

September 9, 2024

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce

The Honorable Brett Guthrie
Chair
Subcommittee on Health

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Health

Dear Chair McMorris Rodgers, Ranking Member Pallone, Chair Guthrie, and Ranking Member Eshoo,

We, the undersigned organizations, urge you to work in a bipartisan manner to address pressing food safety issues related to FDA's partnership with state, local, territorial, and tribal (SLTT) food safety agencies by supporting the Federal and State Food Safety Information Sharing Act of 2024.

As evidenced by recent food safety crises related to infant formula and applesauce and the actions being taken to reorganize the FDA's Human Foods Program, a strong food safety system is vital to the health and well-being of Americans across the country. The Federal and State Food Safety Information Sharing Act would give SLTT food safety agencies, including laboratories, the tools needed to protect food safety while ensuring that limited federal and state food inspection dollars are well-spent.

SLTT food safety agencies, including laboratories, continually collaborate with FDA while conducting food processing, produce, and retail inspections. They also perform key roles in identifying potential illness outbreaks, investigating illnesses, and effectuating product removals through recalls. Further, FDA often requests the use of state authority to expedite product recalls, such as those recently announced for applesauce pouches contaminated with heavy metals.

Information sharing is critical to the success of this work. Historically, SLTT agencies have enjoyed a good working relationship with FDA and frequently collaborated in the best interest of public health. However, in recent years, FDA's Office of the Chief Counsel has altered its interpretation of the Federal Food, Drug & Cosmetic Act (FFDCA). As a result, state authorities have been asked by FDA to conduct important food safety investigations, only to have critical details necessary to conduct the investigation redacted. State officials have also been asked to take immediate regulatory action at facilities based on the FDA inspections but were not provided sufficient information to pursue needed actions under state law.

Prior to FDA's recent determination that the *FFDCA* restricted information sharing, FDA and the states collaborated in ways that made the best use of limited resources while reducing the burden on regulated industry. For example, states would share inspection information on concurrent jurisdiction facilities with FDA, and FDA would do the same. This prevented a state from inspecting a facility that had just been inspected by the FDA and vice versa. Now, states must file Freedom of Information Act requests to gain access to these routine inspection reports.

A modification to the FFDCA that would permit the FDA to share important information with state and local regulatory agencies was listed as an urgent recommendation for Congress to consider in the Reagan-

Udall Foundation's evaluation of the foods program. This change would allow public health authorities to take action needed to prevent foodborne illnesses, which cause an estimated 46 million Americans to be sickened, resulting in lost productivity and medical costs estimated to be as high as \$90 billion annually.

This bill would also lengthen the terms of cooperative agreements. SLTT food safety organizations use cooperative agreements to carry out essential prevention-focused food safety functions, including inspections, training, and education initiatives. The length of these agreements, currently limited to three years, detracts from their effectiveness and creates unnecessary burdens for both state and local agencies and FDA, which must review and approve the applications. FDA has submitted proposals to HHS for inclusion in the budget for multiple years, but this issue has not risen to the level of importance for inclusion in the budget policy recommendations. Five years is the typical duration allowed under most of FDA's authority for cooperative agreements and grants.

Agencies have increasingly found that by the time a cooperative agreement has been executed, it is time to begin the lengthy process of reapplying. In addition, it's hard to attract and retain talented staff to implement these cooperative agreements when there is so much uncertainty. Further, maintaining staff funded by cooperative agreements is only exacerbated by the shortened three-year duration.

Lengthening the term of cooperative agreements from three to five years would allow more continuity and provide the agency with more data as they seek to evaluate the effectiveness of each individual cooperative agreement while improving the cooperative agreements as a whole.

Thank you for your consideration of this important legislation and for your leadership.

Sincerely,

Austin Therrell, Executive Director, Association of American Feed Control Officials (AAFCO)

Steven Mandernach, Executive Director, Association of Food and Drug Officials (AFDO)

Peter Kyriacopoulos, Chief Policy Officer, Association of Public Health Laboratories (APHL)

Joseph M. Kanter, MD, MPH, CEO, Association of State and Territorial Health Officials (ASTHO)

Sarah Sorscher, Director of Regulatory Affairs, Center for Science in the Public Interest (CSPI)

David McSwane, Executive Director, Conference for Food Protection (CFP)

Sarah Gallo, Vice President of Product Policy, Consumer Brands Association (CBA)

Thomas Gremillion, Director of Food Policy, Consumer Federation of America (CFA)

Brian Ronholm, Director of Food Policy, Consumer Reports

Hilary Thesmar, PhD, RD, CFS, Chief Science Officer, FMI - The Food Industry Association

Catherine Burns, CEO, International Fresh Produce Association (IFPA)

Roberta Wagner, Senior Vice President of Regulatory and Scientific Affairs, International Dairy Foods Association (IDFA)

Keith Skiles, Executive Director, Interstate Shellfish Sanitation Conference (ISSC)

Chelsea Gridley-Smith, PhD, Director of Environmental Health, National Association of County and City Health Officials (NACCHO)

Ted McKinney, CEO, National Association of State Departments of Agriculture (NASDA)

David Dyjack, DrPH, CIH, Executive Director, National Environmental Health Association (NEHA)

Dana Brooks, President and CEO, Pet Food Institute

Mitzi D. Baum, CEO, Stop Foodborne Illness

De Ann Davis, PhD, Senior Vice President, Science, Western Growers