the House Calendar and ordered to be printed.

FOOD SAFETY ENHANCEMENT ACT OF 2009

Mr. DINGELL. Mr. Speaker, pursuant to H. Res. 691, I call up the bill (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, and ask for its immediate consideration in the House.

The Clerk reads the title of the bill. The SPEAKER pro tempore. Pursuant to House Resolution 691, in lieu of the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill, the amendment in the nature of a substitute printed in House Report 111-235 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2749

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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. 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. Sanitary security 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. 203. Exportation certificate program.
Sec. 204. Registration for commercial importers of food; fee.
Sec. 205. Registration for customs brokers.
Sec. 206. Uniformity of food facilities, importers, and customs brokers.
Sec. 207. Prohibition against delaying, limiting, or refusing inspection.
Sec. 208. Dedicated foreign inspectorate.
Sec. 209. Plan and review of continued operation, alternative procedures.
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 requirements for ceramic tableware and cookware.

SEC. 3. REFERENCES.

Except as otherwise specified, wherever in this Act an amendment is made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 4. RULES OF CONSTRUCTION.

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

(1) any cause of action under State law; or
(2) the introduction of evidence of compliance or noncompliance with the requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes and regulations;
(2) limit the authority of the Secretary of Health and Human Services to issue regulations related to the safety of food under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of the enactment of this Act; or
(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of the enactment of this Act; or
(3) impede, minimize, or affect the authority of the Secretary of Agriculture to prevent, control, or mitigate a plant or animal health emergency, or a food emergency involving products regulated under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1501 et seq.).

(c) USDA-REGULATED PRODUCTS.—Food is exempt from the requirements of this Act to the extent such facility is regulated by the Secretary of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), the Egg Products Inspection Act (21 U.S.C. 1501 et seq.), or the Livestock and Poultry Products Inspection Act.

(d) FARMS.—A farm is exempt from the requirements of this Act to the extent such farm raises animals from which food is derived, or raises animals under Federal regulation under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act.

SEC. 5. USDA EXEMPTIONS.

(a) USDA-REGULATED PRODUCTS.—A facility is exempt from the requirements of this Act to the extent such facility is regulated as an official establishment by the Secretary of Agriculture under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act or under a program recognized by the Secretary of Agriculture as a condition of doing business in the United States; and

(b) LIVESTOCK AND POULTRY.—Livestock and poultry that are intended to be purchased for slaughter pursuant to the regulations under section 415, including livestock and poultry whose registration is canceled or suspended under such section.

(c) ANNUAL REGISTRATION.—

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

"(1)(A) The term ‘facility’ means every factory, warehouse, or establishment (including a factory, warehouse, or establishment of an importer) that manufactures, processes, packs, or holds food.

(1)(B) The term does not include farms; private residences of individuals; restaurants; other retail food establishments; nonprofit..."
food establishments in which food is prepared for or served directly to the consumer; or fishing vessels (except such vessels engaged in processing as defined in section 122.3 of the regulations, or any successor regulations).

"(C)(i) The term ‘retail food establishment’ means an establishment that, as its primary function, sells food products that it manufactures, processes, packs, or holds directly to consumers (including by Internet or mail order).

(ii) Such term includes:

(I) grocery stores;

(II) convenience stores;

(III) vending machine locations; and

(IV) a food or feed ingredient or additive over-the-counter directly to consumers and final purchasers for their personal animals.

(iii) A retail food establishment’s primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers.

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

(ii) Such term includes—

(I) an operation that packs or holds food, provided that all food used in such activities is grown, raised, or consumed on such farm or another farm under the same ownership;

(II) such an operation that manufactures or processes food, provided that all food used in such activities is consumed on such farm or another farm under the same ownership;

(III) such an operation that sells food directly to consumers if the annual monetary value of sales of the food products from the farm or by the farm as described in clause (ii)(IV) if the receiving farm releases the feed to another farm or facility under different ownership;

(iv) such an operation that manufactures grains or other feed stuffs that are grown and harvested on such farm or another farm under the same ownership and are distributed to other farms for use in the production of food by humans or animals on such farm; and

(v) a fishery, including a wild fishery, an aquaculture operation, or an artificial freshwater fishery, and a saltwater fishery.

