

Memorandum in SUPPORT

A6424A/S6055B and A9295/S8615

The 24 undersigned organizations support two important pieces of food safety legislation, A6424A/S6055B and A9295/S8615, sponsored by Assemblymember Dr. Anna Kelles and Senator Brian Kavanagh, that together will protect New Yorkers from seven unsafe food additives and promote greater transparency in food chemical safety.

For too long, the US Food and Drug Administration has failed New Yorkers. FDA is the federal agency responsible for ensuring the safety of substances added to foods both before and after they come to the market.¹ Yet, frequently, the agency takes no action to protect consumers, even when safety risks are discovered. For example, FDA itself determined in 1990 that the food dye, Red 3, causes cancer when ingested by animals, banning it from cosmetics and topically applied drugs.² While federal law prohibits human or animal carcinogens from being added to foods,³ FDA has taken no action to ban Red 3 from food in more than three decades since FDA determined it causes cancer. Several of the undersigned groups have petitioned the FDA to ban Red 3 in 2022, but the FDA has not yet ruled on this petition.⁴ Frustrated with federal inaction, consumers have turned to state lawmakers to seek stronger protections from dangerous food chemicals. A bill passed in California last year preventing the sale of foods containing Red 3, brominated vegetable oil (BVO), potassium bromate, and propylparaben in that state by 2027.⁵

New York residents also deserve protection from dangerous chemicals. That is why we are grateful that a bill now being considered in New York (A6424A/S6055B) will ban seven harmful food additives—including the four already banned in California, along with titanium dioxide (TiO₂),⁶ azodicarbonamide (ADA), and butylated hydroxyanisole (BHA)—from foods sold in New York.^{7,8} All seven of these chemicals have clear health risks. Four of them, Red 3,⁹ BHA,¹⁰ ADA,^{11,12,13,14} and potassium bromate,¹⁵ have the potential to cause cancer according to the FDA itself or other authorities, like the US National Toxicology Program and the World Health Organization. The other three, TiO₂,¹⁶ BVO,^{17,18} and propylparaben,¹⁹ are linked to other serious adverse effects, like DNA damage, heart and thyroid toxicity, and reproductive harm. Most of these seven additives are banned or heavily restricted in the European Union^{20,21} and California. These risks may be higher for those especially susceptible to toxic exposures, like children and pregnant individuals.²²

In addition to failing to ban existing food chemicals when evidence emerges of safety risks, FDA has failed to ensure new chemicals are safe before coming to market. Instead, the agency has handed the reins to food and chemical companies by expanding a loophole that allows them to secretly bypass FDA approval for new food additives.

Currently, federal laws and regulations allow food companies to add new chemicals to our foods without even notifying FDA, let alone getting FDA approval, by secretly declaring the substance is “generally recognized as safe” or GRAS based on the opinions of individuals or

panels convened and paid by the companies themselves.^{23,24} This violates basic principles of oversight and transparency and creates unnecessary opportunities for industry's clear conflicts of interest to bias food chemical safety assessments. A9295/S8615 would take the secret out of the GRAS process by requiring industry to notify the state of their GRAS determinations that have not been reviewed by FDA. This notice would include a summary of the key safety information (not including trade secrets) that would then be made publicly available by the state.^{25,26} In effect, this bill prevents industry from certifying in secret the safety of food chemicals and will enable public scrutiny of food chemical safety, the most important reform to the US food chemical approval process in decades. Those who stand to make money from the sale of food additives should not be permitted to put new chemicals in our foods with no oversight or transparency.

We thank AM Kelles and Sen. Kavanagh for these important pieces of legislation.

Signed,

Altagracia Faith and Justice Works (New York, NY)
American Senegalese Association (New York, NY)
Bronx Health REACH (New York, NY)
Citizens Campaign for the Environment (Farmingdale, NY)
Clean+Healthy (Albany, NY)
Community Food Advocates (New York, NY)
Consumer Reports (Yonkers, NY)
Earthjustice (Albany, NY)
Interfaith Public Health Network (Poughkeepsie, NY)
Methodist Federation for Social Action – NY (New York, NY)
Muslim Community Network (New York, NY)
New York Clinicians for Climate Action (Albertson, NY)
NYS American Academy of Pediatrics (Albany, NY)
The Korean Community Services of Metropolitan New York, Inc. (Bayside, NY)

Breast Cancer Prevention Partners (San Francisco, CA)
Center for Environmental Health (Oakland, CA)
Center for Food Safety (Washington, DC)
Center for Science in the Public Interest (Washington, DC)
Consumer Federation of America (Washington, DC)
Environmental Working Group (Washington, DC)
Food & Water Watch (Washington, DC)
Healthy Babies Bright Futures (Charlottesville, VA)
Life Time Foundation (Chanhassen, MN)
Mamavation (Simi Valley, CA)

