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BEFORE THE SECRETARY OF AGRICULTURE
UNITED STATES DEPARTMENT OF AGRICULTURE

PETITION TO RESTART THE MICROBIOLOGICAL DATA PROGRAM

Submitted by William D. Marler
November __, 2026

William D. Marler ("Petitioner") respectfully petitions the Secretary of Agriculture to restart the Microbiological Data Program (MDP), the national program that tested fresh produce for foodborne pathogens from 2001 until its funding ended on December 31, 2012. The Agricultural Marketing Service (AMS) ran the MDP under authority the Department still holds. Restarting it requires a decision and a budget line, not an act of Congress.

This petition is submitted under the right to petition the government guaranteed by the First Amendment to the United States Constitution, under 5 U.S.C. 553(e) and 7 C.F.R. 1.28 to the extent any action requested requires rulemaking, and with reference to 5 U.S.C. 555(b) and (e).

I. PETITIONER

Petitioner is an attorney who has represented victims of foodborne illness for more than thirty years, including families in nearly every major produce-related outbreak in that time. He is the managing partner of Marler Clark, Inc., PS, and publisher of *Food Safety News*. He submits this petition in his individual capacity, in the interest of the people who eat fresh produce and the growers who raise it.

II. ACTION REQUESTED

Petitioner respectfully requests that the Secretary:

1. **Restart the MDP in fiscal year 2027** under the Agricultural Marketing Act of 1946, using available funds and the existing Pesticide Data Program (PDP) infrastructure, with any reprogramming notice the Committees on Appropriations require. If full funding is not yet available, begin with a pilot in the states whose laboratories ran the original program.
2. **Request full funding in the President's fiscal year 2028 budget**, at no less than the program's original level of about $6.2 million and preferably at the level needed for the program described in Part IV.

3. **Design the restarted program** with the features set out in Part IV, including whole-genome sequencing of every isolate and an end to blind sampling.
4. **Locate and preserve the MDP's records and culture collection**, and sequence surviving isolates so they can be compared with clinical isolates in public databases.
5. **Respond to this petition in writing** within a reasonable time.

III. STATEMENT OF GROUNDS

A. What the MDP was

AMS built the MDP in 2001 on the statistical design of the Pesticide Data Program, with sampling plans drawn up by the National Agricultural Statistics Service. It sampled produce at terminal markets and distribution centers, weighted by state population and the volume moving through each site, so that its results supported national estimates. State agriculture laboratories did the testing under cooperative agreements, beginning with California, Colorado, Florida, Maryland, Michigan, New York, Ohio, Texas, Washington and Wisconsin. Minnesota later joined. (Exs. 1–2.)

The program tested roughly 10,000 to 15,000 samples a year, and more than 111,000 from 2002 through 2012 alone. About a quarter were imported. It tested produce Americans eat raw, including cilantro, parsley, spinach, lettuce, sprouts, hot peppers, tomatoes, cantaloupe and green onions, for *Salmonella*, *Listeria monocytogenes*, *E. coli* O157:H7, other Shiga toxin-producing *E. coli* (STEC), enterotoxigenic *E. coli* and Shigella. By the time it closed, it accounted for about 80 percent of federal pathogen testing of fresh produce. (Ex. 5.)

The MDP's history belongs to both parties. AMS described it as part of the Presidential Food Safety Initiative launched in 1997. A Republican Congress funded it in the fiscal year 2001 agriculture appropriations act, Pub. L. 106–387. Sampling began in April 2001, and the Bush administration ran the program for eight years. It ended when the fiscal year 2013 budget request dropped it.

B. It found what makes people sick, and it led to recalls

From 2009 through 2012, the MDP found *Salmonella* 111 times, *E. coli* O157:H7 twice, other STEC 82 times and *Listeria* 12 times. Those findings led to 38 recalls. Forty-four of its *Salmonella* isolates, both O157:H7 isolates and nine of the twelve *Listeria* isolates matched isolates from sick people.