(iii) Such term does not include such an operation that receives manufactured feed from another farm as described in clause (ii)(IV) if the receiving farm releases the feed to another farm or facility under different ownership.

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

(E) The term ‘consumer’ does not include a business firm.

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

(A) in the first sentence of paragraph (1)—

(i) by striking ‘‘in electronic format’’ after ‘‘submit’’; and

(ii) by striking ‘‘in paragraph (4), by inserting after the first sentence the following: ‘‘The Secretary shall remove from such list the name of any facility that fails to reregister in accordance with this section by the registration fee required under section 743, or whose registration is canceled by the registrant, canceled by the Secretary in accordance with this section, or suspended by the Secretary in accordance with this section.’’.

(B) in paragraph (2), by inserting ‘‘in electronic format’’ after ‘‘submit a registration to the Secretary’’ each place it appears; and

(C) in the sentence of paragraph (2), by inserting ‘‘in electronic format’’ after ‘‘submit’’;

and

(D) in paragraph (4), by inserting after the first sentence the following: ‘‘(2) REGISTRATION.—Section 415(a) (21 U.S.C. 350a(a)), as amended by paragraphs (1) and (2), is further amended by adding at the end the following:

‘‘(3) CONTENTS OF REGISTRATION.—Paragraph (2) of section 415(a) (21 U.S.C. 350a(a)), as amended by paragraphs (1) and (2), is further amended by striking ‘‘containing information’’ and all that follows and inserting the following: ‘‘containing information that identifies the following: ‘‘(A) The name, address, and emergency contact information of the facility being registered; ‘‘(B) The primary purpose and business activity of the facility, including the dates of operation if the facility is seasonal; ‘‘(C) The general food category (as defined by the Secretary by guidance) of each food manufactured, processed, packed, or held at the facility; ‘‘(D) All trade names under which the facility conducts business related to food; ‘‘(E) The name, address, and 24-hour emergency contact information of the United States distribution agent for the facility, which agent shall have access to the information required to be maintained under section 414(d) for food that is manufactured, processed, packed, or held at the facility; ‘‘(F) If the facility is located outside of the United States, the name, address, and emergency contact information for a United States agent.

‘‘(2) SUSPENSION OF REGISTRATION.—The unique facility identifier of the facility, as specified under section 1011.

‘‘(H) Such additional information pertaining to the facility as the Secretary may require by rule. The registrant shall notify the Secretary of any change in the submitted information not later than 30 days after the date of such change, unless otherwise specified by the Secretary.’’.

(F) The number of such facilities that are foreign.

(G) The number of such facilities that are high-risk.

(H) The number of such facilities that are low-risk.

(i) REGISTRATION FEE.—Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end of subchapter C the following:

‘‘PART 6—FEES RELATING TO FOOD

‘‘§ 743. FACILITY REGISTRATION FEE.

‘‘(a) IN GENERAL.—

‘‘(1) ASSESSMENT AND COLLECTION.—Beginning in fiscal year 2010, the Secretary shall assess and collect an annual fee for the registration of a facility under section 415.

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

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

(B) for any other facility—

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

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

‘‘(b) FEE AMOUNTS.—

‘‘(1) IN GENERAL.—The registration fee under subsection (a) shall be—

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

(B) for fiscal year 2011 and each subsequent fiscal year, the fee for fiscal year 2010 as adjusted under subsection (c).

‘‘(2) ANNUAL FEE SETTING.—The Secretary shall, not later than 60 days before the start of fiscal year 2011 and each subsequent fiscal year, establish, for the next fiscal year, registration fees under subsection (a), as described in paragraph (1) and each subsequent fiscal year, the fee for fiscal year 2010 as adjusted under subsection (c).

‘‘(3) MAXIMUM AMOUNT.—Notwithstanding paragraph (1), a person who owns or operates multiple facilities for which a fee must be paid under this section or this fiscal year shall be liable for not more than $175,000 in aggregate fees under this section for such fiscal year.

