# Project 2027

## A Working Agenda for American Food

## Known Problems, Known Solutions — Bold and Doable

*Draft for comment. Circulated for feedback to the food safety, public health, consumer, labor, industry and nutrition community.*

Bill Marler, Marler Clark. Revised (again) November 26, 2026. Comments by November 30 – v22

**Stronger together.** This paper has now gone to well over a hundred people and organizations. Many of them are working on agendas of their own, some of which this paper covers and some of which it does not, and all of that is welcome. But thirty-three years of this work have taught me one thing about how it usually goes: each organization works its own contacts, inside its own silo, on its own piece. The point of Project 2027 is to try the other way. Whether the subject is bacteria, antibiotic resistance, the chemicals in the food supply, or the chronic disease that follows what we eat, we are asking the same agencies and the same committees for the same thing, which is a food system that does not make people sick. Our voices are stronger together than separate. Keep your own agenda; nobody is asked to give anything up. The ask is only that, where this paper and yours say the same thing, we say it at the same time, to the same people, with each other's names on it. This paper has no owner, and the measure of its success is how much of it ends up in other people's documents.

**Summary.**

This is a draft agenda for 2027, circulated for comment: thirty-six specific things that would make American food safer and can be done within a year by people who already exist. It is meant to become a joint document. Nobody is asked to sign anything yet. The request at this stage is priorities, corrections and cuts, and signatures come later, item by item, which is more honest than unanimity and harder to dismiss.

The case for it is in the government's own numbers. Foodborne illness costs this country $74.7 billion a year by USDA's estimate, and CDC reported this spring that not one of the pathogens it tracks declined against the 2016 to 2018 baseline. In 2025 the government cut that surveillance from eight pathogens to two, withdrew a poultry standard three years in the making, froze its own traceability rule by rider and eliminated the Justice Department branch that prosecuted food cases. In 2026 the country had the largest cyclosporiasis season in its history, 20,996 laboratory-confirmed cases by CDC's count as of October 23, 12,883 of them in one outbreak traced to iceberg lettuce, a year after the government dropped that parasite from the surveillance network that measures whether anything is working. The chronic disease numbers are larger still: heart disease and stroke killed more than 850,000 Americans in 2024, diagnosed diabetes cost $413 billion in 2022, and roughly ninety cents of every health care dollar goes to chronic and mental health conditions. The two halves of this community have every reason to work together and have spent a decade not doing so.

The agenda has seven parts. Congress: kill the traceability rider, pass the infant formula bill, set a federal floor for heavy metals in baby food, move the front-of-package labeling bill and the two school meals bills, require premarket approval for food chemicals, defeat the preemption clause, make federal and state inspection information run both directions, protect plant workers who report what they see, close the sesame loophole, let FDA sample the operations next to the growing fields, send an inspector when an outbreak points at a plant, create an independent board to investigate the worst outbreaks, set an inspection floor for the commodities that keep making people sick, and put produce pathogen testing back, this time in statute. The agencies, needing no new law: enforcement of the one *Salmonella* standard FSIS already has for poultry, and a broader one, the proposed line-speed rules not finalized as written, a GRAS rule with a consequence in it, a final front-of-package label, a definition of ultra-processed food that can carry weight, surveillance and produce testing restored, a registry of long-term outcomes, answers to three pending petitions, an end to routine antibiotics in the feed and water of animals that are not sick, the names of companies in outbreaks, findable records, who prosecutes food crimes, imported food inspected and counted, the national strategy GAO has asked for since 2017, and warning labels on the two foods the agency has warned about for decades without ever putting the warning on the package. Seven citizen petitions, drafted and still taking comments before any of them is filed, that carry seven of those asks without waiting for anyone, each now paired with the bill that would do the same thing if the agency will not. Money. The states, where most of this is winnable. Industry, which does not have to wait. Chronic disease, diet and ultra-processed food, at the same weight as everything before it. And ten hearings, with the witnesses who should be in them.

**A commitment on chronic disease, not a courtesy to it.** I have spent thirty years on bacteria and viruses, and this paper shows it. It should not be read as treating chronic disease as somebody else's problem. Diet-related disease is where most of the sickness, most of the deaths and most of the money are, and heart disease and stroke alone killed more Americans in 2024 than foodborne illness has killed in all the years since Jack in the Box. This version makes four commitments rather than gestures. The chronic disease items carry the same weight as the pathogen items in the priorities and in the hearing requests. The chronic side gets a first item of its own among the four at the front: the letter in item 16 asking FDA and OMB to release their response to David Kessler's petition, which this project will draft and carry. This project will file a comment on the federal definition of ultra-processed food the week it publishes. If the text matches what the Wall Street Journal reported on November 25, that comment will say that a definition limited to research, and kept out of state law and the courtroom, fails the test in item 28. And every item that serves both halves, food chemicals, preemption, school food and Food is Medicine, is written so that neither half has to choose.

**The people who work in the food system, and the people who live beside it.** Five items in this paper rest on one idea, and it should be said once in one place: the conditions of the people who grow, pack, process and serve food, and of the people who live next to where it is produced, are pathogen prevention. A food worker without paid sick leave comes to work sick (item 24). A plant worker who cannot safely report what she sees does not report it (item 8). A line-speed rule is a worker safety question and an inspection question at once (item 11). A feeding operation next to a growing field is a

question for the people who live and work beside it as well as for the people who eat the lettuce (item 31). And antibiotics fed to animals that are not sick breed resistance that reaches farm workers and their neighbors as well as the people who eat the meat (item 36). None of these is a new item. They are named together here because the food safety argument and the worker and community argument are the same argument, and each is stronger when both are made.

**The four that come first.**

The question that matters most about a document like this one is whether thirty-six items is a platform or a campaign. A platform tells every organization that its issue is in there, which is how you get signatures. A campaign tells Congress what you actually want, which is how you get a hearing. The answer here is to be both, and the way to hold both is to say plainly which items come first and leave the rest as the record of what this community is carrying.

Judged by this paper's own three tests, four come first. **Item 1, the traceability rider,** because it is the only item on the list with a deadline inside the next month and because losing it costs a decade of work. **Item 13, surveillance,** because every other number in this paper is unmeasurable without it, and because one organization has already committed staff time to it. **Item 17, naming the companies in outbreaks,** because the Justice Department said in writing on October 26 that FDA has the authority to write the rule, the cost to the government is zero, and every organization on these charts can sign a letter asking for it. The surveillance item is written as two asks, the laboratories first; it stays in the four because the laboratory half is the half nobody disputes. The fourth, the Kessler letter in item 16, is on chronic disease and is set out two paragraphs below.

One more is deliberately held. Item 10, Salmonella in poultry, is the highest priority for some of the people who know FSIS best, and others who know it as well forecast that nothing will happen at the agency. That is not settled, and it is not assumed here. The item now leads with a smaller ask than the one in dispute: enforce the determination FSIS already made for breaded stuffed chicken, which passes all three of this paper's tests on its own. If the answer is the statutory route, the item moves to Part One and into this list. A citizen petition to FSIS, still taking comments and listed with the others after item 16, now asks for the second route in that item, a 1 CFU/g determination for comminuted poultry and chicken parts, and for the enforcement route alongside it.

**The fourth is on chronic disease.** Judged by the same three tests, the Kessler letter in item 16 passes them more easily than anything else in this paper. It is specific: release the response. It has a vehicle: a petition with a docket number, FDA-2025-P-3071, whose statutory clock ran out long ago, and an interim response of February 10, 2026 that answered nothing. And somebody is already pushing it: two organizations have said they will sign. The Secretary said on camera that the agency would act, and it has not. It costs the government nothing, it can start this week, and it is the one place in this paper where the acute and chronic sides of this community are asking the same office for the same thing. Naming it here is deliberate. A paper that leads with three pathogen items and puts chronic disease at the back is telling the nutrition side of this community what it thinks

of their work, and that is not what I think. Item 29, front-of-package labeling, which has the furthest-travelled vehicle in Part Six, is next in line. There is another reading, and it is recorded here: the letter is useful, but it is not a holistic approach to ultra-processed food, and support for pushing it is not yet wide. The holistic work is the definition, the label and the procurement standard in Part Six. The letter is named here because it can start this week, not because it outranks them.

**What changed on November 3.** The voters gave the Democratic Party the majority in both chambers of the 120th Congress, which takes office at noon on January 3, 2027. Every gavel this paper addresses changes hands with it: Energy and Commerce, HELP, both Agriculture committees and both appropriations subcommittees. Three things follow. The House leadership's September planning memorandum, described near the front of this paper, is now the working agenda of the incoming majority, so this paper goes through its sixteen food items one by one and says where each can be made better. The lame duck has about five legislative weeks and a government funding deadline of December 11, and three things in this paper can be finished inside it: no version of the traceability rider in whatever passes on December 11, the House passing the Senate's unanimous infant formula bill with the testing language it lacks, and the information-sharing bill the HELP Committee reported 22 to 0. And everything that does not finish dies on January 3 and has to be reintroduced, which is now an opportunity rather than a chore.

**What else is in this paper.** The seven petitions are folded in as they now stand; none has been filed, all are still taking comments, and beside each one is the legislation that would do the same thing, so that a member who would rather write a law than wait for an agency has the text. Bringing back the Microbiological Data Program, the produce testing program USDA ran from 2001 to 2012, is now a drafted bill, the Produce Pathogen Surveillance Act, and it is in item 14. And infant formula has a faster vehicle than the one this paper has been pushing: the Senate passed S. 272 without objection in April, and it has been sitting at the Speaker's desk since May.

The paper also says where this community will not agree, and whose paper this should be, because that decides what the next draft can contain. The last page is a calendar of every date in it. Comments to bmarler@marlerclark.com. What comes back by November 30 goes into a shorter draft, recirculated in December. This version is not yet that shorter, renumbered draft; it is the last working draft before it. And I would like to settle that draft in a room rather than by email: on Friday, January 15, 2027, once the new Congress is seated, I will host a working meeting in Washington for the people reading this paper, at a neutral venue, with a way to join remotely.

### Where to find things.

One line per item, with the page it starts on. Each line is a link in the Word file; the page numbers refresh when the document is opened or printed, or by selecting all and pressing F9. The numbers out of sequence (31 to 37) were added during the comment period; 1 to 30 are locked until the renumbered draft.

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## What this is.

This is a draft. It is not a manifesto, and it is not my agenda; it is a first attempt at ours, written down in one place so that people who have spent their careers on these questions can tell me what is wrong with it.

The reason for writing it now is that we are about to lose a decade of work, item by item, to people who understand something we have been slow to admit: none of this is protected. A traceability rule can be frozen in a rider nobody read. A surveillance system

built over thirty years can be cut in half in a budget line. An adulterant standard three years in the making can be withdrawn in a single Federal Register notice, and the one that survived can be suspended by another. Each of those happened in the last twenty-four months, and each of them happened while we were fighting the last one.

The other reason is that the case for doing something is no longer theoretical. This summer the country had the largest cyclosporiasis season in its history a year after the surveillance network that measures whether anything is working had dropped that parasite from its list. Nobody has to argue about whether the gaps matter anymore. We can point at them.

What I am asking for is specific, and it is at the end of this paper: priorities, corrections, what is missing and what should come out. If enough of that comes back, the next version is not a lawyer's memo. It is a shorter joint document that this community can decide, in January, whether to put its names on.

A word about scope. I have tried to be comprehensive, which means I have almost certainly missed things and have probably asked for too much. Thirty-six items is not a program anyone finishes in a year. The point of the length is to give this community one document to cut from rather than thirty-six positions to reconcile, and I would rather be told which twelve matter than be told the list is long. Pare it back. That is what the comment period is for, and it has already taken one item out.

**One challenge to the premise, and the honest answer.**

One challenge accepts that acute foodborne illness is solvable and says the ceiling on all of it is low. Roughly 1,400 deaths a year in a country of 330 million is, on this view, already a very small number, and driving it to zero, or even halving it, will not happen inside the FDA paradigm no matter how completely FSMA is implemented. It would take a different model. That is a challenge to the theory of this document rather than to any item in it, and it deserves an answer rather than a footnote.

The answer is not to concede it and not to ignore it. What this paper is, and all it claims to be, is a list of things achievable in one Congress and one budget cycle, chosen because they are winnable. It is not a claim that winning all thirty-six transforms the system. If the structural argument is right, it is right on a horizon this paper does not cover, and the two are not in competition: nothing on this list forecloses a structural fight, and no structural fight is worth losing the traceability rule this fall to have.

Two things about the number itself. It is close to CDC's 2011 estimate of 1,351 deaths a year from known pathogens; the 3,000 in the next section adds the illnesses with no identified cause. It is also a floor rather than a measurement. Publicity in an outbreak drives sick people to seek testing, which is another way of saying that the routine count is set by who happens to get a stool test and who happens to be able to pay for one. This summer proved it: 20,996 confirmed cases is the number of people who got a stool test that found a parasite, in a year when the network that measures the trend had stopped looking for it, and nobody thinks it is the number of people who were sick. And deaths are the wrong denominator for the argument anyway. Ninety-six percent of the people who got listeriosis in the last FoodNet year were hospitalized. Forty-six children in a

catchment covering fifteen percent of the country developed hemolytic uremic syndrome in a single year, twenty-four of them under the age of five. A ten-year-old on dialysis for nine days does not appear in the 1,400.

**What the status quo costs, every year, before anything changes.**

Any agenda has to answer the question of why it is worth anyone's time. The honest answer is that the bill for doing nothing is paid annually, in full, by people who never see it itemized. These are the numbers I would put in front of a member of Congress, and every one of them comes from the government's own accounting.

**The illnesses.** CDC's standing estimate is that contaminated food causes about 48 million illnesses, 128,000 hospitalizations and 3,000 deaths in the United States every year. In April 2025 the agency published updated estimates for seven major pathogens, finding 9.9 million domestically acquired illnesses from six of them, 53,300 hospitalizations and 931 deaths. The two figures are not a before and after; they measure different things, and GAO said so plainly when it reviewed both. What matters for this paper is that nobody claims the burden is falling.

**The trend.** This is the part that should end the argument. FoodNet published its 2024 surveillance data in April 2026 and reported, in its own summary language, that infections either increased or were similar to the 2016 to 2018 reference period. Not one pathogen went down. In a catchment covering about fifteen percent of the country, FoodNet counted 24,624 infections, 6,746 hospitalizations and 178 deaths in a single year. The five most common *Salmonella* serotypes are the same five they have been since 2010.

| Pathogen | 2024 incidence per 100,000, all infections including travel-associated | Against the 2016 to 2018 reference period |
|---|---|---|
| *Salmonella* | 18.0 | Similar. No progress in six years. |
| STEC | 7.1 | Increased |
| *Shigella* | 7.9 | Increased |
| *Yersinia* | 3.5 | Increased |
| *Vibrio* | 1.4 | Increased |
| *Cyclospora* | 1.4 | Increased |
| *Listeria* | 0.4 | Similar, and 96 percent of those infections are hospitalized |

| Pathogen | 2024 incidence per 100,000, all infections including travel-associated | Against the 2016 to 2018 reference period |
|---|---|---|
| *Campylobacter* | Not calculated | A reporting change in 2024 makes it non-comparable |

Two figures from the same report deserve to be read out loud in a hearing. Forty-six children in that catchment developed hemolytic uremic syndrome in 2023, twenty-four of them under the age of five. And 96 percent of the people who got listeriosis were hospitalized, with one in seven of them dying.

**The money.** USDA's Economic Research Service now puts the annual cost of foodborne illness in this country at $74.7 billion in 2023 dollars, covering 31 known pathogens and the unspecified agents. Nontyphoidal *Salmonella* alone accounts for about $17 billion of it. The distribution is the useful part: the serious illnesses are 20 percent of the cases and 60 percent of the cost, which is the economic case for prevention aimed at severity rather than at counts. In the study behind the estimate, deaths account for 56 percent of the mean cost and chronic outcomes for about 31 percent. And the number is deliberately conservative. It includes medical treatment, lost productivity and the value of preventing death. It excludes pain and suffering entirely, and it excludes what outbreaks cost the industry. And the long-term consequences, the kidney damage, the reactive arthritis, the autoimmune and neurological conditions that follow some of these infections, are in the model only where the research was judged strong enough to count them, which is the argument of item 15.

**What it costs industry, which nobody in this community says often enough.** A recall is the cheapest part. One lettuce recall this summer covered 236,192 cases of product. Growers in Salinas plowed crops under while the outbreak was open. Two companies in the last decade have paid criminal penalties in food cases of $19.35 million and $25 million, and one of the largest deli brands in the country closed a plant after a listeriosis outbreak. My own firm has recovered more than $850 million for clients over thirty years, every dollar of it paid by a company, and not one of those dollars bought anybody a new kidney. And the demand effect is the one the produce industry understands best: when the government cannot say which lot was contaminated, it has to warn people off a whole commodity, and consumption of that commodity falls and does not fully come back. There is no version of this where the industry saves money by keeping the system broken. One more cost, which falls on growers: when imported produce is overseen badly, the recurring outbreaks are charged to the domestic growers who share the commodity's name on the shelf, which is a reason the produce industry should want item 20 as much as anyone.

**The cost of chronic disease.** Set the acute numbers beside the chronic ones and the scale changes entirely. Six in ten American adults live with a chronic disease and roughly ninety cents of every health care dollar in this country goes to chronic and mental health conditions. Heart disease and stroke killed more than 850,000 Americans in 2024 and

cost, by CDC's accounting, $223.2 billion in care and another $191.5 billion in lost productivity. Diagnosed diabetes cost $413 billion in 2022. Obesity affects 40 percent of adults and 21 percent of children and costs the health system nearly $173 billion a year. CDC reported in 2025 that about 62 percent of children's calories and 53 percent of adults' calories come from ultra-processed foods.

I am not going to pretend the causal share attributable to any single dietary factor is settled, because it is not, and the people on the nutrition side of this community argue about it in good faith. What is not in dispute is the size of the bill or the direction of travel. And the comparison is the reason the two halves of this room need each other. The foodborne number is a rounding error against the chronic number, which is where the political weight and the public attention now sit. The chronic side has that weight and has surveillance and statutory authority of its own, but not the kind food safety has spent fifty years building: an adulteration standard, a recall, an inspector in the plant, and outbreak surveillance that ties an illness to a product. Neither half is winning alone, and we have spent a decade proving it.

**Why now. What has happened since the start of 2025.**

I have put this in date order rather than in order of outrage, because the sequence is the argument. Read down the left column and the pattern is unmistakable: capacity was removed first, and the consequences arrived on schedule.

**2025**

| When | What happened |
|---|---|
| January 2025 | FDA proposes a front-of-package nutrition label for saturated fat, sodium and added sugars. It is still not final. GAO reports FDA missed its foreign and domestic inspection targets every year from 2018 through 2023, and OMB says it has no plans for the national food safety strategy GAO recommended in 2017. |
| February 2025 | Thirteen organizations petition FDA to make its lead action levels for baby food binding. FDA had finalized the levels as guidance on January 6, 2025; the petition asks for enforceable limits, and it is the petition response that is still pending. |
| February 3, 2025 | The Expanded Food Safety Investigation Act is reintroduced as S. 376 and H.R. 852, to let FDA take samples on concentrated animal feeding operations during an outbreak investigation. No hearing follows. |
| March 2025 | HHS directs FDA to close the self-affirmed GRAS pathway. FDA announces it will delay the FSMA 204 traceability compliance date by thirty months. |

| When | What happened |
|---|---|
| Spring 2025 | HHS reduces its workforce by roughly 20,000 positions. FDA suspends its proficiency testing program for milk and dairy laboratories. |
| April 11, 2025 | FSIS moves the start of *Salmonella* testing for raw breaded stuffed chicken, declared adulterated at 1 CFU/g in May 2024, from May 1 to November 3, 2025. |
| April 25, 2025 | FSIS withdraws the *Salmonella* framework for raw poultry after 7,089 comments, three years into its development. |
| July 1, 2025 | FoodNet drops from eight pathogens to two, ending active, population-based surveillance in its ten sites for *Campylobacter*, *Cyclospora*, *Listeria*, *Shigella*, *Vibrio* and *Yersinia*. National case reporting for all six continues through the notifiable disease system and, for *Listeria*, the *Listeria* Initiative; what is lost is the measured trend. |
| July 2025 | FDA and USDA open a joint request for information on how to define ultra-processed food, docket FDA-2025-N-1793. |
| July 15, 2025 | USDA announces its own food safety plan, built on partnership rather than standards. |
| July 24, 2025 | USDA announces a department-wide reorganization that will move most of its Washington workforce to five regional hubs and, over a period of years, close the Beltsville Agricultural Research Center, home of the Agricultural Research Service's food safety laboratory. |
| August 2025 | David Kessler petitions FDA on ultra-processed food, docket FDA-2025-P-3071. |
| August 7, 2025 | FDA formally proposes moving traceability compliance to July 20, 2028. |
| September 30, 2025 | The Justice Department eliminates the Consumer Protection Branch, which prosecuted food cases. |
| September 2025 | California passes AB 1264, creating a statutory definition of ultra-processed food and requiring removal of the foods of concern from school meals. |
| October 23, 2025 | Consumer, medical and nutrition organizations file a joint comment asking the government to define ultra-processed food for regulatory purposes. |

| When | What happened |
|---|---|
| October 2025 | Major food and beverage companies launch a coalition asking Congress to make FDA both the floor and the ceiling of food regulation. |
| November 7, 2025 | A former FDA deputy commissioner, writing after a *Listeria* outbreak in prepackaged pasta meals, proposes an independent National Foodborne Outbreak Investigation Board modeled on the National Transportation Safety Board. |
| November 2025 | An infant botulism outbreak is linked to powdered formula. The shutdown ends with Section 780 in the appropriations law, barring FDA from spending a dollar on its traceability rule before July 2028 and prodding it to loosen lot-level tracking. |
| November 2025 | Consumer and academic groups ask Congress for a fifty percent increase, about $36 million, for CDC's food safety program. |
| December 2, 2025 | FSIS delays that testing indefinitely, citing test-method limitations, and sets no new date. The standard stays on the books with nobody checking for it. |
| December 10, 2025 | The Federal Food Administration Act is reintroduced, H.R. 6567 in the House and a Senate companion, to move FDA's food functions into a separate agency inside HHS. |

