVY METAL TESTING ON THIS PRODUCT, SCAN THE QUICK RESPONSE (QR) CODE.”; AND

(II) A QR CODE OR OTHER MACHINE-READABLE CODE THAT ALLOWS CONSUMERS TO ACCESS ON THE MANUFACTURER’S WEBSITE OR THE BABY FOOD PRODUCT INFORMATION PAGE:

(H) 1. THE TEST RESULTS FOR THE TOXIC HEAVY METALS;
~~**OR AND**~~

~~**(H) 2. A QR CODE OR OTHER MACHINE-READABLE CODE THAT LINKS TO A PAGE ON THE MANUFACTURER’S WEBSITE CONTAINING THE TEST RESULTS FOR THE TOXIC HEAVY METALS**~~ **LINK TO THE WEBPAGE ON THE U.S. FOOD AND DRUG ADMINISTRATION WEBSITE THAT INCLUDES THE MOST RECENT GUIDANCE AND INFORMATION ABOUT THE HEALTH EFFECTS OF THE TOXIC HEAVY METAL ON CHILDREN.**

(F) IF A CONSUMER BELIEVES, BASED ON INFORMATION GATHERED THROUGH THE USE OF THE CODE INCLUDED ON THE BABY FOOD PRODUCT LABEL UNDER SUBSECTION (E)(2) OF THIS SECTION, THAT BABY FOOD IS BEING SOLD IN THE STATE WITH TOXIC HEAVY METALS THAT EXCEED LIMITS ESTABLISHED BY THE U.S. FOOD AND DRUG ADMINISTRATION, THE CONSUMER SHALL REPORT THE BABY FOOD TO THE DEPARTMENT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, May 16, 2024.