‘‘(c) INFLATION ADJUSTMENT.—For fiscal year 2011 and each subsequent fiscal year, the fee amount under subsection (b)(1) shall
be adjusted by the Secretary by notice, published in the Federal Register, to reflect the greater of—

“(1) the total percentage change that occurs in the Consumer Price Index for All Urban Consumers (all items; U.S. city average) for the 12-month period ending June 30 preceding the fiscal year for which fees are being imposed, and

“(2) the total percentage change for the previous fiscal year in basic pay paid to the Food and Drug Administration, of all personnel stationed in the District of Columbia, or

“(3) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration for such fiscal year (excluding fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

“SEC. 101. CREDITING AND AVAILABILITY OF FEES.—

“(a) fees under subsection (a) shall each fiscal year beginning after fiscal year 2010 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for such fiscal year (excluding fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

“(b) If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary assesses such fees, the Secretary may assess and collect such fees, without any modification in the rate, for registration under section 415 at any time in such fiscal year.

“(2) ADJUSTMENT FACTOR.—In this subsection, the term ‘adjustment factor’ applicable to a fiscal year is the Consumer Price Index (all items; U.S. city average) for October of the preceding fiscal year divided by such Index for October 2009.

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

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

“(1) ADULTERATED FOOD.—Section 402 (21 U.S.C. 342) is amended by adding at the end thereof the following—

“‘(j) If it has been manufactured, processed, packed, transported, or held under conditions that do not meet the requirements of sections 418 and 419.”

“(2) REQUIREMENTS.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end thereof the following—

“SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.—

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

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

“(2) identify and implement effective preventive controls;

“(3) monitor preventive controls;

“(4) institute corrective actions when appropriate;

“(5) conduct verification activities;

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

“(7) reanalyze for hazards;

“(8) IDENTIFICATION OF HAZARDS.—

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

“(A) biological, chemical, and radiological hazards, natural toxins, pesticides, drug residues, filth, decomposition, parasites, allergens, and unapproved food and food additives;

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

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

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

“(c) PREVENTIVE CONTROLS.—

“(1) IN GENERAL.—The owner, operator, or agent of a facility shall identify and implement effective preventive controls to prevent, eliminate, or reduce to acceptable levels the occurrence of any hazards identified in the hazard analysis under subsection (b)(3).

“(2) IDENTIFIED BY THE SECRETARY.—

“(A) ESTABLISHMENT.—The Secretary may establish by regulation preventive controls for specific product types to prevent unintentional contamination

“...
throughout the supply chain. The owner, operator, or agent of a facility shall implement any preventive controls identified by the Secretary under this paragraph.

(3) RESPONSIBILITY.—Such regulation or guidance shall allow the owner, operator, or agent of a facility to implement an alternative preventive control to one established under this section, provided that, in response to a request by the Secretary, the owner, operator, or agent can present to the Secretary data or other information sufficient to demonstrate that the alternative control effectively addresses the hazard, including meeting any applicable performance standard.

(4) LIMITATION.—Subparagraph (B) shall not apply to any preventive control described in subparagraph (A), (B), or (E) of subsection (i)(2).

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

‘‘(e) CORRECTIVE ACTIONS.—The owner, operator, or agent of a facility shall establish and implement procedures to ensure that, if the preventive controls under subsection (c) are not fully implemented or are not found effective:

1. no affected product from such facility enters commerce; and
2. appropriate action is taken to reduce the likelihood of recurrence of the implementation failure.

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

1. preventive controls identified under subsection (c) have been validated as scientifically and technically sound so that, if such system is implemented, the hazards identified in the hazard analysis under subsection (b)(3) will be prevented, eliminated, or reduced to an acceptable level;
2. the facility is conducting monitoring in accordance with subsection (d);
3. the facility is taking effective corrective actions under subsection (e); and
4. the preventive controls are effectively preventing, eliminating, or reducing to an acceptable level the occurrence of identified hazards, including through the use of environmental and product testing programs and other appropriate measures.

‘‘(g) REQUIREMENT TO REANALYZE AND REVISE.—

1. REQUIREMENT.—The owner, operator, or agent of a facility shall—

A. review the evaluation under subsection (b) for the facility and, as necessary, revise the hazard analysis under subsection (b)(3) for the facility:

1. not less than every 2 years;
2. if there is a change in the process or product that could affect the hazard analysis; and
3. if the Secretary determines that it is appropriate to protect public health; and
B. whenever there is a change in the hazard analysis, revise the preventive controls under subsection (c) for the facility as necessary to ensure that all hazards that are reasonably likely to occur are prevented, eliminated, or reduced to an acceptable level, or document the basis for the conclusion that no such revision is needed.