**2026**

| When | What happened |
|---|---|
| January 2026 | HHS and USDA publish the 2025-2030 Dietary Guidelines, seven pages against the previous 149, and explicit for the first time about limiting highly processed foods. |
| January 14, 2026 | FSIS holds a public meeting on practical strategies for *Salmonella* in poultry. A consumer organization asks it there to reverse the breaded stuffed chicken delay. Comments close in March. No proposal follows. |
| January 15, 2026 | The Senate HELP Committee reports S. 272, the Protect Infant Formula from Contamination Act, 22 to 0. |
| February 4, 2026 | A consumer organization petitions FDA to name every company linked to an outbreak, whether or not a recall follows. Still pending; FDA’s interim response of July 28 said the names are protected by the Trade Secrets Act. |

| When | What happened |
|---|---|
| February 10, 2026 | FDA sends a procedural interim response on the Kessler petition. Five days later the Secretary says on camera that FDA will act on it. Nothing since. |
| February 19, 2026 | FSIS proposes raising poultry line speeds to 175 birds a minute for young chickens and 60 for turkeys, and removing the annual worker safety attestation. |
| March 2026 | H.R. 7867, the Infant Formula Safety Modernization Act, is introduced. A consumer organization publishes a second round of infant formula testing. |
| April 22, 2026 | H.R. 8430, the Federal and State Food Safety Information Sharing Act, is introduced by Representatives Ross and Rulli and referred to Energy and Commerce. |
| April 22 and 29, 2026 | The FRESH Act discussion draft appears with a clause superseding any and all state requirements relating to food. Energy and Commerce hears twenty-eight food bills in a single afternoon. |
| April 23, 2026 | USDA announces that the Agricultural Research Service will begin decommissioning the Beltsville Agricultural Research Center and spread its programs across twenty-seven cities. By the Congressional Research Service's count, USDA's workforce has fallen from about 91,000 to about 71,000 since the start of fiscal 2025. |
| April 28, 2026 | The Senate passes S. 272 by unanimous consent. It is received in the House on May 4 and held at the Speaker's desk. |
| May 2026 | Healthy Eating Research publishes an expert-panel report recommending a policy definition of ultra-processed food built on Nova Category 4 and a marker-ingredient test. |
| May to August 2026 | The largest *Cyclospora* season in American history, with 12,883 of its cases in the iceberg lettuce outbreak, which closed September 11. CDC's season count stood at 18,445 laboratory-confirmed cases on September 1 and at 20,996, with 1,161 hospitalizations and two deaths, by October 23, against 1,180 in the same months of 2025. |
| June 4, 2026 | The House passes the fiscal 2027 Agriculture and FDA bill by 213 to 210. The Senate has not acted. |
| June 11, 2026 | A consumer organization asks the Under Secretary for Food Safety, in writing, for the validation data behind FSIS's two opposite positions on the breaded stuffed chicken test method. |

| When | What happened |
|---|---|
| June 16, 2026 | Sixty-five organizations petition FDA to withdraw approval for preventive antibiotic use in food animals. |
| June and July 2026 | Four more infants are hospitalized with botulism, traced to formula made with the same two suppliers as the 2025 outbreak. One of them had given FDA an incomplete customer list the year before. |
| July 14 to 28, 2026 | The Making America's Food Safer Act, S. 4974, is introduced by Senator Tuberville with Senator Cassidy, reported by the HELP Committee 22 to 0 on July 22 and placed on the Senate calendar on July 28. It carries the information-sharing text of H.R. 8430, authority for FDA to destroy a refused import rather than let it be re-exported and tried again, and an expanded third-party certification program. The House bill on destruction of imports, H.R. 2715, is placed on the suspension calendar the same week. |
| August 10 and 11, 2026 | HHS sends the first federal definition of ultra-processed food to the White House for review. FDA proposes mandatory GRAS notification, which is not approval and would bind no one until roughly 2029. |
| August 12, 2026 | Eleven consumer, public health and labor organizations ask the four congressional leaders to rescind Section 780, the traceability rider. |
| August 18 and 19, 2026 | FDA holds a two-day public meeting on *Listeria*. FSIS, which regulates the deli meat, does not participate. |
| August 25, 2026 | Harvard's Food Law and Policy Clinic reports that the FRESH Act preemption clause reaches allergen disclosure, heavy metal limits, restaurant inspection, cottage food laws and state licensure. |
| August 27, 2026 | CDC and FDA confirm by whole genome sequencing that the ByHeart and Nara formula outbreaks were one contamination, reaching two brands through one supply of organic whole milk powder. Fifty-two infants in all. |
| September 1, 2026 | The Democratic caucus's Cost-of-Living Healthcare Working Group sends Leader Jeffries an eighty-four-page memorandum on healthcare action for the 120th Congress. Three of this paper's Part One bills are on its first-100-hours and first-100-days lists. None of its acute-illness items are. |

| When | What happened |
|---|---|
| September 2, 2026 | A continuing resolution funds the government at fiscal 2026 levels through December 11. There is no full-year Agriculture and FDA bill. |
| September 4, 2026 | Two executive orders on beef. One directs USDA to review its authority for mandatory country-of-origin labeling and to step up Packers and Stockyards enforcement. The other directs FSIS to expand the programs that let state-inspected meat cross state lines, to build a one-stop shop for small processors, and to modernize meat inspection by removing requirements that do not advance essential food safety needs, with a report due in sixty days. It is the first instruction of this administration aimed at the inspection regulations themselves. |
| September 2026 | FDA's own investigations table carries seventeen open outbreak investigations. Several name no food at all, and most have had no on-site inspection. |
| October 7 to November 4, 2026 | FDA names ready-to-eat chicken wraps as the vehicle in a fifty-person *E. coli* O157:H7 outbreak it is investigating with FSIS, says the product was proactively removed before the link was confirmed, and names no brand, no plant and no state. The public learns the brand on October 15 from a lawsuit. FSIS confirms the retailer on October 23 in an email to a newspaper. FDA declares the outbreak over on October 28 and on November 4 confirms the wrap as the likely source, still naming no one. |
| October 9, 2026 | FDA issues a final rule permitting salt substitutes in standardized foods whose standards of identity specify salt, which gives manufacturers of those foods a way to lower sodium. |
| October 26, 2026 | The Justice Department's Office of Legal Counsel tells HHS in an eight-page opinion that FDA's current regulations generally do not authorize it to disclose supply chain information in an outbreak, and that FDA has the authority under 21 U.S.C. 375(b) to amend those regulations to permit disclosure where there is imminent danger to health. |
| October 29, 2026 | FDA proposes the first update to infant formula nutrient requirements in nearly thirty years, the first of three planned rules. None of the three, as announced, requires testing for the organism behind the two botulism outbreaks. |
| October 29 to November 6, 2026 | The seven citizen petitions drafted from this agenda reach their current drafts. None has been filed; all are still taking comments. |

| When | What happened |
|---|---|
| November 3, 2026 | Midterm elections. Democrats win the majority in both chambers of the 120th Congress, which convenes January 3, 2027. |
| November 19, 2026 | The American Journal of Public Health publishes online an editorial, “US Ultraprocessed Food Policy: Finding Common Ground,” by the two co-chairs of the Healthy Eating Research panel and two colleagues. It asks advocates, policymakers and researchers to unite behind the panel’s operational definition and five policies rather than wait for full scientific agreement. |
| November 25, 2026 | The Wall Street Journal reports that the White House is moving ahead with the proposed federal definition of ultra-processed food, stalled since before the midterms, with release and a comment period expected soon. As reported, the definition would be for research purposes only and would not be used for state laws or regulations or in lawsuits. |

Two things stand out when the lists are put side by side. The first is that almost nothing on the 2025 list required Congress. Most of it was done by notice, by budget line, or by reorganization, which means most of it can be undone the same way. The second is that the 2026 list contains more openings than it does defeats: a mandatory GRAS proposal that is open for comment, a poultry docket that FSIS reopened itself, three petitions awaiting answers, a preemption bill that is still only a draft, and an appropriations cycle that is unfinished. This is not a year for a wake. It is a year with an unusual number of unlocked doors. A third thing stands out now that the list is longer: the Senate moved a food safety bill 22 to 0 in July, which is the kind of thing that is supposed to be impossible this year, and it did so on the least glamorous item in this paper.

**The three tests.**

Every item below has to pass all three, and I have left out things I care about that failed one of them.

One, it is specific enough that a named person can act on it. Two, it has a vehicle, which is to say a bill, a docket, an appropriations line, a legislative session, a professional conference, or a purchase order. Three, somebody is already pushing it, so joining costs less than founding.

One calendar fact organizes everything. The 119th Congress ends in January 2027 and every bill number in this paper dies with it, so reintroduction is the first task rather than an afterthought. The money moves faster still: fiscal year 2027 begins on October 1, 2026.

**Two tracks, and which one carries the next two years.**

There is a strong argument for putting the states first in this paper, because that is where this community's energy should go, at least until 2029. It describes the political arithmetic honestly. A state legislature meets in January and passes bills by spring. Six states wrote baby food testing laws while Congress wrote none, and California wrote a statutory definition of ultra-processed food while the federal one was still inside a request for information.

The arithmetic of the system itself makes the same case. By the 2025 resource survey of the state regulators' association, state agencies performed 1,079,309 food inspections in 2024, investigated 47,420 complaints, took 40,170 enforcement actions and ran 622,938 laboratory analyses, 32,682 of them whole genome sequences. FDA inspects a high-risk facility once every three years; many states are in the same facilities several times a year, and a state can embargo or seize a product and close a facility on the day a hazard appears. Most food safety work in this country is state and local work, and a national agenda that forgets it is describing the smaller part of the system.

The federal items stay in front of this document for a different reason, which is that they are the ones that fix the system rather than one state's shelf, and because the reintroduction calendar is January whether or not anyone is ready for it. The two tracks are also connected: state laws are what drive federal action. But the two tracks run at different speeds and should be resourced that way. Through the 2027 and 2028 sessions, the work most likely to be won is in Part Four. The federal items in Part One are being set up now so that they are ready when a Congress that can move them arrives, and the election has made it likelier that the one arriving on January 3 can. The appropriations items in Part Three cannot wait for either, because money is annual.

I have not reordered the parts of this paper, and the reason is practical rather than principled. The item numbers here are already in use, and renumbering in the middle of a comment period would break every reference to them. If the shorter draft leads with the states, that is the draft to reorder, and I would rather do it once.

**The new majority's food agenda, item by item, and where it can be made better.**

On September 1, 2026 the Cost-of-Living Healthcare Working Group sent Leader Jeffries a memorandum on what House Democrats should do in the first 100 hours, the first 100 days and the first year of the 120th Congress. It runs to eighty-four pages across eight categories, it was assembled from 93 meetings with 139 members of the caucus and 145 stakeholder organizations, and its seventh category is food: additives, pesticides, chronic disease and food safety, written around the position that the concerns the MAHA movement raised are legitimate and long overdue for a legislative answer, and that most of them are bipartisan. It cites polling that three quarters of Americans want stricter rules on food additives and that 64 percent want stricter rules on pesticides. It names this summer's *Cyclospora* outbreak, alongside the 2025 and 2026 measles outbreaks, as a direct consequence of deregulation and misinformation.

Three bills in Part One of this paper are on that list already. H.R. 7867 on infant formula and H.R. 8429 on heavy metals in baby food are both in the first 100 hours. H.R. 4958, the GRAS Act, is in the first 100 days. They are not gestures in that document. Each one

carries a description, a cosponsor count, its committee of jurisdiction, a written justification and a list of the stakeholder organizations supporting it, and the organizations named are organizations reading this paper.

**What that changes.** It moves items 2, 3 and 4 out of the category of things that need a champion and into the category of things that need to be useful to a plan which already exists. The ask stops being persuasion and becomes drafting, witnesses and scheduling. It also means that the strongest version of the argument for those three items is already written down in a leadership document, which is worth knowing before anybody writes it again.

**What it does not change.** When this paper last went out, the memorandum set an agenda for a House that might or might not change hands. It did, and so did the Senate, which makes the memorandum the closest thing there is to the incoming majority's plan for food. It is still one caucus's planning document in one chamber; the Senate will have its own list, and a place in a queue is not a floor vote. Every bill on it still has to be reintroduced in January, exactly like everything else in this paper.

**And what it leaves out is the more useful information.** Nothing in those eighty-four pages reaches the traceability rider in item 1, surveillance in item 13, naming companies in outbreaks in item 17, *Salmonella* in poultry in item 10, imported food in item 20, or the sampling authority in item 31. Every acute-illness item in this paper is missing from it. I do not read that as a rejection. I read it as the predictable consequence of who was in the room. The working group heard from 145 stakeholder organizations over several months and the chemical-safety and chronic-disease side of this community was plainly among them. The pathogen side either was not there, or was there and did not bring a list.

That is the most useful thing this paper can fix, and it has a date on it. The memorandum covers the first year of the 120th Congress; the reintroduction window is January. A short document naming four or five acute-illness items, with bill numbers, cosponsor counts and supporting organizations attached in the same format the working group already uses, is two afternoons of work and is worth more right now than another round of edits to this one. If your organization has a line into that working group, or into the offices behind it, telling me so this month is the single most useful thing you can send me.

One last thing worth noticing, because it settles an argument this paper has been having with itself. The leadership memorandum is organized the way a campaign is: a short list for the first 100 hours, a longer one for the first 100 days, and a full agenda for the first year. It is a platform and a campaign at the same time, and the way it holds both is by stating the order out loud. That is the same answer this paper reached in naming three items that come first, arrived at independently by people whose job is counting votes.

**The whole list, and what to fix in each.** The memorandum's seventh category carries sixteen pieces of food legislation across its three time frames. All of them belong in a 2027 agenda, and this paper now carries all of them, including the ones outside its usual ground. Each was written for a caucus in a hurry, and each can be made better in ways this community is unusually well placed to see. The table below gives the bill, what it does,

where it sits in this paper and what I would change. None of the changes is a reason to delay the bill.

| The bill | What it does and where the memorandum puts it | Where it sits in this paper | How to make it better |
|---|---|---|---|
| H.R. 7601, No Immunity for Glyphosate Act (Massie and Pingree); 12 cosponsors | First 100 hours. Bars funds to implement the executive order read as shielding glyphosate makers from state-law injury claims. | Item 5. Immunity from a state-law claim is preemption by another name; it is the same fight as the FRESH Act clause. | A funding bar on one executive order lapses with the appropriation and with the order. The durable version is an express savings clause preserving state-law damages claims, which is the same clause any food bill with a uniformity provision needs. My practice benefits from that clause, and the seventh disagreement below says so. |
| H.R. 7867, Infant Formula Safety Modernization Act (DeLauro, Van Drew); 38 cosponsors | First 100 hours. Pathogen testing of facility and finished product, one-business-day notice of positives, notice to Congress of an Official Action Indicated finding, *Clostridium botulinum* added to the testing list. | Item 2, and the petition listed after item 16. | Test the dairy ingredient, not only the plant and the can: ByHeart reported 472 environmental samples, all negative, and FDA found the organism in the whole milk powder. Define the organism as botulinum neurotoxin-producing clostridia, which reaches the C. butyricum and C. baratii strains that also cause infant botulism. Set the sample at thirty 200-gram units or an equivalent plan. Correct the count in the memorandum's justification: CDC's records are 48 infants in 17 states in the ByHeart outbreak and four more in the Nara outbreak, 52 in all, one contamination by whole genome sequencing. And use the faster vehicle: S. 272 is already at the Speaker's desk. |

| The bill | What it does and where the memorandum puts it | Where it sits in this paper | How to make it better |
|---|---|---|---|
| H.R. 8429, Baby Food Safety Act (Krishnamoorthi); 10 cosponsors | First 100 hours. Limits for lead, arsenic, cadmium and mercury by administrative order; quarterly finished-product testing; mandatory recall for food over the limits. | Items 3 and 22. | Write the floor into the text so the state testing and disclosure laws survive. Publish the results, as the states require, rather than keeping them for an inspector. Quarterly testing is less than the states' monthly. Let remote records review supplement inspection rather than replace it, for the reason item 20 gives. Require the orders to weigh nutrition. The memorandum's summary says a product over the limit is "legally altered"; it means adulterated, and the text should say so. |
| H.R. 4958, the GRAS Act (Pallone); 5 cosponsors | First 100 days. Strikes the GRAS exemption, no sale until FDA declines to object within 180 days, objection required where the data come from a conflicted expert, reassessment of at least ten substances every three years. | Items 4 and 12. | Ten every three years is about three hundred years to work through the roughly one thousand substances the memorandum itself says entered without review; set the pace by the inventory, by class. Add the cost-recovery fee. Fund the reviewers. Assess exposure across foods, supplements and medical foods at once. Publish the firms that never notified. |
| Four Food is Medicine bills: H.R. 7906 (Kelly, Kiggans), H.R. 8390 (Ruiz), H.R. 5439 (McGovern, Malliotakis; 31 cosponsors) and | First 100 days. Grants and pilots for medically tailored meals, produce prescriptions and nutrition interventions, | New to this paper; Part Six. | The people these programs feed are the people the listeriosis numbers in this paper are about: older, just out of the hospital, diabetic, on chemotherapy. Write food safety into the grant terms: no deli meat unless reheated, |

| The bill | What it does and where the memorandum puts it | Where it sits in this paper | How to make it better |
|---|---|---|---|
| H.R. 7267 (Pingree, Buchanan) | including a Medicare pilot of home-delivered meals after a hospital discharge. | | no soft or raw milk cheese, no raw sprouts, a supplier verification requirement and a cold chain, and a right to the consignee list in any recall. Count foodborne illness among the outcomes the pilots measure. That costs nothing, and it is the one improvement only the food safety side of this community can make. |
| H.R. 9474, Local Foods for Healthy Schools Act (McDonald-Rivet), $200 million a year; and H.R. 8928, Scratch Cooked Meals for Students Act (Hayes) | First 100 days. Money to buy minimally processed local food for schools, and grants for scratch-cooking kitchens. | Item 30. | Local produce often comes from farms small enough to be exempt from most of the Produce Safety Rule. Make a farm food safety plan a condition of purchase and pay for the help small farms need to meet it, which is the Part Three loan and grant ask. Scratch cooking means more raw product handled in school kitchens by more people; fund food safety training and the employee illness exclusion in item 24. And make the districts consignees entitled to a recall list on day one, which the petition after item 16 already asks for. |
| H.R. 8370, Dietary Supplement Listing Act (Dexter); no cosponsors yet | First 100 days. Mandatory listing of every supplement with FDA, in a public, searchable database. | Items 18 and 4. | Include the manufacturing facility and the lot coding, so the list can find every product in a recall. Tie it to the adverse event reports. The trade association supports it, which is why it is winnable even at zero cosponsors. |

| The bill | What it does and where the memorandum puts it | Where it sits in this paper | How to make it better |
|---|---|---|---|
| H.R. 2339, Children's Health Protection Act (Nadler); 20 cosponsors | First 100 days. Makes EPA's Office of Children's Health Protection and its advisory committee permanent. | Item 3. | Heavy metals reach baby food through soil and water, which is EPA's side of the line. Direct the office to work with FDA on the sources of the metals item 3 limits. |
| H.R. 5085, Protect America's Children from Toxic Pesticides Act (McGovern); 22 cosponsors in the 118th | First year. Bans paraquat, organophosphates and neonicotinoids, suspends pesticides banned in the European Union or Canada pending review, closes the conditional-registration and emergency-exemption loopholes, discloses inert ingredients. | New to this paper; the chemical items and the sixth disagreement. | Pair it with residue data from USDA's Pesticide Data Program, the program the Microbiological Data Program was modeled on and the one that survived because Congress put it in statute. Automatic suspension on a foreign ban will draw trade and grower objections; an expedited review with a statutory deadline is the fallback that keeps the point. The growers who read this paper will object, and that belongs on the record. |
| H.R. 9231, No Toxic Chemicals in Food Packaging Act (Schakowsky); 13 cosponsors | First year. Bans the most dangerous chemicals in food packaging and processing materials, by class. | Item 4. | Regulating by class is right. Add reassessment of the food contact substances already cleared, and publication of what each package contains. |
| Synthetic additives in school meals, a policy idea with no text | First year. Bars six synthetic dyes from federal school meals, with authority to add substances. | Item 30. | Write it as a floor, so the states that acted first keep their laws. Fund the reformulation for the districts. Say in the text why Red No. 3 is not on the list, |

| The bill | What it does and where the memorandum puts it | Where it sits in this paper | How to make it better |
|---|---|---|---|
| | | | since FDA revoked its authorization in January 2025, so that its absence is not read as permission. This is the second open drafting gap in this paper, after the GRAS notice fee. |
| H.R. 6294, Childhood Diabetes Reduction Act (Beyer, Lawler); S. 5026 reported by HELP | First year. Front-of-package warnings on sugar-sweetened beverages, non-sugar sweeteners, ultra-processed foods and foods high in added sugar, saturated fat or sodium; limits on advertising them to children. | Items 28 and 29. | It writes ultra-processed food into statute, so it needs the definition in item 28 or a delegation to FDA with a test attached. The advertising limit will be challenged on First Amendment grounds; build the record for it now. Make it work with FDA's own pending front-of-package rule rather than produce two labels. It lists one supporting organization, and needs a coalition. |

**What the list still lacks.** The memorandum names this summer's *Cyclospora* outbreak as a consequence of deregulation and then proposes nothing about pathogens. The incoming majority now owns that sentence. The page this paper should hand the working group before January carries six items, in the working group's own format, with bill numbers, cosponsors and supporting organizations: no traceability rider (item 1); S. 272 amended with the testing and ingredient language of H.R. 7867 (item 2); the information-sharing text of S. 4974 and H.R. 8430 (item 6); the Produce Pathogen Surveillance Act (item 14); the outbreak disclosure and consignee petitions written as statute (items 17 and 18); and the sampling authority in item 31. Each of them is in the table after item 16 as legislation as well as a petition.

## Part One. Congress.

### 1. The traceability rider.

**The problem.** The law that ended the November 2025 shutdown bars FDA from spending a dollar to administer or enforce its own food traceability rule before July 20, 2028. FDA had already delayed the rule to that date on its own, so a pure funding freeze would have been redundant. Section 780 goes further and directs the agency to identify additional flexibilities for satisfying the lot-level tracking requirement, which is Congress prodding FDA to abandon the linchpin of the rule and start over.

**What the missing rule actually costs, which is a fair question.** In this summer's outbreak the chains knew their own suppliers as soon as the epidemiology pointed at a single processor, and it is fair to ask what a traceability rule would have added. For that outbreak the answer is not much, and the case for this item does not rest on it. It rests on two other things. The first is the interval between the first case and the first lot code, because that interval is where the illnesses accumulate: every day a traceback runs on invoices, phone calls and memory is a day the product is still moving, and people are still eating it. The second is the outbreaks where the epidemiology never arrives at all. FDA's own investigations table in September 2026 carried seventeen open investigations, several of which name no food whatsoever. Those are the ones a lot-level record solves and interviews do not, and they are a large share of what the agency opens and never closes. In this summer's outbreak the public recall record named the processor and its direct customers, the distributors, and stopped there; whether the lot numbers travelled from those distributors to the restaurants, and whether the restaurants recorded what they received, is in no public record, which is the point. Which link failed is a question nobody outside the companies can answer.

**The fix.** The fiscal 2027 package carries no version of that language, and the report language states that lot-level tracking stays. Eleven organizations asked for exactly this on August 12, 2026. The Congressional Research Service has already written the neutral history in R48925, so no member has to take our word for any of it. The Senate never marked up its bill, which makes this the one item on this list with a deadline inside the next month.

**Where it stands on November 26.** Congress came back on November 9, and there is still no full-year bill. The continuing resolution signed on September 2 funds the government at fiscal 2026 levels through December 11, and a continuing resolution ordinarily carries the prior year's provisions forward with the money, Section 780 among them. The House-passed bill, H.R. 8646, repeats the bar on enforcing the rule before July 20, 2028. The date, then, is December 11, and the ask is that whatever passes then, an omnibus, a minibus or another continuing resolution, carries no version of Section 780 and none of the H.R. 8646 language. If the rider survives into calendar 2027, the incoming majority writes the fiscal 2028 bill, and that bill should say in its report language that lot-level tracking stays.

**A backup.** Nothing in the rider prevents a company from keeping lot-level records now, and there is no public list of companies that have committed to meeting the rule's requirements on the original schedule. Item 26 now asks for that list. A company that wants credit for building should be able to get it in writing.

**2. Infant formula.**

**The problem.** Two botulism outbreaks in twelve months were traced to powdered formula, and the second involved the same two suppliers as the first. On August 27, 2026 CDC and FDA confirmed by whole genome sequencing that they were one contamination, reaching two brands through one shared supply of organic whole milk powder: 48 infants in 17 states in the ByHeart outbreak and four more in the Nara outbreak, 52 in all, every one of them hospitalized. Finished-formula testing requirements effectively cover

*Cronobacter* and *Salmonella*. *Clostridium botulinum* was not on the list, which is precisely how it happened twice. Congress learns about a serious inspection classification when a reporter finds it.

**The fix. Both routes, rather than a choice between them.** Legislatively, pass H.R. 7867, the Infant Formula Safety Modernization Act, from Representatives DeLauro and Van Drew. It expands required pathogen testing, requires notification of specific positive tests, and requires FDA to notify Congress within one business day of an official action indicated classification. It is six pages. It had its hearing in April 2026 and then stopped. Reintroduce it in January and move it out of the subcommittee that already heard it.

Administratively, FDA does not need a statute. The infant formula quality control regulations at 21 CFR part 106 are where the required microbiological testing already sits, and the agency can revise them to reach *Clostridium botulinum* and to require reporting of specific positives without waiting for a bill. The reason to ask for both is that they fail in different ways: a regulation can be undone by the next administration, and a bill can die in a subcommittee for reasons that have nothing to do with formula. Asking for both is not indecision. It is two shots at the same target.

