

**Suspend the Rules and Pass the Bill, H.R. 2749, with An Amendment**

**(The amendment strikes all after the enacting clause and inserts a new text)**

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2749

To amend the Federal Food, Drug, and Cosmetic Act to improve the safety of food in the global market, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2009

Mr. DINGELL (for himself, Mr. WAXMAN, Mr. PALLONE, Mr. STUPAK, Ms. DEGETTE, and Ms. SUTTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act to improve the safety of food in the global market, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Food Safety Enhance-  
5 ment Act of 2009”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Rules of construction.
- Sec. 5. USDA exemptions.
- Sec. 6. Alcohol-related facilities.

## TITLE I—FOOD SAFETY

### Subtitle A—Prevention

- Sec. 101. Changes in registration of food facilities.
- Sec. 102. Hazard analysis, risk-based preventive controls, food safety plan, finished product test results from category 1 facilities.
- Sec. 103. Performance standards.
- Sec. 104. Safety standards for produce and certain other raw agricultural commodities.
- Sec. 105. Risk-based inspection schedule.
- Sec. 106. Access to records.
- Sec. 107. Traceability of food.
- Sec. 108. Reinspection and food recall fees applicable to facilities.
- Sec. 109. Certification and accreditation.
- Sec. 110. Testing by accredited laboratories.
- Sec. 111. Notification, nondistribution, and recall of adulterated or misbranded food.
- Sec. 112. Reportable food registry; exchange of information.
- Sec. 113. Safe and secure food importation program.
- Sec. 114. Infant formula.

### Subtitle B—Intervention

- Sec. 121. Surveillance.
- Sec. 122. Public education and advisory system.
- Sec. 123. Research.

### Subtitle C—Response

- Sec. 131. Procedures for seizure.
- Sec. 132. Administrative detention.
- Sec. 133. Authority to prohibit or restrict the movement of food.
- Sec. 134. Criminal penalties.
- Sec. 135. Civil penalties for violations relating to food.
- Sec. 136. Improper import entry filings.

## TITLE II—MISCELLANEOUS

- Sec. 201. Food substances generally recognized as safe.
- Sec. 202. Country of origin labeling.
- Sec. 203. Exportation certificate program.
- Sec. 204. Registration for commercial importers of food; fee.
- Sec. 205. Registration for customs brokers.
- Sec. 206. Unique identification number for food facilities, importers, and custom brokers.
- Sec. 207. Prohibition against delaying, limiting, or refusing inspection.
- Sec. 208. Dedicated foreign inspectorate.
- Sec. 209. Plan and review of continued operation of field laboratories.
- Sec. 210. False or misleading reporting to FDA.

Sec. 211. Subpoena authority.

Sec. 212. Whistleblower protections.

Sec. 213. Extraterritorial jurisdiction.

Sec. 214. Support for training institutes.

Sec. 215. Bisphenol A in food and beverage containers.

Sec. 216. Lead content labeling requirement for ceramic tableware and cookware.

1 **SEC. 3. REFERENCES.**

2       Except as otherwise specified, whenever in this Act  
3 an amendment is expressed in terms of an amendment to  
4 a section or other provision, the reference shall be consid-  
5 ered to be made to a section or other provision of the Fed-  
6 eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et  
7 seq.).

8 **SEC. 4. RULES OF CONSTRUCTION.**

9       (a) Nothing in this Act or the amendments made by  
10 this Act shall be construed to prohibit or limit—

11           (1) any cause of action under State law; or

12           (2) the introduction of evidence of compliance  
13 or noncompliance with the requirements of the Fed-  
14 eral Food, Drug, and Cosmetic Act (21 U.S.C. 301  
15 et seq.).

16       (b) Nothing in this Act or any amendment made by  
17 this Act shall be construed to—

18           (1) alter the jurisdiction between the Secretary  
19 of Agriculture and the Secretary of Health and  
20 Human Services, under applicable statutes and regu-  
21 lations;

1           (2) limit the authority of the Secretary of  
2           Health and Human Services to issue regulations re-  
3           lated to the safety of food under—

4                   (A) the Federal Food, Drug, and Cosmetic  
5                   Act (21 U.S.C. 301 et seq.) as in effect on the  
6                   day before the date of the enactment of this  
7                   Act; or

8                   (B) the Public Health Service Act (42  
9                   U.S.C. 301 et seq.) as in effect on the day be-  
10                  fore the date of the enactment of this Act; or

11           (3) impede, minimize, or affect the authority of  
12           the Secretary of Agriculture to prevent, control, or  
13           mitigate a plant or animal health emergency, or a  
14           food emergency involving products regulated under  
15           the Federal Meat Inspection Act (21 U.S.C. 601 et  
16           seq.), the Poultry Products Inspection Act (21  
17           U.S.C. 451 et seq.), or the Egg Products Inspection  
18           Act (21 U.S.C. 1031 et seq.).

19   **SEC. 5. USDA EXEMPTIONS.**

20           (a) **USDA-REGULATED PRODUCTS.**—Food is exempt  
21           from the requirements of this Act to the extent that such  
22           food is regulated by the Secretary of Agriculture under  
23           the Federal Meat Inspection Act (21 U.S.C. 601 et seq.),  
24           the Poultry Products Inspection Act (21 U.S.C. 451 et

1 seq.), or the Egg Products Inspection Act (21 U.S.C. 1031  
2 et seq.).

3 (b) LIVESTOCK AND POULTRY.—Livestock and poul-  
4 try that are intended to be presented for slaughter pursu-  
5 ant to the regulations by the Secretary of Agriculture  
6 under the Federal Meat Inspection Act or the Poultry  
7 Products Inspection Act are exempt from the require-  
8 ments of this Act. A cow, sheep, or goat that is used for  
9 the production of milk is exempt from the requirements  
10 of this Act.

11 (c) USDA-REGULATED FACILITIES.—A facility is ex-  
12 empt from the requirements of this Act to the extent such  
13 facility is regulated as an official establishment by the Sec-  
14 retary of Agriculture under the Federal Meat Inspection  
15 Act, the Poultry Products Inspection Act, or the Egg  
16 Products Inspection Act or under a program recognized  
17 by the Secretary of Agriculture as at least equal to Fed-  
18 eral regulation under the Federal Meat Inspection Act, the  
19 Poultry Products Inspection Act, or the Egg Products In-  
20 spection Act.

21 (d) FARMS.—A farm is exempt from the require-  
22 ments of this Act to the extent such farm raises animals  
23 from which food is derived that is regulated under the  
24 Federal Meat Inspection Act, the Poultry Products In-  
25 spection Act, or the Egg Products Inspection Act.

1 **SEC. 6. ALCOHOL-RELATED FACILITIES.**

2 (a) IN GENERAL.—With the exception of the amend-  
3 ments made by section 101(a) and (b) and section 113  
4 of this Act, nothing in this Act, or the amendments made  
5 by this Act, shall be construed to apply to a facility that—

6 (1) under the Federal Alcohol Administration  
7 Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle  
8 E of the Internal Revenue Code of 1986 (26 U.S.C.  
9 5291 et seq.) is required to obtain a permit or to  
10 register with the Secretary of the Treasury as a con-  
11 dition of doing business in the United States; and

12 (2) under section 415 of the Federal Food,  
13 Drug, and Cosmetic Act (21 U.S.C. 350d), as  
14 amended by this Act, is required to register as a fa-  
15 cility because such facility is engaged in manufac-  
16 turing, processing, packing, or holding 1 or more al-  
17 coholic beverages.

18 (b) LIMITED RECEIPT AND DISTRIBUTION OF NON-  
19 ALCOHOL FOOD.—Subsection (a) shall not apply to a fa-  
20 cility engaged in the distributing of any non-alcohol food,  
21 except that subsection (a) shall apply to a facility de-  
22 scribed in paragraphs (1) and (2) of subsection (a) that  
23 receives and distributes non-alcohol food provided such  
24 food is received and distributed—

25 (1) in a prepackaged form that prevents any di-  
26 rect human contact with such food; and

1           (2) in amounts that constitute not more than 5  
2           percent of the overall sales of such facility, as deter-  
3           mined by the Secretary of the Treasury.

4           (c) **RULE OF CONSTRUCTION.**—This section shall not  
5           be construed to exempt any food, apart from distilled spir-  
6           its, wine, and malt beverages, as defined in section 211  
7           of the Federal Alcohol Administration Act (27 U.S.C.  
8           211), from the requirements of this Act and the amend-  
9           ments made by this Act.

## 10                   **TITLE I—FOOD SAFETY**

### 11                   **Subtitle A—Prevention**

#### 12           **SEC. 101. CHANGES IN REGISTRATION OF FOOD FACILI-** 13                   **TIES.**

14           (a) **MISBRANDING.**—Section 403 (21 U.S.C. 343) is  
15           amended by adding at the end the following:

16           “(z) If it was manufactured, processed, packed, or  
17           held in a facility that is not duly registered under section  
18           415, including a facility whose registration is canceled or  
19           suspended under such section.”.

20           (b) **ANNUAL REGISTRATION.**—

21                   (1) **DEFINITION OF FACILITY.**—Paragraph (1)  
22                   of section 415(b) (21 U.S.C. 350d(b)) is amended to  
23                   read as follows:

24                           “(1)(A) The term ‘facility’ means any factory,  
25                           warehouse, or establishment (including a factory,

1 warehouse, or establishment of an importer) that  
2 manufactures, processes, packs, or holds food.

3 “(B) Such term does not include farms; private  
4 residences of individuals; restaurants; other retail  
5 food establishments; nonprofit food establishments  
6 in which food is prepared for or served directly to  
7 the consumer; or fishing vessels (except such vessels  
8 engaged in processing as defined in section 123.3(k)  
9 of title 21, Code of Federal Regulations, or any suc-  
10 cessor regulations).

11 “(C)(i) The term ‘retail food establishment’  
12 means an establishment that, as its primary func-  
13 tion, sells food products (including those food prod-  
14 ucts that it manufactures, processes, packs, or  
15 holds) directly to consumers (including by Internet  
16 or mail order).

17 “(ii) Such term includes—

18 “(I) grocery stores;

19 “(II) convenience stores;

20 “(III) vending machine locations; and

21 “(IV) stores that sell bagged feed, pet  
22 food, and feed ingredients or additives  
23 over-the-counter directly to consumers and  
24 final purchasers for their own personal ani-  
25 mals.



1           “(iii) A retail food establishment’s primary  
2           function is to sell food directly to consumers if  
3           the annual monetary value of sales of food  
4           products directly to consumers exceeds the an-  
5           nual monetary value of sales of food products to  
6           all other buyers.

7           “(D)(i) The term ‘farm’ means an operation in  
8           one general physical location devoted to the growing  
9           and harvesting of crops, the raising of animals (in-  
10          cluding seafood), or both.

11          “(ii) Such term includes—

12           “(I) such an operation that packs or holds  
13           food, provided that all food used in such activi-  
14           ties is grown, raised, or consumed on such farm  
15           or another farm under the same ownership;

16           “(II) such an operation that manufactures  
17           or processes food, provided that all food used in  
18           such activities is consumed on such farm or an-  
19           other farm under the same ownership;

20           “(III) such an operation that sells food di-  
21           rectly to consumers if the annual monetary  
22           value of sales of the food products from the  
23           farm or by an agent of the farm to consumers  
24           exceeds the annual monetary value of sales of  
25           the food products to all other buyers;

1           “(IV) such an operation that manufactures  
2           grains or other feed stuffs that are grown and  
3           harvested on such farm or another farm under  
4           the same ownership and are distributed directly  
5           to 1 or more farms for consumption as food by  
6           humans or animals on such farm; and

7           “(V) a fishery, including a wild fishery, an  
8           aquaculture operation or bed, a fresh water  
9           fishery, and a saltwater fishery.

10          “(iii) Such term does not include such an oper-  
11          ation that receives manufactured feed from another  
12          farm as described in clause (ii)(IV) if the receiving  
13          farm releases the feed to another farm or facility  
14          under different ownership.

15          “(iv) The term ‘harvesting’ includes washing,  
16          trimming of outer leaves of, and cooling produce.

17          “(E) The term ‘consumer’ does not include a  
18          business.”.

19          (2) REGISTRATION.—Section 415(a) (21 U.S.C.  
20          350d(a)) is amended—

21                 (A) in the first sentence of paragraph

22                 (1)—

23                         (i) by striking “require that” and in-  
24                         serting “require that, on or before Decem-  
25                         ber 31 of each year,”; and

1 (ii) by striking “food for consumption  
2 in the United States” and inserting “food  
3 for consumption in the United States or  
4 for export from the United States”;

5 (B) in subparagraphs (A) and (B) of para-  
6 graph (1), by inserting “and pay the registra-  
7 tion fee required under section 743” after “sub-  
8 mit a registration to the Secretary” each place  
9 it appears;

10 (C) in the first sentence of paragraph (2),  
11 by inserting “in electronic format” after “sub-  
12 mit”; and

13 (D) in paragraph (4), by inserting after  
14 the first sentence the following: “The Secretary  
15 shall remove from such list the name of any fa-  
16 cility that fails to reregister in accordance with  
17 this section, that fails to pay the registration  
18 fee required under section 743, or whose reg-  
19 istration is canceled by the registrant, canceled  
20 by the Secretary in accordance with this sec-  
21 tion, or suspended by the Secretary in accord-  
22 ance with this section.”.

23 (3) CONTENTS OF REGISTRATION.—Paragraph  
24 (2) of section 415(a) (21 U.S.C. 350d(a)), as  
25 amended by paragraph (1), is amended by striking

1 “containing information” and all that follows and in-  
2 serting the following: “containing information that  
3 identifies the following:

4 “(A) The name, address, and emergency  
5 contact information of the facility being reg-  
6 istered.

7 “(B) The primary purpose and business  
8 activity of the facility, including the dates of op-  
9 eration if the facility is seasonal.

10 “(C) The general food category (as defined  
11 by the Secretary by guidance) of each food  
12 manufactured, processed, packed, or held at the  
13 facility.

14 “(D) All trade names under which the fa-  
15 cility conducts business related to food.

16 “(E) The name, address, and 24-hour  
17 emergency contact information of the United  
18 States distribution agent for the facility, which  
19 agent shall have access to the information re-  
20 quired to be maintained under section 414(d)  
21 for food that is manufactured, processed,  
22 packed, or held at the facility.

23 “(F) If the facility is located outside of the  
24 United States, the name, address, and emer-

1           agency contact information for a United States  
2           agent.

3           “(G) The unique facility identifier of the  
4           facility, as specified under section 1011.

5           “(H) Such additional information per-  
6           taining to the facility as the Secretary may re-  
7           quire by regulation.

8           The registrant shall notify the Secretary of any  
9           change in the submitted information not later than  
10          30 days after the date of such change, unless other-  
11          wise specified by the Secretary.”.

12          (4) SUSPENSION AND CANCELLATION AUTHOR-  
13          ITY.—Section 415(a) (21 U.S.C. 350d(a)), as  
14          amended by paragraphs (1) and (2), is further  
15          amended by adding at the end the following:

16          “(5) SUSPENSION OF REGISTRATION.—

17                 “(A) IN GENERAL.—The Secretary may  
18                 suspend the registration of any facility reg-  
19                 istered under this section for a violation of this  
20                 Act that could result in serious adverse health  
21                 consequences or death to humans or animals.

22                 “(B) NOTICE OF SUSPENSION.—Susten-  
23                 sion of a registration shall be preceded by—

24                         “(i) notice to the facility of the intent  
25                         to suspend the registration; and

1           “(ii) an opportunity for an informal  
2           hearing, as defined in guidance or regula-  
3           tions issued by the Secretary, concerning  
4           the suspension of such registration for  
5           such facility.

6           “(C) REQUEST.—The owner, operator, or  
7           agent in charge of a facility whose registration  
8           is suspended may request that the Secretary va-  
9           cate the suspension of registration when such  
10          owner, operator, or agent has corrected the vio-  
11          lation that is the basis for such suspension.

12          “(D) VACATING OF SUSPENSION.—If,  
13          based on an inspection of the facility or other  
14          information, the Secretary determines that ade-  
15          quate reasons do not exist to continue the sus-  
16          pension of a registration, the Secretary shall va-  
17          cate such suspension.

18          “(6) CANCELLATION OF REGISTRATION.—

19                 “(A) IN GENERAL.—Not earlier than 10  
20                 days after providing the notice under subpara-  
21                 graph (B), the Secretary may cancel a registra-  
22                 tion if the Secretary determines that—

23                         “(i) the registration was not updated  
24                         in accordance with this section or other-

1 wise contains false, incomplete, or inaccurate information; or  
2

3 “(ii) the required registration fee has  
4 not been paid within 30 days after the date  
5 due.

6 “(B) NOTICE OF CANCELLATION.—Cancellation shall be preceded by notice to the facility of the intent to cancel the registration and the basis for such cancellation.

10 “(C) TIMELY UPDATE OR CORRECTION.—  
11 If the registration for the facility is updated or  
12 corrected no later than 7 days after notice is  
13 provided under subparagraph (B), the Secretary shall not cancel such registration.

15 “(7) REPORT TO CONGRESS.—Not later than  
16 March 30th of each year, the Secretary shall submit  
17 to the Congress a report, based on the registrations  
18 on or before December 31 of the previous year, on  
19 the following:

20 “(A) The number of facilities registered  
21 under this section.

22 “(B) The number of such facilities that are  
23 domestic.

24 “(C) The number of such facilities that are  
25 foreign.

1           “(D) The number of such facilities that  
2           are high-risk.

3           “(E) The number of such facilities that are  
4           low-risk.

5           “(F) The number of such facilities that  
6           hold food.

7           “(8) LIMITATION ON DELEGATION.—The au-  
8           thority conferred by this subsection to issue an order  
9           to suspend a registration or cancel a registration  
10          shall not be delegated to any officer or employee  
11          other than the Commissioner of Food and Drugs,  
12          the Principal Deputy Commissioner, the Associate  
13          Commissioner for Regulatory Affairs, or the Direc-  
14          tor for the Center for Food Safety and Applied Nu-  
15          trition, of the Food and Drug Administration.”.

16          (c) REGISTRATION FEE.—Chapter VII (21 U.S.C.  
17          371 et seq.) is amended by adding at the end of sub-  
18          chapter C the following:

19                   **“PART 6—FEES RELATING TO FOOD**

20                   **“SEC. 743. FACILITY REGISTRATION FEE.**

21                   “(a) IN GENERAL.—

22                   “(1) ASSESSMENT AND COLLECTION.—Begin-  
23                   ning in fiscal year 2010, the Secretary shall assess  
24                   and collect an annual fee for the registration of a fa-  
25                   cility under section 415.



1           “(2) PAYABLE DATE.—A fee under this section  
2 shall be payable—

3           “(A) for a facility that was not registered  
4 under section 415 for the preceding fiscal year,  
5 on the date of registration; and

6           “(B) for any other facility—

7           “(i) for fiscal year 2010, not later  
8 than the sooner of 90 days after the date  
9 of the enactment of this part or December  
10 31, 2009; and

11           “(ii) for a subsequent fiscal year, not  
12 later than December 31 of such fiscal year.

13       “(b) FEE AMOUNTS.—

14           “(1) IN GENERAL.—The registration fee under  
15 subsection (a) shall be—

16           “(A) for fiscal year 2010, \$500; and

17           “(B) for fiscal year 2011 and each subse-  
18 quent fiscal year, the fee for fiscal year 2010 as  
19 adjusted under subsection (c).

20           “(2) ANNUAL FEE SETTING.—The Secretary  
21 shall, not later than 60 days before the start of fis-  
22 cal year 2011 and each subsequent fiscal year, es-  
23 tablish, for the next fiscal year, registration fees  
24 under subsection (a), as described in paragraph (1).

1           “(3) MAXIMUM AMOUNT.—Notwithstanding  
2 paragraph (1), a person who owns or operates mul-  
3 tiple facilities for which a fee must be paid under  
4 this section for a fiscal year shall be liable for not  
5 more than \$175,000 in aggregate fees under this  
6 section for such fiscal year.

7           “(c) INFLATION ADJUSTMENT.—For fiscal year 2011  
8 and each subsequent fiscal year, the fee amount under  
9 subsection (b)(1) shall be adjusted by the Secretary by no-  
10 tice, published in the Federal Register, to reflect the  
11 greater of—

12           “(1) the total percentage change that occurred  
13 in the Consumer Price Index for all urban con-  
14 sumers (all items; U.S. city average) for the 12-  
15 month period ending June 30 preceding the fiscal  
16 year for which fees are being established;

17           “(2) the total percentage change for the pre-  
18 vious fiscal year in basic pay under the General  
19 Schedule in accordance with section 5332 of title 5,  
20 United States Code, as adjusted by any locality-  
21 based comparability payment pursuant to section  
22 5304 of such title for Federal employees stationed in  
23 the District of Columbia; or

24           “(3) the average annual change in the cost, per  
25 full-time equivalent position of the Food and Drug

1 Administration, of all personnel compensation and  
2 benefits paid with respect to such positions for the  
3 first 5 years of the preceding 6 fiscal years.

4 The adjustment made each fiscal year under this sub-  
5 section shall be added on a compounded basis to the sum  
6 of all adjustments made each fiscal year after fiscal year  
7 2010 under this subsection.

8 “(d) LIMITATIONS.—

9 “(1) IN GENERAL.—Fees under subsection (a)  
10 shall be refunded for a fiscal year beginning after  
11 fiscal year 2010 unless appropriations for salaries  
12 and expenses of the Food and Drug Administration  
13 for such fiscal year (excluding the amount of fees  
14 appropriated for such fiscal year) are equal to or  
15 greater than the amount of appropriations for the  
16 salaries and expenses of the Food and Drug Admin-  
17 istration for fiscal year 2010 (excluding the amount  
18 of fees appropriated for such fiscal year) multiplied  
19 by the adjustment factor applicable to the fiscal year  
20 involved.

21 “(2) AUTHORITY.—If the Secretary does not  
22 assess fees under subsection (a) during any portion  
23 of a fiscal year because of paragraph (1) and if at  
24 a later date in such fiscal year the Secretary may as-  
25 sess such fees, the Secretary may assess and collect

1 such fees, without any modification in the rate, for  
2 registration under section 415 at any time in such  
3 fiscal year.

4 “(3) ADJUSTMENT FACTOR.—In this sub-  
5 section, the term ‘adjustment factor’ applicable to a  
6 fiscal year is the Consumer Price Index for all urban  
7 consumers (all items; United States city average) for  
8 October of the preceding fiscal year divided by such  
9 Index for October 2009.