2. NONDELEGATION.—Any revisions ordered under this subsection shall be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the head of the district under this Act in which the facility involved is located, or is an official senior to such director.

(b) RECORDKEEPING.—The owner, operator, or agent of a facility shall maintain, for not less than 2 years, records documenting the activities described in subsection (a) through (g).

1. DEFINITIONS.—For purposes of this section:

1. FACILITY.—The term ‘‘facility’’ means a domestic facility or foreign facility that is required to be registered under section 415.
2. PREVENTIVE CONTROLS.—The term ‘‘preventive controls’’ means those risk-based procedures that are performed at a person knowledgeable about the safe manufacturing, processing, packing, transporting, or holding of food that would employ to prevent, eliminate, or reduce to an acceptable level the hazards identified in the hazard analysis under subsection (b)(3) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, transporting, or holding at the time of the analysis. Those procedures, practices, and processes shall include the following, as appropriate to the type of facility or food:

A. Sanitation practices and procedures.
B. Supervisor, manager, and employee hygiene training.
C. Process controls.
D. An allergen control program to minimize potential allergic reactions in humans from ingestion of, or contact with, human and animal food.
E. Good manufacturing practices.
F. Verification procedures, practices, and processes for suppliers and incoming ingredients, which may include onsite auditing of suppliers and testing of incoming ingredients.
G. Other procedures, practices, and processes established by the Secretary under subsection (c)(2).

2. HAZARD THAT IS REASONABLY LIKELY TO OCCUR.—A food safety hazard is reasonably likely to occur if a prudent person who, as applicable, manufactures, processes, packs, transports, or holds food, would establish controls because experience, illness data, scientific reports, or other information provides a basis to conclude that there is a reasonable possibility that the hazard will occur in the type of food being manufactured, processed, packed, transported, or held in the absence of those controls.

3. FOOD SAFETY PLAN.—

1. In General.—Before a facility (as defined in section 418(1)) introduces or delivers for introduction into interstate commerce any shipment of food, the owner, operator, or agent of the facility shall develop and implement a written food safety plan (in this section referred to as a ‘‘food safety plan’’). The food safety plan shall include each of the following elements:

1. The hazard analysis and any reanalysis conducted under section 418.
2. A description of the procedures for monitoring preventive controls.
3. A description of the procedures for verifying preventive controls, including validation that the system of controls, if implemented, will prevent, eliminate, or reduce to an acceptable level the identified hazards, review of monitoring and corrective action records, and procedures for determining whether the system is implementing and effectively preventing, eliminating, or reducing to an acceptable level the occurrence of identified hazards, including the use of environmental and product testing programs.

2. Description of the facility’s procedures for the recall of articles of food, whether voluntarily or when required under section 414.

3. A description of the facility’s procedures to ensure a safe and secure supply chain for the ingredients or components used in making the food manufactured, processed, packed, transported, or held by the facility.

4. A description of the facility’s procedures to implement the science-based performance standards issued under section 414.

5. GUIDANCE OR REGULATIONS.—

1. In General.—The Secretary of Health and Human Services (referred to in this section as the ‘‘Secretary’’) shall issue guidance or promulgate guidance to establish science-based standards for conducting a hazard analysis, documenting hazards, identifying and implementing preventive controls, and documenting the implementation of the preventive controls, including verification and corrective actions under sections 418 and 418A of the Federal Food, Drug, and Cosmetic Act (as added by paragraph (2)).

2. INTERNATIONAL STANDARDS.—In issuing guidance or regulations under subparagraph (A), the Secretary shall review international hazard analysis and preventive control standards that are in existence on the date of the enactment of this Act and relevant to the programs under sections 418 and 418A of the Federal Food, Drug, and Cosmetic Act (as added by paragraph (2)) are consistent, to the extent the Secretary determines practicable and appropriate, with such standards.

3. AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation or otherwise, establish such criteria for compliance under this section and the amendments made by this section with respect to facilities that are solely engaged in—

1. the production of food for animals other than man or the storage of packaged foods that are not exposed to the environment; or
2. the storage of raw agricultural commodities for further distribution or processing.