And there is now a petition that asks for exactly that. The citizen petition listed after item 16, in a draft of November 6, 2026 that went to House Energy and Commerce and Senate HELP with my November 4 letters and is still taking comments before it files, asks the agency to add botulinum neurotoxin-producing clostridia to the finished-product testing table at 21 CFR 106.55(e), at not fewer than thirty analytical units of 200 grams each per production aggregate, or an equivalent plan; to require that each lot of whole milk powder, nonfat dry milk, whey and the other dairy ingredients be tested before use, because that is where the organism came in; to require notice to FDA within one business day of a confirmed finding; to finalize within 180 days the method the agency presented in July 2026; and to require supplier verification and lot-level records that trace each ingredient back to the dryer and the farm. Its petitioners, as drafted, are me, three consumer organizations and forty-four parents of twenty-three of the infants. One view would set the finished-product sample at sixty units per lot, which is the number the rule already uses for *Salmonella*; the petition's thirty units of 200 grams is the sample size in FDA's own outbreak workflow and analyzes at least six kilograms per aggregate. The difference is a question for the agency's statisticians, and the petition is written so they can answer it.

**And it is already on the leadership's list.** The September 1, 2026 memorandum puts H.R. 7867 in the first 100 hours of the 120th Congress, records 38 cosponsors in the 119th, and names five medical and consumer organizations as supporting stakeholders. Its justification describes the same two gaps this item does: a manufacturer can find contamination and say nothing so long as the product has not shipped, and FDA has no obligation to tell Congress when it finds a serious violation at a formula plant. One number in it is larger than the one this paper has been using. The memorandum puts the contamination of ByHeart formula at a minimum of 51 infants in 19 states. The case records say 52 infants across both brands, 48 of them in 17 states in the ByHeart outbreak, and that is the number this paper uses.

**And the Senate has already passed a bill.** S. 272, the Protect Infant Formula from Contamination Act, from Senators Peters and Hoeven, was reported by the HELP Committee 22 to 0 on January 15, 2026 and passed the Senate by unanimous consent on April 28. It has been held at the Speaker's desk since May 4, which means the House can take it up without a committee. As written it reaches only the organisms already on the 106.55(e) list, and botulism appears in it only in a list of things later reports may include. But its one-business-day notice duty follows that list "or any successor regulation," so it reaches the organism the day FDA adds it, which is what the petition asks. There are three ways to finish this before January 3: the House passes S. 272 as it stands; the House amends it with the testing language of H.R. 7867, plus one sentence adding the dairy ingredient, and sends it back to a Senate that passed the subject without objection; or the testing language rides on whatever must pass by December 11. Failing all three, the bill is reintroduced on the first day of the new Congress with a sponsor from each party.

**What the agency has done, in fairness.** FDA has written to the industry about the organism three times since March 2023, presented an interim test method that awaits validation, and found a botulinum toxin gene in two of forty-eight milk powder samples it pulled from suppliers to formula makers. On October 29, 2026 it proposed the first update to formula nutrient requirements in nearly thirty years, the first of three planned rules, with comments due February 26, 2027. That is real work and I have said so in writing. None of it requires anyone to test formula, or the milk powder it is made from, for the organism that paralyzed these babies.

**3. Heavy metals in baby food.**

**The problem.** FDA publishes its action levels for lead in baby food as guidance, finalized January 6, 2025, and a guidance level is not nothing: the agency has used one to force a recall before, when a state's testing found arsenic above the level in an infant rice cereal in 2021. What guidance is, is slow. It moves through the Office of Management and Budget at the pace of guidance, it cannot be ratcheted down as industry improves without going through that process again, and the agency has no quick way to make a number binding. By one account from inside the agency, it asked Congress for a nimbler mechanism, administrative orders of the kind other parts of FDA already use, and never got it for foods. Six states have written their own testing and disclosure laws because the federal number was neither binding nor quick, and the industry now cites that patchwork as the reason to preempt all of it.

**The fix.** Pass H.R. 8429, the Baby Food Safety Act, which supplies that mechanism: it directs FDA to set limits for lead, cadmium, mercury and arsenic by administrative order, with proposed orders for lead and arsenic due by the end of 2026, final orders within eighteen months, review at least every four years, and mandatory recall authority for food that exceeds them. That is the ratchet. Write it as a floor rather than a ceiling so the state testing and disclosure laws survive it. A federal limit that quietly extinguishes six state statutes is a loss dressed as a win.

**Two cautions that belong in the bill text.** The first is nutrition. Root vegetables carry more lead than most fruits and also carry the vitamin A a baby needs; leafy greens carry cadmium; fish carries mercury. A limit set on the hazard alone will push manufacturers

toward apples and fillers, including added sugar, to dilute the ingredients that contribute trace elements, and a public health gain on one page becomes a loss on the next. FDA's own Closer to Zero work weighed nutrition for exactly that reason; the orders should be required to. The second is the data. One industry proposal would have the first year or two of lot-based testing, on standardized methods, characterize how the metals vary by commodity, ingredient, region and supply chain before the limits are set where they will stay, with the data shared confidentially with FDA. That sequencing fits inside the bill's deadlines, and it is how a limit becomes both protective and achievable.

**Also on the leadership's list, and with one line to watch.** The same memorandum puts H.R. 8429 in the first 100 hours, records 10 cosponsors, and names three organizations as supporting it. Two things in its description of the bill matter here. The bill extends FDA's mandatory recall authority to baby food adulterated under the new limits, which is the one corner of the recall question this paper's struck item 7 does not reach and which nobody in the comment round has argued against. And the memorandum's argument for the bill is that binding federal limits protect every family regardless of which state they live in, which is the right argument and sits one sentence away from the ceiling this item warns about. Whoever carries the bill should be asked to put the floor language in the text rather than in the press release.

**4. Food chemicals.**

**The problem.** A company may still put a novel ingredient into the food supply on its own say-so. My clients ate tara flour that no one had ever reviewed, and roughly four hundred of them got sick, with nearly forty gallbladders removed. FDA's own proposed rule cites that episode as its lead example and still does not require approval before sale.

**The fix.** Move a bill that requires premarket approval rather than premarket paperwork. Two of the three heard at the April 29, 2026, hearing do that work: H.R. 4958 from Representative Pallone, and H.R. 4306, the Food Chemical Reassessment Act, from Representative Schakowsky. The third, H.R. 7291 from Representative Lawler, the GRAS Oversight and Transparency Act, is better described as a vehicle designed to generate attention rather than a scientific review of GRAS uses. It would create an interagency review board drawn from FDA, USDA and EPA whose members serve without compensation, to work through the substances a manufacturer self-affirmed before 2000 and never notified to FDA, sort them into three priority tiers, recommend revocation where safety has not been shown, and give the manufacturer 180 days to come back with evidence. There is no funding provision, it does not touch the statutory definition of GRAS, and it has attracted no cosponsor from the other party. The legacy stock is a real problem, and the August 2026 proposed rule does not reach it, so in principle the two are complementary. In practice an unpaid board with no appropriation, reviewing decades of self-affirmations one substance at a time with a rebuttal round built in, is not a throughput mechanism. The bill is listed because it exists and will be cited, not because it is an equivalent option. The single question to ask of any version is whether a company may ship first and notify afterward.

One thing belongs in the bill that is in none of the three. A cost-recovery fee on GRAS notices, so that the review is paid for by the firms seeking it rather than by an

appropriations line that gets cut in the next continuing resolution. No statutory language for such a fee exists anywhere yet. One of the organizations reading this paper has offered to draft it, which is the difference between a position and a deliverable. Not everyone here will agree with fee funding, and that disagreement is recorded later in this paper rather than hidden. The principle fits in one sentence: when a company wants to profit from something, it should pay for the review. And premarket review without the reviewers to do it blows up in unhelpful ways. The resources are not a detail of this item. They are the item.

**And a second thing: the substances already in the food.** Premarket review and approval by FDA is the critical piece, and so is a process for the hundreds or thousands of chemicals already in the supply through self-affirmed GRAS. That process would require disclosure that a chemical is in use; the safety and exposure data the company relied on, filed with FDA and posted in a public database; a process for FDA to put the substances of greatest concern first in line for review; public comment on future notices and on those reviews; and an enforcement mechanism with real teeth. Several state bills already propose much of this.

This item and item 12 are the same fight in two rooms, the statute and the rule. They could be merged. They are kept apart because the vehicles and the clocks are different: the rule has a comment deadline of December 9, 2026 and the bills have to be reintroduced in January.

**One more thing the review should do.** Assess exposure across every use of an ingredient at once, in foods, supplements and medical foods, using use and quantity data together with dietary intake data, rather than one notice at a time with default safety factors standing in for the numbers nobody collected. It is the difference between a review and a filing.

**On the leadership's list, with the argument already made.** The September 1, 2026 memorandum puts H.R. 4958 in the first 100 days, records 5 cosponsors, and names three supporters. Its own analysis of the August 2026 proposed rule is the argument this paper makes in item 12, reached independently and written for a caucus rather than for us: notification is not premarket approval, Congress would still have to amend the statute, a company could still sell before notifying, enforcement is unclear, and the manufacturer would still be hiring the experts who attest to safety. The memorandum also describes two provisions of the bill this item has not been naming and should be: FDA must object where the supporting data come from an expert with an apparent conflict of interest, and FDA must reassess at least ten substances or classes already on the shelves every three years.

One adjacent vehicle belongs here too, because food packaging is the gap in this paper's chemical items. H.R. 9231, the No Toxic Chemicals in Food Packaging Act of 2026 from Representative Schakowsky, with 13 cosponsors, reaches food contact and processing materials rather than ingredients, and regulates by class so that a banned compound cannot be replaced by its cousin. It is on the leadership's first-year list, and thirteen organizations are named behind it.

### 5. Preemption.

**The problem.** The FRESH Act discussion draft would supersede any and all state requirements or prohibitions relating to the use, labeling, sale or marketing of food. Harvard's Food Law and Policy Clinic read the clause line by line on August 25, 2026, and found it reaches well past additives into allergen and menu disclosure, heavy metal limits, PFAS rules, retail and restaurant inspection, cottage food laws and state manufacturing licensure, in most cases with no federal requirement obliged to replace them. A defense lawyer would also raise it against a family's right to sue, and I would not bet a client's case on how that argument comes out. The preemption push is not limited to that draft. The editorial described in item 28 reports that the food industry has launched a campaign, Americans for Ingredient Transparency, to preempt state and local action on ultra-processed food, and reads it as an effort to move the fight to the federal level, where the industry has more say in the outcome. The same aim now shows up in the reported text of the federal definition of ultra-processed food, which by the Wall Street Journal's account of November 25, 2026 would say the definition is not to be used for state laws or regulations or in lawsuits; see item 28.

**This has been tried before, and it lost.** The National Uniformity for Food Act passed the House 283 to 139 in March 2006, without a hearing, and would have barred a state from keeping any food safety or warning requirement not identical to a federal one. State agency lawyers read it as reaching the embargo and seizure powers a state uses on the day an imminent hazard appears, and its emergency exception required the state to notify FDA and then petition for an exemption within thirty days. The state food regulators' association, which has supported uniformity since 1896, led the opposition; the state agriculture departments, the state attorneys general and the consumer groups joined; and the bill died in the Senate. Many of the same industry supporters are behind the FRESH Act, and the coalition which beat the 2006 bill should be assembled before the discussion draft becomes a bill rather than after. Some in that coalition would accept a narrowed clause that leaves the state tools intact; this paper would not, for the reason in the next paragraph, and that difference is recorded rather than hidden.

**The fix.** Defeat the preemption clause. The position in this paper, stated plainly, is no federal preemption of state food law, not a better-drafted clause and not a narrowed one. That distinction matters because the version most likely to pass is the narrowed one, and a narrowed clause still erases the state statutes that already exist. Keep the public argument on preemption rather than on dyes, which is where the coalition backing the draft would prefer it stay. This is the one item on this list where the whole community, acute and chronic, pathogens and chemicals, has the same interest. One limit on this item should be stated. Defeating a clause in a food bill does not reach Monsanto Co. v. Durnell, No. 24-1068, decided June 25, 2026, in which the Supreme Court held 7 to 2 that the federal pesticide statute, FIFRA, expressly preempts a state failure-to-warn claim over a label EPA approved. Only an amendment to FIFRA would change that result, and whether to ask for one is an open question for this community.

### 6. Information sharing, in both directions.

**The problem.** In an outbreak the states know first and the federal count lags by weeks. This summer one state's own case count passed CDC's entire national confirmed total, and two states were the only ones in the country publishing enough detail for anyone to

see inside their own numbers. The gap runs the other way too, and that half is not in any bill: states are not required to give FDA the results of the routine Produce Safety Rule farm inspections they conduct under FDA cooperative agreements. FDA pays for those inspections and cannot count on seeing what they found, which leaves a hole in the public dashboard and, more seriously, leaves the agency without a farm's inspection history at the moment in an outbreak when it needs it most. The Congressional Research Service flagged that coordination gap in R46706 in 2021.

**The fix.** Pass H.R. 8430, the Federal and State Food Safety Information Sharing Act, introduced April 22, 2026 by Representatives Ross and Rulli and referred to Energy and Commerce. It is unglamorous, bipartisan and cheap, and it is the kind of bill that moves in a year when nothing else does. The state food regulators' association testified for it before the health subcommittee on April 29, 2026, and the state agriculture departments support it. It now has a Senate vehicle that has travelled further than the House bill: the Making America's Food Safer Act, S. 4974, carries the same information-sharing section, was reported by the HELP Committee 22 to 0 on July 22, 2026, and sits on the Senate calendar. Information sharing was in both chambers' bills this summer, and it is essential to any long-term reduction in illness. A unanimous committee vote in this Congress is the strongest signal any item in this paper has received.

And add the return leg to it. The bill as drafted authorizes FDA to share unredacted information with state, local, Tribal and territorial authorities. A reciprocal provision requiring states to report Produce Safety Rule inspection results to FDA is a paragraph in a bill that is already moving, with a hearing behind it, rather than a new bill that needs a sponsor and a number.

**The gap runs to the regulated firm as well, which is the version industry raises. Three failures illustrate it.** FDA does not receive the farm inspection reports states write under the Produce Safety Rule, on the argument that a farm is sometimes also somebody's home, which is an argument for redaction rather than for silence. Companies have received Establishment Inspection Reports of their own facilities from FDA with redactions, and had to file Freedom of Information requests to read them. And a state regulator has called a company in another state to ask for a recall on the strength of a retail test result and then declined to share the laboratory report, telling the company to use the state's public records process. The bill reaches the first. The other two are the same reflex and belong in the same conversation.

One more thing to weigh in the December draft. This bill, the return leg above and the sampling authority in item 31 all move the same data among FDA, USDA and the states. Three vehicles, one plumbing problem, and they may be better consolidated than separate.

This is also the one place in this paper where the regulated side, the state regulators and the consumer groups are all standing in the same spot. State agriculture departments, state regulators and consumer groups support the bill, and the produce industry raised the missing half. That is worth saying out loud to a committee.

### 7. Mandatory recall authority for USDA. Struck in version 8.

This item asked Congress to give the Secretary of Agriculture the recall authority FDA has had since 2011. It comes out, on comment, and the number is kept rather than reused so that anything already written against item 7 still points at the right place.

The condition set when this paper first went out was that the item would stay only if people who have actually run recall programs at FDA and at USDA thought it necessary. They did not: the view from that experience is that USDA already has a better recall process than FDA does and does not need the authority. That is the condition failing, and the item goes.

Two things survive the item and belong in the paper anyway. The first is that the statutory gap is real and nobody disputes it: FSIS still cannot order a recall, the Congressional Research Service has described the gap for years, and Senator Gillibrand's 2015 bill remains the template if anyone wants it. What the comments dispute is whether the authority would change any outcome, and the federal record supports them: FDA has held mandatory recall authority since 2011 and told Congress it conducted no reportable mandatory recall activity in fiscal 2022 and again in fiscal 2024. An authority used almost never is not what moves product off a shelf.

The second is the reason FSIS gets compliance without it, which is the more useful lesson and applies well beyond recalls. FSIS can withdraw inspection, and a plant without inspection cannot ship, so companies comply in days. FDA, holding an authority it has barely used, is told to go to court and make us. That difference is about leverage rather than organizational charts, and it explains why several other items in this paper are written the way they are: the asks that work are the ones attached to something the agency can withhold.

What is left of the item is a transparency ask, and it has moved to item 18.

Not everyone agrees. Some on the industry side would put the item back, on the ground that the two agencies' recall policies should be aligned. The answer has not changed, but the dissent is recorded, and the surviving transparency ask in item 18 is where it can do some good.

### 8. Whistleblower protection for the people on the line.

**The problem.** FSMA's whistleblower provision, 21 U.S.C. 399d, protects an employee who reports a food safety violation at a facility regulated by FDA. The Labor Department's own investigator guidance says a meat, poultry or egg processing plant is not covered unless it also handles FDA-regulated food, and a whistleblower organization reports that USDA has asserted FSMA does not reach it at all. The people standing closest to an evisceration line at 175 birds a minute are the ones with the least protection for saying what they see.

**The fix.** Extend 399d or write its twin into the Federal Meat Inspection Act and the Poultry Products Inspection Act, so that a plant worker or a contract grower who reports adulterated product has the same protection as a warehouse worker who reports a rodent. It is a cheap bill with a natural bipartisan frame, and it is the enforcement mechanism for the line-speed item that the agency cannot supply on its own.

**9. Close the sesame loophole.**

**The problem.** When sesame became the ninth major allergen on January 1, 2023, a number of bakers and restaurant suppliers began deliberately adding sesame to products that had never contained it, so they could declare it on the label rather than clean their lines. A consumer organization petitioned FDA to stop the practice and FDA denied the petition in July 2023, saying the practice did not violate the statute while acknowledging it makes safe food harder to find for the 1.6 million Americans allergic to sesame. Undeclared allergens are the largest single category of Class I recalls in most years, and this is the one place where a labeling law made things worse.

**The fix. Two routes, and the first needs nobody's vote.** FDA can act now. Adding a major allergen that serves no functional purpose in the product, in order to avoid cleaning a line, is evidence of a failure of current good manufacturing practice. That argument does not run through the allergen cross-contact provisions at all, which is exactly why it survives the fact that sesame is now a declared ingredient rather than a contaminant, and it is the answer to the agency's stated reason for the denial. A Dear Industry letter saying so, followed by field action at one plant, would end the practice faster than a statute would.

If the agency will not, amend the statute, and write it as a presumption rather than an intent test. A major allergen added to a product without a functional purpose is presumed to have been added to avoid cross-contact controls, rebuttable by the manufacturer with its own formulation records. An intent element is a gift to the defense, because nobody writes down why they added the sesame.

Two drafting notes, because that language is being written now rather than argued about in the shorter draft. It should be framed as codifying the manufacturing-practice theory rather than as creating a new authority, which is an easier sell and answers the objection that Congress is inventing something out of nothing. And it should not attempt to define non-functional in the text. Put the burden on the manufacturer to show the function, because the company's own formulation and development records will answer the question and a statutory definition will not. Some manufacturers will argue a genuine functional purpose, whether texture, protein, moisture or supplier consistency, and on some products that argument will be honest. That is what a burden shift is for. A food law professor reading this draft has offered to review the language before it goes anywhere.

The question every drafter asks is how you prove intent, since a quantity threshold invites a company to add a gram more and a look-back date invites it to plan further ahead. That is why the language above has no intent element, no threshold and no date. It asks whether the sesame does anything, and the company’s own records answer that.

**One note for the next draft.** Because the primary ask here needs no statute, this item belongs in Part Two and it moves there when the paper is renumbered. It stays at 9 for now for the same reason nothing else has moved.

**31. Let FDA find out where the contamination came from.**

This item is numbered 31 rather than slotted into Part One in sequence, because the numbers 1 through 30 are locked for the comment period. It belongs in Part One, and it belongs next to items 1 and 6.

**The problem.** In the 2018 Yuma romaine outbreak the outbreak strain was found in irrigation canal water running past a large cattle feeding operation, and FDA had no authority to go onto that operation and take a sample. That is the shape of the file in my own practice as well: the epidemiology reaches the field, the field sits next to the animals, and the investigation stops at a fence. An agency that cannot sample the most likely source cannot state a root cause, and a root cause nobody states is a root cause nobody fixes. Every produce grower reading this has an interest in that answer being found, because the alternative is another commodity-wide warning.

**The fix.** The Expanded Food Safety Investigation Act of 2025: S. 376, introduced by Senator Booker with Senator Blumenthal on February 3, 2025 and referred to HELP, and H.R. 852 from Representative DeLauro. It adds a section to the Food, Drug, and Cosmetic Act allowing FDA to request access to a concentrated animal feeding operation to conduct microbial sampling of plants, animals, water and the environment where the sampling is necessary to support an outbreak investigation, determine a root cause, or address another public health need. The operation must provide reasonable access and may set reasonable conditions of time, place and manner so long as those conditions do not defeat the sampling. Nothing beyond sampling is imposed on foods within USDA's jurisdiction. Note that the 2025 text is stronger than the 2019 original that most people have read: it adds penalties for refusing reasonable access, and it requires the data collected to be shared with USDA and with state and federal public health agencies.

**An honest word about the odds, measured against this paper's own standard.** This is the hardest lift on the list. It has been introduced in four Congresses without a hearing, its sponsors are all from one party, S. 376 carries a single cosponsor, and the farm and cattle organizations have opposed it since 2019. What has changed is the framing. The 2025 reintroduction was pitched around avian influenza and animal-agriculture surveillance rather than around factory farms, and that is the version that could conceivably attract a Republican cosponsor. Keep the item and keep that framing.

**And a route that does not need the bill at all.** Section 361 of the Public Health Service Act lets FDA write regulations to prevent the interstate spread of communicable disease, and the agency used it in 1975 to reach a pet-store turtle. A citizen petition to FDA, still in draft, asks the agency to use the same section to write a rule in 21 CFR part 1240 requiring the operator of an animal feeding operation that the Commissioner has found in writing to be implicated in a multistate enteric outbreak to permit entry and sampling for a limited period. It asks for nothing else: no seizure, no quarantine, no production records. It is listed with the other petitions after item 16, and a law professor whose book on foodborne illness is the standard account has marked it up. Its current draft is dated November 6, 2026, and it is still taking comments. Its trigger, a written finding that an operation is implicated in a multistate enteric outbreak, entry for a limited period, samples and nothing else, is also the better text for the bill: narrower than the 2025 bill's open-ended "other public health need," and the version a Republican

cosponsor could sign. When S. 376 and H.R. 852 are reintroduced in January, they should be reintroduced with the petition's trigger.

**A precedent that already exists, in eggs.** FDA's Egg Safety Rule, 21 CFR part 118, rests in part on the same section 361 and already requires environmental testing for *Salmonella Enteritidis* in poultry houses, and FDA samples egg farms itself during outbreak investigations. At Midwest Poultry Services in Texas this summer, three of the environmental samples FDA collected matched the outbreak strain by whole genome sequencing. That answers the objection that FDA has never sampled where animals are kept. Industry will reply that an egg farm produces the food itself and a feeding operation does not. The petition could make the comparison and say so candidly. It is not in the petition as drafted, and it should be decided there first.

**Write it for bird flu.** Any sampling rule now has to answer the objection that site visits could spread avian influenza, which has been found in U.S. poultry flocks and, since March 2024, in dairy cattle. Name the standards operators already follow: sampling under biosecurity practices consistent with USDA's Defend the Flock guidance and, for poultry, the National Poultry Improvement Plan, with State animal health officials able to do the sampling. Because FDA does not lead meat and poultry investigations, let CDC or FSIS request a determination, with the Commissioner still deciding. And require sequencing and antimicrobial susceptibility testing of recovered isolates, with the sequences deposited in a public database, so each investigation adds to the record on resistance. Like the egg precedent, this belongs in the petition first.

**And the USDA half of the same idea.** FDA sampling finds the source. It does not give the source a reason to change. This item pairs with a rule on the meat and poultry side that does: animals from a producer shown to be carrying an outbreak strain go to a validated kill step, and not into commerce raw, until the producer has a verified control program. It is described in item 10, and the two belong in the same conversation with the cattle and poultry organizations, since one asks for access and the other offers a way out.

**A longer road, and why this item stays narrow.** Agricultural water enforcement and the sampling of wash and wastewater discharged from feeding operations is a huge undertaking, and one proposal would start with an exploratory committee that has clear objectives and goals by about 2030. The size of it is real. This item keeps the narrower ask, sampling during an outbreak, by the bill or by the petition, because that can be done in 2027. Routine sampling of discharge outside an outbreak is a larger question, and it is not on this list.

### 32. Send an inspector when an outbreak points at a plant.

Numbered 32 for the same reason as item 31. It belongs in Part One.

