SAFE FOOD COALITION

1620 I Street, NW, Suite 200, Washington, DC 20006 202-939-1010

The Honorable Steven Guthrie
Chair, Subcommittee on Health
Energy and Commerce Committee
U.S. House of Representatives
The Capitol
Washington, DC 20515

The Honorable Anna Georges Eshoo
Ranking Member, Subcommittee on Health
Energy and Commerce Committee
U.S. House of Representatives
The Capitol
Washington, DC 20515

September 9, 2024

Re: FDA Food Safety Priorities

Dear Reps. Guthrie and Eshoo:

The undersigned members of the Safe Food Coalition appreciate the opportunity to share our views ahead of the upcoming legislative hearing of the House Energy and Commerce Committee's Subcommittee on Health titled "Evaluating FDA Human Foods and Tobacco Programs." We write to express our support for legislative proposals that will enable the U.S. Food and Drug Administration (FDA) to conduct remote inspections, better protect consumers from contaminated infant formula, and share information with state regulatory partners. At the same time, we urge you to oppose legislation that would delay implementation of FDA's final rule on Requirements for Additional Traceability Records for Certain Foods (Food Traceability Final Rule).

As we wrote before to Congressional leaders, H.R. 7563, the inaccurately titled "Food Traceability Enhancement Act of 2024"[1] (Rep. Franklin) would needlessly delay an important food safety protection for consumers.[2] FDA's final rule on traceability 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), which passed with broad bipartisan Congressional support nearly a decade and a half ago, in 2010.[3] H.R. 7563 would derail years of work at FDA and among food manufacturers, processors, packers and retailers to formulate a workable recordkeeping system to quickly trace foods implicated in a foodborne illness outbreak. The bill would send FDA on a quixotic journey to devise and pilot test a new traceability regime that abandons lot codes, the keystone data element under the final rule, and substitutes some as yet undefined variable. In doing so, the bill would all but assure a continuation of the costly and deadly delays that have hampered too many of FDA's foodborne illness outbreak investigations up to now.[4]

[1] https://d1dth6e84htgma.cloudfront.net/H_R_7563_Food_Traceability_Enhancement_Act_Franklin_9ad5403550.pdf

[2] https://consumerfed.org/press_release/food-safety-advocates-oppose-house-appropriations-rider-that-would-scuttle-fda-traceability-rule/

[3] https://url.us.m.mimecastprotect.com/s/yEZ6CDkJmYiXrzBi5hBCjeUUp?domain=consumerfed.org

[4] 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

In addition to opposing H.R. 7563, we urge you to support H.R. 6770, Improving Newborns' Food and Nutrition Testing Safety (INFANTS) Act of 2023 (Reps. Sykes, Pallone, Cardenas),[5] and H.R. 9443, Federal and State Food Safety Information Sharing Act of 2024 (Rep. Ross).[6] Both of these bills address important gaps in FDA's authority to address food safety threats to consumers.

H.R. 6770 would allow FDA to prevent a repeat of the disastrous events leading up to the closure of Abbott Laboratories' Sturgis, Michigan facility, and of the subsequent infant formula shortage. As FDA has explained, inability to remotely request records delayed the agency's response to complaints about adulterated products from Abbott Laboratories. H.R. 6770 would give the agency authority to make those requests. Additionally, the bill would require infant formula manufacturers to proactively report positive test results for pathogens like *Cronobacter sakazakii* within 24 hours, helping the agency to prioritize its inspection resources and address contamination problems when they first arise.

H.R. 9443 would give FDA needed authority to share information with its regulatory partners. Under the current law, FDA cannot share critical inspection and enforcement information with state regulatory partners out of concern that doing so will compromise confidentiality protections under federal law because the states may subsequently make the shared data public under state sunshine laws. This has led to absurd results. Following FDA inspections, state regulators have reportedly received requests from the agency for assistance with enforcement actions against an out-of-compliance facility, only to find that the FDA inspection data accompanying the request is so heavily redacted that they cannot determine the basis for an enforcement action, and so must duplicate work already undertaken by FDA.[7] To overcome this information sharing barrier, limited preemption of state and local "sunshine" laws, sufficient to prevent the disclosure of confidential federal documents, is appropriate.

Thank you for consideration of these requests. If you have questions please contact Thomas Gremillion, Director of Food Policy at Consumer Federation of America, by phone: 202-939-1010 or email: tgremillion@consumerfed.org.

Sincerely,

Center for Food Safety
Center for Science in the Public Interest
Consumer Federation of America
Consumer Reports
Food & Water Watch
Government Accountability Project
Institute for Food Safety and Nutrition Security
Stop Foodborne Illness

[5] https://d1dth6e84htgma.cloudfront.net/H_R_6770_INFANTS_Act_of_2023_Sykes_902937b48a.pdf
[6] https://d1dth6e84htgma.cloudfront.net/H_R_9443_Federal_and_State_Food_Safety_Information_Sharing_Act_of_2024_Ross_fcf60a3d4c.pdf
[7] https://consumerfed.org/wp-content/uploads/2023/04/Safe-Food-Coalition-Letter-to-Congress-re-FDA-food-safety-authorities-request-4-11-23.pdf