FDA and AMS scientists who analyzed the MDP's data documented strains of real concern. Of 132 STEC strains from produce that they characterized, 105 of them from the MDP, about 9 percent carried the eae gene associated with severe illness, including O157:H7 and O26:H11, and three were O113:H21, a type that has caused hemolytic uremic syndrome. (Ex. 6.) A *Salmonella*

Cubana strain the MDP found in California sprouts in 2008 matched the strain in a 2011 sprout recall, which suggests it survived in seed for three years. (Ex. 5.)

In July 2012, a New York MDP laboratory found *Listeria* in Burch Farms cantaloupe. The recall grew to about 188,000 melons, and no illnesses were reported. That was eleven months after *Listeria* in Jensen Farms cantaloupe sickened 147 people and killed 33.

C. Nothing has replaced it

In 2016, the FDA and AMS scientists who reviewed the MDP's decade of *Salmonella* data wrote that low prevalence still matters, because produce is grown in volume, shipped widely and eaten raw, and that monitoring must continue elsewhere. (Ex. 5.) It has not. FDA's sampling assignments are valuable but episodic. Its first large-scale survey of fresh basil, cilantro and parsley ran from 2017 to 2021 and tested 1,383 samples, about what the MDP tested every six weeks. The results were released in 2024.

Produce outbreaks have continued. *Salmonella* in imported cucumbers began sickening people within weeks of the MDP's shutdown in 2013, and imported cucumbers sickened 907 people and killed six in 2015. In 2026, an outbreak of cyclosporiasis linked to imported iceberg lettuce sickened more than 12,000 people and killed two, in a summer when CDC counted 19,595 confirmed cases of cyclosporiasis.

D. FDA wants this data

The Department would not be acting alone. In September 2026, Dr. Donna Garren, director of FDA's Office of Produce Safety, told the National Association of State Departments of Agriculture that FDA should bring back a national approach to microbiological data on produce, similar to the MDP. Because the Department already has the authority and the state laboratory network to run the program, a USDA restart with prompt data sharing would give FDA that data without waiting for new FDA appropriations.

E. Good data protects growers as well as consumers

In 2008, consumers were warned about tomatoes during a *Salmonella* Saintpaul outbreak that sickened more than 1,400 people. The source turned out to be jalapeño and serrano peppers from Mexico. The tomato industry's losses were estimated at $100 million, and growers spent years in court trying to recover them. When the only evidence is epidemiology, the wrong commodity can be blamed, and the right one can dispute the finding for months. Years of baseline data on which commodities carry which strains, with grower and packer records attached, help investigators rule products in and out. Growers who follow good practices have every reason to want that data to exist.

F. The tools are better, and the cost is small

When the MDP closed, laboratories compared strains by pulsed-field gel electrophoresis. Today whole-genome sequencing links a produce isolate to sick people with far greater precision, and the traceability lot codes required under section 204 of the FDA Food Safety Modernization Act will make a positive sample traceable to its source. Each sample is worth more than it was in 2012. The MDP's annual budget was about $4.5 to $6 million. Medical bills for just 46 families in the 2011 cantaloupe outbreak exceeded $15 million.

Restarting the MDP also fits the Administration's Make America Healthy Again agenda. Healthy eating means more fresh fruits and vegetables, and Americans should be able to trust that what they buy is safe to eat raw.