**The problem.** FDA's investigations table in September 2026 carried seventeen open outbreak investigations, and most of them had had no on-site inspection. That is not an oversight by any individual; it is what the statute produces. FSMA sets inspection frequency by facility risk category, at least once every three years for high-risk facilities and once every five for the rest, and it says nothing at all about the one event that most reliably indicates that something has gone wrong at a particular plant on a particular day,

which is that people got sick from its product. An outbreak triggers a traceback, a possible recall and sometimes an advisory. It does not trigger a visit.

The consequence is that the government routinely closes an investigation without ever having walked the facility that made the food, which means it learns nothing about why it happened and can promise nobody that it will not happen again. Half the value of an inspection in these cases is not enforcement. It is the root cause.

**The fix.** Require it. There is drafted statutory text in hand: Appendix A to a September 9, 2026 memorandum prepared for this project, which would require a for-cause inspection of a firm within a set period once an outbreak has been linked to it, with the fact of the inspection and its findings placed on the public record. It is short, it creates no new authority the agency does not already have, and it converts a discretionary act into a duty with a date on it.

### 33. An inspection floor for the commodities that keep making people sick.

Numbered 33 for the same reason. It belongs in Part One, and it is the other half of item 20.

**The problem.** Inspection frequency is set by facility risk category rather than by what the outbreak record actually shows. Leafy greens, sprouts, cantaloupe, frozen berries, onions, cucumbers and shell eggs have each produced repeated outbreaks over the last decade, and a facility handling any of them can still go three or five years between visits. The record is right there, and the schedule does not read it.

**The fix.** Congress has already done exactly this once, for one commodity. The Food and Drug Omnibus Reform Act of 2022 established a requirement that FDA inspect infant formula facilities annually, against the FSMA baseline of three and five years. Extend that model: an annual inspection floor for facilities handling commodities with a recurrent outbreak history, with the list drawn from the published outbreak record rather than from whoever lobbies hardest, revisited on a stated schedule and published when it changes. Appendix B of the same September 2026 memorandum carries the drafted text on the FDORA model.

Two things to write into it. It has to reach foreign facilities shipping those commodities, or it accomplishes very little: the lettuce this summer came from Mexico, and the blueberries came from Chile. And it needs the money in item 20 behind it, because an inspection floor without inspectors is a schedule nobody meets, which is the finding GAO has already published against the targets FDA has now.

**And a third.** The high-risk foods should be identified on their own terms, and not borrowed from the Food Traceability List, with the funding and the people counted at the same time. That fits a list drawn from the published outbreak record, and it is worth saying outright: the inspection list and the traceability list answer different questions and need not match.

**And a fourth.** Keep the floor targeted and adaptable, and do not let inspection frequency become the measure of whether food is safe: what an inspection found and whether it was

fixed matter more than whether it happened. A list revisited on a stated schedule is meant to answer the first. That raises a question this paper leaves open for comment. Could a foreign facility's annual visit be met by an inspection from its own government, where FDA has assessed that regulator, receives its reports and audits a sample of them itself? That would make the floor reachable abroad. Drawn loosely it is a loophole, and it should not be available for a commodity from a country implicated in an outbreak of that commodity in recent years, with the number of years written into the text.

### 37. An independent board to investigate the worst outbreaks.

Numbered 37 because it was added on November 18. It belongs in Part One, next to items 31 and 32.

**The problem.** An inspection asks whether a plant followed the rules. Nobody is assigned to ask the other question: how and why the system failed, and what would keep it from failing the same way again. A plant can meet every requirement and still make people sick, and the agency running the inquiry is looking at its own rules and its own inspection history when it does. Item 32 sends an inspector. This item is for the outbreaks where an inspector is not enough.

**The fix.** A small National Food Safety Board on the model of the National Transportation Safety Board: independent of FDA, FSIS and CDC, with no power to regulate, cite or fine. After a major outbreak, a death or a contamination problem that keeps coming back, it would bring in the specialists, look at the whole chain, regulators included, and publish the record, its findings and its recommendations. A former FDA deputy commissioner proposed a board like this in November 2025, and I want it built.

Three things to write into the bill. A trigger set by case count, deaths or duration, so that an investigation does not depend on an administration choosing to open one. A deadline for whoever receives a recommendation to answer it, with the answers tracked in public, because a recommendation with no addressee and no date is a lesson written down once and learned by nobody. And the findings stay available to the people who were harmed. The NTSB's reports cannot be admitted in a civil suit for damages, and that is the one piece of the model not to copy.

**An honest word about the odds.** This needs a statute and an appropriation, and no bill exists. The 2027 ask is smaller: drafted text and a hearing. A short comparison of what an inspection does and what a board investigation would do is available to anyone who asks for it.

## Part Two. The agencies. No new statute required.

### 10. *Salmonella* in poultry.

**The problem.** *Salmonella* is an adulterant in exactly one raw poultry product, and the agency that declared it has stopped testing for it. On May 1, 2024, FSIS published a final determination that not-ready-to-eat breaded stuffed chicken containing *Salmonella* at 1 colony forming unit per gram or more is adulterated under the Poultry Products Inspection Act, whatever the serotype. These are the frozen products that are browned on

the outside and look cooked while the chicken inside is raw. By FSIS's own count they are less than 0.15 percent of the domestic chicken supply and were about five percent of chicken-associated outbreaks from 1998 through 2020: fourteen outbreaks through 2021, with 195 reported illnesses and 41 hospitalizations. The determination took effect on May 1, 2025, and FSIS was to begin testing the raw chicken going into these products that day. It moved the date to November 3, 2025, and on December 2, 2025 delayed testing indefinitely, docket FSIS-2025-0180, with no new date at all. The standard is law. Nobody is checking for it.

Everywhere else, *Salmonella* is not an adulterant in raw poultry, which means a plant may knowingly ship contaminated product with a federal mark of inspection on it. FSIS withdrew its framework for raw poultry in April 2025 after three years of work, and contamination rates have not meaningfully improved since 2021 by the agency's own account.

**The fix, by three routes, in the order they could happen, because the people who know this agency best disagree about whether any of them works.** The first route is to enforce the determination FSIS already made, and it asks the agency for nothing new. The December notice rests on a single Agricultural Research Service study, which found that the method FSIS planned to use could report product just under the threshold as over it. The notice says the length of the delay depends on whether the agency can refine that method or develop and validate another, promises advance notice in the Federal Register before testing begins, and adds that the delay gives industry more time to control *Salmonella* in the chicken going into these products. Hold the agency to its own notice: publish the method evaluation and the data behind it, say what a method would have to show to be acceptable, and set a date. The contradiction is plain. In 2024 FSIS said validated methods existed to enforce this standard, and in December 2025 it said the available methods produce false positives at the threshold. A consumer organization asked in writing on June 11, 2026, for the data behind both positions, and I am not aware of an answer.

It is the smallest ask in this item, and the only one that needs neither a new rule nor a new law.

The second route is a new proposed determination covering the outbreak serotypes in raw poultry generally, with a date attached. FSIS withdrew the framework but reopened the question itself in January 2026, which means the docket exists and the agency invited the argument. The 2020 petition is still the best drafted version of the ask.

The third route is statute: a short bill declaring the outbreak serotypes adulterants in raw poultry. That is not in this paper because I wanted a longer list. It is here because of a well-informed forecast: keep making the argument publicly, but nothing is going to happen at that agency, and if it happens at all it happens by law. That is a forecast rather than a disagreement about the merits. On the other side is the view that *Salmonella* in poultry is one of the biggest buckets of preventable illness in this document and that the adulteration finding deserves the highest priority. The statutory route also has a narrow version that pairs with the first: one sentence directing FSIS to begin testing under its own 2024 determination by a date certain, or, cheaper still, appropriations report

language asking the agency to tell the committees where the method evaluation stands and when testing will start.

Both views can be right at once, which is why the item carries every route. The enforcement route may be where they meet, since it is an adulteration finding that already exists and it asks the agency only to do what it has already promised in the Federal Register. If the statutory route is the answer, this item belongs in Part One and belongs in the top three at the front of this paper.

**The petition that goes with the second route.** A citizen petition to FSIS, still taking comments and listed after item 16, asks the agency to finish the analysis it began in 2024: to determine that raw comminuted chicken and turkey and raw chicken parts carrying *Salmonella* at 1 CFU/g or more are adulterated, whatever the serotype; in the alternative, to make the same determination for Infantis, Enteritidis and Typhimurium, the three serotypes FSIS's own performance indicator names; independent of either, to begin the breaded stuffed chicken sampling it announced in 2024 or publish a date and the method record; and, if it denies all of that, to require serotype reporting by establishment. It is deliberately narrower than the 2020 petition, which asked for thirty-one serotypes across meat and poultry, because the record FSIS has built since 2022 is a poultry record.

**Some would go further, in opposite directions.** One view was never comfortable limiting a determination to the top serotypes, because the next outbreak will bring a new one and the argument will have to be made again. It looks to the European Union, which controls *Salmonella* in the flock under a 2003 regulation and treats fresh poultry meat carrying Enteritidis or Typhimurium as unsafe to sell; France reportedly pulls any *Salmonella*-positive raw poultry regardless of serotype. The petition's first request, every serotype at a quantitative threshold, is the version of that point the current record supports; the serotype alternative is there in case the agency will not go that far. The industry view would build the determination the way the withdrawn framework was built: quantification, serotyping, paired sampling before and after processing, statistical process control and mandatory submission of monitoring data, with enforceable limits set only after the data have tied a concentration to illness. That is a serious position. The answer is that FSIS already did that work for one product, published it in 2024, and then stopped. The petition asks it to apply its own method to the rest of the chicken.

**A third approach would start before the plant.** The agency already enforces a rule of this kind against a lesser hazard. Under 9 CFR 310.21, calves from a producer with a previous drug residue condemnation are singled out at the plant, and the consequence lands on the producer who caused the problem. The proposal is to apply the same principle to pathogens. Sample incoming animals and identify who raised them. Where a producer has delivered animals carrying an outbreak strain, its product does not enter commerce raw: it is cooked, irradiated, pressure-treated or put through another validated treatment, and its carcasses are tested for the fecal contamination described in item 11, until the producer has a validated and verified control program on the farm. Zoonotic pathogens are a greater public health hazard than residues, and the residue rule is the stricter of the two. This is the pre-harvest incentive the withdrawn framework never had. It went to the FSIS Administrator in a comment dated January 17, 2025. It is not in the

petition as drafted, and it should be weighed for it while the petition is still taking comments.

**And the premise underneath all of it.** The 1974 decision still cited against an adulterant determination, American Public Health Association v. Butz, rested on the assertion that ordinary cooking takes care of *Salmonella* and that consumers need no warning. The assertion was contradicted by the science of its own day; a National Academy of Sciences committee had described the problem in 1969. The research since is not close. Luber's 2009 review asked whether cross-contamination or undercooking is the larger risk from poultry and found the kitchen, not the oven, to be the problem. Kosa and colleagues surveyed in 2015 how people in this country actually handle raw poultry at home. Studies of cutting boards, hands and kitchen surfaces have been published as recently as this year. A raw product that contaminates the kitchen before it is cooked is not made safe by cooking, and any agency answer or hearing testimony that leans on Butz should be asked to answer that record.

I used to be in the beef business with *E. coli*, and what FSIS did in 1994 took that practice away from me. It is the best thing that has happened to food safety in my lifetime, and every argument being made against doing it for poultry was made and lost by the beef industry thirty years ago.

**11. Line speeds.**

**The problem.** The February 2026 proposal would take young chicken lines from 140 to 175 birds a minute and turkeys from 55 to 60 and would remove the requirement that plants file annual worker safety attestations. Inspection is a physical act performed by a person looking at a bird, and the person cannot see *Salmonella*; what an inspector can see is fecal contamination, digestive contents and the visible defects that mark a carcass that should not go forward, and whether anyone can see those at 175 a minute is the question. The food safety evidence on line speed is contested, and the worker safety evidence is more complicated than it is usually described, which is why this item is written as both and why item 8 is its enforcement mechanism. Speed and inspection are still the same question asked twice.

**What USDA's own study found.** FSIS commissioned a team from the University of California, San Francisco to measure the question directly. The poultry study, published in January 2025, enrolled 1,047 workers at eleven plants running evisceration lines between 140 and 175 birds a minute. It found 81 percent of them at increased risk of musculoskeletal disorders across all eleven plants, and it found that the risk tracked piece rate, the number of parts a worker handles each minute, and not the speed of the evisceration line taken alone. The industry reads that as proof that the faster line is safe. The researchers' own conclusion was that lowering piece rate, by adding staff to a job or slowing that job's line, would lower the risk. Both readings are fair, and they point at the same hole in the proposal: a rule that raises the speed, says nothing about staffing or piece rate, and drops the worker safety attestation in the same stroke has left out the one variable the agency's own study identified.

**And what an inspector cannot see can now be seen.** *Salmonella*, *Campylobacter* and Shiga toxin-producing *E. coli* are fecal organisms, and most of the contamination that

carries them onto a carcass is invisible at any line speed. A microbiologist who spent a career at FSIS proposed a test for it in the early 1990s. Agricultural Research Service scientists and their collaborators have since published fluorescence imaging methods that detect fecal contamination the eye misses, on meat in 2003 and in a handheld device by 2021, and a 2025 paper in the Journal of Food Protection applied the method, with machine learning, to chicken carcasses. The ask is that FSIS build detection of non-visible fecal contamination into inspection, beginning with the plants that have no controls on the flocks they buy. It belongs in the same hearing as this rule, because a rule that speeds the line should have to say what replaces the eye.

**The fix.** Do not finalize it as written, and if it is finalized, make it carry what the agency's own study pointed to: a staffing or piece-rate condition on any plant running above 140, and the attestation kept. Comments closed on April 20, 2026, so the final rule lands in 2027 and the record is already built. The food workers' union reports its members generated more than 42,000 comments against it. A companion rule proposed the same day would remove the line speed limit for pork plants altogether, and USDA's companion study of 574 pork workers found 46 percent at high risk of musculoskeletal disorders, with the effect of line speed varying from plant to plant. The item should cover both species. The September 4, 2026 executive order on meat directs FSIS to remove inspection requirements that do not advance essential food safety needs, with a report due in November. Nobody has said which requirements those are. This item and that report belong in the same hearing.

**12. The GRAS final rule.**

**The problem.** FDA's proposed rule makes notification mandatory, which is real progress. It is not approval. A company may still ship first, the streamlined pathway for legacy substances requires no safety narrative, and the only stated consequence of never filing is that the failure factors into how FDA prioritizes post-market review. The earliest real obligation is roughly 2029.

**The fix.** Comments close December 9, 2026, so the final rule is scheduled to be written in 2027, which is optimistic and is one more argument for the statutory route in item 4. Our own comment asks for ten things. The two that matter most are notification before introduction into commerce and a published list of the firms that did not comply. Everything else is detail.

Add a third that is not in our comment and should be: a cost-recovery fee on notices. A program funded out of an appropriations line is a program that can be defunded in a rider, and this community watched that happen to a traceability rule ten months ago. The same drafting gap described in item 4 applies here, and the same organization has offered to fill it. This paper records, rather than resolves, that some of the groups reading it distrust fee-funded regulation on the strength of the drug user-fee record, and that argument is a real one rather than a reflex. The proposed rule solves little and has as many problems as the rule it replaces, which is the state regulators' view and this paper's. And whatever the rule says, it needs reviewers: faster or broader chemical review needs toxicologists and risk assessors the agency does not have, and one proposal is graduate training in food

toxicology and risk assessment, with public-service loan repayment, to fill the gap. That is a Part Three ask and it is in Part Three now.

One more disagreement belongs in the open. One view would not reform the GRAS process at all but end it, on the view that a self-certification scheme cannot be repaired by requiring the self-certifier to send in a form. This paper asks for approval before sale, which is the same destination reached by a route that has a bill and a docket attached to it.

**What the last one of these cost, in the past tense.** Partially hydrogenated oils sat in the American food supply for decades on a self-affirmed basis before anybody reviewed them. FDA determined in June 2015 that they are not generally recognized as safe for any use in human food; most uses had to stop by June 18, 2018; product working through distribution ran to January 1, 2021; and a 2023 direct final rule cleaned the leftover references out of the standards of identity. The conservative published estimate of what they cost while they were in the food is 30,000 premature deaths a year, from Ascherio and Willett, Health effects of trans fatty acids, American Journal of Clinical Nutrition 1997;66(4 Suppl):1006S to 1010S, with later literature citing a range of 30,000 to 100,000. The number is historical, and that is exactly what makes it useful: it is the price of leaving an unreviewed ingredient in the food supply until somebody finally looks, which is the argument for post-market review and for approval before sale. Written in the present tense it is wrong, and somebody will say so in public.

**And it is not only our argument.** The leadership memorandum of September 1, 2026 reaches the same conclusion about this rule, in a document written for a caucus rather than for this community: notification is not approval, the statute has to change, and the firm still picks the experts. When a comment to a docket and a leadership memorandum say the same thing in the same season, the comment should say so, and should cite it.

**13. Surveillance.**

**The problem, stated carefully.** On July 1, 2025, FoodNet went from eight pathogens to two, and the reason given was funding. FoodNet is not how the country counts an outbreak; the 20,996 *Cyclospora* cases this summer were counted through state reporting and CDC's national case data, and the reporting problems with that parasite go back years, to the 2018 outbreaks and the industry panel that reviewed them. FoodNet is a network of ten sites covering about sixteen percent of the population, built to measure incidence, trend, risk factors, outcomes and underdiagnosis, which is why most of what anyone knows about the epidemiology of foodborne illness in this country rests on it and why its annual briefing shaped how federal food safety money was allocated. National case reporting for the six dropped pathogens continues through the notifiable disease system and, for *Listeria*, the *Listeria* Initiative. What ended is the ability to say whether anything is working. The table at the front of this paper is a FoodNet table, and there will not be another one like it.

**The fix, in two asks, because they are different.** The first is the laboratories: protect PulseNet and the state public health laboratories that feed it, which do the sequencing that makes every multistate outbreak count possible and which are the larger and less visible line item. Without them an adulterant standard nobody can sample for is

a press release, a traceability rule has nothing to trace, and the petitions in this paper have no evidence to stand on. Nobody disputes this half. The second is FoodNet: restore surveillance of all eight pathogens, and ask what the program actually needs rather than what it had, because the funding it had was already not enough.

**Where this item divides people.** One view would not fight for FoodNet as it was: passive surveillance for most of these pathogens no longer exists in a world of culture-independent testing and sequencing, the change was coming regardless, and wastewater surveillance and similar tools could do far more for the money. The opposite view is that FoodNet did much more than count, and that the country will miss it. This paper asks for both, in this order: the laboratories and the sequencing first, because they are the part everyone agrees on; FoodNet restored or rebuilt second, with modernization written into the ask rather than used as the reason to let it go. Those who want the measurement modernized and those who want it restored can sign the same sentence if it says measure, and that is the sentence.

### 14. Publish the testing we already pay for and put produce sampling back.

**The problem.** From 2001 to 2012 USDA's Agricultural Marketing Service ran a program that tested 10,000 to 15,000 samples of fresh produce a year, more than 111,000 in all, for *Salmonella*, *Listeria* and *E. coli*, including the non-O157 strains nobody else was looking for. It accounted for roughly 80 percent of all federal produce testing, its positives went to PulseNet, and between 2009 and 2012 it triggered 38 recalls, with 44 of its *Salmonella* isolates matching human illnesses. It cost about $4.5 million a year. It was shut down on December 31, 2012 because the money was not requested and Congress did not appropriate it, on the argument that pathogen testing did not fit the marketing mission of the agency that housed it. Nothing replaced it at that scale. From 2014 FDA ran its own surveillance sampling program, two or three commodities a year at about 1,600 samples each, published the results, and used them: sprouts, avocados and raw milk cheese first, then cucumbers, hot peppers, fresh herbs tested for *Cyclospora* in the summer months, processed avocado, romaine in Yuma and Salinas, frozen berries, ready-to-eat dips, and in fiscal 2026 whole cucumbers for *Salmonella*. The findings led to recalls, solved outbreaks and guided where the agency put its people, and that program deserves credit. What it is not is a baseline. Fifteen thousand produce samples a year across the commodities people eat most is a different thing from sixteen hundred samples of one commodity every year or two, and the first is what was lost. The produce industry lobbied against the program because its findings caused recalls, which is the same as saying it worked.

**How it started, and how it was weakened before it was killed.** The program was a Republican idea. It grew out of a $100,000 pilot in 1999 that tested lettuce and tomatoes in New York and Ohio, and Congress funded it in fiscal 2001 at about $6.2 million, roughly $11 million today, as part of the Presidential Food Safety Initiative, built on the statistical design of USDA's Pesticide Data Program and run through ten state departments of agriculture. The produce trade associations objected from its first public meeting in January 2002, and they won the point that mattered: report language for the fiscal 2002 appropriation made it a "blind survey," and the agency stripped grower, packer and distributor names from its sample forms. At FDA's request, *Listeria* and *E.*

*coli* O157:H7 were left out at the start. The program got better anyway; by 2008 positives were going to federal and state agencies, and product was being pulled. From 2009 through 2012 it found *Salmonella* 111 times, O157:H7 twice, other Shiga toxin-producing *E. coli* 82 times and *Listeria* 12 times, and 44 of the *Salmonella* isolates, both O157 isolates and 9 of the 12 *Listeria* isolates were matched to sick people. It found Shiga toxin-producing *E. coli* in about one spinach sample in two hundred, after the industry reforms that followed the 2006 spinach outbreak. In July 2012 a New York sample of cantaloupe tested positive for *Listeria*, the recall grew to nearly 189,000 melons and nobody was reported sick, eleven months after *Listeria* in Jensen Farms cantaloupe sickened 147 people and killed 33. Cantaloupe had been added to the program on the industry's own recommendation.

**Why it died and its model did not.** The program never had a statute of its own; it ran under USDA's general marketing authority and a yearly appropriation, so one budget request could end it. The Pesticide Data Program it was modeled on has run continuously since 1991, because section 301 of the Food Quality Protection Act of 1996 told USDA to collect the residue data. Congress protected the program that tests produce for pesticides and never protected the one that tested it for pathogens. The FDA and USDA scientists who analyzed the decade of data wrote in 2016 that low prevalence still matters for food grown in volume, shipped everywhere and eaten raw, and that the monitoring had to continue somewhere. It has not. FDA's only large survey of herbs for *Cyclospora* took four years, 2017 to 2021, to test 1,383 samples, found the parasite in 9.2 percent of basil and 1.3 percent of cilantro, and published in 2024. The old program tested that many samples about every six weeks, though never for parasites.

**The fix. Three asks, and the first one costs nothing.** Publish what the government already tests. FDA runs the Laboratory Flexible Funding Model, a cooperative agreement with fifty-five grantees, forty of them states in the sampling tracks, covering microbiological, chemical and radiochemical testing across human and animal food. It is worth being precise about what it is, because it is often described as the Microbiological Data Program under a new name and it is not: MDP was an AMS program, produce-specific, and it published results at the sample level, which is the thing that made it useful to everyone outside the agency. LFFM publishes annual accomplishment and surveillance-outcome reports in aggregate. The money is already appropriated, and the samples are already being pulled. Publish the results at the sample level. The program sits in FDA's Human Foods Program; the public health laboratory association holds a companion agreement to support the laboratories, but the program does not live there, and the ask goes to FDA.

The second ask is restoration: dedicated produce sampling, at FDA or at AMS or anywhere else with a laboratory, funded in the fiscal 2028 request. One argument would put it at FDA, where a positive sample is also a regulatory finding and can be acted on without a referral, and add *Cyclospora* to the panel, which FDA's own herb assignment has already shown can be done. Four and a half million dollars is a rounding error against the $74.7 billion above and against a single season like this one. I made this argument in 2024 and it has only gotten stronger: we spent this summer arguing about a parasite on lettuce with no baseline data on how often pathogens are found on lettuce, because the program that

would have told us was killed fourteen years ago. Surveillance of people tells you who is already sick. Sampling of product tells you what is coming.