4. SMALL BUSINESSES.—The Secretary—

1. shall consider the impact of any guidance or regulations under this section on small businesses; and
2. shall issue guidance to assist small businesses in complying with the requirements of this section and the amendments made by this section.

5. EFFECT ON EXISTING HACCP AUTHORITY.—Nothing in this section or the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.), as in effect on the day before the date of the enactment of this Act, to revise, issue, or enforce product- and category-specific regulations, such as the Seafood Inspection Program, the Meat and Poultry Inspection Programs, the Juice and Concentrated Vegetable Programs, and the Critical Control Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Program.

6. CONDUCT OF THE SECRETARY.—When implementing sections 418 and 418A of the Federal Food,
(b) EXCEPTIONS.—Notwithstanding paragraph (a), (1) the amendments made by subsection (a) and this subsection shall apply to a small business (as defined by the Secretary) after the date that is 2 years after the date of the enactment of this Act; and

(2) the amendments made by subsection (a) and this subsection shall apply to a very small business (as defined by the Secretary) after the date that is 3 years after the date of the enactment of this Act.

(b) FINISHED PRODUCT TEST RESULTS FROM CATEGORY 1 FACILITIES.

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

"SEC. 418B. FINISHED PRODUCT TEST RESULTS FROM CATEGORY 1 FACILITIES.

(a) AUTHORITY.—Beginning on the date specified in section 418A, the Secretary shall require, after public notice and an opportunity for comment, the submission to the Secretary of finished product test results by the owner, operator, or agent of each category 1 facility subject to good manufacturing practices regulations documenting the presence of contaminants in food in the possession of such facility posing a risk of severe adverse health consequences or death.

(b) CONSIDERATIONS.—The Secretary shall require submissions under subsection (a) by:

"(1) as the Secretary determines feasible and appropriate; and

"(2) taking into consideration available data and information on the potential risks posed by the facility.

(c) BEGINNING DATE.—The date specified in section 418A(c) to the Secretary shall require, after public notice and an opportunity for comment, the submission to the Secretary of finished product test results by the owner, operator, or agent of each category 1 facility subject to good manufacturing practices regulations documenting the presence of contaminants in food in the possession of such facility posing a risk of severe adverse health consequences or death.

(d) PILOT PROJECTS.—The Secretary shall conduct 2 or more pilot projects to evaluate the feasibility of collecting positive finished product testing results from category 1 facilities, including the value and feasibility of reporting corrective actions taken when positive finished product test results are reported to the Secretary.

(e) FEASIBILITY STUDY.—The Secretary shall prepare a report on the feasibility and benefits of the reporting by facilities subject to good manufacturing practices regulations of appropriate finished product testing results from category 1 facilities to the Secretary, including the extent to which the collection of such finished product testing results will help the Secretary assess the risk presented by a facility or product category.

(f) LIMITATIONS.—Nothing in this section shall be construed to—

"(1) to require the Secretary to mandate testing of finished product testing results to the Secretary determines would not provide useful information in assessing the potential risk presented by a facility or product category;

"(2) to limit the Secretary's authority under any other provisions of law to require any person to provide access, or to submit information or test results, to the Secretary, including the ability of the Secretary to require field or other testing and to obtain test results for the purpose of a timely investigation of a potential food-borne illness or contamination incident.

(g) DEFINITION.—In this section, the term 'category 1 facility' means a category 1 facility within the meaning of section 418B(h).

(h) FINISHED PRODUCT TEST RESULTS FROM CATEGORY 1 FACILITIES.—Section 402(16), as added by subsection (a), is amended by striking "418A and 418B" and inserting "418A or 418C".

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

"SEC. 418C. FOOD DEFENSE.

(a) IN GENERAL.—Before a facility (as defined in section 418A) for the first time enters into intermediate commerce any shipment of food, the owner, operator, or agent of the facility shall develop and implement a written food defense plan. (As added by this section referred to as a 'food defense plan').

(b) CONTENTS.—The food defense plan shall include each of the following elements:

"(1) A description of the food defense plan, to identify the conditions and practices that may permit a hazard that may be intentionally introduced or have been ineffective.

