

March 15, 2023

Honorable Jim Wood, Chair
Assembly Health Committee
California State Capitol
Sacramento, CA 95814

Re: Response to National Confectioners Association's Opposition to AB 418

Dear Chair Wood:

Please find below our response to the National Confectioners Association's (NCA) February 27, 2023 letter expressing the confectionery industry's opposition to AB 418. As you know, AB 418 would prohibit an entity from manufacturing, selling, delivering, distributing, holding, or offering for sale food products that contain five health-harming substances — brominated vegetable oil, potassium bromate, propyl paraben, FD&C Red No. 3 (Red Dye 3), and titanium dioxide by January 1, 2025.

This bill will not negatively impact the productivity of the confectionery industry.

The NCA states that the confectionery industry plays an important role in the California economy, and implies that AB 418 would generate negative economic impacts for its constituents. In reality, AB 418 would have no adverse effect on the productivity of the confectionery industry because alternatives for these additives are readily available and already used within the industry.

The two chemicals likely to be of concern to the NCA would be Red Dye 3 and titanium dioxide, which are both additives used to color confectioneries. However, many red confectioneries are colored with colorants derived from natural sources, including beetroot and red radishes. Numerous large chain grocery stores have already prohibited Red Dye 3 from products on their shelves or their store brands, and Red Dye 3 makes up [less than 1%](#) of the color additive poundage certified by FDA each year. Calcium carbonate is an [FDA-approved](#) natural colorant used in lieu of titanium dioxide, and color additive companies have begun developing [proprietary natural alternatives](#) specifically marketed as titanium dioxide replacers in light of the EU ban. Enactment of AB 418 would make sure these safer substitutes will be used in candies sold in California.

Since the EU's bans of Red Dye 3 and titanium dioxide in food are already effect, candy companies have already had to reformulate their products so that they can sell them in the

European market. Clearly, manufacturers can adjust their formulas to omit these harmful ingredients in products sold in California.

FDA safety review of food and color additives has lagged far behind EU action.

The NCA states that all of the additives in this bill have been approved by the FDA, and that the FDA has authority to prohibit food additives in light of new evidence. However, possessing the authority to update regulations in light of new evidence has not translated into FDA action and FDA food regulation has fallen far behind EU standards.

The FDA is not required to re-review allowed additives, and most of the chemicals in AB 418 have not been reviewed in many years.

- FDA allowed the use of brominated vegetable oil on an interim basis pending additional study in [1977](#), but has not updated the regulation in the 45 years since.
- FDA last reviewed propyl paraben's allowance in [1977](#).
- FDA permanently [approved](#) the use of Red Dye 3 in foods in 1969, but [banned](#) the colorant from cosmetics in 1990 after further study showed that the chemical causes cancer in rats. Unfortunately, the FDA did not subsequently ban the use of Red Dye 3 in food. The Center for Science in the Public Interest (CSPI) and several other organizations [petitioned](#) FDA to remove Red Dye 3 from its list of approved food color additives in October 2022.
- The FDA announced a planned literature review of potassium bromate in [1973](#) after approving its use in [1966](#), but it is unclear whether the review was ever completed. After CSPI petitioned FDA to ban potassium bromate in 1999, FDA [responded](#) that it "couldn't examine the issue due to 'limited availability of resources and other agency priorities'."
- The FDA last reviewed the safety of titanium dioxide in food in 2013, when it [approved](#) a color additive petition to allow the use of mica-based pigments containing titanium dioxide in distilled spirits.

Compared to the US' regulatory actions, the EU's action on food additive safety has been much more proactive. The EU has [prohibited](#) the use of Red Dye 3 in food (only allowing it to be used in candied and cocktail cherries) since at least 1994. The European Food Safety Authority (EFSA) [reviewed](#) propyl paraben in 2004, causing the European Parliament to [ban](#) its use in food in 2006. Brominated vegetable oil and potassium bromate have been [banned](#) in the EU since at least 2011, and the UK [banned](#) potassium bromate in 1990. EFSA [reviewed](#) the safety of titanium dioxide in 2021, which led to the European Commission [banning](#) its use in food in 2022.

In light of more recent studies illuminating the health risks posed by these additives, the FDA's lack of action to forbid them is a sign that states must act to protect consumers, not the opposite.

Case study: Red Dye 3

The failure of FDA to address the cancer risks associated with Red Dye 3 is particularly glaring. The NCA statement that “the FDA and the Office of Environmental Health Hazard Assessment (OEHHA) have examined the intake of synthetic colors and hyperactivity in children, but have not found a causal linkage,” is expressly false.

After conducting the most comprehensive and rigorous assessment undertaken to date, OEHHA concluded the exact opposite. In its [2021 peer-reviewed systematic review](#) of the human, animal, and in vitro evidence, OEHHA found that, “the FD&C synthetic food dyes [including Red No. 3] cause or exacerbate neurobehavioral problems in children.” In the title of the report’s [press release](#), OEHHA explicitly stated that its “Report Links Synthetic Food Dyes to Hyperactivity and other Neurobehavioral Effects in Children.” As such, a “causal linkage” between Red Dye 3 and adverse neurobehavioral effects has been clearly established and explicitly stated by OEHHA. It is misleading for NCA to state otherwise.

When the FDA concluded that Red Dye 3 causes cancer when ingested by animals and banned its use in cosmetics [over 30 years ago](#), the agency stated it would “take steps” to prohibit its use in food. To date, the agency has yet to ban or re-review the safety of Red Dye 3 as a color additive for use in food. As the FDA has [failed](#) to act on its own safety determination for 30 years, and in light of OEHHA’s recommendations to reduce exposure to these dyes in children, California should ban Red Dye 3 to protect residents from this dangerous color additive.

While the FDA possesses significant power to regulate the food additives that are sold to the public, updated scientific evidence and protective action from the EU indicate that the FDA’s pattern of inaction on these harmful chemicals is inadequate to protect consumers. Therefore, we reiterate our determined support for AB 418.

Sincerely,

Consumer Reports

Environmental Working Group

Cc: Assemblymember Jesse Gabriel
Assemblymember Buffy Wicks
Members, Assembly Health Committee
Members, Assembly Environmental Safety and Toxic Materials Committee