**The third ask is the statute, and it is drafted.** The Produce Pathogen Surveillance Act, a discussion draft revised November 5, 2026 and not yet reviewed by legislative counsel, gives the program the footing the Pesticide Data Program has had for thirty years and fixes the weaknesses the 2001 and 2002 record exposes. It authorizes a permanent National Produce Pathogen Surveillance Program, at AMS with mandatory data sharing to FDA and CDC, or at FDA under its produce safety authority, a choice left in brackets. It requires not fewer than 15,000 samples a year, from distribution centers, terminal markets, ports of entry and retail, with imported produce sampled at least in proportion to its share of the market. It requires *Salmonella*, *Listeria* and Shiga toxin-producing *E. coli* for every commodity unless the Secretary publishes a scientific finding otherwise, with *Cyclospora*, hepatitis A and norovirus in brackets. It allows culture-independent screening but requires confirmation before a result is called positive and retention of the unconfirmed material. It requires whole genome sequencing of every isolate, submitted to PulseNet within seven days, antimicrobial resistance testing, a culture collection for researchers and surge testing in an outbreak, on the model of the 1,336 extra samples the program ran during the 2008 *Salmonella* Saintpaul outbreak. It bars a return to blind sampling unless a later law expressly overrides the bar, and it provides that the identity of the product, brand, lot, grower, packer and distributor behind a confirmed positive is not confidential commercial information and is published within 48 hours. It says the program is surveillance and that a result is not by itself a basis for a civil penalty, preserves every FDA and state authority to act on a result, and preempts nothing. It gives consumer and public health members at least half the seats on its advisory committee, asks GAO to evaluate it after four years, and carries a placeholder authorization of $25 million a year with 60 percent to the states.

**Collect the data that finds a cause.** A positive sample is only the start of the answer. For every confirmed positive, the program should record where the product was grown (region, and ranch and field where traceback allows), the source of its irrigation water, and whether animal feeding operations or grazing land lie nearby, and publish those fields with the result. FDA's own outbreak investigations show why. At Yuma in 2018 the outbreak strain turned up in irrigation canal water beside a large cattle feeding operation, and investigators could not find how it got there; on the Central Coast later that year it turned up in reservoir sediment, with wild animals and nearby cattle and horse grazing among the possible sources; and near Salinas in 2019 and 2020 it matched cattle feces found within two miles of the implicated fields, and FDA's leading hypothesis is that cattle were the most likely source. Sampling of product tells you what is coming, and recording the field around a positive tells you why. How samples are collected and tested is for the advisory committee the draft already creates.

The short title is a choice too: a neutral one, or the Make Produce Safe Again Act, which fits the language the Secretary uses and a program a Republican administration started. Fifteen congressional letters about this summer's outbreak, from DeLauro, Hoyer, Bishop, Pingree, Van Hollen, Alsobrooks, Dingell, Blumenthal, Klobuchar, Warren, Stanton, Gottheimer and others, have no published answers. Every one of those offices is a natural sponsor. None of them is a Republican yet, and the bill needs one.

**Where people disagree about what to rebuild.** The industry side would build the next version as a prevalence and surveillance program on the model of USDA's Pesticide Data Program: baselines by commodity, season and region, sampled across the whole chain from the field to the store and the restaurant, with the underlying data protected, aggregated results published, and stated escalation criteria before a repeated positive on a product or supplier triggers regulatory action. Others want the opposite on each point: a program at a regulator, acting on what it finds, publishing what it finds. The old program did both, which is why both sides can cite it. This paper asks for sample-level publication because the samples were paid for by the public and because aggregate reports cannot be checked, and it records that the producers who would be sampled do not agree. The draft statute splits the difference in its own way, naming firms behind confirmed positives while saying a result alone is not a basis for a penalty, and it leaves open, in brackets, whether the program sits at AMS, as before, or at FDA.

### A note on items 15, 17 and 18.

These three are the disclosure cluster, and the case for them is simple: transparency that incentivizes prevention has broad risk-reduction impact. That is the theory of this group of items, and it is worth stating explicitly. Disclosure here is not punishment and it is not a substitute for enforcement. It is a signal delivered to the only people who can act before the next outbreak, which is buyers, insurers and the firm's own board.

### 15. Count what happens afterward.

**The problem.** The case counts stop the day the fever breaks. Nobody tracks the child who leaves the hospital with a damaged kidney, the adult with reactive arthritis after a bout of poultry-borne illness, or the rate at which HUS survivors reach dialysis or transplant twenty years on. USDA's own cost model now includes long-term outcomes and is candid that the data behind them are thin. Every burden number in this paper undercounts, and the people who build them know it. A national registry is essential.

**The fix.** A national registry of long-term outcomes from foodborne illness, seeded through the existing FoodNet sites and the pediatric HUS surveillance that already runs, so that in five years the cost of an outbreak can be stated in something other than the number of people who were sick that week. This is research money rather than regulation, and it is the kind of ask a Senate appropriator can put in report language.

### 16. The petitions already on the desk.

**The problem.** Sixty-five organizations asked FDA on June 16, 2026 to withdraw approval for preventive antibiotic use in food animals, docket FDA-2026-P-6878, which now has its own entry as item 36. Thirteen groups asked in February 2025 for enforceable lead action levels in baby food. David Kessler petitioned in August 2025 on ultra-processed food, docket FDA-2025-P-3071; the statutory clock ran out, FDA sent a procedural interim response on February 10, 2026, the Secretary said on camera five days later that the agency would act on it and that the questions it asked were ones FDA should have asked long ago, and nothing has happened since. Other petitions have gone unanswered longer than any of these. A petition that sits unanswered for two years is a decision made without having to defend one.

**The fix.** Answer them in 2027. All of them, not the two that are easiest. A denial with reasons is more useful to everyone in this community than another year of silence, because a denial can be litigated and silence cannot. And the part this community usually leaves out: ask for the people to write the responses. Petition answers are nobody's first priority inside an agency with too much to do, and a request for a handful of positions to clear the docket is cheap, concrete and hard to refuse.

On the Kessler petition specifically, there is a campaign that can start now and does not need this paper to be finished first: a letter to FDA and to OMB asking that the response be released. One organization has committed to putting its name on it and a second says it is willing, which is enough to draft the letter and start asking others. The ask is narrow, which is precisely why it can be won, and the record makes the argument by itself. This is also the clearest place in the whole document where the acute and chronic sides of this community are asking the same government office for the same thing. It is now the chronic side's first item, named beside the three at the front of this paper. I will draft the letter, circulate it for signatures before the end of the year, and bring it to the meeting in Washington described at the end of this paper.

**The petitions this project is filing, and the items they carry.**

This paper also asks FDA to answer petitions other people have filed. Seven more have been drafted from this agenda, six to FDA under 21 CFR 10.30 and one to FSIS under 9 CFR part 392. Each was posted on Marler Blog in draft and opened for public comment before filing, which is this community's own process applied to the petitions themselves, and each was revised on the comments. None has been filed. All seven have current drafts dated between October 29 and November 6, 2026, and all are still taking comments; each files when its comments are in, and the docket numbers go in this table then. None needs a vote, and once filed every one of them is owed an answer within 180 days, which is a deadline no bill in this paper has.

| Petition | What it asks, and the item it serves | Status at November 26, 2026 |
|---|---|---|
| *Salmonella* in raw poultry (FSIS, 9 CFR part 392) | Determine that raw comminuted chicken and turkey and raw chicken parts with *Salmonella* at 1 CFU/g or more are adulterated; in the alternative, Infantis, Enteritidis and Typhimurium; begin the 2024 breaded stuffed chicken sampling or set a date and publish the method record; failing all of that, serotype reporting by establishment. Item 10. | Draft of October 29, 2026; still taking comments; not filed |

| Petition | What it asks, and the item it serves | Status at November 26, 2026 |
|---|---|---|
| Botulinum neurotoxin-producing clostridia in powdered infant formula (FDA) | Add the organism to the finished-product testing table at 21 CFR 106.55(e), thirty 200-gram units per aggregate or an equivalent plan; test the dairy ingredients before use; notice to FDA within one business day; finalize the analytical method within 180 days; supplier verification and lot-level traceability to the dryer and the farm. Item 2. | Draft of November 6, 2026; three consumer organizations and forty-four parents of twenty-three infants as co-petitioners; sent to House Energy and Commerce and Senate HELP with the November 4 letters; still taking comments; not filed |
| Disclosure of firms implicated in outbreaks (FDA) | Amend 21 CFR 20.61 and 20.91 so an implicated firm's identity is not confidential commercial information where epidemiologic evidence implicates the food and traceback or laboratory evidence identifies the firm; the exemption closed and the burden on the firm; notice and correction; the whole chain from grower to retailer; the suspect commodity published while an investigation is open. Item 17. | Draft of November 5, 2026, revised after the first comment round; still taking comments; not filed |
| Retail consignee lists and recall classification (FDA) | Amend 21 CFR part 7 on the FSIS model at 9 CFR 390.10: publish the retail consignee list in every Class I food recall when the recall is announced, reaching restaurants and institutions; classify every recall within ten days and publish the intervals; confirm that removing an outbreak-implicated food is a recall whatever the firm calls it. Item 18. | Draft of November 5, 2026; companion to the disclosure petition, to file with it; still taking comments |
| Access and sampling at implicated animal | A rule under section 361 of the Public Health Service Act, in | Draft of November 6, 2026, after a food law professor's |

| Petition | What it asks, and the item it serves | Status at November 26, 2026 |
|---|---|---|
| feeding operations (FDA) | 21 CFR part 1240, requiring an operation the Commissioner has found in writing to be implicated in a multistate enteric outbreak to permit entry and sampling; no seizure, quarantine or production records. Item 31. | markup; still taking comments; not filed |
| Warning statement on raw and lightly cooked sprouts (FDA) | Amend 21 CFR 101.17 to require a prescribed warning on packaged sprouts and at the point of sale, on the juice and shell egg model, with an exemption for sprouts treated to make them safe. Item 34. | Draft of October 29, 2026, revised November 4; still taking comments; not filed |
| Warning statement on cheese made from unpasteurized milk, and the 60-day aging reevaluation (FDA) | Amend 21 CFR 101.17 to require a prescribed warning on raw milk cheese, reaching cut-to-order, imported and online sales; publish the 60-day reevaluation FDA promised in 2013 within a year; require cheesemakers relying on aging to validate it under the preventive controls rule. Item 35. | Draft of October 29, 2026, with an appendix of model labels; still taking comments; not filed |

What this does to the paper. It gives items 2, 10, 17, 18 and 31 a second vehicle that is not a bill, with a statutory clock on it, and it gives items 34 and 35 a vehicle at all. It also answers, for seven items, the question of who is carrying them: I am, with three consumer organizations and the parents on the formula petition, and the dockets will show who else signs. The petitions are drafted to be severable, so an agency can grant the part it can grant, and every one of them asks for something the agency has already said in its own record.

**The same asks as legislation.** An agency answers a petition in 180 days if it answers at all, and the next administration can undo what it grants. A statute is slower to get and harder to take away. The new majority will be looking for bills that are already written, and every petition above can be one. The table gives the statutory version of each and the vehicle for it, and adds the three drafted bills in this paper that are not petitions. Where the petition and the bill differ, the petition is the narrower ask and the bill is the backstop.

| The petition or draft | The statutory version | Committee and vehicle |
|---|---|---|
| *Salmonella* in raw poultry (FSIS) | Amend the definition of adulterated in the Poultry Products Inspection Act, 21 U.S.C. 453(g), to declare raw comminuted chicken and turkey and raw chicken parts carrying *Salmonella* at 1 CFU/g or more adulterated, or direct FSIS to finish the determination by a date. The narrow version is one sentence directing FSIS to begin the breaded stuffed chicken sampling it announced in 2024, or report language asking when it will. | Senate and House Agriculture; the fiscal 2028 Agriculture appropriations bill for the narrow version. Item 10. |
| Botulinum neurotoxin-producing clostridia in infant formula (FDA) | H.R. 7867 with two additions: the organism defined as botulinum neurotoxin-producing clostridia, and a sentence in section 2(a) requiring testing of the dairy ingredient. Or S. 272 amended with the same text. | S. 272 at the Speaker's desk now; Energy and Commerce and HELP in January. Item 2. |
| Disclosure of firms implicated in outbreaks (FDA) | A section of the Food, Drug, and Cosmetic Act providing that the identity of a firm implicated in an outbreak, on the petition's evidentiary standard, is not confidential commercial information or a trade secret, with notice to the firm and a correction duty, and reaching the grower, processor and distributor whether or not a recall occurs and whether or not the outbreak has ended, which a rule under section 705(b) alone may not reach. | Energy and Commerce and HELP; S. 4974, reported 22 to 0, is the moving vehicle it could ride. Item 17. |
| Retail consignee lists and recall classification (FDA) | Direct FDA to publish the retail consignee list in every Class I food recall when the recall is announced, on the FSIS model at 9 CFR 390.10, to classify every recall within ten days, and to add to the existing FSMA section 206(f) report how often a firm refused a voluntary recall. | The same committees and the same vehicle. Item 18. |
| Access and sampling at implicated animal | The Expanded Food Safety Investigation Act, reintroduced with | S. 376 and H.R. 852 lapse on January 3; |

| The petition or draft | The statutory version | Committee and vehicle |
|---|---|---|
| feeding operations (FDA) | the petition's trigger: a written finding that the operation is implicated in a multistate outbreak, entry for a limited time, samples only. | reintroduce in HELP and Energy and Commerce. Item 31. |
| Warning statement on raw and lightly cooked sprouts (FDA) | A misbranding provision requiring the prescribed warning on packaged sprouts and at the point of sale, with the juice-style exemption for treated sprouts. | Energy and Commerce and HELP; short enough to ride on any food bill. Item 34. |
| Warning statement on raw milk cheese, and the 60-day rule (FDA) | The same provision for cheese made from unpasteurized milk, plus a statutory deadline for the 60-day reevaluation FDA announced in 2013. | The same. Item 35. |
| Produce pathogen testing (not a petition) | The Produce Pathogen Surveillance Act, discussion draft of November 5, 2026. | Agriculture committees and the fiscal 2028 Agriculture appropriations bill. Item 14. |
| For-cause inspection and an inspection floor (not petitions) | The statutory text in Appendices A and B of the September 9, 2026 memorandum prepared for this project. | Energy and Commerce and HELP. Items 32 and 33. |

**17. A company's name is not a trade secret.**

**The problem.** FDA will not name a company linked to an outbreak unless there is a recall, on the theory that the name is confidential commercial information protected by the Trade Secrets Act. The consequence falls hardest on fresh produce, which is perishable and therefore often has no recall to attach a name to. The 2024 romaine outbreak that sickened 89 people in 15 states, hospitalized 36, put 7 into kidney failure and killed one was closed by the agency without the public ever being told whose lettuce it was. A father in that outbreak had to run his own traceback to learn what had put his ten-year-old on dialysis for nine days.

**The fix.** A rule, and a statute behind it. A consumer organization filed on February 4, 2026 a citizen petition asking FDA to adopt a policy of publicly disclosing the name of every company associated with a foodborne illness outbreak, recall or no recall. FDA's interim response of July 28 said the names are protected by the Trade Secrets Act, which is a denial in everything but name. On October 26 the Justice Department's Office of Legal Counsel answered the legal question in an eight-page opinion to the Acting General Counsel of HHS, and the answer has two halves. The first is the half FDA will quote. Under the regulations now in force, the names and locations of the firms in a supply chain are

treated as confidential commercial information, the Trade Secrets Act largely bars the agency from disclosing them, and the exception at 21 CFR 20.91, for information necessary to effectuate a recall or other enforcement action, is exceedingly narrow in practice. The second is the half that matters. Nothing in the Food, Drug, and Cosmetic Act requires that result. Section 705(b) of the Act, 21 U.S.C. 375(b), lets the Commissioner disseminate information about food where there is, in the Commissioner's opinion, imminent danger to health or gross deception of the consumer, and FDA may amend its regulations under that section to authorize disclosure of supply chain information. A disclosure made under such a rule is authorized by law, and the Trade Secrets Act does not reach it.

**What the opinion actually says.** It is tempting to call the legal argument clean and say the Trade Secrets Act does not protect a company's name. That is not what the Justice Department concluded. The Office assumed that supply chain information is covered by the Act, said in a footnote that it doubts that assumption is the best reading of the statute, since a business partner's identity is different in kind from the internal processes the Act lists, and warned that the courts are nonetheless likely to treat it as covered. The title of this item is still the argument. It is not yet the law, and the ask changes accordingly. It is no longer that FDA read its regulations differently. It is that FDA write the rule the Justice Department has told it, in writing, that it may write.

**The limit in the opinion, and why the statute matters.** The opinion says a regulation authorizing disclosure after an outbreak has already ended would likely be inconsistent with section 705(b), because the danger is no longer imminent. That describes most produce outbreaks, which is where this item started: the lettuce is eaten, the investigation closes, and the name is never given. A rule under 705(b) reaches the outbreak that is still running. It probably does not reach the 2024 romaine file. The conclusion is plain: the only way to fix this problem is by statute. That is right about the closed outbreak, and the rule is still worth having for the open one, so this paper now asks for both. The statutory text is in the table after item 16: a section of the Act providing that the identity of a firm implicated in an outbreak is not confidential commercial information or a trade secret, whether or not a recall occurs and whether or not the outbreak has ended. Those last words are there because of the opinion. S. 4974 is the moving vehicle it could ride.

**How the assumption gets challenged.** An Office of Legal Counsel opinion cannot be appealed. A petition denial can. Both petitions argue first that an implicated firm's name is not confidential commercial information at all, and a final denial of either one is reviewable in court under the Administrative Procedure Act, where the Office's own footnote is the government's doubt on the record. That is a slow road, and it is the reason to want an answer in writing, even a bad one, as item 16 says.

**Whatever the rule says, it has to reach past the brand.** My one amendment, which I have written about twice, is that the petition speaks of the consumer-facing company and in a produce outbreak there often is not one. The lettuce moves from a grower to a processor to a distributor to a caterer and onto a plate with no brand on it anywhere. Disclosure has to reach the grower and the processor or produce outbreaks will keep ending in gray boxes because nobody's logo was on the bag. FSIS crossed this bridge years

ago when it began naming retailers in meat recalls, and the sky did not fall. It has not crossed the next one. In the *Salmonella* Infantis chicken outbreak and the *Salmonella* Reading turkey outbreak of 2017 to 2019, FSIS found the outbreak strains in product from 76 chicken and 38 turkey slaughter and processing establishments, declined to name the turkey plants when consumer groups asked in November 2018, and as far as I can tell has never published either list.

**And a limit in the other direction.** A July 31, 2026 memorandum prepared for this project concluded that the agency already has the authority to disclose the identity of an implicated firm absent a recall. The Office of Legal Counsel reads the same regulations the other way, and inside the executive branch its reading controls. What survives of the point is narrower and still useful. The opinion confirms four situations in which FDA may disclose today without amending anything: where the information has already been lawfully disclosed to the public, where a court orders it, where the firm consents, and where disclosure is necessary to effectuate an enforcement action under 20.91. The first of those is the chicken wrap outbreak, and the petition below asks the agency to use it. The agency also has its own stalled outbreak-transparency initiative sitting on a shelf. Restarting it needs no statute and no petition. It needs a decision.

**The petition is now written.** The citizen petition listed after item 16 asks FDA to amend 21 CFR 20.61 and 20.91 so that the identity of a firm implicated in an outbreak is not confidential commercial information, with the exemption closed and the burden on the firm, and to reach the grower, the processor and the distributor where there is no consumer brand. After the October 26 opinion it was rewritten to rest on two authorities instead of one: 20.91, and section 705(b) as the opinion reads it, with a regulation that would authorize disclosure of the firm's name, location and distribution information whenever the Commissioner finds that an outbreak presents imminent danger. It supports the petition already on file rather than replacing it, and it asks for what survives however the trade secret question comes out. It was posted for public comment on October 22 and revised after the first comments on November 5, and it is still open for comment. Its first paragraph is the chicken wrap outbreak: fifty people sick, a product proactively removed without a recall, the brand learned from a lawsuit on October 15, FSIS confirming the retailer on October 23 only in an email to a newspaper, FDA declaring the outbreak over on October 28 on the ground that more detailed product information would not have given consumers an action they could take, and FDA confirming on November 4 that the wrap was the likely source while still naming no brand, no maker, no retailer and no state. It also asks the agency to start now with the authority it already has: once a retailer has told a newspaper which product it pulled, the agency's own regulations let it say the same thing.

**Two things the petition does not yet solve, from opposite ends of the supply chain.**

The first is the exemption. A disclosure obligation handed to an agency that already reads the Trade Secrets Act broadly can be satisfied by defining the entire supply chain as confidential and disclosing almost nothing, and a decade of the traceability record suggests that is the institutional instinct. The ask therefore has to say how the exemption closes and not only what gets disclosed. Written as a rule with a stated exception rather

than the reverse: the identity of a firm whose product is implicated in a human illness is not confidential commercial information, and the burden of showing otherwise sits with the firm, in writing, on the record. Anyone who thinks that goes too far should say so now, because a disclosure policy with an open-ended trade secret carve-out in it is worse than no policy, since it settles the question in the agency's favor for another decade.

The second is the same reflex seen from the other direction. FDA's weekly outbreak investigations table routinely lists the food as not yet identified while traceback, sampling and inspection are all underway, which means the agency frequently knows more than the table says. Publish what is known when it is known, including a suspect commodity, with the uncertainty stated plainly. A produce buyer who cannot find out what is suspected cannot act on it, and neither can a hospital cafeteria.

Those two complaints, one from a consumer organization afraid FDA will disclose nothing and one from the produce industry unable to find out what is suspected, describe the same agency reflex from opposite ends of the chain. That is the strongest version of the argument this item can make, and it should be made that way in the comment.

**A third thing, which the petition now answers.** The produce industry asks what linked means: whether it means the firm that likely caused the outbreak or every firm whose hands touched the product, since distributors and warehouses touch everything, and whether a firm that does not recall finds it easier to dispute the link than one that does. The petition sets the standard in the rule's own text: the firm is named where epidemiologic evidence has implicated the food and traceback or laboratory evidence, including whole genome sequencing, identifies the firm as a likely source or point of contamination, which is the evidence on which FDA already closes an investigation. A handler that merely received the product is not a source. A named firm gets one business day to point out a factual error, and a published correction if the agency later finds it was not a source. Foreign firms are named on the same terms; the petition reaches importers and foreign growers alike.

**18. Make the records findable.**

**The problem.** Naming the company is half of it. The other half is that the records the government already publishes are close to unusable. Recall consignee lists surface weeks late in a database that nothing indexes. Advisories sit unrevised for a month while the product is still in refrigerators. The investigations table carries files as active after the outbreak has ended and names no food at all in several of them. In this summer's outbreak a state health department published the customer list three weeks before the same information surfaced in FDA's own recall file, and nobody picked up either one.

**The fix.** Publish the consignee list when the recall is announced. The consignee petition listed after item 16 asks for that by rule, on the model FSIS adopted in 2008, reaching restaurants, schools, hospitals and online sellers, and it asks the agency to say in writing that removing an outbreak-implicated food from the market is a recall whatever the company calls it, because in October fifty people were sick from chicken wraps that were proactively removed, never classified and never listed. Keep the investigations table current, and mark closed files closed. A document that is public and unfindable at the same time is not disclosure.

**The authority for it.** Three things. Congress pointed FDA at the FSIS model in the Food Safety Modernization Act: 21 U.S.C. 350l(g)(2) tells the agency to consult USDA's policy of giving the public a list of the retail consignees in a Class I recall and to consider doing the same. FDA's own guidance of November 2020 already says it may publish retail consignee lists under 21 CFR 20.91 where that is necessary to effectuate a recall, decided case by case. And the Office of Legal Counsel opinion discussed in item 17 says that no statute requires the case-by-case analysis, and that FDA may write a regulation under sections 701(a) and 705(b) of the Food, Drug, and Cosmetic Act authorizing disclosure where the Commissioner finds imminent danger to health. A Class I recall is by FDA's own definition one with a reasonable probability of serious adverse health consequences or death. The petition asks the agency to turn a discretion it already claims into a rule.

**Classify recalls promptly and put a number on promptly.** A recall that has not been classified is a recall nobody can rank, and the classification often arrives weeks after the product has moved. The consignee petition puts the number at ten calendar days, publishes the classification date with the recall record, and publishes the distribution of intervals every year. The compliance side of the industry would go faster: a pathogen in a ready-to-eat food is Class I on the day the press release goes out, no debate, and the agency should classify at announcement and justify in writing the rare case that needs longer. That is right about the obvious cases, and the ten-day outer limit is written so that the obvious ones take an afternoon. This came from the compliance side of the industry rather than from us, which is a good sign about how hard it would be to win.

