

May 17, 2023

The Honorable Cathy McMorris Rodgers
Chairwoman
Committee on Energy and Commerce

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce

The Honorable Kay Granger
Chairwoman
Committee on Appropriations

The Honorable Rosa DeLauro
Ranking Member
Committee on Appropriations

Dear Chairwoman McMorris Rodgers, Chairwoman Granger, Ranking Member Pallone, and Ranking Member DeLauro,

We, the undersigned organizations, urge you to work in a bipartisan manner to address several pressing food safety issues this year. The infant formula crisis and the Reagan-Udall Foundation's Operational Evaluation of the FDA Human Foods program have led FDA to propose a restructuring of the human foods program. While many of the proposed changes will strengthen the FDA's ability to ensure the safety of our food supply, there are several actions Congress can take to modernize the human foods program and bring clarity and certainty to the agency's budget.

For example, state and local food safety agencies frequently 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 and removals, closures, embargoes, and similar actions.

Information sharing is critical to the success of this work. Historically, state and local agencies have enjoyed a good working relationship with FDA in this respect, frequently collaborating in the best interest of public health. However, in recent years, interpretations of the Federal Food, Drug & Cosmetic Act (FFDCA) by FDA's Chief Counsel have hindered this collaboration. 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 FDA inspections, but were not provided sufficient information to pursue needed actions under state law.

A modification to the FFDCA that would permit FDA to share important, proprietary 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.

Another step Congress should take to improve the efficacy of the FDA's work and realize the goals of the Food Safety Modernization Act (FSMA) is to lengthen the terms of cooperative agreements. State and local food safety organizations use cooperative agreements to carry out essential food safety functions, including inspections and 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, who must review and approve the applications.

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.

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.

Lastly, given the important work performed by state and local food safety agencies, it is vital that they have the budgetary certainty needed to do their jobs effectively. While increased funding since the passage of FSMA has significantly enhanced state and local agencies' capacity to fulfill their food safety mission, too often, FDA uses funds meant for state and local agencies to pursue other priorities. Cuts to several domestic inspections and last-minute shifts in budget resources make long-term planning and resource management difficult for state and local agencies. A consistent and predictable funding mechanism is needed.

We urge you to include a line item detailing specific funding for state and local food safety issues in your budget allocation for FDA to ensure they have the budgetary certainty needed to carry out their work.

Thank you for your consideration of these requests and for your leadership,

Steven Mandernach, Executive Director, Association of Food and Drug Officials

Donna Garren, Executive Vice President, Science and Policy, American Frozen Food Institute

Jeffrey O. Ekoma, MBA, MS, Association of State and Territorial Health Officials

Roberta Wagner, Vice President, Regulatory and Technical Affairs, Consumer Brands Association

Thomas Gremillion, Director of Food Policy, Consumer Federation of America

Brian Ronholm, Director of Food Policy, Consumer Reports

Ashley Eisenbeiser, Senior Director, Food and Product Safety Programs, FMI – The Food Industry Association

Robert Guenther, Chief Public Policy Officer, International Fresh Produce Association

Ted McKinney, Chief Executive Officer, National Association of State Departments of Agriculture

Doug Farquhar, Director of Government Affairs, National Environmental Health Association

Mitzi D. Baum, M.Sc. Chief Executive Officer, STOP Foodborne Illness

DeAnn Davis, PhD, Senior Vice President, Science, Western Growers