10 “(e) CREDITING AND AVAILABILITY OF FEES.—

11 “(1) IN GENERAL.—Fees authorized under sub-  
12 section (a) shall be collected and available for obliga-  
13 tion only to the extent and in the amount provided  
14 in advance in appropriations Acts. Such fees are au-  
15 thorized to remain available until expended. Such  
16 sums as may be necessary may be transferred from  
17 the Food and Drug Administration salaries and ex-  
18 penses appropriation account without fiscal year lim-  
19 itation to such appropriation account for salaries  
20 and expenses with such fiscal year limitation.

21 “(2) COLLECTIONS AND APPROPRIATIONS  
22 ACTS.—The fees authorized by this section—

23 “(A) shall be retained in each fiscal year in  
24 an amount not to exceed the amount specified

1 in appropriation Acts, or otherwise made avail-  
2 able for obligation, for such fiscal year; and

3 “(B) shall only be collected and available  
4 to defray the costs of food safety activities.

5 “(3) AUTHORIZATION OF APPROPRIATIONS.—  
6 For each of fiscal years 2010 through 2014, there  
7 are authorized to be appropriated for fees under this  
8 section such sums as may be necessary.

9 “(4) PUBLIC MEETINGS.—For each fiscal year,  
10 the Secretary shall hold a public meeting on how  
11 fees collected under this section will be used to de-  
12 fray the costs of food safety activities in order to so-  
13 licit the views of the regulated industry, consumers,  
14 and other interested stakeholders.

15 “(f) COLLECTION OF UNPAID FEES.—In any case  
16 where the Secretary does not receive payment of a fee as-  
17 sessed under subsection (a) within 30 days after it is due,  
18 such fee shall be treated as a claim of the United States  
19 Government subject to subchapter II of chapter 37 of title  
20 31, United States Code.

21 “(g) CONSTRUCTION.—This section may not be con-  
22 strued to require that the number of full-time equivalent  
23 positions in the Department of Health and Human Serv-  
24 ices, for officers, employees, and advisory committees not  
25 engaged in food safety activities, be reduced to offset the

1 number of officers, employees, and advisory committees so  
2 engaged.

3 “(h) ANNUAL FISCAL REPORTS.—Beginning with  
4 fiscal year 2011, not later than 120 days after the end  
5 of each fiscal year for which fees are collected under this  
6 section, the Secretary shall prepare and submit to the  
7 Committee on Energy and Commerce of the House of  
8 Representatives and the Committee on Health, Education,  
9 Labor, and Pensions of the Senate a report on the imple-  
10 mentation of the authority for such fees during such fiscal  
11 year and the use, by the Food and Drug Administration,  
12 of the fees collected for such fiscal year.

13 “(i) DEFINITIONS.—In this section:

14 “(1) The term ‘costs of food safety activities’  
15 means the expenses incurred in connection with food  
16 safety activities for—

17 “(A) officers and employees of the Food  
18 and Drug Administration, contractors of the  
19 Food and Drug Administration, advisory com-  
20 mittees, and costs related to such officers, em-  
21 ployees, and committees and to contracts with  
22 such contractors;

23 “(B) laboratory capacity;

1           “(C) management of information, and the  
2           acquisition, maintenance, and repair of tech-  
3           nology resources;

4           “(D) leasing, maintenance, renovation, and  
5           repair of facilities and acquisition, maintenance,  
6           and repair of fixtures, furniture, scientific  
7           equipment, and other necessary materials and  
8           supplies; and

9           “(E) collecting fees under this section and  
10          accounting for resources allocated for food safe-  
11          ty activities.

12          “(2) The term ‘food safety activities’ means ac-  
13          tivities related to compliance by facilities registered  
14          under section 415 with the requirements of this Act  
15          relating to food (including research related to and  
16          the development of standards (such as performance  
17          standards and preventive controls), risk assessments,  
18          hazard analyses, inspection planning and inspec-  
19          tions, third-party inspections, compliance review and  
20          enforcement, import review, information technology  
21          support, test development, product sampling, risk  
22          communication, and administrative detention).”.

23          (d) TRANSITIONAL PROVISIONS.—

24                 (1) FEES.—The Secretary of Health and  
25          Human Services shall first impose the fee estab-

1 lished under section 743 of the Federal Food, Drug,  
2 and Cosmetic Act, as added by subsection (c), for  
3 fiscal years beginning with fiscal year 2010.

4 (2) MODIFICATION OF REGISTRATION FORM.—  
5 Not later than 180 days after the date of the enact-  
6 ment of this Act, the Secretary of Health and  
7 Human Services shall modify the registration form  
8 under section 415 of the Federal Food, Drug, and  
9 Cosmetic Act (21 U.S.C. 350d) to comply with the  
10 amendments made by this section.

11 (3) APPLICATION.—The amendments made by  
12 this section, other than subsections (b)(2) and (c),  
13 shall take effect on the date that is 30 days after  
14 the date on which such modified registration form  
15 takes effect, but not later than 210 days after the  
16 date of the enactment of this Act.

17 (4) SUNSET DATE.—Section 743 of the Federal  
18 Food, Drug, and Cosmetic Act, as added by sub-  
19 section (c), does not authorize the assessment or col-  
20 lection of a fee for registration under section 415 of  
21 such Act (21 U.S.C. 360) occurring after fiscal year  
22 2014.



1 **SEC. 102. HAZARD ANALYSIS, RISK-BASED PREVENTIVE**  
2 **CONTROLS, FOOD SAFETY PLAN, FINISHED**  
3 **PRODUCT TEST RESULTS FROM CATEGORY 1**  
4 **FACILITIES.**

5 (a) HAZARD ANALYSIS, RISK-BASED PREVENTIVE  
6 CONTROLS, FOOD SAFETY PLAN.—

7 (1) ADULTERATED FOOD.—Section 402 (21  
8 U.S.C. 342) is amended by adding at the end the  
9 following:

10 “(j) If it has been manufactured, processed, packed,  
11 transported, or held under conditions that do not meet the  
12 requirements of sections 418 and 418A.”.

13 (2) REQUIREMENTS.—Chapter IV (21 U.S.C.  
14 341 et seq.) is amended by adding at the end the  
15 following:

16 **“SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVEN-**  
17 **TIVE CONTROLS.**

18 “(a) IN GENERAL.—The owner, operator, or agent  
19 of a facility shall, in accordance with this section—

20 “(1) conduct a hazard analysis (or more than  
21 one if appropriate);

22 “(2) identify and implement effective preventive  
23 controls;

24 “(3) monitor preventive controls;

25 “(4) institute corrective actions when—

1           “(A) monitoring shows that preventive con-  
2           trols have not been properly implemented; or

3           “(B) monitoring and verification show that  
4           such controls were ineffective;

5           “(5) conduct verification activities;

6           “(6) maintain records of monitoring, corrective  
7           action, and verification; and

8           “(7) reanalyze for hazards.

9           “(b) IDENTIFICATION OF HAZARDS.—

10           “(1) IN GENERAL.—The owner, operator, or  
11           agent of a facility shall evaluate whether there are  
12           any hazards, including hazards due to the source of  
13           the ingredients, that are reasonably likely to occur  
14           in the absence of preventive controls that may affect  
15           the safety, wholesomeness, or sanitation of the food  
16           manufactured, processed, packed, transported, or  
17           held by the facility, including—

18           “(A) biological, chemical, physical, and ra-  
19           diological hazards, natural toxins, pesticides,  
20           drug residues, filth, decomposition, parasites,  
21           allergens, and unapproved food and color addi-  
22           tives; and

23           “(B) hazards that occur naturally or that  
24           may be unintentionally introduced.

1           “(2) IDENTIFIED BY THE SECRETARY.—The  
2           Secretary may, by regulation or guidance, identify  
3           hazards that are reasonably likely to occur in the ab-  
4           sence of preventive controls.

5           “(3) HAZARD ANALYSIS.—The owner, operator,  
6           or agent of a facility shall identify and describe the  
7           hazards evaluated under paragraph (1) or identified  
8           under paragraph (2), to the extent applicable to the  
9           facility, in a hazard analysis.

10          “(c) PREVENTIVE CONTROLS.—

11           “(1) IN GENERAL.—The owner, operator, or  
12           agent of a facility shall identify and implement effec-  
13           tive preventive controls to prevent, eliminate, or re-  
14           duce to acceptable levels the occurrence of any haz-  
15           ards identified in the hazard analysis under sub-  
16           section (b)(3).

17           “(2) IDENTIFIED BY THE SECRETARY.—

18           “(A) ESTABLISHMENT.—The Secretary  
19           may establish by regulation or guidance preven-  
20           tive controls for specific product types to pre-  
21           vent unintentional contamination throughout  
22           the supply chain. The owner, operator, or agent  
23           of a facility shall implement any preventive con-  
24           trols identified by the Secretary under this  
25           paragraph.

1           “(B) ALTERNATIVE CONTROLS.—Such reg-  
2           ulation or guidance shall allow the owner, oper-  
3           ator, or agent of a facility to implement an al-  
4           ternative preventive control to one established  
5           by the Secretary, provided that, in response to  
6           a request by the Secretary, the owner, operator,  
7           or agent can present to the Secretary data or  
8           other information sufficient to demonstrate that  
9           the alternative control effectively addresses the  
10          hazard, including meeting any applicable per-  
11          formance standard.

12          “(C) LIMITATION.—Subparagraph (B)  
13          shall not apply to any preventive control de-  
14          scribed in subparagraph (A), (B), or (E) of  
15          subsection (i)(2).

16          “(d) MONITORING.—The owner, operator, or agent of  
17          a facility shall monitor the implementation of preventive  
18          controls under subsection (c) to identify any circumstances  
19          in which the preventive controls are not fully implemented  
20          or verification shows that such controls were ineffective.

21          “(e) CORRECTIVE ACTIONS.—The owner, operator,  
22          or agent of a facility shall establish and implement proce-  
23          dures to ensure that, if the preventive controls under sub-  
24          section (c) are not fully implemented or are not found ef-  
25          fective—

1           “(1) no affected product from such facility en-  
2           ters commerce; and

3           “(2) appropriate action is taken to reduce the  
4           likelihood of recurrence of the implementation fail-  
5           ure.

6           “(f) VERIFICATION.—The owner, operator, or agent  
7           of a facility shall ensure that—

8           “(1) the system of preventive controls identified  
9           under subsection (c) has been validated as scientif-  
10          ically and technically sound so that, if such system  
11          is implemented, the hazards identified in the hazard  
12          analysis under subsection (b)(3) will be prevented,  
13          eliminated, or reduced to an acceptable level;

14          “(2) the facility is conducting monitoring in ac-  
15          cordance with subsection (d);

16          “(3) the facility is taking effective corrective ac-  
17          tions under subsection (e); and

18          “(4) the preventive controls are effectively pre-  
19          venting, eliminating, or reducing to an acceptable  
20          level the occurrence of identified hazards, including  
21          through the use of environmental and product test-  
22          ing programs and other appropriate means.

23          “(g) REQUIREMENT TO REANALYZE AND REVISE.—

24          “(1) REQUIREMENT.—The owner, operator, or  
25          agent of a facility shall—

1           “(A) review the evaluation under sub-  
2           section (b) for the facility and, as necessary, re-  
3           vise the hazard analysis under subsection (b)(3)  
4           for the facility—

5                   “(i) not less than every 2 years;

6                   “(ii) if there is a change in the proc-  
7                   ess or product that could affect the hazard  
8                   analysis; and

9                   “(iii) if the Secretary determines that  
10                  it is appropriate to protect public health;  
11                  and

12                 “(B) whenever there is a change in the  
13                 hazard analysis, revise the preventive controls  
14                 under subsection (c) for the facility as nec-  
15                 essary to ensure that all hazards that are rea-  
16                 sonably likely to occur are prevented, elimi-  
17                 nated, or reduced to an acceptable level, or doc-  
18                 ument the basis for the conclusion that no such  
19                 revision is needed.

20                 “(2) NONDELEGATION.—Any revisions ordered  
21                 by the Secretary under this subsection shall be or-  
22                 dered by the Secretary or an official designated by  
23                 the Secretary. An official may not be so designated  
24                 unless the official is the director of the district

1 under this Act in which the facility involved is lo-  
2 cated, or is an official senior to such director.

3 “(h) RECORDKEEPING.—The owner, operator, or  
4 agent of a facility shall maintain, for not less than 2 years,  
5 records documenting the activities described in subsections  
6 (a) through (g).

7 “(i) DEFINITIONS.—For purposes of this section:

8 “(1) FACILITY.—The term ‘facility’ means a  
9 domestic facility or a foreign facility that is required  
10 to be registered under section 415.

11 “(2) PREVENTIVE CONTROLS.—The term ‘pre-  
12 ventive controls’ means those risk-based procedures,  
13 practices, and processes that a person knowledgeable  
14 about the safe manufacturing, processing, packing,  
15 transporting, or holding of food would employ to  
16 prevent, eliminate, or reduce to an acceptable level  
17 the hazards identified in the hazard analysis under  
18 subsection (b)(3) and that are consistent with the  
19 current scientific understanding of safe food manu-  
20 facturing, processing, packing, transporting, or hold-  
21 ing at the time of the analysis. Those procedures,  
22 practices, and processes shall include the following,  
23 as appropriate to the type of facility or food:

24 “(A) Sanitation procedures and practices.

1           “(B) Supervisor, manager, and employee  
2 hygiene training.

3           “(C) Process controls.

4           “(D) An allergen control program to mini-  
5 mize potential allergic reactions in humans  
6 from ingestion of, or contact with, human and  
7 animal food.

8           “(E) Good manufacturing practices.

9           “(F) Verification procedures, practices,  
10 and processes for suppliers and incoming ingre-  
11 dients, which may include onsite auditing of  
12 suppliers and testing of incoming ingredients.

13           “(G) Other procedures, practices, and  
14 processes established by the Secretary under  
15 subsection (c)(2).

16           “(3) HAZARD THAT IS REASONABLY LIKELY TO  
17 OCCUR.—A food safety hazard that is reasonably  
18 likely to occur is one for which a prudent person  
19 who, as applicable, manufactures, processes, packs,  
20 transports, or holds food, would establish controls  
21 because experience, illness data, scientific reports, or  
22 other information provides a basis to conclude that  
23 there is a reasonable possibility that the hazard will  
24 occur in the type of food being manufactured, proc-



1       essed, packed, transported, or held in the absence of  
2       those controls.

3       **“SEC. 418A. FOOD SAFETY PLAN.**

4       “(a) IN GENERAL.—Before a facility (as defined in  
5       section 418(i)) introduces or delivers for introduction into  
6       interstate commerce any shipment of food, the owner, op-  
7       erator, or agent of the facility shall develop and implement  
8       a written food safety plan (in this section referred to as  
9       a ‘food safety plan’).

10       “(b) CONTENTS.—The food safety plan shall include  
11       each of the following elements:

12               “(1) The hazard analysis and any reanalysis  
13               conducted under section 418.

14               “(2) A description of the preventive controls  
15               being implemented under subsection 418(c), includ-  
16               ing those to address hazards identified by the Sec-  
17               retary under subsection 418(b)(2).

18               “(3) A description of the procedures for moni-  
19               toring preventive controls.

20               “(4) A description of the procedures for taking  
21               corrective actions.

22               “(5) A description of verification activities for  
23               the preventive controls, including validation that the  
24               system of controls, if implemented, will prevent,  
25               eliminate, or reduce to an acceptable level the identi-

1       fied hazards, review of monitoring and corrective ac-  
2       tion records, and procedures for determining wheth-  
3       er the system of controls as implemented is effec-  
4       tively preventing, eliminating, or reducing to an ac-  
5       ceptable level the occurrence of identified hazards,  
6       including the use of environmental and product test-  
7       ing programs.

8               “(6) A description of the facility’s record-  
9       keeping procedures.

10              “(7) A description of the facility’s procedures  
11       for the recall of articles of food, whether voluntarily  
12       or when required under section 422.

13              “(8) A description of the facility’s procedures  
14       for tracing the distribution history of articles of  
15       food, whether voluntarily or when required under  
16       section 414.

17              “(9) A description of the facility’s procedures to  
18       ensure a safe and secure supply chain for the ingre-  
19       dients or components used in making the food man-  
20       ufactured, processed, packed, transported, or held by  
21       such facility.

22              “(10) A description of the facility’s procedures  
23       to implement the science-based performance stand-  
24       ards issued under section 419.”.

25              (3) GUIDANCE OR REGULATIONS.—

1           (A) IN GENERAL.—The Secretary of  
2           Health and Human Services (referred to in this  
3           subsection as the “Secretary”) shall issue guid-  
4           ance or promulgate regulations to establish  
5           science-based standards for conducting a haz-  
6           ard analysis, documenting hazards, identifying  
7           and implementing preventive controls, and doc-  
8           umenting the implementation of the preventive  
9           controls, including verification and corrective  
10          actions under sections 418 and 418A of the  
11          Federal Food, Drug, and Cosmetic Act (as  
12          added by paragraph (2)).

13          (B) INTERNATIONAL STANDARDS.—In  
14          issuing guidance or regulations under subpara-  
15          graph (A), the Secretary shall review inter-  
16          national hazard analysis and preventive control  
17          standards that are in existence on the date of  
18          the enactment of this Act and relevant to such  
19          guidelines or regulations to ensure that the pro-  
20          grams under sections 418 and 418A of the Fed-  
21          eral Food, Drug, and Cosmetic Act (as added  
22          by paragraph (2) are consistent, to the extent  
23          the Secretary determines practicable and appro-  
24          priate, with such standards.

1 (C) AUTHORITY WITH RESPECT TO CER-  
2 TAIN FACILITIES.—The Secretary may, by regu-  
3 lation, exempt or modify the requirements for  
4 compliance under this section and the amend-  
5 ments made by this section with respect to fa-  
6 cilities that are solely engaged in—

7 (i) the production of food for animals  
8 other than man or the storage of packaged  
9 foods that are not exposed to the environ-  
10 ment; or

11 (ii) the storage of raw agricultural  
12 commodities for further distribution or  
13 processing.

14 (D) SMALL BUSINESSES.—The Sec-  
15 retary—

16 (i) shall consider the impact of any  
17 guidance or regulations under this section  
18 on small businesses; and

19 (ii) shall issue guidance to assist small  
20 businesses in complying with the require-  
21 ments of this section and the amendments  
22 made by this section.

23 (4) NO EFFECT ON EXISTING HACCP AUTHORI-  
24 TIES.—Nothing in this section or the amendments  
25 made by this section limits the authority of the Sec-

1       retary under the Federal Food, Drug, and Cosmetic  
2       Act (21 U.S.C. 301 et seq.) or the Public Health  
3       Service Act (42 U.S.C. 201 et seq.), as in effect on  
4       the day before the date of the enactment of this Act,  
5       to revise, issue, or enforce product- and category-  
6       specific regulations, such as the Seafood Hazard  
7       Analysis Critical Controls Points Program, the Juice  
8       Hazard Analysis Critical Control Program, and the  
9       Thermally Processed Low-Acid Foods Packaged in  
10      Hermetically Sealed Containers standards.

11           (5) CONSIDERATION.—When implementing sec-  
12      tions 418 and 418A of the Federal Food, Drug, and  
13      Cosmetic Act, as added by paragraph (2), the Sec-  
14      retary may take into account differences between  
15      food intended for human consumption and food in-  
16      tended for consumption by animals other than man.

17           (6) EFFECTIVE DATE.—

18           (A) GENERAL RULE.—The amendments  
19      made by subsection (a) and this subsection  
20      shall take effect 18 months after the date of the  
21      enactment of this Act.

22           (B) EXCEPTIONS.—Notwithstanding sub-  
23      paragraph (A)—

24           (i) the amendments made by sub-  
25      section (a) and this subsection shall apply

1 to a small business (as defined by the Sec-  
2 retary) after the date that is 2 years after  
3 the date of the enactment of this Act; and  
4 (ii) the amendments made by sub-  
5 section (a) and this subsection shall apply  
6 to a very small business (as defined by the  
7 Secretary) after the date that is 3 years  
8 after the date of the enactment of this Act.

9 (b) **FINISHED PRODUCT TEST RESULTS FROM CAT-**  
10 **EGORY 1 FACILITIES.**—

11 (1) **ADULTERATION.**—Section 402 (21 U.S.C.  
12 342), as amended by subsection (a), is amended by  
13 adding at the end the following:

14 “(k) If it is manufactured or processed in a facility  
15 that is in violation of section 418B.”.

16 (2) **REQUIREMENTS.**—Chapter IV (21 U.S.C.  
17 341 et seq.), as amended, is further amended by  
18 adding at the end the following:

19 **“SEC. 418B. FINISHED PRODUCT TEST RESULTS FROM CAT-**  
20 **EGORY 1 FACILITIES.**

21 “(a) **AUTHORITY.**—Beginning on the date specified  
22 in subsection (c), the Secretary shall require, after public  
23 notice and an opportunity for comment, the submission  
24 to the Secretary of finished product test results by the  
25 owner, operator, or agent of each category 1 facility sub-

1 ject to good manufacturing practices regulations docu-  
2 menting the presence of contaminants in food in the pos-  
3 session or control of such facility posing a risk of severe  
4 adverse health consequences or death.

5 “(b) CONSIDERATIONS.—The Secretary shall require  
6 submissions under subsection (a)—

7 “(1) as the Secretary determines feasible and  
8 appropriate; and

9 “(2) taking into consideration available data  
10 and information on the potential risks posed by the  
11 facility.

12 “(c) BEGINNING DATE.—The date specified in this  
13 subsection is the sooner of—

14 “(1) the date of completion of the pilot projects  
15 and feasibility study under subsections (d) and (e);  
16 and

17 “(2) the date that is 2 years after the date of  
18 the enactment of this section.

19 “(d) PILOT PROJECTS.—The Secretary shall conduct  
20 2 or more pilot projects to evaluate the feasibility of col-  
21 lecting positive finished product testing results from cat-  
22 egory 1 facilities, including the value and feasibility of re-  
23 porting corrective actions taken when positive finished  
24 product test results are reported to the Secretary.

1       “(e) FEASIBILITY STUDY.—The Secretary shall as-  
2       sess the feasibility and benefits of the reporting by facili-  
3       ties subject to good manufacturing practices regulations  
4       of appropriate finished product testing results from cat-  
5       egory 1 facilities to the Secretary, including the extent to  
6       which the collection of such finished product testing re-  
7       sults will help the Secretary assess the risk presented by  
8       a facility or product category.