"(2) A description of the preventive measures to be taken to assess the feasibility of the food defense plan, including a description of the procedures to be taken to identify any contaminated facility.

"(3) A description of the procedures to be taken to require corrective actions to ensure that when preventive measures have not been properly implemented or have been ineffective.

"(4) A description of the procedures for taking corrective actions to ensure that when preventive measures have not been properly implemented or have been ineffective.

"(5) A description of the procedures for taking corrective actions to ensure that when preventive measures have not been properly implemented or have been ineffective.

"(6) A description of the procedures for taking corrective actions to ensure that when preventive measures have not been properly implemented or have been ineffective.

"(7) A description of the procedures for taking corrective actions to ensure that when preventive measures have not been properly implemented or have been ineffective.

(c) HAZARD.—For purposes of this section, the term 'hazard that may be intentionally introduced or have been ineffective', including by an act of terrorism, shall be defined as a hazard for which a prudent person would reasonably expect to cause serious adverse health consequences if left uncontrolled.

"(d) RECORDKEEPING.—The owner, operator, or agent of a facility subject to this section shall maintain records for not less than 2 years, records documenting the activities described in subsection (b) and any information derived from such a record.

"(e) ACCESS TO PLAN.—

"(1) ON INSPECTION.—An officer or employee of the Secretary shall have access to the food defense plan of a facility subject to this section 414(a) or 414(b) or 414(c).

"(2) NONDISCLOSURE.—A food defense plan, and any information derived from such a plan, shall be exempt from disclosure under section 522 of title 5, United States Code."

(3) PROHIBITION.—Section 303(i) (21 U.S.C. 331(i)) is amended by inserting after "entitled to protection" the following: "or a food defense plan, or any information derived from such a plan, under section 418C".

SEC. 418. PERFORMANCE STANDARDS.

(a) ALLEGED ADULTERATION.—Section 402 (21 U.S.C. 342), as amended by section 102, is amended by adding at the end the following:

"SEC. 418A. ALLEGED ADULTERATION.

(a) IN GENERAL.—The Secretary may establish by regulation or guidance, preventive measures for specific product types to prevent intentional contamination throughout the supply chain. The owner, operator, or agent of a facility shall implement any preventive measures identified by the Secretary under this section.

(b) ALTERNATIVE MEASURES.—Such regulation or guidance shall allow the owner, operator, or agent of a facility to implement an alternative preventive measure to one established by the Secretary, provided that, in response to a request by the Secretary, the owner, operator, or agent of the facility submitted data or other information sufficient to demonstrate that the alternative measure effectively addresses the hazard.

(c) REQUIREMENT TO REASSESS AND REVISE.—

"(1) REQUIREMENT.—The owner, operator, or agent of a facility shall conduct an inspection of the food defense assessment under subsection (b)(1) for the facility and

"(ii) if there is a change in the process or product that could affect the food defense assessment

"(iii) if the Secretary determines that it is appropriate to protect public health; and

"(B) E XCEPTIONS.—Notwithstanding paragraph (a), the Secretary shall be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is a senior to such a director.

"(3) RECORDKEEPING.—The owner, operator, or agent of a facility shall maintain records for not less than 2 years, records documenting the activities described in subsections (a) and (b) and any information derived from such a record.

"(4) ACCESS TO PLAN.—

"(1) ON INSPECTION.—An officer or employee of the Secretary shall have access to the food defense plan of a facility subject to this section 414(a) only if the Secretary, through an official who is the director of the district under this Act in which the facility is located, or if an official who is senior to such a director, provides notice under section 414(a)(1)(C).

"(2) NONDISCLOSURE.—A food defense plan, and any information derived from such a plan, shall be exempt from disclosure under section 522 of title 5, United States Code."

(3) PROHIBITION.—Section 303(i) (21 U.S.C. 331(i)) is amended by inserting after "entitled to protection" the following: "or a food defense plan, or any information derived from such a plan, under section 418C".
to minimize to an acceptable level, prevent, or eliminate the occurrence of such hazards. Such standards shall be applicable to foods and food classes. Notwithstanding the timelines established by this paragraph, the Secretary shall as appropriate establish such science-based performance standards for identified contaminants as necessary to protect the public health.

