

August 5, 2024

Maryland Joins California with a Baby Food Testing and Disclosure Law¹

By: [Suzie Trigg](#), [Steven Armstrong](#), [Kristi Weisner](#)

Maryland House Bill 97, “Rudy’s Law,” will require testing and disclosure of the levels of lead, cadmium, arsenic, and mercury in baby and toddler foods after January 1, 2025.² Maryland has become the second state in the nation, after California,³ to implement Congressional recommendations that manufacturers test for toxic heavy metals in commercial baby and toddler foods and make the results publicly available. While low levels of heavy metals in baby food are often inevitable due to soil conditions, “Rudy’s Law” was named for a child who suffered lead poisoning after consuming contaminated applesauce and was introduced within weeks after the U.S. Food and Drug Administration (FDA) announced an investigation into elevated lead levels in three apple and cinnamon fruit purees for toddlers.⁴

The law is very similar to California Assembly Bill 899, a summary of which is available [here](#).

I. What are the requirements of “Rudy’s Law”?

Baby Food Testing

Rudy’s Law, which is patterned after California Assembly Bill 899, will require manufacturers, processors and packers of “baby food” to test a representative sample of each “production aggregate” of final baby food product for “toxic heavy metals,” specifically arsenic, cadmium, lead and mercury.⁵

“Baby food” is defined as “food packaged in a jar, pouch, tub, or box sold specifically for babies and children under the age of [two] years.”⁶ Infant formula, as defined in the Federal Food, Drug and Cosmetic Act (FD&C Act), is not included in the law’s definition of “baby food.”⁷

“Production aggregate” is defined in the same way California defined the term as “a quantity of product that is intended to have uniform composition, character, and quality and is produced according to a master manufacturing order.”⁸ Testing must be done at least once a month by a “proficient laboratory,” a definition that again echoes AB 899, as a laboratory that is internationally accredited and employs adequately sensitive analytical and quantification methods.⁹

Manufacturers must begin testing on January 1, 2025.¹⁰

Maryland will also specifically prohibit the sale of baby food that contains heavy metals that exceed limits established by FDA; however, such specific prohibition does not apply to baby food manufactured before January 1, 2026.¹¹ As a practical matter, it would be inadvisable to knowingly sell baby food with levels of heavy metals that exceed final FDA action levels, if established, regardless of the date set by the State of Maryland.

Disclosure of Test Results

The Maryland law also requires manufacturers of baby food to post the following information on their websites for each baby food product sold, manufactured, delivered, held or offered for sale in Maryland on or after January 1, 2026:

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- The name and level of each toxic heavy metal found in the final product upon testing;
- Sufficient information to allow consumers to identify the final product, such as the product name, universal product code, or lot or batch number; and
- A link to the FDA website that includes the agency’s most recent guidance on the health effects of toxic heavy metals in children.¹²

In addition, if the baby food is tested for a toxic heavy metal that is also subject to an FDA action level, regulatory limit, or tolerance,¹³ manufacturers must include the following on the baby food product label:

- The statement, “For information about toxic heavy metal testing on this product, scan the Quick Response (QR) code”; and
- A QR code or other machine-readable code that allows consumers to access the following information on the manufacturer’s website or on the baby food product information page:
 - Test results for the toxic heavy metals; and
 - A link to the FDA website with the most recent guidance on the effects of toxic heavy metals in children.¹⁴

FDA’s website for its “Closer to Zero” initiative provides guidance on the health effects of toxic heavy metals in children.¹⁵ FDA has set proposed action levels for lead in certain foods for toddlers in draft guidance released for public comment but is also working on proposed action levels for inorganic arsenic, cadmium and mercury as part of its “Closer to Zero” initiative.¹⁶

The Maryland law is largely silent as to enforcement but states that if a consumer believes, based on information obtained using the QR code on the label, that a baby food exceeds limits established by the FDA, the consumer must report that product to the Maryland Department of Health.¹⁷

II. Will other states or Congress follow California and Maryland?

While FDA continues to pursue its Closer to Zero initiative to develop action levels for heavy metals in foods intended for young children, there have now been multiple attempts to introduce federal legislation to better limit heavy metals in baby food. For example, the recently introduced Baby Food Safety Act of 2024 follows FDA Commissioner Robert Califf’s request during a May 2024 Appropriations hearing that Congress give FDA additional authority to require producers of baby food to test for contaminants and make data available to the Agency.¹⁸ Finally, other states may follow California and Maryland, as Pennsylvania introduced similar legislation.¹⁹

¹ Prepared by Suzie Trigg, Kristi Weisner, and Steve Armstrong as of August 5, 2024.

² [Baby Food – Toxic Heavy Metals – Testing and Labeling \(Rudy’s Law\)](#), H.B. 97, MD. GEN. ASSEMB. (2023).

³ [California Bill Requiring Baby Food Manufacturers to Test Their Product for Toxic Heavy Metals Signed Into Law](#), Al Muratsuchi, Assembly Member District 66 (Oct. 11, 2023).

⁴ Lisa Fletcher, Andrea Nejman and Larry Deal, [Maryland Lawmaker Introduces Bill To Protect Babies From Toxic Metals in Food](#), WJLA.com (updated Feb. 7, 2024).

⁵ MD. CODE ANN. § 21-330.4(C)(1).

⁶ MD. CODE ANN. § 21-330.4(A)(2)(I).

⁷ MD. CODE ANN. § 21-330.4(A)(2)(II) (citing FD&C Act § 201(z), 321 U.S.C. § 321(z)) (emphasis added).

⁸ MD. CODE ANN. § 21-330.4(A)(4); *see also* CAL. HEALTH AND SAFETY CODE § 110962(a)(5).

⁹ MD. CODE ANN. § 21-330.4(A)(5), (C)(2); *see also* CAL. HEALTH AND SAFETY CODE § 110962(a)(6), (c).

¹⁰ MD. CODE ANN. § 21-330.4(C)(1).

¹¹ MD. CODE ANN. § 21-330(B).

¹² MD. CODE ANN. § 21-330.4(E)(1).

¹³ MD. CODE ANN. § 21-330.4(E)(2); 21 CFR §§ 109.3–109.16 (authorizing FDA, under the FD&C Act, to set tolerances, limits or action levels for poisonous or harmful substances occurring in food and representing the level at which FDA would deem the food adulterated).

¹⁴ MD. CODE ANN. § 21-330.4(E)(2) (citing 21 CFR, part 109).

¹⁵ [*Closer to Zero: Reducing Childhood Exposure to Contaminants From Foods, FDA \(June 7, 2024\)*](#).

¹⁶ [*Draft Guidance for Industry: Action Levels for Lead in Food Intended for Babies and Young Children*](#), FDA, (Jan. 24, 2023); [88 Fed. Reg. 20525](#), FDA (Apr. 6, 2023).

¹⁷ MD. CODE ANN. § 21-330.4(F).

¹⁸ [*Baby Food Act of 2024, H.R. 8385*](#), 118th Cong. (2024); [*Testimony of Dr. Robert Califf, M.D., M.A.C.C., Commissioner of Food and Drugs at FDA*](#), U.S. HOUSE COMM. ON OVERSIGHT AND ACCOUNTABILITY (Apr. 11, 2024).

¹⁹ [H.B. 2535](#), Reg. Sess. (Pa. 2022).