9       “(f) LIMITATIONS.—Nothing in this section shall be  
10       construed—

11               “(1) to require the Secretary to mandate test-  
12       ing or submission of test results that the Secretary  
13       determines would not provide useful information in  
14       assessing the potential risk presented by a facility or  
15       product category; or

16               “(2) to limit the Secretary’s authority under  
17       any other provisions of law to require any person to  
18       provide access, or to submit information or test re-  
19       sults, to the Secretary, including the ability of the  
20       Secretary to require field or other testing and to ob-  
21       tain test results in the course of an investigation of  
22       a potential food-borne illness or contamination inci-  
23       dent.



1 “(g) DEFINITION.—In this section, the term ‘cat-  
2 egory 1 facility’ means a category 1 facility within the  
3 meaning of section 704(h).”.

4 (c) FOOD DEFENSE.—

5 (1) ADULTERATION.—Section 402(j), as added  
6 by subsection (a), is amended by striking “and  
7 418A” and inserting “, 418A, or 418C”.

8 (2) REQUIREMENTS.—Chapter IV (21 U.S.C.  
9 341 et seq.), as amended, is further amended by  
10 adding at the end the following:

11 **“SEC. 418C. FOOD DEFENSE.**

12 “(a) IN GENERAL.—Before a facility (as defined in  
13 section 418(i)) introduces or delivers for introduction into  
14 interstate commerce any shipment of food, the owner, op-  
15 erator, or agent of the facility shall develop and implement  
16 a written food defense plan (in this section referred to as  
17 a ‘food defense plan’).

18 “(b) CONTENTS.—The food defense plan shall in-  
19 clude each of the following elements:

20 “(1) A food defense assessment to identify con-  
21 ditions and practices that may permit a hazard that  
22 may be intentionally introduced, including by an act  
23 of terrorism. This assessment shall evaluate proc-  
24 essing security, cybersecurity, material security (in-  
25 cluding ingredients, finished product, and pack-

1 aging), personnel security, storage security, shipping  
2 and receiving security, and utility security.

3 “(2) A description of the preventive measures  
4 being implemented as a result of such assessment to  
5 minimize the risk of intentional contamination.

6 “(3) A description of the procedures to check  
7 for and identify any circumstances in which the pre-  
8 ventive measures are not fully implemented or were  
9 ineffective.

10 “(4) A description of the procedures for taking  
11 corrective actions to ensure that when preventive  
12 measures have not been properly implemented or  
13 have been ineffective, appropriate action is taken—

14 “(A) to reduce the likelihood of recurrence  
15 of the failure; and

16 “(B) to assess the consequences of the fail-  
17 ure.

18 “(5) A description of evaluation activities for  
19 the preventive measures, including a review of  
20 records provided for under paragraph (6) and proce-  
21 dures to periodically test the effectiveness of the  
22 plan.

23 “(6) A description of the facility’s record-keep-  
24 ing procedures, including records documenting im-

1        plementation of the procedures under paragraphs  
2        (3), (4), and (5).

3        “(c) HAZARD.—For purposes of this section, the  
4        term ‘hazard that may be intentionally introduced, includ-  
5        ing by an act of terrorism’ means a hazard for which a  
6        prudent person who, as applicable, manufactures, proc-  
7        esses, packs, transports, or holds food, would establish  
8        preventive measures because the hazard has been identi-  
9        fied by a food defense assessment by application of—

10            “(1) a targeting assessment tool recommended  
11            by the Secretary by guidance; or

12            “(2) a comparable targeting assessment tool.

13        “(d) FOOD DEFENSE HAZARDS IDENTIFIED BY THE  
14        SECRETARY.—

15            “(1) ESTABLISHMENT.—The Secretary may es-  
16            tablish by regulation or guidance preventive meas-  
17            ures for specific product types to prevent intentional  
18            contamination throughout the supply chain. The  
19            owner, operator, or agent of a facility shall imple-  
20            ment any preventive measures identified by the Sec-  
21            retary under this paragraph.

22            “(2) ALTERNATIVE MEASURES.—Such regula-  
23            tion or guidance shall allow the owner, operator, or  
24            agent of a facility to implement an alternative pre-  
25            ventive measure to one established by the Secretary,

1 provided that, in response to a request by the Sec-  
2 retary, the owner, operator, or agent can present to  
3 the Secretary data or other information sufficient to  
4 demonstrate that the alternative measure effectively  
5 addresses the hazard.

6 “(e) REQUIREMENT TO REASSESS AND REVISE.—

7 “(1) REQUIREMENT.—The owner, operator, or  
8 agent of a facility shall—

9 “(A) review the food defense assessment  
10 under subsection (b)(1) for the facility and, as  
11 necessary, revise the food defense assessment  
12 under subsection (b)(1) for the facility—

13 “(i) not less than every 2 years;

14 “(ii) if there is a change in the proc-  
15 ess or product that could affect the food  
16 defense assessment; and

17 “(iii) if the Secretary determines that  
18 it is appropriate to protect public health;  
19 and

20 “(B) whenever there is a change in the  
21 food defense assessment, revise the preventive  
22 measures under subsection (b)(2) for the facil-  
23 ity as necessary to ensure that for all hazards  
24 identified, the risk is minimized, or document

1           the basis for the conclusion that no such revi-  
2           sion is needed.

3           “(2) NONDELEGATION.—Any revisions ordered  
4           by the Secretary under this subsection shall be or-  
5           dered by the Secretary or an official designated by  
6           the Secretary. An official may not be so designated  
7           unless the official is the director of the district  
8           under this Act in which the facility involved is lo-  
9           cated, or is an official senior to such director.

10          “(f) RECORDKEEPING.—The owner, operator, or  
11          agent of a facility shall maintain, for not less than 2 years,  
12          records documenting the activities described in subsections  
13          (b) and (e).

14          “(g) ACCESS TO PLAN.—

15                 “(1) ON INSPECTION.—An officer or employee  
16                 of the Secretary shall have access to the food de-  
17                 fense plan of a facility under section 414(a) only if  
18                 the Secretary, through an official who is the director  
19                 of the district under this Act in which the facility is  
20                 located or an official who is senior to such a direc-  
21                 tor, provides notice under section 414(a)(1)(C).

22                 “(2) NONDISCLOSURE.—A food defense plan,  
23                 and any information derived from such a plan, shall  
24                 be exempt from disclosure under section 552 of title  
25                 5, United States Code.”.

1           (3) PROHIBITION.—Section 301(j) (21 U.S.C.  
2           331(j)) is amended by inserting after “entitled to  
3           protection” the following: “or a food defense plan, or  
4           any information derived from such a plan, under  
5           section 418C”.

6   **SEC. 103. PERFORMANCE STANDARDS.**

7           (a) ADULTERATED FOOD.—Section 402 (21 U.S.C.  
8           342), as amended by section 102, is amended by adding  
9           at the end the following:

10          “(l) If it has been manufactured, processed, packed,  
11          transported, or held under conditions that do not meet the  
12          standards issued under section 419.”.

13          (b) REQUIREMENTS.—Chapter IV (21 U.S.C. 341 et  
14          seq.), as amended by section 102(b), is further amended  
15          by adding at the end the following:

16   **“SEC. 419. PERFORMANCE STANDARDS.**

17          “(a) PERFORMANCE STANDARDS.—The Secretary  
18          shall, not less frequently than every 2 years, review and  
19          evaluate epidemiological data and other appropriate  
20          sources of information, including research under section  
21          123 of the Food Safety Enhancement Act of 2009, to  
22          identify the most significant food-borne contaminants and  
23          the most significant resulting hazards. The Secretary shall  
24          issue, as soon as practicable, through guidance or by regu-  
25          lation, science-based performance standards (which may

1 include action levels) applicable to foods or food classes,  
2 as appropriate, to minimize to an acceptable level, prevent,  
3 or eliminate the occurrence of such hazards. Such stand-  
4 ards shall be applicable to foods and food classes. Notwith-  
5 standing the timelines set forth in this paragraph, the Sec-  
6 retary shall as appropriate establish such science-based  
7 performance standards for identified contaminants as nec-  
8 essary to protect the public health.

9       “(b) LIST OF CONTAMINANTS.—Following each re-  
10 view under subsection (a), the Secretary shall publish in  
11 the Federal Register a list of food-borne contaminants  
12 that have the greatest adverse impact on public health.  
13 In determining whether a particular food-borne contami-  
14 nant should be added to such list, the Secretary shall con-  
15 sider the number and severity of illnesses and the number  
16 of deaths associated with the foods associated with such  
17 contaminants.

18       “(c) SAMPLING PROGRAM.—In conjunction with the  
19 establishment of a performance standard under this sec-  
20 tion, the Secretary may make recommendations to indus-  
21 try for conducting product sampling.

22       “(d) REVOCATION BY SECRETARY.—All performance  
23 standards of the Food and Drug Administration applicable  
24 to foods or food classes in effect on the date of the enact-  
25 ment of this section, or issued under this section, shall

1 remain in effect until revised or revoked by the Sec-  
2 retary.”.

3 (c) REPORT TO CONGRESS.—The Secretary of Health  
4 and Human Services shall submit to the Congress by  
5 March 30th of the year following each review under sec-  
6 tion 419 of the Federal Food, Drug, and Cosmetic Act,  
7 as added by subsection (b), a report on the results of such  
8 review and the Secretary’s plans to address the significant  
9 food-borne hazards identified, or the basis for not address-  
10 ing any significant food-borne hazards identified, includ-  
11 ing any resource limitations or limitations in data that  
12 preclude further action at that time.

13 **SEC. 104. SAFETY STANDARDS FOR PRODUCE AND CERTAIN**  
14 **OTHER RAW AGRICULTURAL COMMODITIES.**

15 (a) ADULTERATED FOOD.—Section 402 (21 U.S.C.  
16 342), as amended by sections 102 and 103(a), is amended  
17 by adding at the end the following:

18 “(m) If it has been grown, harvested, processed,  
19 packed, sorted, transported, or held under conditions that  
20 do not meet the standards established under section  
21 419A.”.

22 (b) STANDARDS.—Chapter IV (21 U.S.C. 341 et  
23 seq.), as amended by sections 102(b) and 103(b), is  
24 amended by adding at the end the following:



1 **“SEC. 419A. SAFETY STANDARDS FOR PRODUCE AND CER-**  
2 **TAIN OTHER RAW AGRICULTURAL COMMOD-**  
3 **ITIES.**

4 “(a) STANDARDS.—The Secretary, in coordination  
5 with the Secretary of Agriculture, shall establish by regu-  
6 lation scientific and risk-based food safety standards for  
7 the growing, harvesting, processing, packing, sorting,  
8 transporting, and holding of those types of raw agricul-  
9 tural commodities—

10 “(1) that are a fruit, vegetable, nut, or fungus;  
11 and

12 “(2) for which the Secretary has determined  
13 that such standards are reasonably necessary to  
14 minimize the risk of serious adverse health con-  
15 sequences or death to humans or animals.

16 “(b) CONTENTS.—The regulations under subsection  
17 (a)—

18 “(1) may set forth such procedures, processes,  
19 and practices as the Secretary determines to be rea-  
20 sonably necessary—

21 “(A) to prevent the introduction of known  
22 or reasonably foreseeable biological, chemical,  
23 and physical hazards, including hazards that  
24 occur naturally, may be unintentionally intro-  
25 duced, or may be intentionally introduced, in-  
26 cluding by acts of terrorism, into raw agricul-

1 tural commodities that are a fruit, vegetable,  
2 nut, or fungus; and

3 “(B) to provide reasonable assurances that  
4 such commodity is not adulterated under sec-  
5 tion 402;

6 “(2) may include, with respect to growing, har-  
7 vesting, processing, packing, sorting, transporting,  
8 and storage operations, standards for safety as the  
9 Secretary determines to be reasonably necessary;

10 “(3) may include standards addressing manure  
11 use, water quality, employee hygiene, sanitation and  
12 animal control, and temperature controls, as the  
13 Secretary determines to be reasonably necessary;

14 “(4) may include standards for such other ele-  
15 ments as the Secretary determines necessary to  
16 carry out subsection (a);

17 “(5) shall provide a reasonable period of time  
18 for compliance, taking into account the needs of  
19 small businesses for additional time to comply;

20 “(6) may provide for coordination of education  
21 and enforcement activities;

22 “(7) shall take into consideration, consistent  
23 with ensuring enforceable public health protection,  
24 the impact on small-scale and diversified farms, and  
25 on wildlife habitat, conservation practices, water-

1 shed-protection efforts, and organic production  
2 methods;

3 “(8) may provide for coordination of education  
4 and training with other government agencies, univer-  
5 sities, private entities, and others with experience  
6 working directly with farmers; and

7 “(9) may provide for recognition through guid-  
8 ance of other existing publicly available procedures,  
9 processes, and practices that the Secretary deter-  
10 mines to be equivalent to those established under  
11 paragraph (1).

12 “(c) EDUCATION AND COMPLIANCE.—The Secretary  
13 shall coordinate with the Secretary of Agriculture to pro-  
14 vide for effective implementation of education and compli-  
15 ance activities. The Secretary may contract and coordinate  
16 with the agency or department designated by the Governor  
17 of each State to perform activities to ensure compliance  
18 with this section.”.

19 (c) TIMING.—

20 (1) PROPOSED RULE.—Not later than 18  
21 months after the date of enactment of this Act, the  
22 Secretary of Health and Human Services shall issue  
23 a proposed rule to carry out section 419A of the  
24 Federal Food, Drug, and Cosmetic Act, as added by  
25 subsection (b).

1           (2) FINAL RULE.—Not later than 3 years after  
2       such date, the Secretary of Health and Human  
3       Services shall issue a final rule under such section.

4       (d) NO EFFECT ON EXISTING HACCP AUTHORI-  
5       TIES.—Nothing in this section or the amendments made  
6       by this section limits the authority of the Secretary under  
7       the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301  
8       et seq.) or the Public Health Service Act (42 U.S.C. 201  
9       et seq.), as in effect on the day before the date of the  
10      enactment of this Act, to revise, issue, or enforce product-  
11     and category-specific regulations, such as the Seafood  
12     Hazard Analysis Critical Controls Points Program, the  
13     Juice Hazard Analysis Critical Control Program, and the  
14     Thermally Processed Low-Acid Foods Packaged in Her-  
15     metically Sealed Containers standards.

16      (e) UPDATE EXISTING GUIDANCE.—Not later than  
17     1 year after the date of the enactment of this Act, the  
18     Secretary of Health and Human Services shall update the  
19     guidance document entitled “Guidance For Industry:  
20     Guide To Minimize Microbial Food Safety Hazards For  
21     Fresh Fruits And Vegetables” (issued on October 26,  
22     1998) in accordance with this section and the amendments  
23     made by this section.

1 **SEC. 105. RISK-BASED INSPECTION SCHEDULE.**

2 (a) IN GENERAL.—Section 704 (21 U.S.C. 374) is  
3 amended by adding at the end the following:

4 “(h)(1) Each facility registered under section 415  
5 shall be inspected—

6 “(A)(i) by one or more officers duly designated  
7 under section 702 or other statutory authority by  
8 the Secretary;

9 “(ii) for domestic facilities, by a Federal, State,  
10 or local official recognized by the Secretary under  
11 paragraph (2); or

12 “(iii) for foreign facilities, by an agency or a  
13 representative of a country that is recognized by the  
14 Secretary under paragraph (2); and

15 “(B) at a frequency determined pursuant to a  
16 risk-based schedule.

17 “(2) For purposes of paragraph (1)(A), the Sec-  
18 retary—

19 “(A) may recognize Federal, State, and local of-  
20 ficials and agencies and representatives of foreign  
21 countries as meeting standards established by the  
22 Secretary for conducting inspections under this Act;  
23 and

24 “(B) may limit such recognition to inspections  
25 of specific commodities or food types.

1           “(3) The risk-based schedule under paragraph (1)(B)  
2 shall be implemented beginning not later than 18 months  
3 after the date of the enactment of this subsection.

4           “(4) Such risk-based schedule shall provide for a fre-  
5 quency of inspections commensurate with the risk pre-  
6 sented by the facility and shall be based on the following  
7 categories and inspection frequencies:

8           “(A) CATEGORY 1.—A category 1 food facility  
9 is a high-risk facility that manufactures or processes  
10 food. The Secretary shall randomly inspect a cat-  
11 egory 1 food facility at least every 6 to 12 months.

12           “(B) CATEGORY 2.—A category 2 food facility  
13 is a low-risk facility that manufactures or processes  
14 food or a facility that packs or labels food. The Sec-  
15 retary shall randomly inspect a category 2 facility at  
16 least every 18 months to 3 years.

17           “(C) CATEGORY 3.—A category 3 food facility  
18 is a facility that holds food. The Secretary shall ran-  
19 domly inspect a category 3 facility at least every 5  
20 years.

21           “(5) The Secretary—

22           “(A) may, by guidance, modify the types of  
23 food facilities within a category under paragraph  
24 (4);

1           “(B) may alter the inspection frequencies speci-  
2           fied in paragraph (4) based on the need to respond  
3           to food-borne illness outbreaks and food recalls; and

4           “(C) may inspect a facility more frequently  
5           than the inspection frequency provided by paragraph  
6           (4);

7           “(D) beginning 6 months after submitting the  
8           report required by section 105(b)(2) of the Food  
9           Safety Enhancement Act of 2009, may—

10           “(i) publish in the Federal Register adjust-  
11           ments to the inspection frequencies specified in  
12           subparagraphs (B) and (C) of paragraph (4)  
13           for category 2 and category 3 food facilities,  
14           which adjustments shall be in accordance with  
15           the Secretary’s recommendations in such re-  
16           port; and

17           “(ii) after such publication, implement the  
18           adjustments; and

19           “(E) except as provided in subparagraphs (B)  
20           and (C), may not alter the inspection frequency  
21           specified in paragraph (4)(A) for category 1 food fa-  
22           cilities.

23           “(6) In determining the appropriate frequency of in-  
24           spection, the Secretary shall consider—

1           “(A) the type of food manufactured, processed,  
2           packed, or held at the facility;

3           “(B) the compliance history of the facility;

4           “(C) whether the facility importing or offering  
5           for import into the United States food is certified by  
6           a qualified certifying entity in accordance with sec-  
7           tion 801(q); and

8           “(D) such other factors as the Secretary deter-  
9           mines by guidance to be relevant to assessing the  
10          risk presented by the facility.

11          “(7) Before establishing or modifying the categoriza-  
12         tion under paragraph (4) of any food facility or type of  
13         food facility, the Secretary shall publish a notice of the  
14         proposed categorization in the Federal Register and pro-  
15         vide a period of not less than 60 days for public comment  
16         on the proposed categorization.”.

17          (b) REPORTS ON RISK-BASED INSPECTIONS OF  
18         FOOD FACILITIES.—

19                 (1) ANNUAL REPORT.—Not later than Decem-  
20                 ber 31 of each year, the Secretary of Health and  
21                 Human Services shall submit a report to the Com-  
22                 mittee on Energy and Commerce of the House of  
23                 Representatives and the Committee on Health, Edu-  
24                 cation, Labor, and Pensions of the Senate describ-  
25                 ing—



1 (A) the number of foreign and domestic fa-  
2 cilities, by risk category, inspected under the  
3 risk-based inspection schedule established under  
4 section 704(h) of the Federal Food, Drug, and  
5 Cosmetic Act, as added by subsection (a), in  
6 the preceding fiscal year; and

7 (B) the costs of implementing the risk-  
8 based inspection schedule for the preceding 12  
9 months.

10 (2) THIRD-YEAR REPORT.—Not later than 3  
11 years after the date of the enactment of this Act, the  
12 Secretary of Health and Human Services shall sub-  
13 mit a report to the Committee on Energy and Com-  
14 merce of the House of Representatives and the Com-  
15 mittee on Health, Education, Labor, and Pensions  
16 of the Senate describing recommendations on the  
17 risk-based inspection schedule under section 704(h)  
18 of the Federal Food, Drug, and Cosmetic Act, as  
19 added by subsection (a), including recommendations  
20 for adjustments to the timing of the schedule and  
21 other ways to improve the risk-based allocation of  
22 resources by the Food and Drug Administration. In  
23 making such recommendations, the Secretary shall  
24 consider—

1 (A) the nature of the food products being  
2 processed, stored, or transported;

3 (B) the manner in which food products are  
4 processed, stored, or transported;

5 (C) the inherent likelihood that the prod-  
6 ucts will contribute to the risk of food-borne ill-  
7 ness;

8 (D) the best available evidence concerning  
9 reported illnesses associated with the foods  
10 processed, stored, held, or transported in the  
11 category of facilities; and

12 (E) the overall record of compliance with  
13 food safety law among facilities in the category,  
14 including compliance with applicable perform-  
15 ance standards and the frequency of recalls.

16 **SEC. 106. ACCESS TO RECORDS.**

17 (a) RECORDS ACCESS.—Subsection (a) of section 414  
18 (21 U.S.C. 350e) is amended to read as follows:

19 “(a) RECORDS ACCESS.—

20 “(1) RECORDS ACCESS DURING AN INSPEC-  
21 TION.—

22 “(A) IN GENERAL.—Except as provided in  
23 paragraph (3), each person who manufactures,  
24 processes, packs, transports, distributes, re-  
25 ceives, or holds an article of food in the United

1 States or for import into the United States  
2 shall, at the request of an officer or employee  
3 duly designated by the Secretary, permit such  
4 officer or employee, upon presentation of appro-  
5 priate credentials, at reasonable times and with-  
6 in reasonable limits and in a reasonable man-  
7 ner, to have access to and copy all records re-  
8 lating to such article bearing on whether the  
9 food may be adulterated, misbranded, or other-  
10 wise in violation of this Act, including all  
11 records collected or developed to comply with  
12 section 418 or 418A.

13 “(B) SCOPE OF RECORDS.—The require-  
14 ment under subparagraph (A) applies to all  
15 records relating to the manufacture, processing,  
16 packing, transporting, distribution, receipt,  
17 holding, or importation of such article main-  
18 tained by or on behalf of such person in any  
19 format (including paper and electronic formats)  
20 and at any location.

