

SAFE FOOD COALITION

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The Honorable Mike Johnson
Speaker
U.S. House of Representatives
The Capitol
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
U.S. Senate
The Capitol
Washington, DC 20510

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
The Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
The Capitol
Washington, DC 20510

The Honorable Kay Granger
Chairwoman
House Committee on Appropriations
H-307 The Capitol 1036
Washington, DC 20515

The Honorable Rosa DeLauro
Ranking Member
House Committee on Appropriations
Longworth House Office Building
Washington, DC 20515

The Honorable Patty Murray
Chairwoman
Senate Committee on Appropriations
S-128, The Capitol
Washington, DC 20510

The Honorable Susan Collins
Vice Chair
Senate Committee on Appropriations
S-128, The Capitol
Washington, DC 20510

June 25, 2024

Re: U.S. Food and Drug Administration Traceability Rule to Promote Food Safety by Facilitating Faster and More Effective Recalls and Foodborne Illness Outbreak Investigations

Dear Speaker Johnson, Majority Leader Schumer, Minority Leader Jeffries and Minority Leader McConnell:

The undersigned members of the Safe Food Coalition urge you to vote against legislation that would delay implementation of FDA's final rule on Requirements for Additional Traceability Records for Certain Foods (Food Traceability Final Rule). This final rule is currently scheduled to go into effect January 20, 2026. This compliance date gives industry ample time to prepare and represents an already long overdue enactment of the Food Safety Modernization Act (FSMA). FSMA passed with broad bipartisan Congressional support nearly a decade and a half ago, in 2010.

FSMA directed FDA to propose recordkeeping requirements for certain "high risk" foods no later than January 2013. When FDA failed to propose those requirements, Safe Food Coalition member Center for Food Safety sued the agency, leading to a federal court order mandating that the agency

propose requirements by September 2020, and finalize the rulemaking process by November 2022.¹ The agency complied with that order, announcing a final rule that requires food manufacturers, processors, packers and retailers to maintain records containing certain “Key Data Elements,” including lot codes, associated with specified “Critical Tracking Events” for designated foods. Parties subject to the rule must be able to report the required information to FDA within 24 hours, thereby facilitating more effective foodborne illness outbreak investigations.²

The rule aligns with the best practices followed by members of industry. Already, as the compliance date approaches, companies have made significant progress in tracking and recording data for food traceability purposes, improving on the current system that limits traceability capabilities to “one step forward and one step back,” with little specificity. Larger food retailers have indicated that they expect suppliers to comply with the rule well ahead of FDA’s compliance date. For example, Kroger has announced that it will require all its food suppliers—not just those supplying the “high risk” foods on FDA’s Food Traceability List—to adopt new traceability protocols by June 30, 2025, six months prior to FDA’s compliance deadline.³

Some of the regulated industry, however, seeks to undermine FDA’s traceability rule by exempting lot code information. A group representing large food retailers— FMI, the Food Industry Association—has pushed for legislation in the House titled the *Food Traceability Enhancement Act* (H.R. 7563).⁴ This title is misleading. The *Food Traceability Evisceration Act* more accurately describes the legislation, which would effectively gut FDA’s rule by allowing retailers to discard critical lot code information that has been carefully developed and maintained by suppliers subject to the rule. FMI argues that the rule will be costly and is not needed, but many suppliers have already adopted traceability requirements, and as noted above, leading retailers are already moving to comply. Moreover, lot codes lie at the core of FDA’s ability to trace and solve outbreaks, and exempting retailers—the final link in the supply chain—from maintaining such information will effectively lay waste to efforts by FDA, produce growers, and other producers and manufacturers of foods covered by the rule. Removing retailers from this core requirement sets FDA back to square one in solving outbreaks—forcing the agency to muddle through confusing and inconsistent records that have hampered the agency’s investigations up to now.