References

- ¹ US Food and Drug Administration. *Food Chemical Safety*. Updated: July 12, 2023. <https://www.fda.gov/food/food-ingredients-packaging/food-chemical-safety>. Accessed: 22 February 2024.
- ² 55 Fed. Reg. 3520-01 (1 February 1990). Color Additives; Denial of Petition for Listing of FD&C Red No. 3 for Use in Cosmetics and Externally Applied Drugs; Withdrawal of Petition for Use in Cosmetics Intended for Use in the Area of the Eye.
- ³ 21 USC §§ 348(c)(3)(A), 379e(b)(5)(B)
- ⁴ Filing of Color Additive Petition from Center for Science in the Public Interest, et al.; Request to Revoke Color Additive Listing for Use of FD&C Red No. 3 in Food and Ingested Drugs. <https://www.regulations.gov/docket/FDA-2023-N-0437>.
- ⁵ The California Food Safety Act. https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB418.
- ⁶ Dairy products are exempted from this ban in New York.
- ⁷ NY Assembly Bill A6424, <https://www.nysenate.gov/legislation/bills/2023/A6424>.
- ⁸ NY Senate Bill S6055B, <https://www.nysenate.gov/node/12032438>.
- ⁹ 55 Fed. Reg. 3520-01
- ¹⁰ US National Toxicology Program. *Butylated Hydroxyanisole*. Report on Carcinogens, Fifteenth Edition. 2021. Available: <https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/profiles/butylatedhydroxyanisole.pdf>. Accessed: 13 February 2024.
- ¹¹ Azodicarbonamide breaks down into ethyl carbamate (urethane) which has carcinogenic potential according to the US NTP and the World Health Organization.
- ¹² World Health Organization. Safety evaluation of certain contaminants in food / prepared by the sixty-fourth meeting of the Joint FAO/WHO Expert Committee on Food Additives. *WHO Food Additive Series*. 2006;55. Available: <https://www.who.int/publications/i/item/9241660554>.
- ¹³ US National Toxicology Program. *Urethane*. Report on Carcinogens, Fifteenth Edition. 2021. Available: <https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/profiles/urethane.pdf>. Accessed: 14 February 2024.
- ¹⁴ International Agency for Research on Cancer, World Health Organization. Alcohol Consumption and Ethyl Carbamate. *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*. 2010;96. Available: <https://publications.iarc.fr/114>.
- ¹⁵ World Health Organization. Evaluation of Certain Food Additives and Contaminants. *WHO Technical Report Series*. 1995;859. Available: https://iris.who.int/bitstream/10665/37246/1/WHO_TRS_859.pdf.
- ¹⁶ EFSA FAF Panel (EFSA Panel on Food Additives and Flavourings), Scientific Opinion on the safety assessment of titanium dioxide (E171) as a food additive. *EFSA Journal* 2021;19(5):6585, 130 pp. <https://doi.org/10.2903/j.efsa.2021.6585>.
- ¹⁷ World Health Organization. Evaluation of Food Additives. *WHO Technical Report Series*. 1971;462. Available: https://iris.who.int/bitstream/10665/40848/1/WHO_TRS_462.pdf.
- ¹⁸ Woodling KA, Chitranshi P, Jacob CC, Loukotková L, Von Tungeln LS, Olson GR, Patton RE, Francke S, Mog SR, Felton RP, Beland FA, Zang Y, Gamboa da Costa G. Toxicological evaluation of brominated vegetable oil in Sprague Dawley rats. *Food Chem Toxicol*. 2022 Jul;165:113137. <https://doi.org/10.1016/j.fct.2022.113137>.
- ¹⁹ EFSA Panel on Food Additives and Nutrient Sources Added to Food, 2004. Opinion of the Scientific Panel on food additives, flavourings, processing aids and materials in contact with food (AFC) related to para hydroxybenzoates (E 214-219). *EFSA Journal* 2004; 2(9):83, 26 pp. <https://doi.org/10.2903/j.efsa.2004.83>.
- ²⁰ All approved food additives in the EU are listed in Annex II of the European Commission's food additive regulation. The European Commission maintains Annex II as a database, which is accessible at: https://food.ec.europa.eu/safety/food-improvement-agents/additives/database_en and searchable at <https://ec.europa.eu/food/food-feed-portal/screen/food-additives/search>. Absence from this list indicates the substance is banned from use as a food additive in the E.U.
- ²¹ REGULATION (EC) No 1333/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on food additives. Available: <https://eur-lex.europa.eu/eli/reg/2008/1333/oj>.
- ²² World Health Organization. Summary of Principles for Evaluating Health Risks in Children Associated with Exposure to Chemicals. 2011. Available: https://iris.who.int/bitstream/handle/10665/44533/9789241501170_eng.pdf.
- ²³ 81 Fed. Reg. 54,960 (17 Aug 2016). Substances Generally Recognized as Safe.
- ²⁴ U.S. Government Accountability Office. *FDA Should Strengthen Its Oversight of Food Ingredients Determined to Be Generally Recognized as Safe (GRAS)*. GAO-10-246 2010. Available: <https://www.gao.gov/products/GAO-10-246>.
- ²⁵ NY Assembly Bill A9295. <https://www.nysenate.gov/legislation/bills/2023/A9295>.
- ²⁶ NY Senate Bill S8615. <https://www.nysenate.gov/legislation/bills/2023/S8615>.