21 “(C) IMMEDIATE AVAILABILITY WITH NO-  
22 TICE.—Records not required to be made avail-  
23 able immediately on commencement of an in-  
24 spection under subparagraph (A) shall nonethe-  
25 less be made available immediately on com-

1           mencement of such an inspection if, by a rea-  
2           sonable time before such inspection, the Sec-  
3           retary by letter to the person identifies the  
4           records to be made available during such in-  
5           spection. Nothing in this subparagraph shall  
6           be construed as permitting a person to refuse to  
7           produce records required under and in accord-  
8           ance with subparagraph (A) due to failure of  
9           the Secretary to provide notice under this  
10          paragraph.

11          “(2) ADDITIONAL AUTHORITIES TO ACCESS  
12          RECORDS REMOTELY; SUBMISSION OF RECORDS TO  
13          THE SECRETARY.—

14                 “(A) REMOTE ACCESS IN EMERGENCIES.—

15           If the Secretary has a reasonable belief that an  
16           article of food presents a threat of serious ad-  
17           verse health consequences or death to humans  
18           or animals, the Secretary may require each per-  
19           son who manufactures, processes, packs, trans-  
20           ports, distributes, receives, holds, or imports  
21           such article of food, or any article of food that  
22           the Secretary determines may be affected in a  
23           similar manner, to submit to the Secretary all  
24           records reasonably related to such article of  
25           food as soon as is reasonably practicable, after

1 receiving written notice (including by notice  
2 served personally and outside normal business  
3 hours to an agent identified under subpara-  
4 graph (E) or (F) of section 415(a)(2)) of such  
5 requirement.

6 “(B) REMOTE ACCESS TO RECORDS RE-  
7 LATED TO FOOD SAFETY PLANS.—With respect  
8 to a facility subject to section 418 and 418A,  
9 the Secretary may require the owner, operator,  
10 or agent of such facility to submit to the Sec-  
11 retary, as soon as reasonably practicable after  
12 receiving written notice of such requirement,  
13 the food safety plan, supporting information re-  
14 lied on by the facility to select the preventive  
15 controls to include in its food safety plan, and  
16 documentation of corrective actions, if any,  
17 taken under section 418(e) within the preceding  
18 2 years

19 “(C) ELECTRONIC SUBMISSION.—If the  
20 records required to be submitted to the Sec-  
21 retary under subparagraph (A) or (B) are avail-  
22 able in electronic format, such records shall be  
23 submitted electronically unless the Secretary  
24 specifies otherwise in the notice under such sub-  
25 paragraph.

1           “(3) LIMITED RECORDS ACCESS ON FARMS.—

2                   “(A) APPLICATION.—Paragraphs (1) and  
3           (2) do not apply with respect to farms, except  
4           as provided in this paragraph.

5                   “(B) IN GENERAL.—A person who is the  
6           owner, operator, or agent of a farm (as defined  
7           in section 415) shall, at the request of an offi-  
8           cer or employee duly designated by the Sec-  
9           retary, permit such officer or employee, at rea-  
10          sonable times and within reasonable limits and  
11          in a reasonable manner, to have access to and  
12          copy all records relating to an article of food  
13          produced, manufactured, processed, packed, or  
14          held on such farm as specified in paragraphs  
15          (1) and (2) if—

16                   “(i) such article of food is a fruit, veg-  
17                  etable, nut, or fungus that is the subject of  
18                  a standard issued under section 419A; or

19                   “(ii) such article of food is the subject  
20                  of an active investigation by the Secretary  
21                  of a food borne illness outbreak and is not  
22                  a grain or similarly handled commodity as  
23                  defined in subsection (c)(4)(C)(ii).

24                   “(C) RECORDS ACCESS ON FARMS PRIOR  
25                  TO RULEMAKING.—

1           “(i) IN GENERAL.—As soon as prac-  
2           ticable after the enactment of this para-  
3           graph, the Secretary shall, in coordination  
4           with the Secretary of Agriculture, identify  
5           1 or more fruits, vegetables, nuts, or fungi  
6           for which the Secretary shall have access  
7           to records on farms. Such identification  
8           shall be made by guidance, following notice  
9           and public comment.

10           “(ii) IDENTIFICATION OF RAW AGRI-  
11           CULTURAL COMMODITIES.—The Secretary,  
12           in coordination with the Secretary of Agri-  
13           culture, shall make the identification in  
14           clause (i), based on any past food borne ill-  
15           ness outbreak attributed to the fruit, vege-  
16           table, nut, or fungus—

17           “(I) in the United States and the  
18           risk that a similar outbreak could  
19           occur again in the United States; or

20           “(II) in a foreign country and  
21           the risk that a similar outbreak could  
22           occur in the United States.

23           “(iii) DURATION OF AUTHORITY.—  
24           The authority to have access to records for  
25           a fruit, vegetable, nut, or fungus under

1           this subparagraph shall begin on the date  
2           on which the Secretary identifies such  
3           fruit, vegetable, nut, or fungus under  
4           clause (i) and shall terminate on the effec-  
5           tive date of a final rule issued by the Sec-  
6           retary under section 419A.

7           “(iv) SCOPE OF RECORDS ACCESS.—  
8           In the guidance under clause (i), and for  
9           the period specified in clause (iii), the Sec-  
10          retary, in coordination with the Secretary  
11          of Agriculture, shall determine the scope of  
12          the records to which the Secretary shall  
13          have access under this subparagraph.

14          “(D) RULE OF CONSTRUCTION.—This  
15          paragraph shall not be construed as limiting ac-  
16          cess to any records authorized under—

17                 “(i) this Act or the Public Health  
18                 Service Act, as in effect on the day before  
19                 the date of the enactment of this para-  
20                 graph; or

21                 “(ii) regulations issued under such  
22                 Acts on any date before the date of the en-  
23                 actment of this paragraph.”.

24          (b) REGULATIONS CONCERNING RECORDKEEPING.—



1           (1) AMENDMENT.—Subsection (b) of section  
2       414 (21 U.S.C. 350c) is amended to read as follows:

3       “(b) REGULATIONS CONCERNING RECORD-  
4 KEEPING.—The Secretary, in consultation and coordina-  
5 tion, as appropriate, with other Federal departments and  
6 agencies with responsibilities for regulating food safety,  
7 shall by regulation establish requirements regarding the  
8 establishment and maintenance, for not longer than 3  
9 years, of records by persons who manufacture, process,  
10 pack, transport, distribute, receive, or hold food in the  
11 United States or for import into the United States. The  
12 Secretary shall take into account the size of a business  
13 in promulgating regulations under this subsection. The  
14 Secretary shall consult with the Secretary of Agriculture  
15 in promulgating regulations with respect to farms under  
16 this subsection and shall take into account the nature of  
17 and impact on farms in promulgating such regulations.  
18 The only distribution records which may be required of  
19 restaurants under this subsection are those showing the  
20 restaurant’s suppliers and subsequent distribution other  
21 than to consumers.”.

22           (2) APPLICATION.—The Secretary of Health  
23       and Human Services shall promulgate revised regu-  
24       lations to implement section 414(b) of the Federal  
25       Food, Drug, and Cosmetic Act, as amended by this

1 subsection. Section 414(b) of the Federal Food,  
2 Drug, and Cosmetic Act and regulations thereunder,  
3 as in effect on the day before the date of the enact-  
4 ment of this Act, shall apply to acts and omissions  
5 occurring before the effective date of such revised  
6 regulations.

7 (c) CONFORMING AMENDMENTS.—Section 704(a)(1)  
8 (21 U.S.C. 374(a)(1)) is amended—

9 (1) in the second sentence—

10 (A) by striking “(excluding farms or res-  
11 taurants)” and inserting “(excluding farms, ex-  
12 cept as provided in section 414(a)(3))”;

13 (B) by inserting “receives,” before  
14 “holds”;

15 (C) by striking “described in section 414”  
16 and inserting “described in or required under  
17 section 414”; and

18 (D) by striking “when the Secretary has a  
19 reasonable belief that an article of food is adul-  
20 terated and presents a threat of serious adverse  
21 health consequences or death to humans or ani-  
22 mals” and inserting “bearing on whether such  
23 food is adulterated, misbranded, or otherwise in  
24 violation of this Act, including all records col-

1 lected or developed to comply with section 418  
2 or 418A”; and

3 (2) in the fourth sentence—

4 (A) by striking “the preceding sentence”  
5 and inserting “either of the preceding two sen-  
6 tences”; and

7 (B) by inserting “recipes for food,” before  
8 “financial data,”.

9 **SEC. 107. TRACEABILITY OF FOOD.**

10 (a) PROHIBITED ACT.—Section 301(e) (21 U.S.C.  
11 331(e)) is amended by inserting “, the violation of any  
12 requirement of the food tracing system under section  
13 414(c);” before “or the refusal to permit access to or  
14 verification or copying of any such required record”.

15 (b) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is  
16 amended by inserting “or (4) the requirements of section  
17 414 have not been complied with regarding such article,”  
18 before “then such article shall be refused admission”.

19 (c) PRODUCT TRACING FOR FOOD.—Section 414 (21  
20 U.S.C. 350c), as amended by section 106, is amended—

21 (1) by redesignating subsections (c) and (d) as  
22 subsections (d) and (e), respectively; and

23 (2) by inserting after subsection (b) the fol-  
24 lowing:

25 “(c) TRACING SYSTEM FOR FOOD.—

1           “(1) IN GENERAL.—The Secretary shall by reg-  
2           ulation establish a tracing system for food that is lo-  
3           cated in the United States or is for import into the  
4           United States.

5           “(2) INFORMATION GATHERING.—

6           “(A) TRACING TECHNOLOGIES.—Before  
7           issuing a proposed regulation under this sub-  
8           section, the Secretary shall—

9                   “(i) identify technologies and meth-  
10                   odologies for tracing the distribution his-  
11                   tory of a food that are, or may be, used by  
12                   members of different sectors of the food in-  
13                   dustry, including technologies and meth-  
14                   odologies to enable each person who pro-  
15                   duces, manufactures, processes, pack,  
16                   transports, or holds a food to—

17                           “(I) maintain the full pedigree of  
18                           the origin and previous distribution  
19                           history of the food;

20                           “(II) link that history with the  
21                           subsequent distribution of the food;

22                           “(III) establish and maintain a  
23                           system for tracing the food that is  
24                           interoperable with the systems estab-

1 lished and maintained by other such  
2 persons; and

3 “(IV) use a unique identifier for  
4 each facility owned or operated by  
5 such person for such purpose, as spec-  
6 ified under section 1011; and

7 “(ii) to the extent practicable, as-  
8 sess—

9 “(I) the costs and benefits associ-  
10 ated with the adoption and use of  
11 such technologies;

12 “(II) the feasibility of such tech-  
13 nologies for different sectors of the  
14 food industry; and

15 “(III) whether such technologies  
16 are compatible with the requirements  
17 of this subsection.

18 “(B) PUBLIC MEETINGS.—Before issuing a  
19 proposed regulation under this subsection, the  
20 Secretary shall conduct not less than 2 public  
21 meetings in diverse geographical areas of the  
22 United States to provide persons in different re-  
23 gions an opportunity to provide input and infor-  
24 mation to the Secretary.

1           “(C) PILOT PROJECTS.—Before issuing a  
2 proposed regulation under this subsection, the  
3 Secretary shall conduct 1 or more pilot projects  
4 in coordination with 1 or more sectors of the  
5 food industry to explore and evaluate tracing  
6 systems for food. The Secretary shall coordinate  
7 with the Secretary of Agriculture in conducting  
8 pilot projects with respect to farms under this  
9 subsection.

10           “(3) REGULATION.—

11           “(A) IN GENERAL.—Taking into account  
12 information obtained through information gath-  
13 ering under paragraph (2), the Secretary shall  
14 issue regulations establishing a tracing system  
15 that enables the Secretary to identify each per-  
16 son who grows, produces, manufactures, proc-  
17 esses, packs, transports, holds, or sells such  
18 food in as short a timeframe as practicable but  
19 no longer than 2 business days.

20           “(B) SCOPE OF REGULATION.—The Sec-  
21 retary may include in the regulations estab-  
22 lishing a tracing system—

23           “(i) the establishment and mainte-  
24 nance of lot numbers;

1                   “(ii) a standardized format for pedi-  
2                   gree information; and

3                   “(iii) the use of a common nomen-  
4                   clature for food.

5                   “(C) COORDINATION REGARDING FARM IM-  
6                   PACT.—In issuing regulations under this para-  
7                   graph that will impact farms, the Secretary—

8                   “(i) shall coordinate with the Sec-  
9                   retary of Agriculture; and

10                   “(ii) take into account the nature of  
11                   the impact of the regulations on farms.

12                   “(4) EXEMPTIONS AND LIMITATIONS.—

13                   “(A) DIRECT SALES BY FARMS.—Food is  
14                   exempt from the requirements of this sub-  
15                   section if such food is—

16                   “(i) produced on a farm; and

17                   “(ii) sold by the owner, operator, or  
18                   agent in charge of such farm directly to a  
19                   consumer or to a restaurant or grocery  
20                   store.

21                   “(B) FISHING VESSELS.—Food is exempt  
22                   from the requirements of this subsection if such  
23                   food is produced through the use of a fishing  
24                   vessel as defined in section 3(18) of the Magnu-  
25                   son-Stevens Fishery Conservation and Manage-

1           ment Act until such time as the food is sold by  
2           the owner, operator, or agent in charge of such  
3           fishing vessel.

4           “(C) GRAINS AND SIMILARLY HANDLED  
5           COMMODITIES.—

6           “(i) LIMITATION ON EXTENT OF  
7           TRACING.—In addition to the exemption  
8           under subparagraph (A), any tracing sys-  
9           tem established under this subsection with  
10          regard to any grain or similarly handled  
11          commodity shall be limited to enabling the  
12          Secretary to identify persons who received,  
13          processed, packed, transported, distributed,  
14          held, or sold the grain or similarly handled  
15          commodity from the initial warehouse op-  
16          erator that held the grain or similarly han-  
17          dled commodity for any period of time to  
18          the ultimate consumer.

19          “(ii) DEFINITIONS.—In this subpara-  
20          graph:

21                  “(I) The term ‘grain or similarly  
22                  handled commodity’ means wheat,  
23                  corn, grain sorghum, barley, oats,  
24                  rice, wild rice, rye, soybeans, legumes,  
25                  sugar cane, sugar beets, sunflower



1 seed, rapeseed, canola, safflower,  
2 flaxseed, mustard seed, crambe, ses-  
3 ame seed, camelina, cottonseed, cocoa  
4 beans, grass hay, and honey. The  
5 term may include any other com-  
6 modity as determined by the Sec-  
7 retary in coordination with the Sec-  
8 retary of Agriculture.

9 “(II) The term ‘warehouse oper-  
10 ator’ has the meaning given that term  
11 in section 2 of the United States  
12 Warehouse Act (7 U.S.C. 241), except  
13 that the term also includes any person  
14 or entity that handles or stores agri-  
15 cultural products for other persons or  
16 entities or, in the case of a coopera-  
17 tive, handles or stores agricultural  
18 products for its members, as deter-  
19 mined by the Secretary in coordina-  
20 tion with the Secretary of Agriculture.

21 “(D) EXEMPTION OF OTHER FOODS.—The  
22 Secretary may by notice in the Federal Register  
23 exempt a food or a type of facility, farm, or res-  
24 taurant from, or modify the requirements with  
25 respect to, the requirements of this subsection

1 if the Secretary determines that a tracing sys-  
2 tem for such food or type of facility, farm, or  
3 restaurant is not necessary to protect the public  
4 health.

5 “(E) RECORDKEEPING REGARDING PRE-  
6 VIOUS SOURCES AND SUBSEQUENT RECIPI-  
7 ENTS.—For a food or person covered by a limi-  
8 tation or exemption under subparagraph (B),  
9 (C), or (D), the Secretary shall require each  
10 person who produces, receives, manufactures,  
11 processes, packs, transports, distributes, or  
12 holds such food to maintain records to identify  
13 the immediate previous sources of such food  
14 and its ingredients and the immediate subse-  
15 quent recipients of such food.

16 “(F) RECORDKEEPING BY RESTAURANTS  
17 AND GROCERY STORES.—For a food covered by  
18 an exemption under subparagraph (A), res-  
19 taurants and grocery stores shall keep records  
20 documenting the farm that was the source of  
21 the food.

22 “(G) RECORDKEEPING BY FARMS.—For a  
23 food covered by an exemption under subpara-  
24 graph (A), farms shall keep records, in elec-  
25 tronic or non-electronic format, for at least 6

1 months documenting the restaurant or grocery  
2 store to which the food was sold.”.

3 **SEC. 108. REINSPECTION AND FOOD RECALL FEES APPLI-**  
4 **CABLE TO FACILITIES.**

5 (a) IN GENERAL.—Part 6 of subchapter C of chapter  
6 VII (21 U.S.C. 371 et seq.), as added by section 101(e),  
7 is amended by adding at the end the following:

8 **“SEC. 743A. REINSPECTION AND FOOD RECALL FEES APPLI-**  
9 **CABLE TO FACILITIES.**

10 “(a) IN GENERAL.—The Secretary shall assess and  
11 collect fees from each entity in a fiscal year—

12 “(1) that—

13 “(A) during such fiscal year commits a vio-  
14 lation of any requirement of this Act relating to  
15 food, including any such requirement relating to  
16 good manufacturing practices; and

17 “(B) because of such violation, undergoes  
18 additional inspection by the Food and Drug Ad-  
19 ministration; or

20 “(2) during such fiscal year is subject to a food  
21 recall.

22 “(b) AMOUNT OF FEES.—The Secretary shall set the  
23 amount of the fees under this section to fully cover the  
24 costs of—

1           “(1) in the case of fees collected under sub-  
2           section (a)(1), conducting the additional inspections  
3           referred to in such subsection; and

4           “(2) in the case of fees collected under sub-  
5           section (a)(2), conducting food recall activities, in-  
6           cluding technical assistance, follow-up effectiveness  
7           checks, and public notifications, during the fiscal  
8           year involved.

9           “(c) CREDITING AND AVAILABILITY OF FEES.—

10           “(1) IN GENERAL.—Fees authorized under sub-  
11           section (a) shall be collected and available for obliga-  
12           tion only to the extent and in the amount provided  
13           in advance in appropriations Acts. Such fees are au-  
14           thorized to remain available until expended. Such  
15           sums as may be necessary may be transferred from  
16           the Food and Drug Administration salaries and ex-  
17           penses appropriation account without fiscal year lim-  
18           itation to such appropriation account for salaries  
19           and expenses with such fiscal year limitation.

20           “(2) COLLECTIONS AND APPROPRIATIONS  
21           ACTS.—The fees authorized by this section—

22           “(A) shall be retained in each fiscal year in  
23           an amount not to exceed the amount specified  
24           in appropriation Acts, or otherwise made avail-  
25           able for obligation, for such fiscal year; and

1           “(B) shall only be collected and available  
2           to defray the costs referred to in subsection (b).

3           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
4           For each of fiscal years 2010 through 2014, there  
5           are authorized to be appropriated for fees under this  
6           section such sums as may be necessary.

7           “(d) WAIVER.—The Secretary shall waive and, if ap-  
8           plicable, refund the amount of any fee collected under this  
9           section from an entity as a result of a food recall that  
10          the Secretary determines was inappropriately ordered.”.

11          (b) EFFECTIVE DATE.—The amendment made by  
12          subsection (a) shall apply to additional inspections and  
13          food recall activities occurring after the date of the enact-  
14          ment of this Act.

15          **SEC. 109. CERTIFICATION AND ACCREDITATION.**

16          (a) MISBRANDING.—

17                  (1) IN GENERAL.—Section 403 (21 U.S.C.  
18                  343), as amended by section 101(a), is amended by  
19                  adding at the end the following:

20                  “(aa) If it is part of a shipment offered for import  
21                  into the United States and such shipment is in violation  
22                  of section 801(q) (requiring a certification of compliance  
23                  for certain food shipments).”.

24                  (2) EFFECTIVE DATE.—The amendment made  
25                  by paragraph (1) shall apply to shipments offered

1 for import on or after the date that is 3 years after  
2 the date of the enactment of this Act.

3 (b) CERTIFICATION OF COMPLIANCE FOR IM-  
4 PORTS.—Chapter VIII (21 U.S.C. 381 et seq.) is amend-  
5 ed—

6 (1) in section 801(a), as amended by section  
7 107(b), by inserting after the third sentence the fol-  
8 lowing: “If such article is food being imported or of-  
9 fered for import into the United States and is not  
10 in compliance with the requirement of subsection (q)  
11 (relating to certifications of compliance with this  
12 Act), then such article shall be refused admission.”;

13 (2) in the second sentence of section 801(b), by  
14 striking “the fourth sentence” and inserting “the  
15 fifth sentence”; and

16 (3) by adding at the end of section 801 the fol-  
17 lowing:

18 “(q) CERTIFICATIONS CONCERNING IMPORTED ARTI-  
19 CLES.—

20 “(1) IN GENERAL.—

21 “(A) REQUIREMENT.—The Secretary may  
22 require, as an additional condition of granting  
23 admission to an article of food being imported  
24 or offered for import into the United States,  
25 that a qualified certifying entity provide a cer-

1           tification that the article complies with require-  
2           ments of this Act as specified by the Secretary  
3           if—

4                   “(i) for food imported from a par-  
5                   ticular country, territory, or region, the  
6                   Secretary finds, based on scientific, risk-  
7                   based evidence, that the government con-  
8                   trols in such country, territory, or region  
9                   are inadequate to ensure that the article is  
10                  safe and that certification would assist the  
11                  Secretary in determining whether to refuse  
12                  to admit such article under subsection (a);

13                   “(ii) for a type of food for which there  
14                   is scientific evidence that there is a par-  
15                   ticular risk associated with the food that  
16                   presents a threat of serious adverse health  
17                   consequences or death, the Secretary finds  
18                   that certification would assist the Sec-  
19                   retary in determining whether to refuse to  
20                   admit such article under subsection (a); or

21                   “(iii) for an article imported from a  
22                   particular country or territory, there is an  
23                   agreement between the Secretary and the  
24                   government of such country or territory  
25                   providing for such certification.

1           “(B) FORM OF CERTIFICATION.—A certifi-  
2           cation under subparagraph (A) may take the  
3           form of a statement that the article or the facil-  
4           ity or farm that manufactured, processed,  
5           packed, held, grew, harvested, sorted, or trans-  
6           ported the article, as the case may be, complies  
7           with requirements of this Act as specified by  
8           the Secretary, or any other form as the Sec-  
9           retary may specify, including a listing of cer-  
10          tified facilities or other entities. The Secretary  
11          may require that the certification include addi-  
12          tional information regarding compliance.