**Three more things that belong here.** Change the investigations table's own criteria, so that once sampling or inspection is checked for a file a suspect food has to be named; it is not credible to be sampling a food and inspecting a plant while telling the public that no food is yet known, and that fix costs the agency a sentence in a procedure manual. Publish the redaction policies at FDA and FSIS and apply them to release the most information rather than the least, and fix the records search on FDA's own site, which is close to unusable. And look at California, which already publishes the retail distribution list for a recall down to the street address of each store, on a state website, for deli meat, infant formula and frozen seafood alike. A state health department has been doing for years what this paper asks the federal agency to start.

**And publish what the existing report to Congress leaves out.** FSMA section 206(f) requires HHS to report each year to the Senate Health, Education, Labor and Pensions Committee and to House Energy and Commerce on the use of FDA's mandatory recall authority and on public health advisories against eating a food. The recent reports say, in substance, that there was no reportable mandatory recall activity, which is true and useless. The number that would tell Congress something is the one nobody publishes: how often a firm initially refused a voluntary recall, and how often the authority was invoked or threatened to obtain one. That is an addition to a report that already exists, costs nothing, and is the surviving piece of the item this paper struck at number 7. It comes out of the same memorandum series as items 32 and 33.

**And finish the part of recall communication Congress already ordered.** The agency held its own listening session on modernizing recalls on September 29, 2023. The docket, FDA-2023-N-2393, closed that October 27. Since then the agency has sent

industry two letters, on July 9 and December 15, 2025, encouraging better recall communication, and in December 2025 it sent warning letters to four national retailers that still had recalled infant formula on their shelves weeks into the recall. No rule or guidance has come out of the docket that I can find. The authority has been on the books since 2011. Section 211 of the Food Safety Modernization Act, 21 U.S.C. 350f(g) and (h), directs FDA to publish a one-page consumer summary for a reportable food, and requires a grocery chain with fifteen or more stores that sold the food to post that summary within 24 hours and keep it up for 14 days. The statute gave FDA one year to say where and how the notice is to be posted. FDA published an advance notice of proposed rulemaking on March 26, 2014, and a consumer organization asked the agency in writing to finish the job in 2015 and again in 2016. As far as I can find, FDA has gone no further. The ask is to finish that rule and to act on the 2023 docket. It needs no new statute, and it is the difference between a recall that is announced and a recall a shopper actually sees.

**19. Criminal enforcement.**

**The problem.** The Justice Department eliminated the Consumer Protection Branch in September 2025 and moved the work into a unit inside the Fraud Section, while the Justice Manual still instructs assistant United States attorneys to consult a branch that no longer exists. Deterrence that nobody can locate is not deterrence.

**The fix.** Two asks that cost nothing: publish charging guidelines for food cases, and state plainly whether the strict-liability misdemeanor under the Food, Drug, and Cosmetic Act is still charged. I put both to the Attorney General in August. A stronger version would ask for more than guidelines: restore the branch, and prosecute the senior executives whose negligence put the product on the shelf, under the doctrine the Supreme Court set in Park fifty years ago, because a civil penalty is a cost of doing business and a jail sentence is not. That is the maximal version of this item.

**20. Imported food, which this paper has been avoiding.**

**The problem.** The lettuce this summer came from Mexico. The frozen blueberries came from Chile, and FDA's response to the facility was a remote regulatory assessment and an import alert rather than a person on the ground. There is another reading of that episode, and it is at least half right: the remote assessment let the agency widen the recall faster than a visit would have, and the real failure was the trace-forward, with the recall still expanding to new lots, new brands and new states two months after the first notice. Remote review is a tool. Counting it as an inspection is the mistake, and so is a trace-forward that takes a summer. The tara flour came from Peru through an importer whose supplier verification plan FDA said needed more information. More than half of the GRAS notices ever filed came from foreign firms. FSMA told FDA to inspect 600 foreign food facilities in its first year and double the number each year after, so that the statute now calls for 19,200 a year, and GAO reported in January 2025 that the agency missed both its foreign and its domestic inspection targets in every year from 2018 through 2023, with nearly half of high-risk domestic facilities not inspected on schedule in 2021. The best year was fiscal 2019, at 1,727 foreign inspections, about 9 percent of the target, and the average over the six years was 917.

**The fix.** Publish the numbers every year: foreign facilities inspected, supplier verification actions taken, import alerts issued and lifted. Fund foreign inspections in the fiscal 2028 request at a level FDA is willing to defend rather than the one it has quietly settled on. Stop counting a records review over the internet as an inspection. And there is now a vehicle that has moved: the Making America's Food Safer Act, S. 4974, reported 22 to 0 by the Senate HELP Committee in July, would let FDA order a refused import destroyed rather than re-exported and tried again, which consumer groups asked for in March, and would expand the third-party certification program, which this community should watch more closely than it has. Use it, and the Safer Shrimp Imports Act heard in April, for whatever import provisions this community can agree on.

**And fix the guidance the importers actually work from.** FDA's supplier verification guidance defaults to an annual onsite audit of a foreign supplier where a hazard requires a control and there is a reasonable probability of serious adverse health consequences or death. The people who have to comply with it say the default has decayed into a compliance checkbox: the audit happens on schedule, the box is ticked, and nobody asks what the audit found or whether the auditor was looking at the right thing. Update the guidance to say that the annual audit is a minimum, that in most cases additional verification is expected, and that verification is judged on what it detects rather than on whether it occurred, so that an importer who finds something is not worse off than one who finds nothing. FDA said an audit was the default, so an audit is what everyone does, and it is not working.

**And say what equivalence means.** This item should be measured by something other than inspection counts: define what equivalent food safety assurance means for an imported food, test whether supplier verification is actually catching anything, publish an import oversight strategy with risk criteria, milestones and performance data, and be transparent about FSVP enforcement, import alert decisions, the farms and packinghouses implicated, and what was done about them. The foreign inspection schedule FSMA wrote has disappeared for lack of money, and one proposal is that user fees should fund it. Both belong in the hearing on imports in Part Seven, which now also asks who inside FDA owns this work.

**And the regulators at the other end.** This item, read with item 33, can lean too hard on FDA's own inspectors. An inspection is a snapshot. The hazards often start on the farm, in the pond or on the boat, before any processor is involved. And no budget anyone will pass lets FDA inspect the world. The first question is whether the exporting country's own regulator can show that its system finds hazards and corrects them. Rely on that regulator where it can, help it where it cannot, and turn to inspections, sampling and import alerts where it will not. Trust but verify. FDA already has three tools for it. Systems recognition covers New Zealand, Canada and Australia, signed in 2012, 2016 and 2017. Congress directed regulatory partnerships on shrimp with India, Indonesia and Ecuador, and the first, with Ecuador, was signed in August 2023. And FDA has had a produce safety partnership with Mexico's regulators since 2014, widened to all human food in 2020. The record is also the caution. Twelve years into that partnership, the lettuce this summer still came from Mexico. The Ecuador arrangement covers shrimp, and the blood clams in the hepatitis A outbreak of 2025 and 2026 came from Ecuador as well. A partnership is an activity, the same as an inspection. The ask is the one this paper makes everywhere else:

publish, beside the inspection numbers, which foreign regulators FDA has assessed, what each arrangement produced in data received, deficiencies found and deficiencies corrected, and how FDA checked. Take up GAO's own suggestion from January 2025 as well, that Congress revisit the 19,200 target once FDA says how many foreign inspections it actually needs. The verifying still takes inspectors, which is why the money in this item stays.

Foreign oversight also belongs in the list of recommendations coming out of this summer, and it is not currently in anybody's after-action list. Nearly thirteen thousand confirmed illnesses in one outbreak traced to imported lettuce is the argument, and it will not still be available a year from now.

**21. The national strategy GAO has asked for since 2017.**

**The problem.** Federal oversight of food safety has been on GAO's High-Risk List since 2007, longer than most of the people working on it have held their jobs. In 2017 GAO recommended that the White House develop a national strategy to address the fragmentation among the agencies that share the work. In January 2025 the Office of Management and Budget told GAO there were no plans to create one. Fifteen agencies, thirty statutes, no plan.

**The fix.** Ask for the strategy. It is the version of the structural argument that can be won in 2027, it requires no legislation, and it is a ready-made oversight hearing for either chamber. As the section on structural change below explains, this community currently holds two incompatible proposals for reorganizing food safety and has not agreed between them. A national strategy is the one ask that does not require choosing, and a GAO request letter on the same subject costs one member's signature and no gavel. One condition belongs in the ask: the strategy should count diet-related disease as well as contamination, so that an integrated system does not integrate only the pathogen half.

**The strategy has a skeleton already, and the states built it.** In 1997 the state and local regulators' association put forward the idea of an integrated food safety system, one seamless partnership among federal, state, local, tribal and territorial agencies, and has worked with FDA on it since: national program standards for inspection and sampling, a training and certification program, a laboratory network, integrated outbreak response, and, inside FDA's Human Foods Program, an office whose job is the partnerships. The momentum has dwindled as leaders changed, and there is little public discussion of it. The recommendations are the cheapest in this paper: tell GAO that the integrated system is the strategy it has been asking for, tell the public, get senior federal and state officials to commit to it in writing, and bring the next generation of state regulators into it. A national strategy that does not start from the agencies that do over a million inspections a year is a strategy for the smaller part of the system.

**34. A warning label on raw sprouts.**

Numbered 34 for the same reason as items 31 through 33. It belongs in Part Two, and it needs no statute.

**The problem.** Twenty-eight years ago FDA told children, older adults, pregnant women and people with weakened immune systems not to eat raw sprouts, and it has never withdrawn that advice. It repeated it in 1999, in 2002, in guidance, and on the outbreak pages it published this September and October for two open sprout outbreaks. It has delivered that advice by press release, talk paper and web page, and never once on the package, where the purchasing decision is made. The bacteria can be inside the seed, where washing cannot reach them. My firm has represented sprout victims for nearly thirty years and represents victims of this fall's outbreak.

**The fix.** Amend 21 CFR 101.17, the regulation that already carries the juice warning and the shell egg statement, to require a prescribed warning on packaged sprouts and on a placard where sprouts are sold or served unpackaged, with a juice-style exemption for sprouts that have been treated to make them safe. The citizen petition asking for that was posted for public comment in September, revised on the comments, and its current draft is dated October 29, 2026, revised November 4; it is still taking comments. It is listed with the others after item 16.

### 35. The 60-day rule for cheese made from unpasteurized milk, and a warning label.

Numbered 35 for the same reason.

**The problem.** Unpasteurized milk may not cross state lines in a bottle. It may cross as cheese, on the strength of a 60-day aging provision written in the 1940s. In 2013 FDA published, with Health Canada, a risk assessment finding that raw milk cheese carries fifty to 160 times the per-serving listeriosis risk of pasteurized cheese and that aging can increase the risk in surface-ripened cheese, and announced that it would reevaluate the 60-day rule. It has not. Since then four outbreaks in thirty-one months, the last of them this September, have come from cheese that complied with the rule: forty-three people sick, seventeen hospitalized and six children with kidney failure, and in the last one more than half of the sick were five or younger. The label says nothing. A national pediatricians' organization said in October that it would keep the product away from children and pregnant women outright; this paper asks only that the agency finish the reevaluation it announced and that the package say what the agency already knows.

**The fix.** Three things, in this order. Publish the 60-day reevaluation within a year or say in the docket why not. Require cheesemakers that rely on aging to control pathogens to validate it under the preventive controls rule they are already subject to. And amend 21 CFR 101.17 to require a prescribed warning on cheese made from unpasteurized milk, modeled on the juice warning, reaching cheese cut at a counter, imported cheese and cheese sold online. The citizen petition asking for all three is listed after item 16; its current draft is dated October 29, 2026, and it is still taking comments.

**H5N1, to be weighed for the petition.** The reevaluation now has a current hazard to answer. A Cornell study supported by FDA and published in Nature Medicine in October 2025 found infectious H5N1 virus after 120 days of aging, twice the federal minimum, in cheese made from contaminated raw milk at a pH of 5.8 to 6.6. Ferrets that ate the cheese were not infected, which cheesemakers will fairly point out. On January 17, 2025 FDA told makers of cat and dog food that use unpasteurized milk or uncooked poultry or cattle

materials to reanalyze their food safety plans for H5N1. FDA could ask raw milk cheesemakers to do the same, framed as address it and explain the answer. That request is not in the petition as drafted, and it should be decided there first.

**36. Stop feeding medically important antibiotics to animals that are not sick.**

Numbered 36 for the same reason as items 31 through 35. It belongs in Part Two, and it needs no statute.

**The problem.** FDA's own report puts 2024 sales of medically important antibiotics for food animals at nearly 7.1 million kilograms, up 16 percent in a single year. That is 28 percent above 2017, the year the agency's last attempt at the problem took effect, with swine taking 43 percent and cattle 41. Ninety-five percent is given to whole herds and flocks through feed or water, much of it to animals with no diagnosed illness, and the last published comparison found about twice as much sold for food animals as for sick people. FDA ended growth promotion claims in 2017 through voluntary guidance and left disease prevention claims in place, in many cases at the same dose and in some with no limit on duration. It is also fair to say, because industry will, that the 2024 total is still 27 percent below the 2015 peak.

This belongs in a food safety paper because the bacteria at issue are ours. *Salmonella* and *Campylobacter*, the two most common bacterial causes of foodborne illness, are both on CDC's list of serious antibiotic resistance threats, and a resistant infection is more likely to put the patient in a hospital. CDC counts more than 2.8 million resistant infections and more than 35,000 deaths a year from all sources.

FDA has known this since 1977, when it first proposed to withdraw penicillin and tetracyclines from animal feed and did not finish. The Second Circuit let the agency rely on voluntary measures in 2014. A 2016 petition was denied on the same ground. The sales figures are the record of how the voluntary approach has worked.

**The fix.** Grant the petition, docket FDA-2026-P-6878. It asks for four things, all under authority FDA already has. First, find that feed and water uses of medically important antibiotics for disease prevention in animals with no diagnosed illness, for maintenance of weight gain, and for long durations are not shown to be safe, and begin withdrawing the indications listed in its Appendix A. Second, end labeled group administration beyond 21 days, the line FDA's own guidance already treats as high extent of use. Third, collect and publish use data by species and purpose from the Veterinary Feed Directives and feed distribution records the agency already requires to be kept. Fourth, set reduction targets by livestock sector, as CDC has done for hospitals and clinics.

Nothing in it stops a veterinarian from treating a sick animal or controlling a diagnosed outbreak in a herd. USDA's own survey found that more than half of feedlots, including more than 30 percent of the largest, give no antibiotics in feed at all, so the practice is a choice and not a necessity. This item is framed the way the sixth question at the end of this paper says it would be, as resistance, and it takes no position on how animals should be raised.

The 180 days FDA's regulations allow for a response run on December 13, 2026. If the date passes in silence, this becomes one more name on the list in item 16, and the ask is the same one made there: answer it in 2027, because a denial with reasons can be litigated and silence cannot.

**Part Three. Money, which is the part every agenda skips.**

An adulterant standard nobody can sample for is a press release. A traceability rule with no investigators behind it is a filing cabinet. Four asks, and every one of them is small against the cost of a single outbreak. This part carries no item numbers. That is deliberate: these asks are annual and go into an appropriations letter rather than a bill.

FDA's foods program should come out of fiscal 2027 no worse than it went in; the House bill runs 1.4 percent below the enacted 2026 level overall, and the Senate has not acted. FSIS needs its roughly eight thousand frontline inspectors funded, which is also the honest answer to the line-speed argument. CDC's food safety program should get the fifty percent increase, about $36 million, that was requested in November 2025, and this time with the summer attached to the request. And the money that actually reaches the ground is state and local: the public health laboratories that do the sequencing, the state epidemiologists, the retail funding a professional association administers for FDA, which works for a small program and not for a large one and does nothing to help anyone solve an outbreak, so that CDC's environmental assessment and specialist networks, NEARS and EHS-Net, are the better model and the better line to protect, and the produce safety cooperative agreements that pay for the farm inspections FDA does not perform itself.

**One disagreement inside that paragraph, recorded.** One industry view would not ask for more FSIS inspectors. The question is whether continuous carcass-by-carcass inspection in meat plants and a few hours once every several years in FDA plants is the right split of the country's inspection money, and the answer on that view is no, with the acknowledgment that the statutes which require it are not going to change. This paper keeps the ask, because the inspectors are the enforcement mechanism for item 11 and because the alternative on offer in the September 4 executive order is not risk-based inspection but less inspection. The disagreement is real and is in the list at the end.

**And a precondition.** It is hard to ask for more money for an agency that cannot say what it does with the money it has. Appropriations report language should require FDA's Human Foods Program to account for its food safety spending, and the Office of Inspections and Investigations to report what it spends on food inspections, domestic, foreign and at the border, separately. USDA should also publish the number of Agricultural Research Service scientists and postdoctoral researchers at Beltsville two years before the center's closure was announced, one year before, and one year after they are relocated, because the research capacity behind every standard in this paper is being moved and nobody has counted it. Both are report-language asks, and both make the rest of Part Three easier to win.

**A sixth ask, from the industry side.** Low-interest loans and grants for small and midsize food companies, farms and packinghouses to upgrade equipment and make the repairs that allergen control and pathogen control require, so that the cost of a new requirement does not push production out of the country. And graduate training in food

toxicology and risk assessment, with public-service loan repayment, to produce the reviewers that items 4 and 12 will need. Neither is this community's usual ask. Both answer the objection that usually beats us.

**A fifth ask, which is different in kind: fees.** Every appropriation in the paragraph above has to be won again next year, and last year this community learned what a single rider can do to a decade of work. Fee-funded review does not have that vulnerability. The place to start is a cost-recovery fee on GRAS notices, which appears in items 4 and 12 and for which no statutory language exists anywhere. One organization has offered to draft it. The same point applies to the appropriation itself: FDA cannot do the chemical work in items 4 and 12, the reviews or the reassessments, without the money and the people for it.

It is also the item most likely to split this room, and pretending otherwise would be dishonest. Some organizations here have watched fee funding change who a regulator understands its customer to be, and they will cite the drug user-fee record when they say so. That argument deserves an answer in the drafting rather than after it: fees that pay for review by the firm seeking the review, with the fee schedule set in statute rather than negotiated with the industry, and no reauthorization cliff that lets the payers rewrite the program every five years.

There is one table in Washington where industry and consumer groups sign the same appropriations letter. On this section, we should be using it rather than working around it, though much of the industry regards it as not really interested in food. It should see this paper.

## Part Four. The states, where most of this is winnable.

There is a good argument that this part should come first, at least until 2029. The reasons are in the section on two tracks near the front of this paper, and they are good ones. Read this part as the near-term work rather than as the back of the book.

### 22. Finish the baby food and formula testing laws.

**The problem.** Testing and disclosure requirements now exist in a handful of states and nowhere else, which means a parent's protection depends on the address on the shipping label.

**The fix.** Get New York's bill signed if it has not been. Pass California's AB 2302. Add states in the 2027 sessions, using the same template: monthly testing, public posting of results, scannable codes on the label. Six states become twelve, and the federal floor in item three gets much easier to argue.

**And test for pathogens.** The state laws are heavy metal laws: lead, arsenic, cadmium and mercury. Federal rules already require every lot of powdered infant formula to be tested for *Cronobacter* and *Salmonella*, and the results stay in the company's files. Nothing, state or federal, requires a test for the botulinum-producing clostridia behind this year's fifty-two cases, and no state requires any pathogen result to be posted where a parent can see it. The template is incomplete without pathogens. The next state bill should

add them for powdered formula on the same terms as the metals: every lot tested, the botulinum organisms included, the results posted and scannable from the label. It is the state version of item 2 and of the formula petition after item 16, and a legislature can pass it before FDA answers either.

**Does this item disappear if item 3 passes?** No. The federal bill sets limits; the state laws require monthly testing, public posting of results and a scannable code on the label, which the federal bill does not, and a floor leaves them standing. If item 3 passes as a floor, the state work shifts from limits to disclosure, which is where most of it already is.

### 23. Take an Issue to the Conference for Food Protection.

**The problem.** Retail and restaurant food safety is governed by the Food Code, which most of this community never engages with, while the sector generates the majority of outbreaks people actually experience. Item 23 is the venue. Item 24 is the first thing to take to it.

**The fix.** The Conference writes the recommendations FDA folds into the Code, which the states then adopt, and government, industry, academia and consumers have equal standing to submit and deliberate Issues. The next biennial meeting is April 19 to 23, 2027 in Grand Rapids and the Issue submission window opens in the months before it. One well-drafted Issue is a route onto the national retail agenda with no bill and no rulemaking. Enforcement of the employee illness exclusion the Code already contains, allergen disclosure to customers, which the Code does not yet require of a menu, and hepatitis A vaccination all belong there.

**Three questions, answered.** States adopt the Food Code voluntarily and late, many of them an edition or two behind and some of them in part, so a Conference Issue is a route onto the agenda and not a guarantee of adoption; that is why item 24 pairs it with a second track that does not depend on the Code. Employee illness is already in the Code; the Issue is about whether anyone verifies the exclusion, which is what the state regulators' association proposes below. And who pays for the hepatitis A vaccine is the first question the Issue has to answer, which is why the Issue should answer it rather than leave it to each health department.

**And a better Issue than any of those, from the state regulators' association.** Amend the Voluntary National Retail Food Regulatory Program Standards so that Standard 5, on foodborne illness response, requires a program to be able to conduct environmental sampling and to participate in CDC's National Environmental Assessment Reporting System, and ask FDA or CDC to stand up a technical assistance group that a state or local program can call for real-time help in the middle of a retail outbreak investigation. That is the operational version of this item, it comes from the people who run the programs, and it should go to the Conference as its own Issue.

### 24. Norovirus, the biggest number in this paper and the one that never gets named.

**The problem.** CDC's April 2025 estimate puts norovirus at 5.5 million domestically acquired foodborne illnesses a year, more than any other pathogen, and 22,400

hospitalizations. The mechanism, most of the time, is a food worker who came in sick because staying home cost a shift. No traceability rule and no adulterant standard touches it. The fixes are the Food Code's employee health provisions and paid sick leave, and this community rarely works either one.

**The fix.** Two tracks, both state and local. First, the Food Code: a Conference for Food Protection Issue on employee illness exclusion and its enforcement, submitted for the 2027 meeting. Second, paid sick leave for food service workers, which is a labor issue with a food safety argument attached and has passed in states where a food safety bill alone would not. The hepatitis A vaccination item belongs alongside it, for the same reason.

### 25. Defend state authority and use it.

**The problem.** Every state law described above is what the preemption clause is aimed at. States did not wander into food regulation out of boredom; they moved because Washington did not. The scale of what preemption would reach is in the section on two tracks near the front of this paper: more than a million state inspections a year, and the embargo and seizure powers that make a state the first responder on the day a hazard appears.

**The fix.** Two tracks. Defensively, make preemption a live political cost for any member who supports it. Offensively, the unfinished state business is real: very small farms must complete pre-harvest agricultural water assessments by April 5, 2027 and state departments of agriculture will inspect for it; hepatitis A vaccination for food service workers remains a patchwork thirty years after the vaccine appeared; and raw milk sales keep expanding in state after state, with the children who end up on dialysis still ending up in my office.

**The two tracks can look contradictory, and the sentence that reconciles them belongs here.** This paper is for state authority where Washington has not acted and for federal floors where the country needs one number, and against anything that takes the first away in the name of the second. Defending the state laws and finishing the state work are the same position. One industry view would accept federal preemption on a short, specific list, nutrition labeling, defined claims and the definition of ultra-processed food, on Commerce Clause grounds; that is a narrower disagreement than it sounds, since none of those is a state food safety authority, and it is recorded in the fourth disagreement at the end.

## Part Five. Industry, which does not have to wait for any of this.

### 26. Build to lot codes anyway.

**The problem.** The rider froze the rule, and some firms have used it as permission to stop building. Others did not: three of the largest grocers told their suppliers to meet the rule's requirements on the original schedule and say they are not undoing that. Even that is debatable: asking suppliers for lot data is the easy half, carrying it from the distribution center to the store at the lot level for every food on the list is the hard half, and no retailer is known to do the second today.