"(b) List of Contaminants.—Following each review under subsection (a), the Secretary shall publish in the Federal Register a list of food-borne contaminants that have the greatest adverse impact on public health. In determining whether a particular food-borne contaminant should be added to such list, the Secretary shall consider the number and severity of illnesses and the number of deaths associated with the foods associated with such contaminants.

"(c) Sampling Program.—In conjunction with the establishment of a performance standard under this section, the Secretary may make recommendations to industry for conducting product sampling.

"(d) Revocation by Secretary.—All performance standards of the Food and Drug Administration applicable to foods or food classes in effect on the date of the enactment of this section, or issued under this section, shall remain in effect until revised or revoked by the Secretary.

"(e) Report to Congress.—The Secretary of Health and Human Services shall submit to the Congress by March 30th of the year following enactment and every 6 or 12 months thereafter, an update of the performance standards established under section 419A.

"(f) Timings.—(1) Final Rule.—Not later than 3 years after the date of enactment of this Act, the Secretary of Health and Human Services shall issue a proposed rule to carry out section 419A of the Federal Food, Drug, and Cosmetic Act, as added by subsection (b), a report on the results of such review and the Secretary’s plans for further action. The Secretary shall consider the number and severity of illnesses and the number of deaths associated with the foods associated with such contaminants.

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

"(g) Timings.—(1) General.—Section 704 (21 U.S.C. 374) is amended by adding at the end the following:

"(h) TO THE SECRETARY—Each facility registered under section 415 shall be inspected;

"(i) by one or more officers duly designated under section 415 (2) or other statutory authority by the Secretary;

"(ii) for domestic facilities, by a Federal, State, or local official recognized by the Secretary under paragraph (2) or

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

"(B) at a frequency determined pursuant to a risk-based schedule.

"(2) For purposes of paragraph (1)(A), the Secretary—

"(A) may recognize Federal, State, and local officials and agencies and representatives of foreign countries as meeting standards established by the Secretary for conducting inspections under this Act; and

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

"(3) Such risk-based schedule shall provide for a frequency of inspections commensurate with the risk presented by the facility and shall be based on the following categories and inspection frequencies:

"(A) Category 1.—A category 1 food facility is a high-risk facility that manufactures or processes food. The Secretary shall randomly inspect a category 1 food facility at least every 6 to 12 months.

"(B) Category 2.—A category 2 food facility is a low-risk facility that manufactures or processes food or a facility that packs or labels food. The Secretary shall randomly inspect a category 2 facility at least every 18 months to 3 years.

"(C) Category 3.—A category 3 food facility is a facility that holds food. The Secretary shall randomly inspect a category 3 facility at least every 3 years.

"(3) The Secretary—

"(A) may, by guidance, modify the types of food facilities within a category under paragraphs (1) and (2);

"(B) may alter the inspection frequencies specified in paragraph (4) based on the need to respond to food-borne illness outbreaks and food recalls; and

"(C) may inspect a facility more frequently than the inspection frequency provided by paragraph (4).

"(4) Beginning 6 months after submitting the report required by section 105(b)(2) of the Food Safety Enhancement Act of 2009, the Secretary shall publish in the Federal Register adjustments to the inspection frequencies specified in subparagraphs (B) and (C) of paragraph (4) for category 2 and category 3 food facilities, with the Secretary’s recommendations to be in accordance with the Secretary’s recommendations in such report; and

"(ii) after such publication, implement the adjustments; and

"(E) except as provided in subparagraphs (B) and (C), may not alter the inspection frequency specified in paragraph (4)(A) for category 1 food facilities.

"(6) In determining the appropriate frequency of inspection, the Secretary shall consider—

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

"(B) the compliance history of the facility;

"(C) whether the facility importing or distributing food is certified by a qualified certifying entity in accordance with section 301(q); and

"(D) the results of any risk-based inspection of that facility.
(D) such other factors as the Secretary determines by guidance to be relevant to assessing the risk presented by the facility.

(7) Before establishing or modifying the categorization under paragraph (4) of any food facility or type of food facility, the Secretary shall publish a notice of the proposed categorization in the Federal Register and provide a period of not less than 60 days for public comment on the proposed categorization.