13           “(C) ADEQUATE GOVERNMENT CON-  
14          TROLS.—

15           “(i) PROCESS.—Before requiring a  
16          certification under clause (ii) of subpara-  
17          graph (A) with respect to a food, the Sec-  
18          retary shall establish a process by which a  
19          country or territory may demonstrate that  
20          its government controls are adequate to  
21          ensure that such food exported from its  
22          territory to the United States is safe.

23           “(ii) DEMONSTRATION.—The Sec-  
24          retary shall not require a certification  
25          under clause (ii) of subparagraph (A) for



1 a food exported from a country or terri-  
2 tory, if that country or territory has dem-  
3 onstrated, pursuant to the process estab-  
4 lished by the Secretary under clause (i),  
5 that its government controls are adequate  
6 to ensure that such food exported from its  
7 territory to the United States is safe.

8 “(D) NOTICE OF CANCELLATION OR SUS-  
9 PENSION OF CERTIFICATION.—As a condition  
10 on acceptance of certifications from a qualified  
11 certifying entity, the Secretary shall require the  
12 qualified certifying entity to notify the Sec-  
13 retary whenever the qualified certifying entity  
14 cancels or suspends the certification of any fa-  
15 cility or other entity included in a listing under  
16 subparagraph (B).

17 “(E) CONSISTENCY WITH INTERNATIONAL  
18 OBLIGATIONS.—The Secretary shall apply this  
19 paragraph consistently with United States obli-  
20 gations under international agreements.

21 “(2) QUALIFIED CERTIFYING ENTITY.—For  
22 purposes of this subsection, the term ‘qualified certi-  
23 fying entity’ means—

24 “(A) an agency or a representative of the  
25 government of the country from which the arti-

1           cle originated, as designated by such govern-  
2           ment or the Secretary; or

3           “(B) an individual or entity determined by  
4           the Secretary or an accredited body recognized  
5           by the Secretary to be qualified to provide a  
6           certification under paragraph (1).

7           “(3) NO CONFLICTS OF INTEREST.—

8           “(A) IN GENERAL.—The Secretary shall  
9           issue regulations to ensure that any qualified  
10          certifying entity and its auditors are free from  
11          conflicts of interest. In issuing these regula-  
12          tions, the Secretary may rely on or incorporate  
13          international certification standards.

14          “(B) REGULATIONS.—Such regulations  
15          shall require that—

16               “(i) the qualified certifying entity  
17               shall have a committee or management  
18               structure for safeguarding impartiality;

19               “(ii) conflict of interest policies for a  
20               qualified certifying entity and auditors act-  
21               ing for the qualified certifying entity shall  
22               be written;

23               “(iii) the qualified certifying entity  
24               shall not be owned, operated, or controlled  
25               by a producer, manufacturer, processor,

1 packer, holder, supplier, or vendor of any  
2 article of the type it certifies;

3 “(iv) the qualified certifying entity  
4 shall not have any ownership or financial  
5 interest in any product, producer, manu-  
6 facturer, processor, packer, holder, supplier  
7 or vendor of the type it certifies;

8 “(v) no auditor acting for the quali-  
9 fied certifying entity (or spouse or minor  
10 children) shall have any significant owner-  
11 ship or other financial interest regarding  
12 any product of the type it certifies;

13 “(vi) the qualified certifying entity  
14 shall—

15 “(I) obtain and maintain annual  
16 declarations from all personnel who  
17 may be directly involved in the per-  
18 formance of audits as to whether they  
19 do or do not have direct financial in-  
20 terests in any producer, manufacturer,  
21 processor, packer, holder, supplier, or  
22 vendor of foods, and a list of any such  
23 companies in which they do have fi-  
24 nancial interests or by which they  
25 were employed in the past year; and

1                   “(II) when an auditor is assigned  
2                   to audit a facility, require that indi-  
3                   vidual to affirm that he or she has no  
4                   financial interest in the company that  
5                   owns or operates that facility and was  
6                   not employed by that facility in the  
7                   previous year;

8                   “(vii) neither the qualified certifying  
9                   entity nor any of its auditors acting for the  
10                  qualified certifying entity shall participate  
11                  in the production, manufacture, processing,  
12                  packing, holding, promotion, or sale of any  
13                  product of the type it certifies;

14                  “(viii) neither the qualified certifying  
15                  entity nor any of its auditors shall provide  
16                  consultative services to any facility cer-  
17                  tified by the qualified certifying entity, or  
18                  the owner, operator, or agent in charge of  
19                  such a facility, unless the qualified certi-  
20                  fying entity has procedures in place, ap-  
21                  proved by the Secretary, to ensure separa-  
22                  tion of functions between auditors pro-  
23                  viding consultative services and auditors  
24                  providing certification services under this  
25                  subsection;

1           “(ix) no auditors acting for the quali-  
2           fied certifying entity shall participate in an  
3           audit of a facility they were employed by  
4           within the last 12 months;

5           “(x) fees charged or accepted shall  
6           not be contingent or based upon the report  
7           made by the qualified certifying entity or  
8           any personnel involved in the audit proe-  
9           ess;

10          “(xi) neither the qualified certifying  
11          entity nor any of its auditors shall accept  
12          anything of value from anyone in connec-  
13          tion with the facility being audited other  
14          than the audit fee;

15          “(xii) the qualified certifying entity  
16          shall not be owned, operated, or controlled  
17          by a trade association whose member com-  
18          panies operate facilities that it certifies;

19          “(xiii) the qualified certifying entity  
20          and its auditors shall be free from any  
21          other conflicts of interest that threaten im-  
22          partiality;

23          “(xiv) the qualified certifying entity  
24          and its auditors shall sign a statement at-  
25          testing to compliance with the conflict of

1 interests requirements under this para-  
2 graph; and

3 “(xv) the qualified certifying entity  
4 shall ensure that any subcontractors that  
5 might be used (such as laboratories and  
6 sampling services) provide similar assur-  
7 ances, except that it shall not be a viola-  
8 tion of this subsection to the extent such  
9 subcontractors perform additional nutri-  
10 tional testing services unrelated to the test-  
11 ing under this subsection.

12 “(C) DEFINITIONS.—In this paragraph:

13 “(i) The term ‘anything of value’ in-  
14 cludes gifts, gratuities, reimbursement of  
15 non-audit-related expenses, entertainment,  
16 loans, or any other form of compensation  
17 in cash or in kind.

18 “(ii) The term ‘direct financial inter-  
19 est’ does not include any ownership of mu-  
20 tual funds that have a financial interest in  
21 a company.

22 “(4) RENEWAL AND REFUSAL OF CERTIFI-  
23 CATIONS.—The Secretary shall—

24 “(A) require that, to the extent applicable,  
25 any certification provided by a qualified certi-

1           fying entity be renewed by such entity at such  
2           times as the Secretary determines appropriate;  
3           and

4           “(B) refuse to accept any certification if  
5           the Secretary determines that such certification  
6           is no longer valid or reliable.

7           “(5) ON-SITE AUDITS.—In evaluating whether  
8           an accreditation body meets, or continues to meet,  
9           the standards for recognition under this subsection,  
10          or whether to accept certifications from a qualified  
11          certifying entity, the Secretary may—

12          “(A) observe on-site audits of qualified cer-  
13          tifying entities by such accreditation body; or

14          “(B) for any facility that is certified by a  
15          qualified certifying entity, upon request of an  
16          officer or employee designated by the Secretary  
17          and upon presentation of appropriate creden-  
18          tials, at reasonable times and within reasonable  
19          limits and in a reasonable manner, conduct an  
20          on-site audit of the facility, which shall include  
21          access to, and copying and verification of, any  
22          related records.

23          “(6) ELECTRONIC SUBMISSION.—The Secretary  
24          shall provide, in coordination with the Commissioner  
25          responsible for Customs and Border Protection, for

1 the electronic submission of certifications under this  
2 subsection.

3 “(7) NO LIMIT ON AUTHORITY.—This sub-  
4 section shall not be construed to limit the authority  
5 of the Secretary to conduct random inspections of  
6 imported articles or facilities of importers, issue im-  
7 port alerts for detention without physical examina-  
8 tion, require submission to the Secretary of docu-  
9 mentation or other information about an article im-  
10 ported or offered for import, or to take such other  
11 steps as the Secretary deems appropriate to deter-  
12 mine the admissibility of imported articles.”.

13 **SEC. 110. TESTING BY ACCREDITED LABORATORIES.**

14 (a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331)  
15 is amended by adding at the end the following:

16 “(uu) The violation of any requirement of section 714  
17 (relating to testing by accredited laboratories).”.

18 (b) LABORATORY ACCREDITATION.—Subchapter A of  
19 chapter VII (21 U.S.C. 371 et seq.) is amended by adding  
20 at the end the following:

21 **“SEC. 714. TESTING BY ACCREDITED LABORATORIES.**

22 “(a) IN GENERAL.—

23 “(1) REQUIREMENT.—Whenever analytical test-  
24 ing of an article of food is conducted as part of testi-  
25 mony for the purposes of section 801(a), or for such



1 other purposes as the Secretary deems appropriate  
2 through regulation or guidance, such testing shall be  
3 conducted by a laboratory that—

4 “(A) is accredited, for the analytical meth-  
5 od used, by a laboratory accreditation body that  
6 has been recognized by the Secretary; and

7 “(B) samples such article with adequate  
8 controls for ensuring the integrity of the sam-  
9 ples analyzed.

10 “(2) INDEPENDENCE OF LABORATORY.—

11 “(A) CERTAIN TESTS.—Tests required for  
12 purposes of section 801(a) or in response to a  
13 finding of noncompliance by the Secretary shall  
14 be conducted by a laboratory independent of the  
15 person on whose behalf such testing is con-  
16 ducted and analyzed.

17 “(B) CERTAIN PRODUCTS.—The Secretary  
18 may require that testing for certain products  
19 under paragraph (1) be conducted by a labora-  
20 tory independent of the person on whose behalf  
21 such testing is conducted.

22 “(b) RECOGNITION OF LABORATORY ACCREDITATION  
23 BODIES.—The Secretary shall establish and implement a  
24 program for the recognition, based on standards the Sec-  
25 retary deems appropriate, of laboratory accreditation bod-

1 ies that accredit laboratories to perform analytical testing  
2 for the purposes of this section. The Secretary shall issue  
3 regulations or guidance to implement this program.

4 “(c) ONSITE AUDITS.—In evaluating whether an ac-  
5 creditation body meets, or continues to meet, the stand-  
6 ards for recognition under subsection (b), the Secretary  
7 may—

8 “(1) observe onsite audits of laboratories by  
9 such accreditation bodies; or

10 “(2) for any laboratory that is accredited by  
11 such accreditation body under this section, upon re-  
12 quest of an officer or employee designated by the  
13 Secretary and upon presentation of appropriate cre-  
14 dentials, at reasonable times and within reasonable  
15 limits and in a reasonable manner, conduct an onsite  
16 audit of the laboratory, which shall include access to,  
17 and copying and verification of, any related records.

18 “(d) PUBLICATION OF LIST OF RECOGNIZED AC-  
19 CREDITATION BODIES.—The Secretary shall publish and  
20 maintain on the public Web site of the Food and Drug  
21 Administration a list of accreditation bodies recognized by  
22 the Secretary under subsection (b).

23 “(e) NOTIFICATION OF ACCREDITATION OF LABORA-  
24 TORY.—An accreditation body that has been recognized  
25 pursuant to this section shall promptly notify the Sec-

1   retary whenever it accredits a laboratory for the purposes  
2   of this section and whenever it withdraws or suspends  
3   such accreditation.

4       “(f) ADVANCE NOTICE.—Whenever analytical testing  
5   is conducted pursuant to subsection (a), the person on  
6   whose behalf the testing is conducted shall notify the Sec-  
7   retary before any sample of the article is collected. Such  
8   notice shall contain information the Secretary determines  
9   is appropriate to identify the article, the location of the  
10  article, and each laboratory that will analyze the sample  
11  on the person’s behalf.

12       “(g) CONTENTS OF LABORATORY PACKAGES.—  
13  Whenever analytical testing is conducted pursuant to sub-  
14  section (a), the laboratory conducting such testing shall  
15  submit, directly to the Secretary—

16           “(1) the results of all analyses conducted by the  
17       laboratory on each sample of such article; and

18           “(2) all information the Secretary deems appro-  
19       priate to—

20               “(A) determine whether the laboratory is  
21       accredited by a recognized laboratory accredita-  
22       tion body;

23               “(B) identify the article tested;

24               “(C) evaluate the analytical results; and

1                   “(D) determine whether the requirements  
2                   of this section have been met.

3           “(h) EXIGENT CIRCUMSTANCES.—The Secretary  
4 may waive the requirement of subsection (a)(1)(A) (relat-  
5 ing to analytical methods) on a laboratory or method basis  
6 due to exigent or other circumstances.

7           “(i) FEDERAL LABORATORY TESTING.—If Customs  
8 and Border Protection laboratory testing concludes that  
9 an article of food is adulterated or misbranded, the Sec-  
10 retary shall consider and utilize as appropriate the testing  
11 results issued by the Customs and Border Protection lab-  
12 oratories in making a decision about the admissibility of  
13 the product.

14           “(j) NO LIMIT ON AUTHORITY.—Nothing in this sec-  
15 tion shall be construed to limit—

16                   “(1) the ability of the Secretary to review and  
17 act upon information from the analytical testing of  
18 food (including under this section), including deter-  
19 mining the sufficiency of such information and test-  
20 ing; or

21                   “(2) the authority of the Secretary to conduct,  
22 require, or consider the results of analytical testing  
23 pursuant to any other provision of law.”.

1 **SEC. 111. NOTIFICATION, NONDISTRIBUTION, AND RECALL**  
2 **OF ADULTERATED OR MISBRANDED FOOD.**

3 (a) PROHIBITED ACTS.—Section 301 (21 U.S.C.  
4 331), as amended by section 110, is amended by adding  
5 at the end the following:

6 “(vv)(1) The failure to notify the Secretary in viola-  
7 tion of section 420(a).

8 “(2) The failure to comply with any order issued  
9 under section 420.”.

10 (b) NOTIFICATION, NONDISTRIBUTION, AND RECALL  
11 OF ADULTERATED OR MISBRANDED FOOD.—Chapter IV  
12 (21 U.S.C. 341 et seq.), as amended by sections 102, 103,  
13 and 104, is amended by adding at the end the following:  
14 **“SEC. 420. NOTIFICATION, NONDISTRIBUTION, AND RECALL**  
15 **OF ADULTERATED OR MISBRANDED FOOD.**

16 “(a) NOTIFICATION, NONDISTRIBUTION, AND RE-  
17 CALL OF ADULTERATED OR MISBRANDED FOOD.—

18 “(1) IN GENERAL.—A responsible party as that  
19 term is defined in section 417(a)(1) or a person re-  
20 quired to register under section 801(s) that has rea-  
21 son to believe that an article of food when intro-  
22 duced into or while in interstate commerce, or while  
23 held for sale (regardless of whether the first sale)  
24 after shipment in interstate commerce, is adulter-  
25 ated or misbranded in a manner that presents a rea-  
26 sonable probability that the use or consumption of,

1 or exposure to, the article (or an ingredient or com-  
2 ponent used in any such article) will cause a threat  
3 of serious adverse health consequences or death to  
4 humans or animals shall, as soon as practicable, no-  
5 tify the Secretary of the identity and location of the  
6 article.

7 “(2) MANNER OF NOTIFICATION.—Notification  
8 under paragraph (1) shall be made in such manner  
9 and by such means as the Secretary may require by  
10 regulation or guidance.

11 “(b) VOLUNTARY RECALL.—The Secretary may re-  
12 quest that any person who distributes an article of food  
13 that the Secretary has reason to believe is adulterated,  
14 misbranded, or otherwise in violation of this Act volun-  
15 tarily—

16 “(1) recall such article; and

17 “(2) provide for notice, including to individuals  
18 as appropriate, to persons who may be affected by  
19 the recall.

20 “(c) ORDER TO CEASE DISTRIBUTION.—If the Sec-  
21 retary has reason to believe that the use or consumption  
22 of, or exposure to, an article of food may cause serious  
23 adverse health consequences or death to humans or ani-  
24 mals, the Secretary shall have the authority to issue an

1 order requiring any person who distributes such article to  
2 immediately cease distribution of such article.

3       “(d) ACTION FOLLOWING ORDER.—Any person who  
4 is subject to an order under subsection (c) shall imme-  
5 diately cease distribution of such article and provide notifi-  
6 cation as required by such order, and may appeal within  
7 24 hours of issuance such order to the Secretary. Such  
8 appeal may include a request for an informal hearing and  
9 a description of any efforts to recall such article under-  
10 taken voluntarily by the person, including after a request  
11 under subsection (b). Except as provided in subsection (f),  
12 an informal hearing shall be held as soon as practicable,  
13 but not later than 5 calendar days, or less as determined  
14 by the Secretary, after such an appeal is filed, unless the  
15 parties jointly agree to an extension. After affording an  
16 opportunity for an informal hearing, the Secretary shall  
17 determine whether the order should be amended to require  
18 a recall of such article. If, after providing an opportunity  
19 for such a hearing, the Secretary determines that inad-  
20 equate grounds exist to support the actions required by  
21 the order, the Secretary shall vacate the order.

22       “(e) ORDER TO RECALL.—

23               “(1) AMENDMENT.—Except as provided under  
24 subsection (f), if after providing an opportunity for  
25 an informal hearing under subsection (d), the Sec-

1       retary determines that the order should be amended  
2       to include a recall of the article with respect to  
3       which the order was issued, the Secretary shall  
4       amend the order to require a recall.

5               “(2) CONTENTS.—An amended order under  
6       paragraph (1) shall—

7                       “(A) specify a timetable in which the recall  
8       will occur;

9                       “(B) require periodic reports to the Sec-  
10       retary describing the progress of the recall; and

11                      “(C) provide for notice, including to indi-  
12       viduals as appropriate, to persons who may be  
13       affected by the recall.

14       In providing for such notice, the Secretary may  
15       allow for the assistance of health professionals, State  
16       or local officials, or other individuals designated by  
17       the Secretary.

18               “(3) NONDELEGATION.—An amended order  
19       under this subsection shall be ordered by the Sec-  
20       retary or an official designated by the Secretary. An  
21       official may not be so designated unless the official  
22       is the director of the district under this Act in which  
23       the article involved is located, or is an official senior  
24       to such director.

25               “(f) EMERGENCY RECALL ORDER.—



1           “(1) IN GENERAL.—If the Secretary has cred-  
2           ible evidence or information that an article of food  
3           subject to an order under subsection (c) presents an  
4           imminent threat of serious adverse health con-  
5           sequences or death to humans or animals, the Sec-  
6           retary may issue an order requiring any person who  
7           distributes such article—

8                   “(A) to immediately recall such article; and

9                   “(B) to provide for notice, including to in-  
10           dividuals as appropriate, to persons who may be  
11           affected by the recall.

12           “(2) ACTION FOLLOWING ORDER.—Any person  
13           who is subject to an emergency recall order under  
14           this subsection shall immediately recall such article  
15           and provide notification as required by such order,  
16           and may appeal within 24 hours after issuance such  
17           order to the Secretary. An informal hearing shall be  
18           held within as soon as practicable but not later than  
19           5 calendar days, or less as determined by the Sec-  
20           retary, after such an appeal is filed, unless the par-  
21           ties jointly agree to an extension. After affording an  
22           opportunity for an informal hearing, the Secretary  
23           shall determine whether the order should be amend-  
24           ed pursuant to subsection (e)(1). If, after providing  
25           an opportunity for such a hearing, the Secretary de-

1       termines that inadequate grounds exist to support  
2       the actions required by the order, the Secretary shall  
3       vacate the order.

4               “(3) NONDELEGATION.—An order under this  
5       subsection shall be issued by the Commissioner of  
6       Food and Drugs, the Principal Deputy Commis-  
7       sioner, or the Associate Commissioner for Regu-  
8       latory Affairs of the Food and Drug Administration.

9               “(g) NOTICE TO CONSUMERS AND HEALTH OFFI-  
10      CIALS.—The Secretary shall, as the Secretary determines  
11      to be necessary, provide notice of a recall order under this  
12      section to consumers to whom the article was, or may have  
13      been, distributed and to appropriate State and local health  
14      officials.

15              “(h) SAVINGS CLAUSE.—Nothing contained in this  
16      section shall be construed as limiting—

17                      “(1) the authority of the Secretary to issue an  
18      order to cease distribution of, or to recall, an article  
19      under any other provision of this Act or the Public  
20      Health Service Act; or

21                      “(2) the ability of the Secretary to request any  
22      person to perform a voluntary activity related to any  
23      article subject to this Act or the Public Health Serv-  
24      ice Act.”.

1           (c) ARTICLES SUBJECT TO REFUSAL.—The third  
2 sentence of subsection (a) of section 801 (21 U.S.C. 381),  
3 as amended by section 107(b), is amended by inserting  
4 “or (5) such article is subject to an order under section  
5 420 to cease distribution of or recall the article,” before  
6 “then such article shall be refused admission”.

7           (d) EFFECTIVE DATE.—Sections 301(vv)(1) and 420  
8 of the Federal Food, Drug, and Cosmetic Act, as added  
9 by subsections (a) and (b), shall apply with respect to arti-  
10 cles of food as of such date, not later than 1 year after  
11 the date of the enactment of this Act, as the Secretary  
12 of Health and Human Services shall specify.