Lot codes—required under the final rule to be captured at point of service, including retail establishments and restaurants—are critical to solving outbreaks. With more than half of all estimated foodborne illness outbreaks in the U.S. associated with food from restaurants, linking illnesses to the specific foods purchased at retail or consumed at restaurants is critical to conducting tracebacks with speed, accuracy, and specificity during outbreak investigations. Without lot codes, the outbreak investigation process would continue to falter, with consumers exposed to contaminated foods for too long. In addition, when outbreaks are unsolved, FDA must issue overly broad consumer advisories, such

¹ Kimbrell, G., & Talbott, R. (2019, June 11). Taking Foodborne Illness Off the Menu. Center for Food Safety. <https://www.centerforfoodsafety.org/blog/5622/taking-foodborne-illness-off-the-menu>

² FSMA Final Rule on Requirements for Additional Traceability Records for Certain Foods. (2024, April 17). U.S. Food and Drug Administration; FDA. <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-requirements-additional-traceability-records-certain-foods>

³ Letter from Stuart Aitken and Gabriel Arreaga to Kroger suppliers RE: The Kroger Co Food Traceability Policy & Requirements (December 1, 2023). <https://edi.kroger.com/EDIPortal/documents/Maps/kroger-modernized-systems/Food%20Traceability%20Requirements.pdf>

⁴ FMI Applauds Introduction of Legislation to Address Challenges with FDA’s Food Traceability Rule. (2024, March 6). The Food Industry Association. <https://www.fmi.org/newsroom/news-archive/view/2024/03/06/fmi-applauds-introduction-of-legislation-to-address-challenges-with-fda-s-food-traceability-rule>

as the advisory not to consume *any* romaine lettuce following a deadly outbreak in 2018, instead of restricting its advisory to affected lots. Such notices harm food producers whose products would otherwise remain unaffected, create food waste, and depress consumer confidence in otherwise healthy and nutritious foods.

Another effort to undermine FDA’s traceability rule has appeared as a poison pill rider in this year’s House Appropriations Committee appropriations package. A provision in the Fiscal Year 2025 bill for the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Subcommittee, would put the FDA’s 2026 implementation date on hold by demanding that the agency conduct additional traceability pilots, including a pilot that will require the agency to “successfully” solve outbreaks without using lot codes.⁵ Notably, the bill provides the FDA with no new funding for such pilots, and indeed, effectively cuts agency resources by flat-funding FDA at FY24 levels, with no appropriations to increase staff salaries and address other rising costs. Like the *Food Traceability Evisceration Act*, the appropriations rider evinces an intent to indefinitely delay the traceability rule by exempting lot code information, the rule’s core element.

Such delays are unnecessary. FDA has already conducted traceability pilots in partnership with industry and the Institute of Food Technology (IFT) shortly after FSMA was passed, as detailed in an August 2012 report.⁶ The appropriations rider would require FDA to “measure the effectiveness of foodborne illness outbreak investigations conducted without requiring tracing to a single lot code,” demanding that such pilots be “successful” before implementing the rule. But while simple outbreaks may lend themselves to that task, challenging cases will not. In other words, the appropriations rider contemplates a pilot that would constrain the FDA to develop a cherry-picked example, which in turn would build the case against a rule that FDA has already demonstrated is necessary to improve outbreak investigations. The end result would be to hamper implementation of the traceability rule and waste taxpayer money.

Consumers have had to wait too long for FDA to put into place the traceability requirements that Congress ordered it to promulgate in 2010. We urge you to oppose the FTEA and Section 768 of the House appropriations bill. Both legislative actions undermine longstanding Congressional efforts to bring more transparency to the food supply chain and protect consumers from foodborne illness.

Sincerely,

Center for Food Safety
Center for Science in the Public Interest
Consumer Federation of America
Consumer Reports
Food & Water Watch
Government Accountability Project
National Consumers League

⁵ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2025, Sec. 768, 118th Cong. <https://appropriations.house.gov/news/press-releases/committee-releases-fy25-agriculture-rural-development-food-and-drug>

⁶ Food Traceability. (n.d.). Institute of Food Technologists. Retrieved June 18, 2024, from <https://www.ift.org/policy-and-advocacy/advocacy-toolkits/food-traceability>