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March 1, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Class II Recall Limits for Heavy Metals in Spices

Dear Governor Hochul:

We wish to express our profound concerns about new Class II recall limits for heavy metals in spices previously promulgated by the New York State Departments of Agriculture & Markets ("Ag & Markets") and Health ("DOH", and together with Ag & Markets, the "Departments") during the Cuomo Administration that will take effect next year and their effect upon lives of New York residents and businesses. Spices are an integral part of a New Yorker's diet, promote healthy living practices, and serve as a critical component for common cuisines found throughout New York State's vibrant immigrant communities. Over \$550 million worth of spices are imported annually through New York ports and \$400 million of spices are sold in this state each year. The Dietary Guidelines for Americans denote that "spices and herbs can help flavor foods when reducing added sugar, saturated fat, and sodium, and they also can add to the enjoyment of nutrient-dense foods, dishes, and meals that reflect specific cultures." Now our ethnic and immigrant communities, as well as New York large and small businesses, face a potential economic and personal crisis as the implementation of the new class II recall action limits for heavy metals in spices will effectively ban a variety of commonly used spices from New York State. This is an unacceptable situation but one that can be easily remedied by your administration. As you have with other ill-conceived Cuomo policies, your administration should withdraw the proposed new recall action limits and have the Departments work with members of the spice industry and other interested parties to develop accurate and feasible standards for certain recall limits on spices.

Due to a variety of unavoidable factors such as environmental exposure or natural concentration of heavy metals in the Earth's crust, trace amounts of lead and other heavy metals are found in spices. In 2016, New York State established a Class II recall limit for heavy metals in spices at 1.0 part per million (ppm). This standard was and remains the most stringent standard in the US, below other state, federal, and global limits. This limit has been effective, as it has resulted in over 100 recalls of certain spice products in New York State, thus providing real health protections for our constituents. It has also spurred the spice industry to take a number of steps and practices to reduce heavy metals in spices. This said, the levels of lead and other heavy metals in spices are typically lower than 1.0 ppm. In fact, it is clear that the 1.0-ppm level works and spices are meeting the current recall action limits. We have been advised that the spice industry has considered the potential of further reductions and has concluded that, for a wide range of reasons, that a further reduction below 1.0 ppm is not feasible.

Despite these facts and the work done to date, the Cuomo administration took unilateral actions to reduce the action limits even further earlier this year. In May 2021, the Departments radically revised the limits

so that the new Class II recall limit for lead and inorganic arsenic will be .21 ppm and .26 ppm for cadmium. While we appreciate the intent of protecting New Yorkers' health, there are significant questions as to the scientific support for this measure and the approach undertaken by the state agencies to establish these new recall action limits. For instance, the Departments limited its evaluation to only eight spices in its analysis, two of which, dried bell pepper and sesame seeds, are, in fact, not actually considered to be spices under the U.S. Food and Drug Administration definition. Moreover, the Departments excluded many other common spices from their analysis. Further, the method used by the Departments to evaluate consumption of spices assumed that every consumer of spices eats every single spice, every single day. If a more standard definition of spices and proper consumption analysis were used, it would have resulted in the establishment of a limit higher than .21, perhaps even higher than the current 1.0-ppm limit. These are but a few examples of flaws in the agencies' methodology for creating the new class II recall limit. It is clear that the approach undertaken by the Departments is incorrect and dramatically overestimates risk. As such, a withdrawal of the new limits is warranted.

Further, these erroneously developed new Class II action recall limits will result in an effective ban on spices in New York State. According to the Department's own faulty calculations, when this new recall action limit is implemented, nearly half of the current supply of all spices in New York State will not meet the new action limit. We understand the actual impact would be much more significant. We have been advised that 95% of ginger, 86% of cinnamon, 79% of oregano, and nearly half of the basil and turmeric and many other popular spices currently available in New York State will not be able to meet the new limit. This new limit is simply not achievable for these common spices.


The existing Class II recall action limit of 1.0 ppm, established merely five (5) years ago, is already safe and protective of New Yorkers, particularly children. Spices represent less than 0.001% of total food intake. The 1.0-ppm standard has led to spices contributing less than 0.01% of dietary lead exposure in children. This is in contrast to grains, fruits, and dairy, which contribute 27.5%, 24.7%, and 16.8% to children's dietary lead exposure, respectively. Moreover, New York State's action limits on all other food products, which are consumed in much higher quantities than spices, are also five times higher than the new spice recall limits. Focusing on spices as the way to reduce lead and heavy metals in New Yorkers' diet does not seem to be the most effective way of accomplishing a goal of reducing heavy metals in foods.

Implementation of a measure that essentially bans the legal sale of certain spices will have significant and severe consequences for New York State. This will be devastating to New York restaurants, bakeries, packaged foods manufacturers, and retailers from mega supermarkets and neighborhood food stores, all of whom continue to reel from COVID-19 economic loss and inflationary pressure. These businesses will be unable to source the spices they need to prepare certain foods because the products will not meet the action limits. Moreover, residents throughout New York State will be severely impacted by these new limits, particularly certain ethnic and immigrant communities that utilize daily certain types of spices as a staple for their cuisines. Spices are an important part of diet and ethnic cuisines and the inability for residents to obtain spices such as cinnamon, ginger, oregano, basil, and/or turmeric will have substantial consequences on these constituents' nutritional and health needs. While these new action limits are not scheduled to take effect until sometime in 2023, the realities of supply chains and other business planning considerations mean that changes will start to affect spice companies immediately. Thus, action by your administration must be taken now.

It is both clear that the new Class II limits were developed using questionable data that are neither achievable nor feasible. Moving forward with these new limits will only result in an effective ban on spices that are critical to our business and constituents. The establishment of these lower limits will not make New Yorkers any safer given the high levels of heavy metals tolerated in more consumed foods and drinking water. Governor Hochul, make no mistake, these proposed new action limits hurt New York

residents and small businesses, rather than protecting them. Worse yet, these new rules will have a disparate effect on certain immigrant communities in New York State, which runs counter to the policies and programs supported by your administration. We certainly need to protect New Yorkers from high levels of lead in food, water, and other consumables. However, doing so at the expense of our immigrant and ethnic communities as well as our small businesses is not the answer. The best and only course of action for New York State at this point is to withdraw this Cuomo-era action and work with interested parties to develop a realistic and feasible standard. We look to your leadership on this issue and appreciate any efforts to roll back these unfair, unattainable, and unrealistic limits.

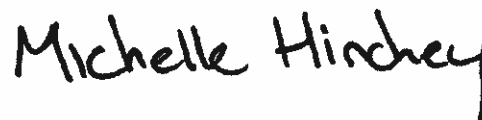
Sincerely,



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Senator – 23rd District



Jeremy Cooney
Senator – 56th District



Michelle Hinchey
Senator – 46th District



Kevin Thomas
Senator – 6th District