13 **SEC. 112. REPORTABLE FOOD REGISTRY; EXCHANGE OF IN-**  
14 **FORMATION.**

15           (a) REPORTABLE FOOD REGISTRY.—Section 417 (21  
16 U.S.C. 350f) is amended—

17                   (1) in subsection (a)(1), by striking “means a  
18 person” and all that follows through the end of  
19 paragraph (1) and inserting the following: “means—

20                           “(A) a person who submits the registration  
21 under section 415(a) for a food facility that is  
22 required to be registered under section 415(a),  
23 at which such food is manufactured, processed,  
24 packed, or held;

1           “(B) a person who owns, operates, is an  
2           agent of, or is otherwise responsible for such  
3           food on a farm (as such term is defined in sec-  
4           tion 1.227(b)(3) of title 21, Code of Federal  
5           Regulations, or successor regulations) at which  
6           such food is produced for sale or distribution in  
7           interstate commerce;

8           “(C) a person who owns, operates, or is an  
9           agent of a restaurant or other retail food estab-  
10          lishment (as such terms are defined in section  
11          1.227(b)(11) and (12), respectively, of title 21,  
12          Code of Federal Regulations, or successor regu-  
13          lations) at which such food is offered for sale;  
14          or

15          “(D) a person that is required to register  
16          pursuant to section 801(s) with respect to im-  
17          portation of such food.”;

18          (2) in subsection (b), by adding at the end the  
19          following:

20          “(3) REPORTING BY FARMS, RESTAURANTS,  
21          AND RETAIL FOOD ESTABLISHMENTS.—In addition  
22          to the electronic portal described in paragraph (1),  
23          the Secretary shall make available alternative means  
24          of reporting under this section with respect to farms,

1 restaurants, and other retail food establishments  
2 with limited ability for such reporting.”;

3 (3) in subsection (d)(1)—

4 (A) in the matter preceding subparagraph  
5 (A), by inserting “following a timely review of  
6 any reasonably available data and information,”  
7 after “reportable food,”;

8 (B) in subparagraph (A), by striking  
9 “and” at the end;

10 (C) by redesignating subparagraph (B) as  
11 subparagraph (C); and

12 (D) by inserting after subparagraph (A)  
13 the following:

14 “(B) submit, with such report, through the  
15 electronic portal, documentation of results from  
16 any sampling and testing of such article, includ-  
17 ing—

18 “(i) analytical results from testing of  
19 such article conducted by or on behalf of  
20 the responsible party under section 418,  
21 418A, 419, 419A, or 714;

22 “(ii) analytical results from testing  
23 conducted by or on behalf of such respon-  
24 sible party of a component of such article;

1           “(iii) analytical results of environ-  
2           mental testing of any facility at which such  
3           article, or a component of such article, is  
4           manufactured, processed, packed, or held;  
5           and

6           “(iv) any other information the Sec-  
7           retary determines is necessary to evaluate  
8           the adulteration of such article, any com-  
9           ponent of such article, any other article of  
10          food manufactured, processed, packed or  
11          held in the same manner as, or at the  
12          same facility as, such article, or any other  
13          article containing a component from the  
14          same source as a component of such arti-  
15          cle; and”;

16          (4) in subsection (e)—

17                (A) in paragraph (1), by inserting “if the  
18                responsible party is required to register” after  
19                “415(a)(3)”;

20                (B) by adding at the end the following:

21                “(12) Such additional information as the Sec-  
22                retary deems appropriate.”.

23          (b) EXCHANGE OF INFORMATION.—Section 708 (21  
24          U.S.C. 379) is amended—

1           (1) by striking “The Secretary” and inserting  
2           “(a) The Secretary”; and

3           (2) by adding at the end the following:

4           “(b)(1)(A) The Secretary may provide to any Federal  
5 agency acting within the scope of its jurisdiction any infor-  
6 mation relating to food that is exempt from disclosure pur-  
7 suant to subsection (a) of section 552 of title 5, United  
8 States Code, by reason of subsection (b)(4) of such sec-  
9 tion, or that is referred to in section 301(j) or 415(a)(4).

10          “(B) Any such information provided to another Fed-  
11 eral agency shall not be disclosed by such agency except  
12 in any action or proceeding under the laws of the United  
13 States to which the receiving agency or the United States  
14 is a party.

15          “(2)(A) In carrying out this Act, the Secretary may  
16 provide to a State or local government agency any infor-  
17 mation relating to food that is exempt from disclosure pur-  
18 suant to section 552(a) of title 5, United States Code, by  
19 reason of subsection (b)(4) of such section, or that is re-  
20 ferred to in section 301(j) or 415(a)(4).

21          “(B) Any such information provided to a State or  
22 local government agency shall not be disclosed by such  
23 agency.

24          “(3) In carrying out this Act, the Secretary may pro-  
25 vide to any person any information relating to food that

1 is exempt from disclosure pursuant to section 552(a) of  
2 title 5, United States Code, by reason of subsection (b)(4)  
3 of such section, if the Secretary determines that providing  
4 the information to the person is appropriate under the cir-  
5 cumstances and the recipient provides adequate assur-  
6 ances to the Secretary that the recipient will preserve the  
7 confidentiality of the information.

8 “(4) In carrying out this Act, the Secretary may pro-  
9 vide any information relating to food that is exempt from  
10 disclosure pursuant to section 552(a) of title 5, United  
11 States Code, by reason of subsection (b)(4) of such sec-  
12 tion, or that is referred to in section 301(j)—

13 “(A) to any foreign government agency; or

14 “(B) any international organization established  
15 by law, treaty, or other governmental action and  
16 having responsibility—

17 “(i) to facilitate global or regional harmo-  
18 nization of standards and requirements in an  
19 area of responsibility of the Food and Drug Ad-  
20 ministration; or

21 “(ii) to promote and coordinate public  
22 health efforts,

23 if the agency or organization provides adequate as-  
24 surances to the Secretary that the agency or organi-



1 zation will preserve the confidentiality of the infor-  
2 mation.

3 “(c) Except where specifically prohibited by statute,  
4 the Secretary may disclose to the public any information  
5 relating to food that is exempt from disclosure pursuant  
6 to section 552(a) of title 5, United States Code, by reason  
7 of subsection (b)(4) of such section, if the Secretary deter-  
8 mines that such disclosure is necessary to protect the pub-  
9 lic health.

10 “(d) Except as provided in subsection (e), the Sec-  
11 retary shall not be required to disclose under section 552  
12 of title 5, United States Code, or any other provision of  
13 law any information relating to food obtained from a Fed-  
14 eral, State, or local government agency, or from a foreign  
15 government agency, or from an international organization  
16 described in subsection (b)(4), if the agency or organiza-  
17 tion has requested that the information be kept confiden-  
18 tial, or has precluded such disclosure under other use limi-  
19 tations, as a condition of providing the information.

20 “(e) Nothing in subsection (d) authorizes the Sec-  
21 retary to withhold information from the Congress or pre-  
22 vents the Secretary from complying with an order of a  
23 court of the United States.

1 “(f) This section shall not affect the authority of the  
2 Secretary to provide or disclose information under any  
3 other provision of law.”.

4 (c) CONFORMING AMENDMENT.—Section 301(j) (21  
5 U.S.C. 331(j)) is amended by striking “or to the courts  
6 when relevant in any judicial proceeding under this Act,”  
7 and inserting “to the courts when relevant in any judicial  
8 proceeding under this Act, or as specified in section 708,”.

9 **SEC. 113. SAFE AND SECURE FOOD IMPORTATION PRO-**  
10 **GRAM.**

11 Chapter VIII (21 U.S.C. 381 et seq.) is amended by  
12 adding at the end the following:

13 **“SEC. 805. SAFE AND SECURE FOOD IMPORTATION PRO-**  
14 **GRAM.**

15 “(a) IN GENERAL.—The Secretary may establish by  
16 regulation or guidance in coordination with the Commis-  
17 sioner responsible for Customs and Border Protection a  
18 program that facilitates the movement of food through the  
19 importation process under this Act if the importer of such  
20 food—

21 “(1) verifies that each facility involved in the  
22 production, manufacture, processing, packaging, and  
23 holding of the food is in compliance with the food  
24 safety and security guidelines developed under sub-  
25 section (b) with respect to such food;

1           “(2) ensures that appropriate safety and secu-  
2           rity controls are in place throughout the supply  
3           chain for such food; and

4           “(3) provides supporting information to the  
5           Secretary.

6           “(b) GUIDELINES.—

7           “(1) DEVELOPMENT.—For purposes of the pro-  
8           gram established under subsection (a), the Secretary  
9           shall develop in consultation with the Commissioner  
10          responsible for Customs and Border Protection safe-  
11          ty and security guidelines applicable to the importa-  
12          tion of food taking into account, to the extent appro-  
13          priate, other relevant Federal programs, such as the  
14          Customs-Trade Partnership Against Terrorism (C-  
15          TPAT) programs under section 211 of the Security  
16          and Accountability for Every Port Act of 2006.

17          “(2) FACTORS.—Such guidelines shall take into  
18          account the following factors:

19                 “(A) The personnel of the person import-  
20                 ing the food.

21                 “(B) The physical and procedural safety  
22                 and security of such person’s food supply chain.

23                 “(C) The sufficiency of preventive controls  
24                 for food and ingredients purchased by such per-  
25                 son.

1 “(D) Vendor and supplier information.

2 “(E) Other programs for certification or  
3 verification by a qualified certifying entity used  
4 by the importer.

5 “(F) Such other factors as the Secretary  
6 determines necessary.”.

7 **SEC. 114. INFANT FORMULA.**

8 (a) MISBRANDING.—Section 403 (21 U.S.C. 343), as  
9 amended by sections 101(a) and 109(a), is amended by  
10 adding at the end the following:

11 “(bb) If it is a new infant formula and—

12 “(1) it is not the subject of a registration made  
13 pursuant to section 412(c)(1)(A);

14 “(2) it is not the subject of a submission made  
15 pursuant to section 412(c)(1)(B), or

16 “(3) at least 90 days have not passed since the  
17 making of such registration or of such submission to  
18 the Secretary.”.

19 (b) REQUIREMENTS.—Section 412 (21 U.S.C. 350a)  
20 is amended—

21 (1) in subsection (c)(1)(B), by striking “(c)(1)”  
22 at the end and inserting “(d)(1), subject to sub-  
23 section (d)(2)(B)”;

24 (2) in subsection (d)(1)—

1 (A) by striking “and” at the end of sub-  
2 paragraph (C);

3 (B) by striking the period at the end of  
4 subparagraph (D) and inserting “, and”; and

5 (C) by adding at the end the following:

6 “(E) information on any new ingredient in  
7 accordance with paragraph (2)(A).”;

8 (3) in subsection (d), by redesignating para-  
9 graphs (2) and (3) as paragraphs (3) and (4), re-  
10 spectively; and

11 (4) by inserting after paragraph (1) of sub-  
12 section (d) the following:

13 “(2)(A) The description of any new infant formula  
14 required under paragraph (1) shall include, for any new  
15 ingredient for use in the formula—

16 “(i) a citation to a prior approval by the Sec-  
17 retary of the new ingredient for use in infant for-  
18 mula under section 409;

19 “(ii) a citation to or information showing a  
20 prior consideration of the new ingredient for use in  
21 infant formula under any program established by the  
22 Secretary for the review of ingredients used in food;  
23 or

24 “(iii) for a new ingredient that is not a food ad-  
25 ditive or a color additive, information equivalent to

1 that provided under any program established by the  
2 Secretary for the review of ingredients used in food.  
3 “(B) If the information submitted under subpara-  
4 graph (A) is the information described in clause (iii) of  
5 such subparagraph, the 90 day period provided by sub-  
6 section (c)(1)(B) shall not commence until the Secretary  
7 has completed review of the information submitted under  
8 such clause and has provided the submitter notice of the  
9 results of such review.”.

## 10 **Subtitle B—Intervention**

### 11 **SEC. 121. SURVEILLANCE.**

12 (a) DEFINITION OF FOOD-BORNE ILLNESS OUT-  
13 BREAK.—In this section, the term “food-borne illness out-  
14 break” means the occurrence of 2 or more cases of a simi-  
15 lar illness resulting from the ingestion of a food.

16 (b) FOOD-BORNE ILLNESS SURVEILLANCE SYS-  
17 TEMS.—The Secretary of Health and Human Services (in  
18 this subtitle referred to as the “Secretary”), acting  
19 through the Director of the Centers for Disease Control  
20 and Prevention, shall enhance food-borne illness surveil-  
21 lance systems to improve the collection, analysis, report-  
22 ing, and usefulness of data on food-borne illnesses by—

23 (1) coordinating Federal, State, and local food-  
24 borne illness surveillance systems, including com-  
25 plaint systems, and increasing participation in na-

1 tional networks of public health and food regulatory  
2 agencies and laboratories;

3 (2) facilitating sharing of findings on a more  
4 timely basis among governmental agencies, including  
5 the Food and Drug Administration, the Department  
6 of Agriculture, and State and local agencies, and  
7 with the public;

8 (3) developing improved epidemiological tools  
9 for obtaining quality exposure data, and micro-  
10 biological methods for classifying cases;

11 (4) augmenting such systems to improve attri-  
12 bution of a food-borne illness outbreak to a specific  
13 food;

14 (5) expanding capacity of such systems, includ-  
15 ing fingerprinting and other detection strategies for  
16 food-borne infectious agents, in order to identify new  
17 or rarely documented causes of food-borne illness;

18 (6) allowing timely public access to aggregated,  
19 de-identified surveillance data;

20 (7) at least annually, publishing current reports  
21 on findings from such systems;

22 (8) establishing a flexible mechanism for rapidly  
23 initiating scientific research by academic institu-  
24 tions;

1           (9) integrating food-borne illness surveillance  
2 systems and data with other biosurveillance and  
3 public health situational awareness capabilities at  
4 the Federal, State, and local levels; and

5           (10) other activities as determined appropriate  
6 by the Secretary.

7           (c) IMPROVING FOOD SAFETY AND DEFENSE CAPAC-  
8 ITY AT THE STATE AND LOCAL LEVEL.—

9           (1) IN GENERAL.—The Secretary shall develop  
10 and implement strategies to leverage and enhance  
11 the food safety and defense capacities of State and  
12 local agencies in order to achieve the following goals:

13                   (A) Improve food-borne illness outbreak re-  
14 sponse and containment.

15                   (B) Accelerate food-borne illness surveil-  
16 lance and outbreak investigation, including  
17 rapid shipment of clinical isolates from clinical  
18 laboratories to appropriate State laboratories,  
19 and conducting more standardized illness out-  
20 break interviews.

21                   (C) Strengthen the capacity of State and  
22 local agencies to carry out inspections and en-  
23 force safety standards.

24                   (D) Improve the effectiveness of Federal,  
25 State, and local partnerships to coordinate food



1 safety and defense resources and reduce the in-  
2 cidence of food-borne illness.

3 (E) Share information on a timely basis  
4 among public health and food regulatory agen-  
5 cies, with the food industry, with health care  
6 providers, and with the public.

7 (2) REVIEW.—In developing the strategies re-  
8 quired by paragraph (1), the Secretary shall, not  
9 later than 1 year after the date of enactment of this  
10 Act, complete a review of State and local capacities,  
11 and needs for enhancement, which may include a  
12 survey with respect to—

13 (A) staffing levels and expertise available  
14 to perform food safety and defense functions;

15 (B) laboratory capacity to support surveil-  
16 lance, outbreak response, inspection, and en-  
17 forcement activities;

18 (C) information systems to support data  
19 management and sharing of food safety and de-  
20 fense information among State and local agen-  
21 cies and with counterparts at the Federal level;  
22 and

23 (D) other State and local activities and  
24 needs as determined appropriate by the Sec-  
25 retary.

1 **SEC. 122. PUBLIC EDUCATION AND ADVISORY SYSTEM.**

2 (a) PUBLIC EDUCATION.—The Secretary, in coopera-  
3 tion with private and public organizations, including the  
4 appropriate State entities, shall design and implement a  
5 national public education program on food safety. The  
6 program shall provide—

7 (1) information to the public so that individuals  
8 can understand the potential impact and risk of  
9 food-borne illness, take action to reduce their risk of  
10 food-borne illness and injury, and make healthy die-  
11 tary choices;

12 (2) information to health professionals so that  
13 they may improve diagnosis and treatment of food-  
14 related illness and advise individuals whose health  
15 conditions place them in particular risk; and

16 (3) such other information or advice to con-  
17 sumers and other persons as the Secretary deter-  
18 mines will promote the purposes of this Act.

19 (b) HEALTH ADVISORIES.—The Secretary shall work  
20 with the States and other appropriate entities to—

21 (1) develop and distribute regional and national  
22 advisories concerning food safety;

23 (2) develop standardized formats for written  
24 and broadcast advisories; and

1           (3) incorporate State and local advisories into  
2           the national public education program required  
3           under subsection (a).

4 **SEC. 123. RESEARCH.**

5           The Secretary shall conduct research to assist in the  
6           implementation of this Act, including studies to—

7           (1) improve sanitation and food safety practices  
8           in the production, harvesting, and processing of food  
9           products;

10          (2) develop improved techniques for the moni-  
11          toring of food and inspection of food products;

12          (3) develop efficient, rapid, and sensitive meth-  
13          ods for determining and detecting the presence of  
14          contaminants in food products;

15          (4) determine the sources of contamination of  
16          food and food products, including critical points of  
17          risk for fresh produce and other raw agricultural  
18          commodities;

19          (5) develop consumption data with respect to  
20          food products;

21          (6) draw upon research and educational pro-  
22          grams that exist at the State and local level;

23          (7) utilize the DNA matching system and other  
24          processes to identify and control pathogens;

1 (8) address common and emerging zoonotic dis-  
2 eases;

3 (9) develop methods to reduce or destroy patho-  
4 gens before, during, and after processing;

5 (10) analyze the incidence of antibiotic resist-  
6 ance as it pertains to the food supply and evaluate  
7 methods to reduce the transfer of antibiotic resist-  
8 ance to humans; and

9 (11) conduct other research that supports the  
10 purposes of this Act.

## 11 **Subtitle C—Response**

### 12 **SEC. 131. PROCEDURES FOR SEIZURE.**

13 Section 304(b) (21 U.S.C. 334(b)) is amended by in-  
14 serting “and except that, with respect to proceedings relat-  
15 ing to food, Rule G of the Supplemental Rules of Admi-  
16 ralty or Maritime Claims and Asset Forfeiture Actions  
17 shall not apply in any such case, exigent circumstances  
18 shall be deemed to exist for all seizures brought under this  
19 section, and the summons and arrest warrant shall be  
20 issued by the clerk of the court without court review in  
21 any such case” after “in any such case shall be tried by  
22 jury”.

### 23 **SEC. 132. ADMINISTRATIVE DETENTION.**

24 (a) AMENDMENTS.—Section 304(h) (21 U.S.C.  
25 334(h)) is amended—

1           (1) in paragraph (1)(A), by striking “credible  
2           evidence or information indicating” and inserting  
3           “reason to believe”;

4           (2) in paragraph (1)(A), by striking “presents  
5           a threat of serious adverse health consequences or  
6           death to humans or animals” and inserting “is adul-  
7           terated, misbranded, or otherwise in violation of this  
8           Act”;

9           (3) in paragraph (2), by striking “30” and in-  
10          serting “60”;

11          (4) in paragraph (3), by striking the third sen-  
12          tence; and

13          (5) in paragraph (4)(A) by striking the terms  
14          “five” and “five-day” and inserting “fifteen” and  
15          “fifteen-day”, respectively.

16          (b) REGULATIONS.—The Secretary shall issue regula-  
17          tions or guidance to implement the amendments made by  
18          this section.

19          (c) EFFECTIVE DATE.—The amendments made by  
20          this section shall take effect 180 days after the date of  
21          the enactment of this Act.

1 **SEC. 133. AUTHORITY TO PROHIBIT OR RESTRICT THE**  
2 **MOVEMENT OF FOOD.**

3 (a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331),  
4 as amended by sections 110 and 111, is amended by add-  
5 ing at the end by adding the following:

6 “(ww) The violation of a prohibition or restriction  
7 under section 304(i).”.

8 (b) IN GENERAL.—Section 304 (21 U.S.C. 334) is  
9 amended by adding at the end the following:

10 “(i) AUTHORITY TO PROHIBIT OR RESTRICT THE  
11 MOVEMENT OF FOOD WITHIN A STATE OR PORTION OF  
12 A STATE.—

13 “(1) AUTHORITY TO PROHIBIT OR RESTRICT  
14 THE MOVEMENT OF FOOD.—

15 “(A) IN GENERAL.—

16 “(i) After consultation with the Gov-  
17 ernor or other appropriate official of an af-  
18 fected State, if the Secretary determines  
19 that there is credible evidence that an arti-  
20 cle of food presents an imminent threat of  
21 serious adverse health consequences or  
22 death to humans or animals, the Secretary  
23 may prohibit or restrict the movement of  
24 an article of food within a State or portion  
25 of a State for which the Secretary has  
26 credible evidence that such food is located

1 within, or originated from, such State or  
2 portion thereof.

3 “(ii) In carrying out clause (i), the  
4 Secretary may prohibit or restrict the  
5 movement within a State or portion of a  
6 State of any article of food or means of  
7 conveyance of such article of food, if the  
8 Secretary determines that the prohibition  
9 or restriction is a necessary protection  
10 from an imminent threat of serious adverse  
11 health consequences or death to humans or  
12 animals.

13 “(2) NOTIFICATION PROCEDURES.—Subject to  
14 paragraph (3), before any action is taken in a State  
15 under this subsection, the Secretary shall—

16 “(A) notify the Governor or other appro-  
17 priate official of the State affected by the pro-  
18 posed action;

19 “(B) issue a public announcement of the  
20 proposed action; and

21 “(C) publish in the Federal Register—

22 “(i) the findings of the Secretary that  
23 support the proposed action;

24 “(ii) a statement of the reasons for  
25 the proposed action; and

1                   “(iii) a description of the proposed ac-  
2                   tion, including—

3                               “(I) the area affected; and

4                               “(II) an estimate of the antici-  
5                   pated duration of the action.

6                   “(3) NOTICE AFTER ACTION.—If it is not prac-  
7                   ticable to publish in the Federal Register the infor-  
8                   mation required under paragraph (2)(C) before tak-  
9                   ing action under paragraph (1), the Secretary shall  
10                  publish the information as soon as practicable, but  
11                  not later than 10 business days, after commence-  
12                  ment of the action.

13                  “(4) APPLICATION OF LEAST DRASTIC AC-  
14                  TION.—No action shall be taken under paragraph  
15                  (1) unless, in the opinion of the Secretary, there is  
16                  no less drastic action that is feasible and that would  
17                  be adequate to prevent the imminent threat of seri-  
18                  ous adverse health consequences or death to humans  
19                  or animals.

20                  “(5) NONDELEGATION.—An action under para-  
21                  graph (1) may only be ordered by the Secretary or  
22                  an official designated by the Secretary. An official  
23                  may not be so designated unless the official is the  
24                  Commissioner of Food and Drugs or the Principal  
25                  Deputy Commissioner.



1           “(6) DURATION.—Fourteen days after the initi-  
2           ation of an action under paragraph (1), and each 14  
3           days thereafter, if the Secretary determines that it  
4           is necessary to continue the action, the Secretary  
5           shall—

6                   “(A) notify the Governor or other appro-  
7                   priate official of the State affected of the con-  
8                   tinuation of the action;

9                   “(B) issue a public announcement of the  
10                  continuation of the action; and

11                  “(C) publish in the Federal Register the  
12                  findings of the Secretary that support the con-  
13                  tinuation of the action, including an estimate of  
14                  the anticipated duration of the action.

