Testimony of Jennifer Gardner
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Maryland Senate Finance Committee
Hearing on House Bill 1208

March 27, 2025

Chairwoman Beidle, members of the Senate Finance Committee, my name is Jennifer Gardner, and I am here on behalf of the National Confectioners Association and its Maryland based members. Thank you for the opportunity to participate in today's hearing. While our association supports a rigorous post-market assessment of food and color additives and a strong food safety system, House Bill 1208 would merely exacerbate a concerning precedent for state food ingredient restrictions through its proposed food and color additive prohibitions.

The National Confectioners Association (NCA) is the leading trade organization for the $48 billion U.S. confectionery industry. The NCA represents manufacturers, wholesalers, and suppliers of chocolate, candy, gum, and mints, supporting more than 7,000 jobs in Maryland through direct and indirect economic activity and providing over $472.2 million in total economic output in the State.

As heavily regulated food manufacturers with national distribution networks, our members must follow a unified federal standard operated by the Food and Drug Administration (FDA). Different laws in all 50 states would severely disrupt the economy without any notable food safety or public health benefits, posing a particular challenge to states like Maryland that rely on a strong interstate commerce system to ensure the uninterrupted follow of goods and services.

Maryland has played a valuable role in policy debates spurring supplemental federal engagement on food additive and color safety, and since similar legislation was considered last year, two of the four food additives included in House Bill 1208 have now been revoked by FDA.

On January 15, 2025, FDA revoked the authorization for the use of Red Dye 3 in food and ingested drugs, and on July 2, 2024, the FDA revoked the authorization for the use of brominated vegetable oil (BVO) in food. In addition to FDA's revocation of Red Dye 3 and BVO, both potassium bromate and propylparaben are currently under the agency's review. The FDA also undertook a substantive reorganization late last year to create a new unified Human Foods Program, enhancing the agency's focus on the post-market review of food additives and colors in the food supply.

The new federal Administration is also working to swiftly address food ingredients and recently launched a new Commission that will, in part, "assess the threat that potential over-utilization of medication, certain food ingredients, certain chemicals, and certain other exposures pose to children . . . using rigorous and transparent data, including international comparisons." This report is set to be released in just a few short months on May 24, 2025.

Supporters of state food and color additive prohibitions have alleged that FDA is not capable of keeping the nation's food supply safe, so states must act. However, recent agency actions refute this narrative.

The FDA is the rightful national regulatory decision maker and leader in food safety, and the agency can best leverage its scientific and regulatory experts to thoroughly analyze and assess ingredients to make informed decisions on ingredient safety. State policymakers play an integral role in supporting our national food safety system to maintain uniform access to safe, affordable foods in every state.

Maryland residents currently benefit from food manufacturers' nationwide distribution network that provides a safe and diverse array of products to meet customer needs and preferences. Should the state continue to pursue, and ultimately implement, varying food ingredient restrictions, product reformulations to meet diverse state mandates may not be feasible or practical. Product reformulation is complex and time intensive, and any ingredient changes must be carefully evaluated for product safety, taste, and shelf-life repercussions.

As FDA continues its work to review food ingredients on behalf of all states, state proposals to establish varying restrictions on food ingredients lead to uncertainty in the market and propels misinformation, resulting in the consideration of proposals in some states that seek to regulate colors not even in existence in the food supply and additives that only exist in the Marvel Universe. If Maryland initiates state-specific restrictions on FDA-approved ingredients this year, such an action would merely propel supplemental requests for state intervention on supplemental food colors and additives in subsequent sessions. It is crucial that states continue to allow FDA scientists, toxicologists, and regulatory experts to drive food safety determinations in the U.S.

While well-intentioned, House Bill 1208 would result in a patchwork approach to food ingredient oversight, creating duplicative regulatory structures, inflating already heightened food costs, and undermining consumer confidence in the safety of our nation's food supply. In lieu of pursuing a state specific approach that may not align with other similar state or federal initiatives, we urge you to collaboratively with FDA in their work to evaluate chemical safety and respectfully request an unfavorable report on House Bill 1208.