**The fix.** Keep building. The produce trade association has called for end-to-end traceability, Taylor Farms says on its own website that it endorses traceability legislation, and the food technologists' institute, which ran FDA's original tracing pilots, took a three-million-dollar grant in June 2026 to push interoperability across commodities. The technical authority in this argument says the rule is buildable. A company that keeps building will be the one that can prove, when the next outbreak comes, that its product was not the one that hurt anybody.

**And publish who has committed.** There is no public list of companies that have committed to meeting the rule's requirements now. Produce the list, keep it current, and let buyers use it; a company that wants credit for building should be able to get it in writing, and a company that stopped should have to say so. The produce association, which this paper credits for its support of end-to-end traceability, has also asked FDA to accept a warehouse-management-system model that assigns the traceability lot code for last-mile shipments by probability rather than by scanning the case. The association calls it a stepping stone; critics call it a way to undo the rule from inside. The proposal went to FDA in July. It belongs on the record here, because the next fight over this rule may be about what counts as a lot code rather than about the date.

### 27. Buy safety and publish what you find.

**The problem.** Most large buyers have more practical leverage over a supplier than any inspector does, and most of them do not use it. Pledges made in public get quietly abandoned when nobody checks; two advocacy groups reported in August 2026 that three of the largest chains had walked away from their antibiotics commitments.

**The fix.** Write food safety into purchase orders and audit against them. Publish finished-product testing the way the baby food laws now require. Disclose environmental monitoring programs to buyers, meaning the design of the program and what it is capable of finding, rather than the positives, because the positives are the wrong number: a company can test the environment in ways that keep its rate below whatever the buyer wants, and a disclosure rule written around the rate rewards not looking. Put the customer list in the recall notice on day one. And judge a supplier audit on what it found rather than on whether it happened, which is the same complaint the importers make about the FSVP audit default in item 20. Jack in the Box did not change because of a verdict; it changed because Dave Theno wrote specifications and made suppliers meet them, and he carried a photograph of a six-year-old girl in his wallet for the rest of his life so that everyone in the room knew who the specifications were for.

**On audits.** Third-party audits on the GFSI model have become the industry's assurance that food is safe, and the opposite has happened: the audits give a false sense of security, the auditor's business model depends on being hired again, and the scores are high because of it. Repetitive audits manage liability rather than safety, consume the money that would fix the problem, and let a buyer choose the cheaper supplier and call it verified. The fix is the one in this item and in item 20: judge an audit on what it found, and hold the retailer responsible for verifying the safety of what it chooses to sell, especially the unbranded produce and perimeter foods where the retailer picked the supplier and the customer cannot.

## Part Six. Chronic disease, diet and ultra-processed food: the same commitment.

I have spent my career on bacteria and viruses, and the weight of this paper reflects it. That should not be mistaken for a judgment about what matters. Heart disease and stroke killed more than 850,000 Americans in 2024, which is more than foodborne illness has killed in the thirty-three years since Jack in the Box by any estimate, and ninety cents of every health care dollar goes to chronic and mental health conditions. Roughly a quarter of the organizations on my own map work the salt, sugar, fat and ultra-processed side of the same problem, and the two halves of this community have been treated as separate worlds for too long. This part, then, is a commitment, and it comes with things I will do rather than things I hope for: carry the letter asking FDA and OMB to release the response to the Kessler petition (item 16), which this paper now names as the chronic side's first item, beside the three at the front; file a comment on the federal definition of ultra-processed food the week it publishes, measured against the benchmark and the two tests in item 28; push item 29, front-of-package labeling, which has the furthest-travelled vehicle in this part; and write food safety and nutrition into the same procurement contracts and the same Food is Medicine grants, so that a school district or a hospital never has to choose between them. One of our items is already theirs: the loophole in item four is the same loophole that David Kessler's petition attacks from the nutrition side. If we are going to be in the same room on preemption, and we are, we should be in the same paper, at the same weight.

The incoming majority's list adds a fourth subject to this part, Food is Medicine: medically tailored meals, produce prescriptions and nutrition grants. It is in the leadership section near the front of this paper, with the one improvement this community is best placed to make, which is to write food safety into meals delivered to the people most likely to die of listeriosis.

### 28. A definition of ultra-processed food that can carry weight.

**The problem.** The first problem is the food. Eating ultra-processed food is associated with obesity and weight gain, type 2 diabetes, cardiovascular disease, dementia, anxiety and depression. The products are aggressively marketed and are everywhere, and they are now the largest source of calories in the American diet. The Lancet published a three-paper series on the evidence in November 2025. The second problem is the definition. Until this summer the federal government had no definition of ultra-processed food, which is the practical reason it could not be regulated or kept out of a school cafeteria. Research did not have that problem: the Nova classification has been used consistently across more than a hundred studies of these foods and health outcomes. FDA and USDA opened the question with a request for information in July 2025 and sent a proposed definition to the White House on August 10, 2026. CDC reported in 2025 that about 62 percent of children's calories and 53 percent of adults' calories come from these foods.

**What the text is reported to say.** On November 25, 2026 the Wall Street Journal reported that the White House is moving ahead with the proposed definition, which had been stalled since before the midterm elections, and that its release and a comment period are expected soon. By the Journal's account of a document its reporters saw, the definition

would reach around 60 percent of the food supply. The government would not say that foods meeting it are harmful. It would be for research purposes only. It would not be used for state laws or regulations or in lawsuits. And it would exempt food safety additives, infant formula and foods that meet FDA's Healthy standard. None of that is published, and all of it can change. Measured against the tests below, a definition limited to research passes one use of three, and items 29 and 30 would have no federal definition to build on. The language on state law and lawsuits is item 5 arriving by another road. A definition that declines to say these foods are harmful has trouble with the second test. The Healthy exemption matches the benchmark, though whether nonsugar sweeteners and certified colors still lose it is not reported. And the additive exemption turns on how it is drawn. Preservatives are not marker ingredients under the benchmark, so a narrow exemption costs nothing; one broad enough to cover the nitrite in cured meat would take out processed meat, a category the editorial described below names.

**The fix. Adopt a benchmark now, before the federal text publishes,** so that this community has something to measure it against on the day it comes out rather than three weeks later. The benchmark is the Healthy Eating Research expert-panel report published in May 2026, from a fourteen-member panel convened by Healthy Eating Research (based at Duke), and the right way to use it is by reference rather than by restating it here. Its recommendation is Nova Category 4 as the scientific basis, because nearly every study linking these foods to health outcomes uses Nova, operationalized for policy as a marker-ingredient test: a product is ultra-processed if it contains at least one cosmetic additive or one ingredient of non-culinary use. Foods meeting FDA's Healthy definition are exempt, with the exception that products containing nonsugar sweeteners do not get the exemption.

Two pieces of that are contestable and should be flagged here rather than buried, because they are where the industry will aim and where the federal proposal is most likely to land differently: the exemption for foods meeting Healthy, and the sweetener carve-out from that exemption. An earlier draft of the federal definition reportedly kept the Healthy exemption and withheld it from any food containing a nonsugar sweetener or a certified color. Expect the industry to like the first and fight the second.

Then judge the federal definition against one test: can it be used in a procurement contract, a labeling rule and a research protocol, or only in a press release. Rank those uses with policy first, meaning labels, procurement and consumer education, and research after. And say what usable means. The definition has to identify ultra-processed foods and separate them from everything else as reliably as the scientific Nova definition does, and agencies and regulators have to be able to apply it in practice. A definition drawn so broadly that foods meeting FDA's Healthy definition sit in the same category as a soft drink will collapse under its own weight. Two examples show the line. Plain yogurt is not Nova Category 4 under any definition in use, though many yogurts with sweeteners, flavors and thickeners are. Most whole grain bread is, because of emulsifiers and dough conditioners: by one count about 85 percent of breads are ultra-processed and only 8 percent also meet the Healthy criteria. One drawn narrowly enough to exempt the products doing the damage is worse. This community has one chance to shape it, and the comment period is the whole opportunity.

**And write this item so that it does not depend on which definition wins,** because the people reading this paper do not agree and are not going to agree before the federal text publishes. One view is that the Nova Category 4 approach, run as a marker-ingredient test, is more than good enough to work with. Another is that no definition of the category will work because the category is the wrong unit of analysis: on that reading of the feeding-study evidence the harm tracks energy density rather than processing as such, and a definition that misses a calorie-dense snack has told a school district nothing useful. The reply is that the meals in the NIH trial were designed to be ultra-processed or not, and that what the trial found is that energy density may be a mediating factor that explains part of the effect of ultra-processed food, not a substitute for it. Both readings are recorded here. A third view is that the definition fight is a distraction from the Kessler petition altogether.

The first two are closer than they look, and it is worth saying so rather than staging a fight. The objection is that a marker-ingredient test sweeps in products with no evidence of harm. The panel anticipated exactly that and built in the answer: the exemption for foods meeting FDA's Healthy definition, which limits added sugar, sodium and saturated fat, takes out of the category the products with the strongest nutritional case for being left alone. That is not an energy-density test: energy density has nothing to do with sodium, and not every food high in sugar or fat is energy dense, though most ultra-processed foods are. The real argument between them is whether the exemption leaves out enough of the products with no evidence of harm. This paper does not answer that.

They can all live with the same first test, and a second one should be added to it: does what the definition captures track harm that somebody can measure. Put plainly: is there scientific evidence that the foods the definition captures are associated with harm to health. A definition that passes both is usable whatever anyone thinks about categories, and the argument about categories can continue in the journals without holding up a procurement contract. This paper records that disagreement rather than settling it, and anyone who wants it settled should say so in the comment period.

**The panel's co-chairs have now made the case for unity in print.** On November 19, 2026 the American Journal of Public Health published an editorial online, "US Ultraprocessed Food Policy: Finding Common Ground," by four authors, two of them the panel's co-chairs (doi 10.2105/AJPH.2026.308815). It makes this paper's opening argument to the nutrition side. Experts will go on disagreeing about the concept, the authors say, as they did over trans fat and sodium, but the disagreement looks larger from outside than it is, and the industry uses it to claim the science is unsettled. The editorial answers the objections one at a time, and two of its answers go to the disagreement recorded above. On whether policy should aim at nutrients rather than processing, it calls the two approaches complementary: by its count about 90 percent of American products high in saturated fat, added sugar or sodium are ultra-processed, so a policy that reaches ultra-processed food reaches most of them, while about 30 percent of ultra-processed products are high in none of the three, and a nutrient-only rule would miss those and invite reformulation around it. On whether Nova sweeps in healthy foods, it points to the same exemption discussed above for products that meet FDA's Healthy claim. That is one side of the argument, stated by the people who wrote the benchmark. It does not close the question about the unit of analysis. What it changes is the cost of waiting. The authors'

point is that full scientific agreement before acting is a standard few public health measures have ever met, and that the political window is open now. This paper's position does not change: work from the benchmark, apply the two tests, and do not let the argument about categories hold up the comment.

**What the editorial would build on the definition.** It lists five policies drawn from the panel report: an excise tax on selected ultra-processed products, such as sweetened beverages and processed meats; limits on what is bought and served in publicly funded settings, among them schools, early learning and child care sites and government facilities; publicly funded countermarketing on the model of the tobacco Truth campaign; guidance to limit these foods in dietary guidelines; and a front-of-package warning that a product is ultra-processed. Two of the five are already in this paper, the publicly funded settings in item 30 and the label in item 29. The tax and the countermarketing campaign are not. The tax is left off for the reason given in the section on what this paper leaves out, which is a judgment about this list and not about the evidence. The editorial also names the industry campaign organized to preempt state and local action, which is item 5.

**One caution, which the chronic disease groups will recognize.** A definition that is not connected to what people can afford, reach and cook does very little and may stigmatize the people it is aimed at; whatever the definition says, the policies built on it have to pair it with access and affordability. That is not an argument against the definition. It is an argument about what comes after it, and it belongs in item 30. Item 30 answers only part of it. Procurement reaches the public plate, and the caution is also about what people eat at home. The answer there has four parts: whole foods such as legumes and grains are often cheap; consumers need more healthy food subsidies; SNAP benefits need to be modernized and expanded; and farm subsidies should support healthy foods, not the big commodity crops. The incentive piece is set out after item 30.

**29. Front-of-package labeling.**

**The problem.** FDA proposed a front-of-package label for saturated fat, sodium and added sugars in January 2025, said it intended to finalize it, and has not. The 2025-2030 Dietary Guidelines, published in January 2026, speak about added sugar in new terms, but the Daily Value the label rests on has not changed; it is still 50 grams a day for an adult, and the Nutrition Facts panel has not moved. Reopening the rule carries two real risks: that the agency could drop saturated fat from the label, given the Secretary's statements about ending the war on it, and that a reopened rule would have to redo the consumer research the proposal rests on, which delays a final rule for a long time or forever.

**The fix.** Finalize it in 2027. If the agency reopens it substantially it has to propose again and take comment again, and that pushes any compliance date past the end of this administration. A finished imperfect rule beats a better one that never takes effect. This is the same argument we make about traceability, in a different room.

**There is also a vehicle now, which this item did not have.** H.R. 6294, the Childhood Diabetes Reduction Act of 2025 from Representatives Beyer and Lawler, would require front-of-package health warnings on sugar-sweetened beverages, on foods containing non-sugar sweeteners, on ultra-processed foods, and on foods high in added

sugar, saturated fat or sodium, and would restrict advertising those products to children. Its Senate companion, S. 5026, was reported out of the Health, Education, Labor and Pensions Committee in the 119th Congress, which is further than anything else in Part Six has travelled. It is on the leadership's first-year list. Two things about it matter to this community. It is bipartisan, with a Republican lead in the House. And it writes ultra-processed food into statutory labeling text, which means the definition argument in item 28 is not academic and arrives attached to this bill. The November 19, 2026 editorial described in item 28 lists a front-of-package warning that a product is ultra-processed among its five policies, which is close to what this bill would require.

**Two things to add.** The nutrient label for saturated fat, sodium and added sugars is long overdue, and a label identifying a product as ultra-processed should travel with it. And format decides whether a label works. A plain "high in" warning does better in randomized trials, and in the countries that use one, than a traffic light carrying numbers, which is the design the Secretary appears to favor. There is a state route as well: FDA can set the label that identifies a food, and the states may be able to require health warning labels, which is worth exploring for the 2027 sessions with the preemption question in item 5 in view.

### 30. School food and public procurement.

**The problem.** Federal school standards follow the Dietary Guidelines, and the new guidelines discourage highly processed foods without defining them, which leaves districts with an instruction they cannot operationalize. Meanwhile the fastest movement in the country is in the states: California passed a statutory definition in 2025 and required the removal of ultra-processed foods of concern from school meals.

**The fix.** Carry a school food law into the 2027 state sessions, built on California's example but not on its text, and where a ban will not pass, use procurement instead. California's law should not be the template as written. It is needlessly complicated, and under its definition a food counts only if it carries a listed additive and is also high in saturated fat, sodium or added sugar, or contains a nonnutritive sweetener. A manufacturer who reformulates under those nutrient thresholds keeps an ultra-processed product on the tray. The bills in New York, Massachusetts and Pennsylvania do not make that mistake. A school district that writes a standard into its contract does not need a statute, and certification and purchasing programs already exist to do part of the specification work. This is also the one place where the acute and chronic sides of this community have identical interests, since the same contract can require both a pathogen program and an ingredient standard. Industry and the public side say the same thing about cost: reviving school programs and writing standards into them costs money the federal government has stopped providing, and the asks here should carry their own funding line. The editorial described in item 28 puts the same route on its short list, limiting what is bought and served in publicly funded settings, and it names early learning and child care sites and government facilities alongside schools, which is a longer list of contracts than this item started with.

**Three federal vehicles, and a drafting gap worth claiming.** The September 1, 2026 leadership memorandum puts H.R. 9474, the Local Foods for Healthy Schools Act

of 2026 from Representative McDonald-Rivet, and H.R. 8928, the Scratch Cooked Meals for Students Act from Representative Hayes, on the first-100-days list, which is the federal counterpart to the state procurement route described above. It also carries a policy idea with no legislative text behind it at all: prohibiting schools in the federal meal programs from serving foods containing a defined list of synthetic additives, beginning with six synthetic dyes, with authority for USDA or FDA to add substances as the evidence warrants. The memorandum cites a two-year California assessment finding that 64 percent of clinical trials showed a link between synthetic dyes and hyperactivity, inattentiveness and restlessness in children, and notes that FDA's safe-intake levels rest on studies forty to sixty years old. No text exists. That is the second drafting gap in this paper, after the GRAS notice fee, and it is a week of work for an organization with a legislative counsel. One caution about what such a list would buy. Removing six dyes has minimal effect on health by itself, and the text should be written to reach ultra-processed food as a whole and not stop at color. A further caution from a reader of this draft: the larger limits on school food are physical. Many schools lack the kitchens to cook from scratch and many students lack the time to eat, and on that view farm-to-school buying, kitchen equipment and time at the table would do more for school meals than any additive list. The two bills at the top of this paragraph are the place to carry that argument.

**Three additions from the nutrition side, not yet numbered.** Three proposals are not yet items in this paper. They are set out here so that the next round of comments can say whether they should become items.

**Marketing to children.** H.R. 6294 in item 29 already limits advertising these products to children. A further step: restrict the marketing of ultra-processed foods, foods with nonsugar sweeteners and foods high in fat, sugar or salt to children across television, digital and in-store advertising, and bar child-directed appeals such as cartoon characters on the package. Where the First Amendment limits that, start with child-centered settings, meaning schools, child care and government facilities, and with data privacy rules that limit the collection, use and sale of children's data. The United Kingdom and Chile have restricted child-directed marketing of foods high in nutrients of concern, and those are the models.

**Sodium.** FDA issued its Phase II voluntary sodium reduction targets as draft guidance on August 15, 2024 and has not finalized them. The ask is to finalize. About 70 percent of the sodium Americans eat is already in packaged, processed and restaurant food before it reaches them, which is why the targets are aimed at the food supply and not the salt shaker. FDA did finish a related rule on October 9, 2026, permitting salt substitutes in standardized foods.

**Healthy food incentives.** The other half of any definition: people have to be able to afford the food the definition points them toward. Fund and expand nutrition incentive programs such as Double Up Food Bucks and the federal Gus Schumacher Nutrition Incentive Program, which subsidize fruit and vegetable purchases for people with lower incomes. This is an incentive. It is not a restriction on what SNAP dollars may buy, which stays off this list for the reason given near the end of this paper.

**And one point about level.** This part is weighted toward federal nutrition policy when most of the progress is in the states and, to a lesser extent, the cities; the work belongs at all three levels. That is the argument of the two-tracks section near the front, applied to Part Six.

**Part Seven. The hearings to ask for, and who should be in the room.**

Most of what is in this paper needs a hearing before it needs a vote. A hearing forces an agency to answer in public, it creates a record a court and a reporter can use, and it is the cheapest thing a member of Congress can give us. What follows is ten of them, with the subject narrowed enough that a committee staffer can see the afternoon in their head.

Three points about mechanics, because this community sometimes asks for the wrong thing in the wrong way. The majority sets the schedule, so the request goes to the chair with a copy to the ranking member, and the minority can request a hearing of its own if the majority will not move. A caucus briefing needs no gavel at all and can be arranged in weeks rather than months. And committee leadership changes parties in January, in both chambers, so these requests are addressed to committees rather than to individuals and should be re-sent to the new chairs when the 120th Congress organizes. The incoming chairs will also be looking for their first hearings; a request that arrives in December with its witnesses named is the kind that gets scheduled.

| Committee | The hearing to ask for | Who should be in the room |
|---|---|---|
| House Energy and Commerce, Health Subcommittee | Infant formula, one subject and not twenty-eight. Two botulism outbreaks that sequencing showed were one contamination, a six-page bill that has not moved, and a Senate bill, S. 272, that passed without objection in April and has sat at the Speaker's desk since May. | FDA's Human Foods Program; pediatricians; consumer organizations, including one that has done its own testing; parents from both outbreaks; and the dairy suppliers and formula makers whose shared milk supply connects them. |
| House Energy and Commerce, Oversight and Investigations | What FDA publishes about outbreaks, and when it will write the disclosure rule. Why it will not name a company absent a recall is no longer a question: its own regulations, as the Justice Department read them on October 26, 2026. The same opinion says FDA may amend them, so the question for the hearing is the date. Imported food and | FDA's outbreak response leadership; the former FDA deputy commissioner who proposed the independent board; the HHS Office of the General Counsel, which asked the Justice Department the question; the consumer organization that filed the February petition; a consumer voice on recall timing; an academic food safety center; a |

| Committee | The hearing to ask for | Who should be in the room |
|---|---|---|
| | foreign firms included, because the disclosure question does not stop at the border. And whether the worst outbreaks should be investigated by an independent board, item 37. | produce industry voice on why the not-yet-identified table fails buyers; a parent from the 2024 romaine outbreak who has already written publicly about it. |
| House Appropriations, Agriculture and FDA Subcommittee | Section 780. What the traceability rule costs, what the delay costs, and who asked for it. | FDA foods leadership; a consumer organization; a traceability technologist on whether the rule is buildable; a grocer that already built to it; a Salinas grower who plowed a crop under. |
| Senate Agriculture, Nutrition and Forestry | *Salmonella* in poultry and line speeds, taken together, because they are the same question about inspection, starting with why a determination published in 2024 has never been enforced. | The Under Secretary for Food Safety; the Agricultural Research Service on the method study the testing delay rests on; the food workers' union; the 2020 petitioners; a former Deputy Under Secretary for Food Safety and a former FSIS administrator, who do not agree about what the agency will do; a family from a poultry outbreak; and the poultry industry's trade association, because a hearing without the other side is a press conference. |
| Senate Appropriations, Labor, Health and Human Services, Education Subcommittee, which is where CDC's money is | Surveillance. What was cut in 2025, what it detected before it was cut, and what this summer cost. | CDC's food safety leadership; the public health laboratories on capacity; the state epidemiologists on case definitions and reporting lags; local health departments; a state epidemiologist from Michigan or Ohio. The head of a state food regulators' association on what the laboratories and wastewater |

| Committee | The hearing to ask for | Who should be in the room |
|---|---|---|
| | | surveillance could do with the same money, and a former FDA center director on what FoodNet did that nothing else does. |
| Senate Health, Education, Labor and Pensions | Food chemicals: the GRAS rule, whether notice can ever substitute for approval, and whether Congress should preempt the states that acted first. | FDA; a law school food policy clinic on the preemption clause; environmental health organizations; a state attorney general or a state legislator who wrote one of these laws; someone injured by an ingredient nobody reviewed. |
| House Energy and Commerce, Oversight and Investigations | Imported food: how many foreign facilities FDA inspected last year, what supplier verification has ever enforced, why a Chilean blueberry plant got a records review instead of a visit and why its recall was still expanding two months later, and who inside FDA owns import oversight, the Human Foods Program or the Office of Inspections and Investigations, with the Trade Representative in the room. | FDA's inspection leadership; GAO, which has the numbers; a consumer organization; an importer who can describe what the annual audit default actually produces; the produce association; a family from the blueberry or lettuce outbreak. The frozen food trade association, which was in the room the last time frozen produce was implicated. |
| House Energy and Commerce, Health Subcommittee, or Senate HELP | The condition of FDA's Human Foods Program two years after the reorganization: its structure and accountability, how the inspection office allocates its people and money between food and everything else, milestones and metrics, recruiting and succession for the jobs that keep turning over, the use of artificial intelligence tools, public-private partnerships, and | The Deputy Commissioner for Human Foods; the head of the Office of Inspections and Investigations; GAO; the coalition that advocates for FDA's appropriation; a former center director; the state food regulators' association on the integrated food safety system; the packaged food and produce trade associations, because they are the regulated parties and they will say the same thing. |

| Committee | The hearing to ask for | Who should be in the room |
|---|---|---|
| | whether stakeholder engagement has been restored. | |
| House or Senate Judiciary | Who prosecutes food crimes now that the Consumer Protection Branch is gone. | The Criminal Division; a whistleblower organization; a former food-safety prosecutor; a victims' organization. |
| The bipartisan Safe Food Caucus, House and Senate | A briefing, not a hearing: produce testing, what the government already samples and does not publish, the program that was killed in 2012, and the drafted Produce Pathogen Surveillance Act that would bring it back. | The state agriculture departments; the public health laboratories; a state agriculture laboratory director who ran MDP sampling; an academic food safety center. No gavel required, which is why this one can happen first. |

Six notes on that table. The Energy and Commerce Health Subcommittee heard twenty-eight food bills in a single afternoon in April 2026, which is not a hearing, it is a roll call. One subject and four hours would move the infant formula bill further than another omnibus session. The appropriations hearing is the one with a clock on it, because the fiscal 2027 bill is unfinished. The Judiciary hearing has the lowest odds and the lowest cost, since it asks two questions the Department can answer in a paragraph. The imports hearing writes itself out of a GAO report that already exists, which is the easiest kind of hearing for a staffer to build. And the Safe Food Caucus briefing is the one I would schedule first, because it is bipartisan, it needs nobody's permission and produce testing is the least ideological item in this paper. I was scheduled to speak to that caucus in the spring and had a heart attack the night before. I would like to finish the sentence. And the surveillance hearing is addressed to the subcommittee that funds CDC.