15           “(7) RULEMAKING.—The Secretary shall, con-  
16           sistent with national security interests and as appro-  
17           priate for known hazards, establish by regulation  
18           standards for conducting actions under paragraph  
19           (1), including, as appropriate, sanitation standards  
20           and procedures to restore any affected equipment or  
21           means of conveyance to its status prior to an action  
22           under paragraph (1).”.

23 **SEC. 134. CRIMINAL PENALTIES.**

24           Section 303(a) (21 U.S.C. 333) is amended—

1 (1) in paragraph (1), by striking “Any” and in-  
2 sserting “Except as provided in paragraph (2) or (3),  
3 any”; and

4 (2) by adding at the end the following:

5 “(3) Notwithstanding paragraph (1), any person who  
6 knowingly violates paragraph (a), (b), (c), (k), or (v) of  
7 section 301 with respect to any food that is misbranded  
8 or adulterated shall be imprisoned for not more than 10  
9 years or fined in accordance with title 18, United States  
10 Code, or both.”.

11 **SEC. 135. CIVIL PENALTIES FOR VIOLATIONS RELATING TO**  
12 **FOOD.**

13 (a) IN GENERAL.—Paragraph (2) of section 303(f)  
14 (21 U.S.C. 331 et seq.) is amended to read as follows:

15 “(2)(A) Any person who violates a provision of  
16 section 301 relating to food shall be subject to a civil  
17 penalty for each such violation of not more than—

18 “(i) \$20,000 in the case of an individual,  
19 not to exceed \$50,000 in a single proceeding;  
20 and

21 “(ii) \$250,000 in the case of any other  
22 person, not to exceed \$1,000,000 in a single  
23 proceeding.

24 “(B) Any person who knowingly violates a pro-  
25 vision of section 301 relating to food shall be subject

1 to a civil penalty for each such violation of not more  
2 than—

3 “(i) \$50,000 in the case of an individual,  
4 not to exceed \$100,000 in a single proceeding;  
5 and

6 “(ii) \$500,000 in the case of any other  
7 person, not to exceed \$7,500,000 in a single  
8 proceeding.

9 “(C) Each violation described in subparagraph  
10 (A) or (B) and each day during which the violation  
11 continues shall be considered to be a separate of-  
12 fense.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) applies to violations committed on or after  
15 the date of the enactment of this Act.

16 **SEC. 136. IMPROPER IMPORT ENTRY FILINGS.**

17 (a) PROHIBITED ACTS.—Section 301 (21 U.S.C.  
18 331), as amended by sections 110, 111, and 133, is  
19 amended by adding at the end the following:

20 “(xx) The submission of information relating to food  
21 that is required by or under section 801 that is inaccurate  
22 or incomplete.

23 “(yy) The failure to submit information relating to  
24 food that is required by or under section 801.”.

1 (b) DOCUMENTATION FOR IMPORTS.—Section 801  
2 (21 U.S.C. 381), as amended by section 109, is amended  
3 by adding at the end the following:

4 “(r) DOCUMENTATION.—

5 “(1) SUBMISSION.—The Secretary may require  
6 by regulation or guidance the submission of docu-  
7 mentation or other information for articles of food  
8 that are imported or offered for import into the  
9 United States. When developing any regulation or  
10 guidance in accordance with this paragraph, to the  
11 extent that the collection of documentation or other  
12 information involves Customs and Border Protection  
13 efforts or resources, the Secretary shall consult with  
14 Customs and Border Protection.

15 “(2) FORMAT.—A regulation or guidance under  
16 paragraph (1) may specify the format for submission  
17 of the documentation or other information.”.

## 18 **TITLE II—MISCELLANEOUS**

### 19 **SEC. 201. FOOD SUBSTANCES GENERALLY RECOGNIZED AS** 20 **SAFE.**

21 Section 409 (21 U.S.C. 348) is amended by adding  
22 at the end the following:

23 “Substances Generally Recognized as Safe

24 “(k)(1) Not later than 60 days after the date of re-  
25 ceipt by the Secretary, after the date of the enactment

1 of this subsection, of a determination that a substance is  
2 a GRAS food substance, the Secretary shall post notice  
3 of such determination and the supporting scientific jus-  
4 tifications on the Food and Drug Administration's public  
5 Web site.

6       “(2) Not later than 60 days after the date of receipt  
7 of a request under paragraph (1), the Secretary shall ac-  
8 knowledge receipt of such request by informing the re-  
9 quester in writing of the date on which the request was  
10 received.

11       “(3) In this subsection, the term ‘GRAS food sub-  
12 stance’ means a substance excluded from the definition of  
13 the term ‘food additive’ in section 201(s) because such  
14 substance is generally recognized, among experts qualified  
15 by scientific training and experience to evaluate its safety,  
16 as having been adequately shown through scientific proce-  
17 dures (or, in the case of a substance used in food prior  
18 to January 1, 1958, through either scientific procedures  
19 or experience based on common use in food) to be safe  
20 under the conditions of its intended use.”.

21 **SEC. 202. COUNTRY OF ORIGIN LABELING.**

22       (a) MISBRANDING.—Section 403 (21 U.S.C. 343), as  
23 amended by sections 101(a), 109(a), and 114(a), is  
24 amended by adding at the end the following:

1       “(cc) In the case of a processed food, if the labeling  
2 of the food fails to identify the country in which the final  
3 processing of the food occurs.

4       “(dd) In the case of nonprocessed food, if the labeling  
5 of the food fails to identify the country of origin of the  
6 food.”.

7       (b) REGULATIONS.—

8           (1) PROMULGATION.—Not later than 180 days  
9 after the date of the enactment of this Act, the Sec-  
10 retary of Health and Human Services shall promul-  
11 gate final regulations to carry out paragraphs (cc)  
12 and (dd) of section 403 of the Federal Food, Drug,  
13 and Cosmetic Act, as added by subsection (a).

14           (2) RELATION TO OTHER REQUIREMENTS.—  
15 Regulations promulgated under paragraph (1) shall  
16 provide that labeling meets the requirements of  
17 paragraphs (cc) and (dd) of section 403 of the Fed-  
18 eral Food, Drug, and Cosmetic Act, as added by  
19 subsection (a), if—

20           (A) in the case of a processed food, the  
21 label of the food informs the consumer of the  
22 country where the final processing of the food  
23 occurred in accordance with country of origin  
24 marking requirements of the United States  
25 Customs and Border Protection; or

1 (B) in the case of a nonprocessed food, the  
2 label of the food informs the consumer of the  
3 country of origin of the food in accordance with  
4 labeling requirements of the Department of Ag-  
5 riculture.

6 (c) EFFECTIVE DATE.—The requirements of para-  
7 graphs (cc) and (dd) of section 403 of the Federal Food,  
8 Drug, and Cosmetic Act, as added by subsection (a), take  
9 effect on the date that is 2 years after the date of the  
10 enactment of this Act.

11 **SEC. 203. EXPORTATION CERTIFICATE PROGRAM.**

12 Section 801(e)(4) (21 U.S.C. 381) is amended—

13 (1) in the matter preceding clause (i) in sub-  
14 paragraph (A)—

15 (A) by inserting “from the United States”  
16 after “exports”; and

17 (B) by striking “a drug, animal drug, or  
18 device” and inserting “a food (including animal  
19 feed), drug, animal drug, or device”;

20 (2) in subparagraph (A)(i)—

21 (A) by striking “in writing”; and

22 (B) by striking “exported drug, animal  
23 drug, or device” and inserting “exported food,  
24 drug, animal drug, or device”;

25 (3) in subparagraph (A)(ii)—

1 (A) by striking “in writing”;

2 (B) by striking “the drug, animal drug, or  
3 device” and inserting “the food, drug, animal  
4 drug, or device”; and

5 (C) by striking “the drug or device” and  
6 inserting “the food, drug, or device”;

7 (4) by redesignating subparagraph (B) as sub-  
8 paragraph (C);

9 (5) by inserting after subparagraph (A) the fol-  
10 lowing:

11 “(B) For purposes of this paragraph, a  
12 certification by the Secretary shall be made on  
13 such basis and in such form (such as a publicly  
14 available listing) as the Secretary determines  
15 appropriate.”; and

16 (6) by adding at the end the following:

17 “(D) Notwithstanding subparagraph (C), if the Sec-  
18 retary issues an export certification within the 20 days  
19 prescribed by subparagraph (A) with respect to the export  
20 of food, a fee for such certification shall not exceed such  
21 amount as the Secretary determines is reasonably related  
22 to the cost of issuing certificates under subparagraph (A)  
23 with respect to the export of food. The Secretary may ad-  
24 just this fee annually to account for inflation and other  
25 cost adjustments. Fees collected for a fiscal year pursuant



1 to this subparagraph shall be credited to the appropriation  
2 account for salaries and expenses of the Food and Drug  
3 Administration and shall be available in accordance with  
4 appropriations Acts until expended, without fiscal year  
5 limitation. Such fees shall be collected in each fiscal year  
6 in an amount equal to the amount specified in appropria-  
7 tions Acts for such fiscal year and shall only be collected  
8 and available for the costs of the Food and Drug Adminis-  
9 tration to cover the cost of issuing such certifications.  
10 Such sums as necessary may be transferred from such ap-  
11 propriation account for salaries and expenses of the Food  
12 and Drug Administration without fiscal year limitation to  
13 such appropriation account for salaries and expenses with  
14 fiscal year limitation.”.

15 **SEC. 204. REGISTRATION FOR COMMERCIAL IMPORTERS**  
16 **OF FOOD; FEE.**

17 (a) REGISTRATION.—

18 (1) PROHIBITIONS.—Section 301 (21 U.S.C.  
19 331), as amended by sections 110, 111, 133, and  
20 136, is amended by adding at the end the following:  
21 “(zz) The failure to register in accordance with sec-  
22 tion 801(s).”.

23 (2) MISBRANDING.—Section 403 (21 U.S.C.  
24 343) as amended by sections 101(a), 109(a), 114(a),

1 and 202, is amended by adding at the end the fol-  
2 lowing:

3 “(ee) If it is imported or offered for import by an  
4 importer not duly registered under section 801(s).”.

5 (3) REGISTRATION.—Section 801, as amended  
6 by sections 109 and 136, is amended by adding at  
7 the end the following:

8 “(s) REGISTRATION OF IMPORTERS.—

9 “(1) REGISTRATION.—The Secretary shall re-  
10 quire an importer of food—

11 “(A) to be registered with the Secretary in  
12 a form and manner specified by the Secretary;  
13 and

14 “(B) consistent with section 1011, to sub-  
15 mit appropriate unique facility identifiers as a  
16 condition of registration.

17 “(2) GOOD IMPORTER PRACTICES.—The main-  
18 tenance of registration under this subsection is con-  
19 ditioned on compliance with good importer practices  
20 in accordance with the following:

21 “(A) The Secretary, in consultation with  
22 Customs and Border Protection, shall promul-  
23 gate regulations to establish good importer  
24 practices that specify the measures an importer

1 shall take to ensure imported food is in compli-  
2 ance with the requirements of this Act.

3 “(B) The measures under subparagraph  
4 (A) shall ensure that the importer of a food—

5 “(i) has adequate information about  
6 the food, its hazards, and the requirements  
7 of this Act applicable to such food;

8 “(ii) has adequate information or pro-  
9 cedures in place to verify that both the  
10 food and each person that produced, man-  
11 ufactured, processed, packed, transported,  
12 or held the food, including components of  
13 the food, are in compliance with the re-  
14 quirements of this Act; and

15 “(iii) has adequate procedures in  
16 place to take corrective action, such as the  
17 ability to appropriately trace, withhold,  
18 and recall articles of food, if a food im-  
19 ported by the importer is not in compliance  
20 with the requirements of this Act.

21 “(C) In promulgating good importer prac-  
22 tices regulations, the Secretary may, as appro-  
23 priate—

24 “(i) incorporate certification of com-  
25 pliance under section 801(q) and participa-

1                   tion in the safe and secure food importa-  
2                   tion program under section 805; and

3                   “ (ii) take into account differences  
4                   among importers and the types of imports,  
5                   including based on the level of risk posed  
6                   by the imported food.

7                   “(3) SUSPENSION OF REGISTRATION.—

8                   “(A) IN GENERAL.—Registration under  
9                   this subsection is subject to suspension upon a  
10                  finding by the Secretary, after notice and an  
11                  opportunity for an informal hearing, of—

12                  “(i) a violation of this Act; or

13                  “(ii) the knowing or repeated making  
14                  of an inaccurate or incomplete statement  
15                  or submission of information relating to  
16                  the importation of food.

17                  “(B) REQUEST.—The importer whose reg-  
18                  istration is suspended may request that the  
19                  Secretary vacate the suspension of registration  
20                  when such importer has corrected the violation  
21                  that is the basis for such suspension.

22                  “(C) VACATING OF SUSPENSION.—If the  
23                  Secretary determines that adequate reasons do  
24                  not exist to continue the suspension of a reg-

1           istration, the Secretary shall vacate such sus-  
2           pension.

3           “(4) CANCELLATION OF REGISTRATION.—

4                   “(A) IN GENERAL.—Not earlier than 10  
5           days after providing the notice under subpara-  
6           graph (B), the Secretary may cancel a registra-  
7           tion that the Secretary determines was not up-  
8           dated in accordance with this section or other-  
9           wise contains false, incomplete, or inaccurate  
10          information.

11                   “(B) NOTICE OF CANCELLATION.—Can-  
12          cellation shall be preceded by notice to the im-  
13          porter of the intent to cancel the registration  
14          and the basis for such cancellation.

15                   “(C) TIMELY UPDATE OR CORRECTION.—  
16          If the registration for the importer is updated  
17          or corrected no later than 7 days after notice  
18          is provided under subparagraph (B), the Sec-  
19          retary shall not cancel such registration.

20           “(5) EXEMPTIONS.—The Secretary, by notice  
21          published in the Federal Register—

22                   “(A) shall establish an exemption from the  
23          requirements of this subsection for importations  
24          for personal use; and

1           “(B) may establish other exemptions from  
2           the requirements of this subsection.”.

3           (4) REGULATIONS.—Not later than 36 months  
4           after the date of the enactment of this Act, the Sec-  
5           retary of Health and Human Services in consulta-  
6           tion with the Commissioner responsible for Customs  
7           and Border Protection shall promulgate the regula-  
8           tions required to carry out section 801(s) of the  
9           Federal Food, Drug, and Cosmetic Act, as added by  
10          paragraph (3). In establishing the effective date of  
11          a regulation promulgated under section 801(s), the  
12          Secretary shall, in consultation with the Commis-  
13          sioner responsible for Customs and Border Protec-  
14          tion, as appropriate, provide a reasonable period of  
15          time for importers of food to comply with good im-  
16          porter practices, taking into account differences  
17          among importers and the types of imports, including  
18          based on the level of risk posed by the imported  
19          food.

20          (5) EFFECTIVE DATE.—The amendments made  
21          by this subsection shall take effect on the date that  
22          is 24 months after the date of enactment of this Act.

23          (b) FEE.—Subchapter C of chapter VII (21 U.S.C.  
24          379f et seq.) as added and amended by sections 101 and  
25          108, is amended by adding at the end the following:

1                   **“PART 7—IMPORTERS OF FOOD**

2   **“SEC. 744. IMPORTERS OF FOOD.**

3           “(a) IMPORTERS.—The Secretary shall assess and  
4 collect an annual fee for the registration of an importer  
5 of food under section 801(s).

6           “(b) AMOUNT OF FEE.—

7               “(1) BASE AMOUNTS.—The registration fee  
8 under subsection (a) shall be—

9                   “(A) for fiscal year 2010, \$500; and

10                   “(B) for fiscal year 2011 and each subse-  
11 quent fiscal year, the fee for fiscal year 2010 as  
12 adjusted under paragraph (2).

13               “(2) ADJUSTMENT.—For fiscal year 2011 and  
14 subsequent fiscal years, the fees established pursu-  
15 ant to paragraph (1) shall be adjusted by the Sec-  
16 retary by notice, published in the Federal Register,  
17 for a fiscal year to reflect the greater of—

18                   “(A) the total percentage change that oc-  
19 curred in the Consumer Price Index for all  
20 urban consumers (all items; United States city  
21 average), for the 12-month period ending June  
22 30 preceding the fiscal year for which fees are  
23 being established;

24                   “(B) the total percentage change for the  
25 previous fiscal year in basic pay under the Gen-  
26 eral Schedule in accordance with section 5332

1 of title 5, United States Code, as adjusted by  
2 any locality-based comparability payment pur-  
3 suant to section 5304 of such title for Federal  
4 employees stationed in the District of Columbia;  
5 or

6 “(C) the average annual change in the  
7 cost, per full-time equivalent position of the  
8 Food and Drug Administration, of all personnel  
9 compensation and benefits paid with respect to  
10 such positions for the first 5 years of the pre-  
11 ceding 6 fiscal years.

12 “(3) COMPOUNDED BASIS.—The adjustment  
13 made each fiscal year pursuant this subsection shall  
14 be added on a compounded basis to the sum of all  
15 adjustments made each fiscal year after fiscal year  
16 2010 under this subsection.

17 “(4) WAIVER FOR IMPORTERS REQUIRED TO  
18 PAY REGISTRATION FEE.—In the case of a person  
19 who is required to pay both a fee under section 743  
20 for registration of one or more facilities under sec-  
21 tion 415 and a fee under this section for registration  
22 as an importer of food under section 801(s), the  
23 Secretary shall waive the fees applicable to such per-  
24 son under section 743 or the fee applicable to such  
25 person under this section.



1 “(c) CREDITING AND AVAILABILITY OF FEES.—

2 “(1) IN GENERAL.—Fees authorized under sub-  
3 section (a) shall be collected and available for obliga-  
4 tion only to the extent and in the amount provided  
5 in advance in appropriations Acts. Such fees are au-  
6 thorized to remain available until expended. Such  
7 sums as may be necessary may be transferred from  
8 the Food and Drug Administration salaries and ex-  
9 penses appropriation account without fiscal year lim-  
10 itation to such appropriation account for salaries  
11 and expenses with such fiscal year limitation.

12 “(2) COLLECTIONS AND APPROPRIATIONS  
13 ACTS.—The fees authorized by this section—

14 “(A) shall be retained in each fiscal year in  
15 an amount not to exceed the amount specified  
16 in appropriation Acts, or otherwise made avail-  
17 able for obligation, for such fiscal year; and

18 “(B) shall only be collected and available  
19 to cover the costs associated with registering  
20 importers under section 801(s) and with ensur-  
21 ing compliance with good importer practices re-  
22 specting food.

23 “(3) AUTHORIZATION OF APPROPRIATIONS.—  
24 For each of fiscal years 2010 through 2014, there

1 are authorized to be appropriated for fees under this  
2 section such sums as may be necessary.”.

3 (c) INSPECTION.—Section 704 (21 U.S.C. 374), as  
4 amended by section 105, is amended by adding at the end  
5 the following:

6 “(i) IMPORTERS.—Every person engaged in the im-  
7 porting of any food shall, upon request of an officer or  
8 employee designated by the Secretary, permit such officer  
9 or employee at all reasonable times to inspect the facilities  
10 of such person and have access to, and to copy and verify,  
11 any related records.”.

12 **SEC. 205. REGISTRATION FOR CUSTOMS BROKERS.**

13 (a) REGISTRATION.—

14 (1) PROHIBITIONS.—Section 301(zz) (21  
15 U.S.C. 331), as added by section 204, is amended  
16 by inserting “or 801(t)” after “801(s)”.

17 (2) MISBRANDING.—Section 403(ee) (21 U.S.C.  
18 343), as added by section 204, is amended—

19 (A) by inserting “or a customs broker”  
20 after “by an importer”; and

21 (B) by inserting “or 801(t)” after  
22 “801(s)”.

23 (3) REGISTRATION.—Section 801, as amended  
24 by sections 109, 136, and 204, is amended by add-  
25 ing at the end the following:

1 “(t) REGISTRATION OF CUSTOMS BROKER.—

2 “(1) REGISTRATION.—The Secretary shall re-  
3 quire a customs broker, with respect to the importa-  
4 tion of food—

5 “(A) to be registered with the Secretary in  
6 a form and manner specified by the Secretary;  
7 and

8 “(B) consistent with section 1011, to sub-  
9 mit appropriate unique facility identifiers as a  
10 condition of registration.

11 “(2) CANCELLATION OF REGISTRATION.—

12 “(A) IN GENERAL.—Not earlier than 10  
13 days after providing the notice under subpara-  
14 graph (B), the Secretary may cancel a registra-  
15 tion that the Secretary determines was not up-  
16 dated in accordance with this section or other-  
17 wise contains false, incomplete, or inaccurate  
18 information.

19 “(B) NOTICE OF CANCELLATION.—Can-  
20 cellation shall be preceded by notice to the cus-  
21 toms broker of the intent to cancel the registra-  
22 tion and the basis for such cancellation.

23 “(C) TIMELY UPDATE OR CORRECTION.—  
24 If the registration for the customs broker is up-  
25 dated or corrected no later than 7 days after

1 notice is provided under subparagraph (B), the  
2 Secretary shall not cancel such registration.

3 “(3) NOTIFICATION.—The Secretary shall no-  
4 tify the Commissioner responsible for Customs and  
5 Border Protection whenever the Secretary cancels a  
6 registration under this subsection.

7 “(4) EXEMPTIONS.—In consultation with the  
8 Commissioner responsible for Customs and Border  
9 Protection, the Secretary, by notice published in the  
10 Federal Register—

11 “(A) shall establish an exemption from the  
12 requirements of this subsection for importations  
13 for personal use; and

14 “(B) may establish other exemptions from  
15 the requirements of this subsection.

16 “(5) CIVIL PENALTIES.—Notwithstanding any  
17 other provision in this Act, a customs broker who  
18 violates section 301 because of a violation of section  
19 403(ee), or who violates section 301(xx), 301(yy), or  
20 301(zz), shall not be subject to a civil penalty under  
21 section 303(f)(2).”.

22 (4) REGULATIONS.—Not later than 24 months  
23 after the date of the enactment of this Act, the Sec-  
24 retary of Health and Human Services, in consulta-  
25 tion with the Commissioner responsible for Customs

1 and Border Protection, shall promulgate the regula-  
2 tions required to carry out section 801(t) of the  
3 Federal Food, Drug, and Cosmetic Act, as added by  
4 paragraph (2).