IV. HOW THE RESTARTED PROGRAM SHOULD WORK

Petitioner requests that the restarted program include the following features, each within the Department's existing authority:

- **Statistical design.** Statistically valid sampling plans developed with NASS and in consultation with CDC and FDA, at distribution centers, terminal markets and other points near the consumer, with imported produce sampled at least in proportion to its share of the market. At full funding, at least 15,000 samples a year.
- **Commodities that follow the outbreaks.** Selection reviewed at least every two years based on outbreak data, starting with leafy greens, fresh herbs, cucumbers, peppers, tomatoes, melons and sprouts.
- **Pathogens.** *Salmonella*, *Listeria monocytogenes* and STEC, including O157:H7, in every commodity, with *Cyclospora cayetanensis* added for leafy greens and herbs using FDA's validated molecular methods.
- **Sequencing and resistance testing.** Whole-genome sequencing of every isolate, with sequences submitted to the National Center for Biotechnology Information and PulseNet within seven days, and antimicrobial resistance testing reported to NARMS. Samples that screen positive but are not confirmed should be retained for further testing.
- **No blind sampling.** Record for each sample the brand, lot, traceability lot code, country of origin and, where available, the grower, packer and distributor.
- **Notification.** Notify FDA, CDC and affected states within 24 hours of a presumptive or confirmed positive, and promptly notify the firms involved.
- **Public results.** Publish aggregate results at least quarterly, and publish the product, brand, lot and firms behind each confirmed positive.

- **Surge capacity.** Redirect or add sampling at the request of CDC or FDA during an outbreak, as the MDP did when it tested 1,336 extra samples during the 2008 Saintpaul outbreak.
- **Shared infrastructure.** Use the PDP's sampling sites, state cooperative agreements and collectors without reducing PDP funding.

V. LEGAL AUTHORITY

The Department needs no new statute. AMS conducted the MDP under the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq., as it stated in the Federal Register when it announced the program's second public meeting. 67 Fed. Reg. 65777 (Oct. 28, 2002) (Ex. 4). That Act directs the Department to carry out research, data collection and marketing services that improve the marketing and quality of agricultural products. The same authority supports the Pesticide Data Program, which AMS has run continuously since 1991.

Blind sampling is not required by law. In 2002, AMS told commenters that "congressional language" called for a "blind survey," and it stripped grower, packer and distributor names from its sample forms. (Ex. 3.) That language accompanied a single year's appropriation more than two decades ago. To Petitioner's knowledge, no statute requires the Department to blind its samples today.

Nor does federal law prevent publication of the firms behind confirmed positives. Test results generated by the Department's own laboratories, from samples it collects in commerce, are not information "obtained from a person" within the meaning of FOIA Exemption 4, 5 U.S.C. 552(b)(4). See *Board of Trade v. Commodity Futures Trading Commission*, 627 F.2d 392 (D.C. Cir. 1980); *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427 (2019). Brand names and lot codes printed on packages moving through commerce are not confidential. Once a result leads to a recall, the firm's identity is public in any event.

VI. CONCLUSION

For a few million dollars a year, the MDP gave the country its only national, statistically sound picture of pathogens in fresh produce. It found contamination before people got sick, it led to recalls, and its data have outlived the program by more than a decade. The Department has the authority and the infrastructure to bring it back. Petitioner respectfully asks the Secretary to do so.

EXHIBITS

Ex. 1 USDA AMS, "Microbiological Data Program" (program objectives, legislative authority, funding and workload data), January 2001.

Ex. 2 USDA AMS, "Microbiological Data Program (MDP): An Overview of MDP Principles and Objectives," June 20, 2001.

Ex. 3 USDA AMS, Science and Technology Programs, "Responses to Public Meeting Questions Regarding the Microbiological Data Program," March 28, 2002.

Ex. 4 USDA AMS, "Microbiological Data Program; Public Meeting," 67 Fed. Reg. 65777 (Oct. 28, 2002).

Ex. 5 Reddy, Wang, Adams & Feng, "Prevalence and Characteristics of *Salmonella* Serotypes Isolated from Fresh Produce Marketed in the United States," *J. Food Prot.* 79:6–16 (2016).

Ex. 6 Feng & Reddy, "Prevalences of Shiga Toxin Subtypes and Selected Other Virulence Factors among Shiga-Toxigenic *Escherichia coli* Strains Isolated from Fresh Produce," *Appl. Environ. Microbiol.* 79:6917–6923 (2013).

Respectfully submitted,

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