**On witness lists, which is where these things are won or lost.** Every hearing above needs three kinds of witness, and most food hearings only get two. There is the agency that has to answer, there is the expert who can be cross-examined on the science, and there is the person it happened to. The third one is what makes a hearing matter a year later, and it is the one that gets left off, usually out of a well-meant instinct to spare the family. Ask the family. There are organizations that have spent thirty years preparing people to do exactly this, and the parents I have represented have told me they would rather testify than be described.

Invite the industry too, at every one of these. A hearing with only our side of the table is a press conference that costs a member an afternoon, and the trade associations are better

witnesses than we sometimes admit: the produce association is on the record for end-to-end traceability, the technologists say the rule is buildable, and the chicken council has to explain in public why a standard that worked for beef cannot work for poultry. Industry agrees. One caution is that the produce association's support for end-to-end traceability comes with a probability model for last-mile lot codes that could hollow out the rule, which is a good reason to have the association under oath rather than on a panel.

What we should send with each request is a single page: the question the hearing answers, the bill number or docket it attaches to, three witnesses with their contact information, and two facts a member can say out loud without staffing them out first. Staff will use a page. They will not use a report. If this paper is agreed to by even a dozen of these organizations, those ten pages are two afternoons of work, and they are the most valuable thing the coalition can produce this fall.

**Structural change, which this paper no longer excludes and does not resolve.**

Earlier versions left a single food agency off the list on the ground that it is not a 2027 project and would not survive a jurisdictional fight in an election year. That cannot stand, because the people who raise it are not asking the same question as each other, and one version describes a road this community has already been down.

**There is a bill.** H.R. 6567, the Federal Food Administration Act of 2025, was introduced on December 10, 2025 by Representative DeLauro with Representatives Jacobs and Bishop and referred to Energy and Commerce, with a Senate companion carried by Senator Durbin and Senator Blumenthal. It would establish a Federal Food Administration inside HHS, led by a Senate-confirmed commissioner, and move FDA's food functions into it. Four consumer organizations have endorsed it, which means leaving it out was not neutral; it was a position, and not a widely held one.

**And there is the other direction.** By one first-hand account, the Clinton administration privately considered moving FDA's food center into USDA rather than the reverse, as part of Reinventing Government and in response to Jack in the Box. It was never said publicly. The administration instead sent a new leader to USDA's food safety agency, where *E. coli* O157:H7 was declared an adulterant in ground beef. That account is one person's memory of a private conversation, and it is worth having here because it turns the question from a hypothetical into something an earlier administration actually considered.

The argument underneath it is not about organizational charts. It is about leverage, and it is the same point that took item 7 out of this paper. FSIS can withdraw inspection and a plant without inspection cannot ship, so companies comply in days. FDA has to persuade or sue, and firms have been known to say go to court and make us. Whatever anyone thinks about moving a center from one department to another, that difference is real, it survives the reorganization question entirely, and it explains why the asks in this paper that work are the ones attached to something an agency can withhold.

**A third version has since arrived.** Four authors published a column on March 16, 2026 calling for a single federal food protection entity that would join food safety with food defense, food authenticity and the protection of the food infrastructure, on a risk-

based footing. It is broader than either proposal above, and it does not choose a department. It is recorded here for the same reason as the other two: it is a serious proposal from people who have done the work, and it is not one this community has agreed to.

This paper, then, does not exclude structural change and does not pretend this community agrees about it. Two proposals, running in opposite directions, both called a single food agency, with real organizations behind each. That disagreement is now in the section below where the disagreements live rather than hidden inside an exclusion. And the 2027 ask that does not require choosing between them is item 21, the national strategy, which is why that item is worth more than it looks.

**Where we will not all agree.**

A joint document that pretends the room agrees about everything is worth less than one that says where it does not. These are the places I expect real disagreement, set out plainly so nobody has to be diplomatic about them in an email.

First, whether Part Six belongs here at all. Some of the pathogen groups will say chronic disease dilutes a safety agenda, and some of the nutrition groups will say outbreak work is not their fight. My own answer: it belongs, at the same weight as everything else, and the signature block and the hearing requests will treat it that way. Nobody has to swallow the paper whole. Sign it item by item. A signature block that varies line by line is more honest than unanimity and harder to dismiss.

Second, the administration. Several items here move through a government that also cut FoodNet in half, withdrew the poultry framework and froze the traceability rule. Working with it on ultra-processed food and GRAS while fighting it on surveillance is uncomfortable, and I do not have a tidy answer beyond the observation that refusing on principle means losing both.

Third, raw milk. Some of the newer groups closest to us on additives are on the other side of this one, and my clients in those cases are children on dialysis. The item stays in and I do not expect everyone to sign it. Item 35 asks for a label rather than a ban, which is the version of this fight the newer groups could conceivably sign.

Fourth, floors and ceilings. This paper opposes federal preemption and asks for a federal limit on heavy metals in baby food, which is a real tension and not a rhetorical one. The distinction is that a floor leaves the state laws standing and a ceiling erases them, and it has to be written into the bill text rather than assumed. Anyone who thinks item three is too dangerous to ask for in this Congress should say so now rather than after it is drafted. One industry view would go the other way on a narrow list: federal preemption for nutrition labeling, defined claims and the ultra-processed food definition, where fifty state versions would be a Commerce Clause problem and no state safety power is at stake. That is the one version of preemption this paper should at least argue about rather than reject by reflex.

Fifth, small producers. I left the exemptions for small and very small operations off the list. Part of this community thinks that is a serious omission, and another part would walk out if it were included. It deserves a decision rather than a silence.

Sixth, animal agriculture. Antibiotics and line speeds are framed here as resistance, inspection and worker safety, because that is where the evidence is, because these are ordinary public health asks that stand on that evidence whatever anyone thinks about animal agriculture, and because the regulator and grower associations we need on other items will not sign a document about ending it. Groups that want to make the larger argument should make it in their own name, and I will not treat that as a betrayal of this one. Growers would turn the sentence around: fruit and vegetable production gets a fraction of the legislative attention animal agriculture gets, and keeping that production in this country is a nutrition and national security question, which is an argument for asking whether a new requirement will move a packinghouse to Mexico before the requirement is written. That is a fair question to ask of items 20 and 33, and the answer in both is that the requirement reaches the foreign facility too.

Seventh, me. I am a plaintiffs' lawyer and parts of this agenda are good for my practice. Traceability makes causation easier to prove, and an adulterant standard makes liability clearer. The honest answer is to say so, and where my name on an item costs it more than it adds, somebody else should carry that item and I will stay off the letterhead.

Eighth, where structural change goes. One proposal moves FDA's food program into a new agency inside HHS and has a bill, a Senate companion and four endorsements from consumer organizations. The other moves it into USDA, has no bill, and rests on the argument that the department that can stop a line is the department that gets compliance. Both are called a single food agency and they run in opposite directions. This paper carries both descriptions and no recommendation, and I would rather that be argued out in the comment period than papered over in the next draft.

Ninth, whether the GRAS process should be reformed or ended. This paper asks for approval before sale, on the theory that it is the same destination, and it has vehicles attached. One view is that this is a category error, and that a self-certification regime cannot be fixed by requiring the self-certifier to file a form.

Tenth, fee-funded regulation. Fees are the only money in this paper that cannot be taken away in a rider, and some organizations here believe fee funding changes who a regulator thinks its customer is, with the drug user-fee record as the evidence. That is a serious argument, and the drafting answer is in Part Three, but nobody should assume the disagreement is settled by it.

Eleventh, what kind of document this is. A thirty-six-item agenda is a platform and gets signatures. A three-item agenda is a campaign and gets a hearing. This paper tries to be both by naming four that come first and keeping the rest as the record of what the community is carrying. If that is a fudge, tell me now. The advice that keeps coming back is the same: pick a few items with broad consensus, rebuild the coalition that passed FSMA, and rank the rest. The next draft will be shorter.

Twelfth, whether to fight for FoodNet as it was. One view is that the old program was passing anyway and that wastewater surveillance would do more for the money; the other is that the program did more than anyone outside it understood. Item 13 asks for the laboratories first and a measurement system second, and leaves the word restore and the word modernize in the same sentence on purpose.

Thirteenth, what the next produce testing program is for. The producers who would be sampled want a surveillance program on the pesticide data model, publishing aggregates and acting only on stated escalation criteria. The people who would use the data want a regulatory program that acts on a positive and publishes it. Item 14 asks for the second and records the first.

Fourteenth, inspectors. One industry view would not fund more FSIS inspectors, on the ground that continuous carcass inspection is the wrong use of the money. Part Three keeps the ask and says why.

One point against the assumption that this argument splits the acute side from the chronic side. The same people often carry a tool for the ultra-processed food item and a hard pathogen item at once. The division is not acute against chronic. It is how many fights to pick.

**Where each of these stands.**

The table below lists each ask and where it stands in November 2026. Who is carrying each one is kept in a separate record, so that organizations with different interests can read this paper without anyone's name attached to a position.

| The ask | Where it stands, November 2026 |
|---|---|
| Kill the traceability rider | No full-year bill; continuing resolution through December 11 carries Section 780 forward; the House-passed H.R. 8646 repeats the bar |
| Infant formula testing (H.R. 7867 and S. 272) | H.R. 7867 heard April 29, 2026, no markup; S. 272 passed the Senate by unanimous consent April 28 and is at the Speaker's desk; both die January 3 unless finished; H.R. 7867 on the leadership memorandum's first-100-hours list, 38 cosponsors |
| Federal and state information sharing (H.R. 8430) | Introduced April 22, 2026; referred to Energy and Commerce; the same text in S. 4974, reported by Senate HELP 22 to 0 on July 22, 2026 and on the Senate calendar |
| *Salmonella* as an adulterant | Breaded stuffed chicken determination in effect since May 1, 2025, testing delayed indefinitely December 2, 2025; framework withdrawn April 2025; FSIS reopened the question January 2026; agency and statutory routes both open |
| Line speeds | Comments closed April 20, 2026; final rule pending |

| The ask | Where it stands, November 2026 |
|---|---|
| Real premarket approval for additives | FDA notification rule open for comment until December 9, 2026; H.R. 4958 on the leadership memorandum's first-100-days list, 5 cosponsors |
| A cost-recovery fee on GRAS notices | No statutory language exists anywhere yet |
| Stop preemption of state food law | FRESH Act still a discussion draft; expect a bill in 2027 |
| Antibiotics in food animals | Item 36. June 16, 2026 petition, docket FDA-2026-P-6878, sixty-five signers, pending at FDA; the 180 days run December 13, 2026 |
| Lead in baby food | February 2025 petition pending; six states have acted; H.R. 8429 on the leadership memorandum's first-100-hours list, 10 cosponsors |
| Release the response to the Kessler petition | Interim response February 10, 2026; nothing since |
| Surveillance funding | FoodNet cut from eight pathogens to two on July 1, 2025; views divided on whether to restore FoodNet or modernize it; the laboratories are not in dispute |
| Imported food inspections and supplier verification | FDA missed every statutory target 2018 to 2023; S. 4974, with authority to destroy hazardous imports, reported by HELP July 22, 2026 |
| A national food safety strategy | On GAO's High-Risk List since 2007; OMB says no plans |
| A single food agency | H.R. 6567 introduced December 10, 2025; no agreement in this community on direction |
| Name the companies in outbreaks | A petition filed February 4, 2026, interim response July 28, 2026; Office of Legal Counsel opinion October 26, 2026 that FDA may amend its regulations; this project's petition in draft (November 5, 2026), still taking comments, not filed |
| Publish produce testing, restore sampling, and put it in statute | MDP shut down December 31, 2012; FDA's own surveillance sampling has run two or three commodities a year since 2014; LFFM publishes aggregates only; the Produce Pathogen Surveillance Act drafted November 5, 2026, unclaimed |
| A usable definition of ultra-processed food | Proposed definition sent to the White House August 10, 2026; this paper adopts the HER definition as the yardstick and |

| The ask | Where it stands, November 2026 |
|---|---|
| | records the disagreement; editorial of November 19, 2026 asks the nutrition side to unite behind it |
| FDA sampling authority on adjacent operations | S. 376 and H.R. 852 lapse January 3 after four Congresses without a hearing; this project's petition in draft (November 6, 2026), still taking comments |
| Food is Medicine, written with food safety in it | Four bills on the leadership memorandum's first-100-days list; none carries a food safety standard for the patients it feeds |
| Pesticides, and liability for them | H.R. 5085 and H.R. 7601 on the leadership memorandum's lists; growers will object |
| Supplement listing | H.R. 8370 on the first-100-days list, no cosponsors yet |
| Outbreak-triggered inspection, and an inspection floor for repeat-outbreak commodities | New in this draft, items 32 and 33; the infant formula precedent is FDORA 2022 |
| An independent board to investigate the worst outbreaks | New in this draft, item 37; no bill exists, so the 2027 ask is drafted text and a hearing |
| Front-of-package labeling | FDA rule proposed January 2025 and still not final; H.R. 6294 with Senate companion S. 5026 reported out of HELP, on the leadership memorandum's first-year list |
| Retail and restaurant safety | Issues for the April 19 to 23, 2027 meeting are due this fall |
| Victims in the room | Asked in writing June 25, 2026; no answer |
| Keep toxic chemicals out of food packaging | H.R. 9231 (Schakowsky), 13 cosponsors; on the leadership memorandum's first-year list |
| Get synthetic dyes out of federally funded school meals | A policy idea in the leadership memorandum with no legislative text behind it; the second open drafting gap in this paper |
| Consignee lists and prompt recall classification | Draft of November 5, 2026, companion to the disclosure petition; still taking comments; item 18 |
| Botulism-producing clostridia in infant formula testing | Draft of November 6, 2026, still taking comments, not filed; asks FDA to amend 21 CFR 106.55(e) and test the dairy ingredients; item 2 |

| The ask | Where it stands, November 2026 |
|---|---|
| Warning labels on raw sprouts and on raw milk cheese | Both in draft (October 29, 2026; sprouts revised November 4), still taking comments, not filed; items 34 and 35 |

**The hour that costs nothing.**

Officials who decide these questions should sit down with people the decisions were about. Not a listening session, not a press availability, and no family asked to perform. An hour, in private, with somebody who lost a child or a kidney or a year of their life. I asked the Secretary of Health and Human Services for that in writing on June 25, 2026, after he had met the formula chief executives twice, and as far as I can tell it has not happened. It can be arranged tomorrow. I have watched that hour change executives, defense lawyers and regulators who walked into the room against me, and I have never once seen it fail to change what the next number on the page means to the person reading it.

**What is deliberately not in this paper.**

A single food agency is not on this list; it has its own section above, because this community wants structural change and disagrees about which direction it runs.

A rewrite of the Food Safety Modernization Act is still off the list; the 2010 statute is not the problem, the unfunded and unenforced half of it is. Consumer education stays off as a solution, though it belongs on every list as a last line, because people should not have to be microbiologists to make dinner. Sugary drink taxes and restrictions on what SNAP dollars may buy are left out for a different reason: both split this room down the middle, with the anti-hunger organizations and the public health organizations in good faith on opposite sides, and neither needs a lawyer's opinion to settle it. The editorial described in item 28 lists an excise tax on sweetened beverages and processed meats among its five policies; it stays off this list for the same reason. And I have left off several fights I would personally enjoy, on the theory that a list which includes everything is not an agenda.

**Credentialing is left off for now. One proposal is to credential inspectors** and, separately, food workers, the second on the model of the Transportation Worker Identification Credential. The point is that a person can interview in the afternoon and be handling food that night, at retail more than in manufacturing, and that the system that feeds the country is critical infrastructure. The vulnerability is real. A security credential for food workers is left off because it is a food defense measure and not a pathogen measure, and because a background-check requirement for this workforce would divide the organizations this paper is written for. The inspector half may belong with the inspection items and is open for comment. The retail half of the problem is taken up, as far as this paper goes, in items 23 and 24.

**How we will know, at the end of 2027, whether any of this worked.**

Twelve questions, all answerable by a person with a search engine and no inside knowledge. Does the lot-level tracking requirement still stand with a date attached. Has

FSIS begun testing under the *Salmonella* determination it made in 2024, and is there a new proposed determination for poultry generally, or a bill that does the same work. Do the eight pathogens have surveillance again. Did the infant formula bill move in the new Congress. How many states require baby food testing at the end of 2027 against six at the start. Has FDA answered the petition asking it to name companies. Is produce testing in the fiscal 2028 budget request or in statute, and are the state testing results FDA already funds published at the sample level. And has one senior official spent one hour with one family. Did the information-sharing text in S. 4974 and H.R. 8430 become law. Has the federal definition of ultra-processed food been published, does it pass the two tests in item 28, and is there a final front-of-package rule or a law that requires one. And has FDA or FSIS granted, or at least answered on the merits, the seven petitions listed after item 16. And is there a bill to create an independent outbreak investigation board, or a hearing on one.

**Whose paper this is.**

This question has to be settled before the second draft, because it decides what the second draft can say. There are two honest options and a third that is a fudge.

The first is that an existing coalition holds the pen. There is one that has been convened for forty years and whose letters go to Congress with many of these organizations' names on them. If that is the vehicle, the coalition decides what stays and the items it will not sign come off, which probably means the diet and chronic disease items, the animal agriculture items and anything with my name attached to it. What remains would be shorter and carry more weight per page.

The second is that this stays what it is now, a paper with my name on it and a list of organizations that have endorsed particular items. It can say more, it can be wrong in more places, and it will be read as a lawyer's paper by the people who want to read it that way.

The third, which I think is the right one, is both at once. The coalition takes the items it can carry and puts them in its own letter to the new Congress in January. This paper stays the longer document behind it, cut to what the room in January agrees on, and it cites the coalition letter as the core. That requires two things from the people reading this: a conversation with the coalition about whether it wants the shorter document, and, when the shorter draft exists, a decision from each organization about which items it will put its name on. The second draft is my job. The first conversation is not mine to have alone.

**What I am asking of you.**

Four things, and the shorter your answer the more useful it is.

One, corrections. If a fact, a date or a docket number in here is wrong, tell me and it gets fixed; everything in this paper is meant to be checkable and some of it has already not survived contact with the people who work these files daily, which is exactly what I wanted. Two, what is missing and what should come out. Seafood and pet food are still underweighted here, and that reflects my own practice rather than their importance; and thirty-six items is more than a coalition can carry, so tell me which ones you would cut,

not only which you would add. Three, priorities: which items come first, so the shorter draft is built in the right order. Four, what you are already doing that I have described badly or left out, since this paper is only as good as the map behind it.

And one more: several of you have offered to draft or research something. Those offers are worth more than any signature, and they are what turns a paper into a program. Tell me what you are taking on, in what form, by when, and whether you want your name on it.

**And an invitation.** Given the holidays, I will host a working meeting in Washington on Friday, January 15, 2027, after the 120th Congress is seated, at a neutral venue equipped so that anyone who cannot travel can take full part remotely. One day, both halves of this community in the same room, the pathogen side and the chronic disease side, and the shorter December draft in front of us, with four things on the table. The first is the cut, so that what goes to the new Congress is the shorter paper many of you have asked for. The second is priorities, in the order this room would put them. The third is the one-page acute-illness list for the House leadership's working group, in the format it already uses. The fourth is signers for the Kessler letter. If you would come, in person or remotely, tell me; the place and the hours will follow.

Comments to bmarler@marlerclark.com. What comes back by November 30 goes into the shorter December draft, which is what the January meeting settles, and what the room agrees on goes in front of the new Congress, when the bills have to be reintroduced anyway and every committee in this paper has a new chair.

None of this is radical. Most of it is finishing what somebody in this community already started, and the rest is refusing to let twenty years of work be undone in a rider nobody read. I have said for thirty years that I would like to be put out of business. That has never been closer to a policy proposal than it is right now, and it is not going to happen one lawsuit at a time.

**The calendar, November 2026 to the traceability date.**

| When | What happens, and what it means for this agenda |
|---|---|
| October 1, 2026 | Fiscal 2027 begins with no full-year Agriculture and FDA bill. The September 2 continuing resolution runs to December 11 and carries Section 780 forward. |
| October 29 to November 6, 2026 | The seven petitions after item 16 reach their current drafts. None has been filed; all are still taking comments. The formula petition goes to the committees, in draft, with the November 4 letters. |
| November 3, 2026 | Midterm elections. Democrats win both chambers of the 120th Congress, and every committee gavel in this paper changes hands on January 3. The sixty-day report under the September 4 meat executive order was due about the same day. |

| When | What happens, and what it means for this agenda |
|---|---|
| November 9 to December 2026 | The lame duck: about five legislative weeks. December 11 is the funding deadline. The asks inside it: no Section 780 in whatever passes; the House takes up S. 272, as it stands or amended with the testing and ingredient language of H.R. 7867; S. 4974. |
| Late November and December 2026 | Comments close November 30. The shorter draft circulates in December. Conference for Food Protection Issue window for the 2027 meeting; dates at foodprotect.org. Each petition files when its comment round closes, and each filing starts a 180-day clock. December 13 is day 180 on the antibiotics petition in item 36. The acute-illness page goes to the leadership's working group. |
| December 9, 2026 | Comments close on FDA's proposed GRAS rule, docket FDA-2025-N-3262. |
| January 1, 2027 | Illinois baby food manufacturers must begin publishing test results. |
| Friday, January 15, 2027 | A working meeting in Washington, at a neutral venue, in person and remote: the cut, the priorities, the acute-illness page for the working group, and signers for the Kessler letter. |
| January 2027 | The 120th Congress convenes on January 3 with new majorities in both chambers. Every bill number in this paper expires and must be reintroduced, H.R. 7867 and S. 272 among them, preferably on the first day with a sponsor from each party. The agenda the January meeting settles, or the coalition letter drawn from it, goes to the new chairs. The leadership memorandum's first 100 hours begins, with two of this paper's bills on that list and none of its acute-illness items unless this community puts them there. S. 4974, reported 22 to 0, dies with the 119th unless the Senate acts first. Item 37, the independent investigation board, has no bill to reintroduce and needs a first sponsor. |
| February 2027 | The fiscal 2028 budget request is due the first Monday. Produce testing, CDC's food safety line, foreign inspections and the outcomes registry belong in it or in the response. February 4 is one year since the disclosure petition was filed. |
| February 26, 2027 | Comments due on FDA's proposed infant formula nutrient rule, docket FDA-2026-N-10832, the place to say in writing that the next phase should be testing. |
| April 5, 2027 | Very small farms must have completed pre-harvest agricultural water assessments; the states inspect. |
| April 19 to 23, 2027 | Conference for Food Protection biennial meeting, Grand Rapids. |

| When | What happens, and what it means for this agenda |
|---|---|
| Spring 2027 | CDC publishes FoodNet's 2025 data, the first full year after the surveillance cut; the 2024 data came out April 29, 2026. |
| During 2027, undated | FSIS final rule on line speeds. FDA final rule on GRAS. The ultra-processed food definition and front-of-package label, if finalized. Any FSIS proposal on *Salmonella*, and the Federal Register notice FSIS has promised before it begins testing breaded stuffed chicken. FDA's answers to the disclosure, antibiotics, lead and Kessler petitions. FDA's and FSIS's responses to the seven petitions listed after item 16; the 180 days on each runs from filing. |
| September 30, 2027, then July 20, 2028 | Fiscal 2027 ends; the fiscal 2028 bill is the second chance at the rider and the first to fund this paper. Then the traceability date, if it survives. |