5 (5) EFFECTIVE DATE.—The amendments made  
6 by this subsection shall take effect on the date that  
7 is 24 months after the date of enactment of this Act.

8 (b) INSPECTION.—Section 704 (21 U.S.C. 374), as  
9 amended by sections 105 and 204, is amended by adding  
10 at the end the following:

11 “(j) BROKERS.—Every customs broker required to be  
12 registered with the Secretary shall, upon request of an of-  
13 ficer or employee designated by the Secretary, permit such  
14 officer or employee at all reasonable times to inspect the  
15 facilities of such person and have access to, and to copy  
16 and verify, any related records.”.

17 **SEC. 206. UNIQUE IDENTIFICATION NUMBER FOR FOOD FA-**  
18 **CILITIES, IMPORTERS, AND CUSTOM BRO-**  
19 **KERS.**

20 Chapter X (21 U.S.C. 391 et seq) is amended by add-  
21 ing at the end the following:

22 **“SEC. 1011. UNIQUE FACILITY IDENTIFIER.**

23 **“(a) REGISTRATION OF FACILITY OR ESTABLISH-**  
24 **MENT.—A person required to register a facility pursuant**

1 to section 415 shall submit, at the time of registration,  
2 a unique facility identifier for the facility or establishment.

3 “(b) REGISTRATION OF IMPORTERS AND CUSTOM  
4 BROKERS.—A person required to register pursuant to sec-  
5 tion 801(s) or 801(t) shall submit, at the time of registra-  
6 tion, a unique facility identifier for the principal place of  
7 business for which such person is required to register  
8 under section 801(s) or 801(t).

9 “(c) GUIDANCE.—The Secretary may, by guidance,  
10 and, with respect to importers and customs brokers, in  
11 consultation with the Commissioner responsible for Cus-  
12 toms and Border Protection, specify the unique numerical  
13 identifier system to be used to meet the requirements of  
14 subsections (a) and (b) and the form, manner, and timing  
15 of a submission under such subsections. Development of  
16 such guidelines shall take into account the utilization of  
17 existing unique identification schemes and compatibility  
18 with customs automated systems, such as integration with  
19 the Automated Commercial Environment (ACE) and the  
20 International Trade Data System (ITDS), and any suc-  
21 cessor systems.

22 “(d) IMPORTATION.—An article of food imported or  
23 offered for import shall be refused admission unless the  
24 appropriate unique facility identifiers, as specified by the  
25 Secretary, are provided for such article.”.

1 **SEC. 207. PROHIBITION AGAINST DELAYING, LIMITING, OR**  
2 **REFUSING INSPECTION.**

3 (a) ADULTERATION.—Section 402 (21 U.S.C. 342),  
4 as amended by section 102, 103(a), and 104(a), is amend-  
5 ed by adding at the end the following:

6 “(n) If it has been produced, manufactured, proc-  
7 essed, packed, or held in any farm, factory, warehouse,  
8 or establishment and the owner, operator, or agent of such  
9 farm, factory, warehouse, or establishment, or any agent  
10 of a governmental authority in the foreign country within  
11 which such farm, factory, warehouse, or establishment is  
12 located, delays or limits an inspection, or refuses to permit  
13 entry or inspection, under section 414 or 704.”.

14 (b) FOREIGN INSPECTIONS.—Section 704(a)(1) (21  
15 U.S.C. 374(a)(1)), as amended by section 106(c), is  
16 amended—

17 (1) in the first sentence, by inserting “, includ-  
18 ing any such food factory, warehouse, or establish-  
19 ment whether foreign or domestic,” after “factory,  
20 warehouse, or establishment”; and

21 (2) in the third sentence, by inserting “, includ-  
22 ing any food factory, warehouse, establishment, or  
23 consulting laboratory whether foreign or domestic,”  
24 after “factory, warehouse, establishment, or con-  
25 sulting laboratory”.

1 **SEC. 208. DEDICATED FOREIGN INSPECTORATE.**

2 Section 704 (21 U.S.C. 374), as amended by sections  
3 105, 204, and 205, is amended by adding at the end the  
4 following:

5 “(k) DEDICATED FOREIGN INSPECTORATE.—The  
6 Secretary shall establish and maintain a corps of inspec-  
7 tors dedicated to inspections of foreign food facilities. This  
8 corps shall be staffed and funded by the Secretary at a  
9 level sufficient to enable it to assist the Secretary in  
10 achieving the frequency of inspections for food facilities  
11 as described in this Act.”.

12 **SEC. 209. PLAN AND REVIEW OF CONTINUED OPERATION**  
13 **OF FIELD LABORATORIES.**

14 (a) SUBMISSION OF PLAN.—Not later than 90 days  
15 before the Secretary terminates or consolidates any lab-  
16 oratory, district office, or the functions (including the in-  
17 spection and compliance functions) of any such laboratory  
18 or district office, specified in subsection (b), the Secretary  
19 shall submit a reorganization plan to the Comptroller Gen-  
20 eral of the United States, the Committee on Energy and  
21 Commerce of the House of Representatives, and the Com-  
22 mittee on Health, Education, Labor, and Pensions of the  
23 Senate.

24 (b) SPECIFIED LABORATORIES AND OFFICES.—The  
25 laboratories and offices specified in this subsection are the  
26 following:



1           (1) Any of the 13 field laboratories responsible  
2           for analyzing food that were operated by the Office  
3           of Regulatory Affairs of the Food and Drug Admin-  
4           istration as of January 1, 2007.

5           (2) Any of the 20 district offices of the Food  
6           and Drug Administration with responsibility for food  
7           safety functioning as of January 1, 2007.

8           (c) CONGRESSIONAL REVIEW.—A reorganization  
9           plan described in subsection (a) is deemed to be a major  
10          rule (as defined in section 804(2) of title 5, United States  
11          Code) for purposes of chapter 8 of such title.

12          **SEC. 210. FALSE OR MISLEADING REPORTING TO FDA.**

13          (a) IN GENERAL.—Section 301(q)(2) (21 U.S.C.  
14          331(q)(2)) is amended by inserting after “device” the fol-  
15          lowing: “, food,”.

16          (b) EFFECTIVE DATE.—The amendment made by  
17          subsection (a) shall apply to submissions made on or after  
18          the date of the enactment of this Act.

19          **SEC. 211. SUBPOENA AUTHORITY.**

20          (a) PROHIBITED ACT.—Section 301(f) is amended by  
21          inserting before the period “or the failure or refusal to  
22          obey a subpoena issued pursuant to section 311”.

23          (b) AMENDMENT.—Chapter III (21 U.S.C. 331 et  
24          seq.) is amended by adding at the end the following:

1 **“SEC. 311. EXERCISE OF SUBPOENA AUTHORITY.**

2 “(a) IN GENERAL.—For the purpose of—

3 “(1) any hearing, investigation, or other pro-  
4 ceeding respecting a violation of a provision of this  
5 Act, the Public Health Service Act, or the Federal  
6 Anti-Tampering Act, relating to food; or

7 “(2) any hearing, investigation, or other pro-  
8 ceeding to determine if a person is in violation of a  
9 specific provision of this Act, the Public Health  
10 Service Act, or the Federal Anti-Tampering Act, re-  
11 lating to food,

12 the Commissioner may issue subpoenas requiring the at-  
13 tendance and testimony of witnesses and the production  
14 of records and other things.

15 “(b) TIMING OF COMPLIANCE.—When the Commis-  
16 sioner deems that immediate compliance with a subpoena  
17 issued under this section is necessary to address a threat  
18 of serious adverse health consequences or death, the sub-  
19 poena may require immediate production.

20 “(c) SERVICE OF SUBPOENA.—

21 “(1) IN GENERAL.—Subpoenas of the Commis-  
22 sioner shall be served by a person authorized by the  
23 Commissioner by delivering a copy thereof to the  
24 person named therein or by certified mail addressed  
25 to such person at such person’s last known dwelling  
26 place or principal place of business.

1           “(2) CORPORATIONS AND OTHER ENTITIES.—  
2           Service on a domestic or foreign corporation, part-  
3           nership, unincorporated association, or other entity  
4           that is subject to suit under a common name may  
5           be made by delivering the subpoena to an officer, a  
6           managing or general agent, or any other agent au-  
7           thorized by appointment or by law to receive service  
8           of process.

9           “(3) PERSON OUTSIDE U.S. JURISDICTION.—  
10          Service on any person not found within the terri-  
11          torial jurisdiction of any court of the United States  
12          may be made in any manner as the Federal Rules  
13          of Civil Procedure prescribe for service in a foreign  
14          nation.

15          “(4) PROOF OF SERVICE.—A verified return by  
16          the person so serving the subpoena setting forth the  
17          manner of service, or, in the case of service by cer-  
18          tified mail, the return post office receipt therefor  
19          signed by the person so served, shall be proof of  
20          service.

21          “(d) PAYMENT OF WITNESSES.—Witnesses subpoe-  
22          naed under subsection (a) shall be paid the same fees and  
23          mileage as are paid witnesses in the district courts of the  
24          United States.

1           “(e) ENFORCEMENT.—In the case of a refusal to  
2 obey a subpoena duly served upon any person under sub-  
3 section (a), any district court of the United States for the  
4 judicial district in which such person charged with refusal  
5 to obey is found, resides, or transacts business, upon ap-  
6 plication by the Commissioner, shall have jurisdiction to  
7 issue an order compelling compliance with the subpoena  
8 and requiring such person to appear and give testimony  
9 or to appear and produce records and other things, or  
10 both. The failure to obey such order of the court may be  
11 punished by the court as contempt thereof. If the person  
12 charged with failure or refusal to obey is not found within  
13 the territorial jurisdiction of the United States, the United  
14 States District Court for the District of Columbia shall  
15 have the same jurisdiction, consistent with due process,  
16 to take any action respecting compliance with the sub-  
17 poena by such person that such district court would have  
18 if such person were personally within the jurisdiction of  
19 such district court.

20           “(f) NONDISCLOSURE.—A United States district  
21 court for the district in which the subpoena is or will be  
22 served, upon application of the Commissioner, may issue  
23 an ex parte order that no person or entity disclose to any  
24 other person or entity (other than to an attorney to obtain  
25 legal advice) the existence of such subpoena for a period

1 of up to 90 days. Such order may be issued on a showing  
2 that the records or things being sought may be relevant  
3 to the hearing, investigation, proceeding, or other matter  
4 and that there is reason to believe that such disclosure  
5 may result in—

6           “(1) furtherance of a potential violation under  
7           investigation;

8           “(2) endangerment to the life or physical safety  
9           of any person;

10           “(3) flight or other action to avoid prosecution  
11           or other enforcement remedies;

12           “(4) destruction of or tampering with evidence;  
13           or

14           “(5) intimidation of potential witnesses.

15 An order under this subsection may be renewed for addi-  
16 tional periods of up to 90 days upon a showing that any  
17 of the circumstances described in paragraphs (1) through  
18 (5) continue to exist.

19           “(g) RELATION TO OTHER PROVISIONS.—The sub-  
20 poena authority vested in the Commissioner and the dis-  
21 trict courts of the United States by this section is in addi-  
22 tion to any such authority vested in the Commissioner or  
23 such courts by other provisions of law, or as is otherwise  
24 authorized by law.

1       “(h) NONDELEGATION.—The authority to issue a  
2 subpoena under this section is limited to the Secretary or  
3 an official designated by the Secretary. An official may  
4 not be so designated unless the official is the director of  
5 the district under this Act in which the article involved  
6 is located, or is an official senior to such director.”.

7 **SEC. 212. WHISTLEBLOWER PROTECTIONS.**

8       Chapter X (21 U.S.C. 391 et seq.), as amended by  
9 section 206, is amended by adding at the end the fol-  
10 lowing:

11 **“SEC. 1012 PROTECTIONS FOR EMPLOYEES WHO REFUSE**  
12 **TO VIOLATE, OR WHO DISCLOSE VIOLATIONS**  
13 **OF, THIS ACT.**

14       “(a) IN GENERAL.—No person who submits or is re-  
15 quired under this Act or the Public Health Service Act  
16 to submit any information related to a food, or any officer,  
17 employee, contractor, subcontractor, or agent of such per-  
18 son may discharge, demote, suspend, threaten, harass, or  
19 in any other manner discriminate against an employee in  
20 the terms and conditions of employment because of any  
21 lawful act done by the employee, including within the ordi-  
22 nary course of the job duties of such employee—

23               “(1) to provide information, cause information  
24               to be provided, or otherwise assist in any investiga-  
25               tion regarding any conduct which the employee rea-

1 sonably believes constitutes a violation of this Act, or  
2 any other provision of Federal law relating to the  
3 safety of a food, if the information or assistance is  
4 provided to, or an investigation stemming from the  
5 provided information is conducted by—

6 “(A) a Federal regulatory or law enforce-  
7 ment agency;

8 “(B) any Member of Congress or any com-  
9 mittee of Congress; or

10 “(C) a person with supervisory authority  
11 over the employee (or such other person work-  
12 ing for the employer who has the authority to  
13 investigate, discover, or terminate the mis-  
14 conduct);

15 “(2) to file, cause to be filed, testify, participate  
16 in, or otherwise assist in a proceeding filed, or about  
17 to be filed (with any knowledge of the employer), in  
18 any court or administrative forum relating to any  
19 such alleged violation; or

20 “(3) to refuse to commit or assist in any such  
21 violation.

22 “(b) ENFORCEMENT ACTION.—

23 “(1) IN GENERAL.—An employee who alleges  
24 discharge or other discrimination in violation of sub-

1 section (a) may seek relief in accordance with the  
2 provisions of subsection (c) by—

3 “(A) filing a complaint with the Secretary  
4 of Labor; or

5 “(B) if the Secretary of Labor has not  
6 issued a final decision within 210 days of the  
7 filing of the complaint and there is no showing  
8 that such delay is due to the bad faith of the  
9 claimant, or within 90 days after receiving a  
10 final decision or order from the Secretary,  
11 bringing an action at law or equity for de novo  
12 review in the appropriate district court of the  
13 United States, which court shall have jurisdic-  
14 tion over such action without regard to the  
15 amount in controversy, and which action shall,  
16 at the request of either party to such action, be  
17 tried by the court with a jury.

18 “(2) PROCEDURE.—

19 “(A) IN GENERAL.—Any action under  
20 paragraph (1) shall be governed under the rules  
21 and procedures set forth in section 42121(b) of  
22 title 49, United States Code.

23 “(B) EXCEPTION.—Notification in an ac-  
24 tion under paragraph (1) shall be made in ac-  
25 cordance with section 42121(b)(1) of title 49,



1 United States Code, except that such notifica-  
2 tion shall be made to the person named in the  
3 complaint, the employer, and the Commissioner  
4 of Food and Drugs.

5 “(C) BURDENS OF PROOF.—An action  
6 brought under paragraph (1)(A) or (1)(B) shall  
7 be governed by the legal burdens of proof set  
8 forth in section 42121(b) of title 49, United  
9 States Code.

10 “(D) STATUTE OF LIMITATIONS.—An ac-  
11 tion under paragraph (1)(A) shall be com-  
12 menced not later than 180 days after the date  
13 on which the violation occurs.

14 “(c) REMEDIES.—

15 “(1) IN GENERAL.—An employee prevailing in  
16 any action under subsection (b)(1) shall be entitled  
17 to all relief necessary to make the employee whole.

18 “(2) ISSUANCE OF ORDER.—If, in response to  
19 a complaint filed under paragraph (b)(1), the Sec-  
20 retary of Labor or the district court, as applicable,  
21 determines that a violation of subsection (a) has oc-  
22 curred, the Secretary or the court shall order the  
23 person who committed such violation—

24 “(A) to take affirmative action to abate  
25 the violation;

1 “(B) to—

2 “(i) reinstate the complainant to his  
3 or her former position together with com-  
4 pensation (including back pay); and

5 “(ii) restore the terms, conditions,  
6 and privileges associated with his or her  
7 employment; and

8 “(C) to provide compensatory damages to  
9 the complainant.

10 If such an order is issued under this paragraph, the  
11 Secretary or the court, at the request of the com-  
12 plainant, shall assess against the person against  
13 whom the order is issued a sum equal to the aggre-  
14 gate amount of all costs and expenses (including at-  
15 torney and expert witness fees) reasonably incurred,  
16 as determined by the Secretary, by the complainant  
17 for, or in connection with, the bringing of the com-  
18 plaint upon which the order was issued.

19 “(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in  
20 this section shall be deemed to diminish the rights, privi-  
21 leges, or remedies of any employee under any Federal or  
22 State law or under any collective bargaining agreement.  
23 The rights and remedies in this section may not be waived  
24 by any agreement, policy, form, or condition of employ-  
25 ment.”.

1 **SEC. 213. EXTRATERRITORIAL JURISDICTION.**

2 (a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331),  
3 as amended by sections 110, 111, 133, 136, and 204, is  
4 amended by adding at the end the following:

5 “(aaa) The production, manufacture, processing,  
6 preparation, packing, holding, or distribution of an adul-  
7 terated or misbranded food with the knowledge or intent  
8 that such article will be imported into the United States.”.

9 (b) JURISDICTION.—Chapter III (21 U.S.C. 331 et  
10 seq.), as amended by section 211, is amended by adding  
11 at the end the following:

12 **“SEC. 312. EXTRATERRITORIAL JURISDICTION.**

13 “There is extraterritorial Federal jurisdiction over  
14 any violation of this Act relating to any article of food  
15 if such article was intended for import into the United  
16 States or if any act in furtherance of the violation was  
17 committed in the United States.”.

18 **SEC. 214. SUPPORT FOR TRAINING INSTITUTES.**

19 The Secretary of Health and Human Services, acting  
20 through the Commissioner of Food and Drugs, shall pro-  
21 vide financial and other assistance to appropriate entities  
22 to establish and maintain one or more university-affiliated  
23 food protection training institutes that—

24 (1) conduct training related to food protection  
25 activities for Federal, State, local, territorial, and  
26 tribal officials; and

1 (2) meet standards developed by the Secretary.

2 **SEC. 215. BISPHENOL A IN FOOD AND BEVERAGE CON-**  
3 **TAINERS.**

4 (a) NOTICE OF DETERMINATION.—No later than De-  
5 cember 31, 2009, the Secretary of Health and Human  
6 Services shall notify the Congress whether the available  
7 scientific data support a determination that there is a rea-  
8 sonable certainty of no harm, for infants, young children,  
9 pregnant women, and adults, for approved uses of  
10 polycarbonate plastic and epoxy resin made with bisphenol  
11 A in food and beverage containers, including reusable food  
12 and beverage containers, under the conditions of use pre-  
13 scribed in current Food and Drug Administration regula-  
14 tions.

15 (b) NOTICE OF ACTIONS TO BE TAKEN.—If the Sec-  
16 retary concludes that such a determination cannot be  
17 made for any approved use, the Secretary shall notify the  
18 Congress of the actions the Secretary intends to take  
19 under the Secretary's authority to regulate food additives  
20 to protect the public health, which may include—

21 (1) revoking or modifying any of the approved  
22 uses of bisphenol A in food and beverage containers,  
23 including reusable food and beverage containers; and

1           (2) ensuring that the public is sufficiently in-  
2           formed of such determination and the steps the pub-  
3           lic may take in response to such determination.

4           (c) **RULE OF CONSTRUCTION.**—Nothing herein is in-  
5           tended or shall be construed to modify existing Food and  
6           Drug Administration authority, procedures, or policies for  
7           assessing scientific data, making safety determinations, or  
8           regulating the safe use of food additives.

9           **SEC. 216. LEAD CONTENT LABELING REQUIREMENT FOR**  
10           **CERAMIC TABLEWARE AND COOKWARE.**

11           (a) **IN GENERAL.**—Section 403 (21 U.S.C. 343), as  
12           amended by sections 101(a), 109(a), 114(a), 202, and  
13           204, is amended by adding at the end the following:

14           “(ff) If it is ceramic tableware or cookware and in-  
15           cludes a glaze or decorations containing lead for an in-  
16           tended functional purpose, unless—

17           “(1) the product and its packaging bear the  
18           statement: ‘This product is made with lead-based  
19           glaze consistent with Food and Drug Administration  
20           guidelines for such lead.’; or

21           “(2) the product is in compliance with the re-  
22           quirements applicable to ornamental and decorative  
23           ceramicware in section 109.16 of title 21, Code of  
24           Federal Regulations (or any successor regulation).”.

1 (b) EFFECTIVE DATE.—Section 403(ff) of the Fed-  
2 eral Food, Drug, and Cosmetic Act, as added by sub-  
3 section (a), shall apply only to ceramic tableware or  
4 cookware that is manufactured on or after the date that  
5 is 1 year after the date of the enactment of this Act.

6 (c) CONSUMER EDUCATION.—Chapter IV (21 U.S.C.  
7 341 et seq.), as amended by sections 102, 103, 104, and  
8 111, is amended by adding at the end the following:

9 **“SEC. 421. CONSUMER EDUCATION ON THE CONTENT OF**  
10 **LEAD IN CERAMICWARE AND APPLICABLE**  
11 **LABELING REQUIREMENTS.**

12 “(a) IN GENERAL.—The Secretary shall educate con-  
13 sumers on the safety of ceramicware for food use by post-  
14 ing information on the Web site of the Food and Drug  
15 Administration with regard to—

16 “(1) the content of lead in ceramicware and its  
17 glaze;

18 “(2) existing Federal laws and regulations gov-  
19 erning lead in ceramicware;

20 “(3) as appropriate, existing industry practices  
21 and guidelines; and

22 “(4) the labeling requirements applicable under  
23 this Act.

24 “(b) TOPICS.—The education under this section shall  
25 address—

1           “(1) the broad range of ceramicware types, in-  
2           cluding traditional pottery, ornamental and decora-  
3           tive ceramicware, cookware, and everyday dinner-  
4           ware;

5           “(2) the safety of ceramicware that is aged or  
6           damaged;

7           “(3) the use of ceramicware in microwave  
8           ovens;

9           “(4) the storage of foods in ceramicware;

10          “(5) the use of home lead test kits by con-  
11          sumers;

12          “(6) the use of ceramicware by children and  
13          women of childbearing age; and

14          “(7) issues that are especially relevant to sub-  
15          populations of consumers who may preferentially use  
16          certain types of ceramicware made with lead.”.