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

(1) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate describing—

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

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

(2) THREE-YEAR REPORT.—Not later than 3 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report describing recommendations on the risk-based inspection schedule under section 704(h) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), including recommendations for adjustments to the timing of the schedule and other ways to improve the risk-based allocation of resources by the Food and Drug Administration.

In making such recommendations, the Secretary shall consider—

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

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

(C) the inherent likelihood that the products will contribute to the risk of food-borne illness;

(D) the best available evidence concerning reported illnesses associated with the foods processed, stored, held, or transported in the category;

(E) the overall record of compliance with food safety law among facilities in the category, including compliance with applicable performance standards and the frequency of recalls.

SEC. 106. ACCESS TO RECORDS.

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

"(a) RECORDS ACCESS.—

"(1) RECORDS ACCESS DURING AN INSPECTION.—

"(A) IN GENERAL.—Except as provided in paragraph (3), each person who manufactures, processes, transports, serves, or receives, or holds an article of food which is a fruit, vegetable, or nut, or any of the by-products or residues thereof, and which is produced in or imported into the United States shall, at the request of an officer of the Federal Register, who has reason to believe that he has access to and may copy all records relating to such article bearing on whether the food may be adulterated, misbranded, or otherwise in violation of this Act, including all records collected or developed to comply with section 418 or 414a.

"(B) SCOPE OF RECORDS.—The requirement under subparagraph (A) applies to all records relating to the manufacture, processing, packing, transporting, distribution, receipt, and holding of such food, shall be maintained by or on behalf of such person in any format (including paper and electronic format) and at any location.

"(C) RECORDS ACCESS ON FARMS.—In the guidance, following notice and public comment, the Secretary shall make the identification in clause (i), based on any past food borne illness outbreak attributed to the fruit, vegetable, nut, or fungs—

"(i) in the United States and the risk that a similar outbreak could occur again in the United States; or

"(ii) in a foreign country and the risk that a similar outbreak could occur in the United States.

"(2) ADDITIONAL AUTHORITIES TO ACCESS RECORDS REMOTELY; SUBMISSION OF RECORDS TO THE SECRETARY.—

"(A) RECORD ACCESS IN EMERGENCIES.—If the Secretary believes that an article of food presents a threat of serious adverse health consequences or death to humans or animals, the Secretary may require the manufacturer, packer, processor, distributor, seller, holds, or imports such article of food, or any records which may be required of restaurants and their employees, for not longer than 3 years, of records regarding the establishment and maintenance, for not longer than 3 years, of records pursuant to guidance, following notice and public comment, the Secretary shall consult with the Secretary of Agriculture, shall, make the identification in clause (i), based on any past food borne illness outbreak attributed to the fruit, vegetable, nut, or fungs—

"(i) in the United States and the risk that a similar outbreak could occur again in the United States; or

"(ii) in a foreign country and the risk that a similar outbreak could occur in the United States.

"(B) SCOPE OF RECORDS ACCESS.—In the guidance under clause (i), and for the period specified in clause (iii), the Secretary, in coordination with the Secretary of Agriculture, shall determine the records to which the Secretary shall have access under this subparagraph.

"(C) IMMEDIATE AVAILABILITY WITH NO NOTICE.—Records not required to be made available immediately on commencement of an inspection under subparagraph (A) nonetheless be made available immediately on commencement of such an inspection if, by a reasonable time before such inspection, the Secretary identifies the records to be made available during such inspection. Nothing in this subparagraph shall be construed as a person to refuse to produce such records required under and in accordance with subparagraph (A) due to failure of the Secretary to provide notice under this paragraph.

"(D) ADDITIONAL AUTHORITIES TO ACCESS RECORDS REMOTELY; SUBMISSION OF RECORDS TO THE SECRETARY.—

"(A) RECORD ACCESS IN EMERGENCIES.—If the Secretary, as soon as reasonably practicable after receiving written notice of such requirement, the food safety plan, and documentation of corrective actions, if any, the Secretary specifies otherwise in the notice under such subparagraph.

"(B) RECORD ACCESS TO RECORDS RELATED TO FOOD SAFETY PLANS.—With respect to a facility subject to section 418 and 418A, the Secretary may require the owner, operator, or agent of such facility to submit to the Secretary, as soon as reasonably practicable after receiving written notice of such requirement, the food safety plan, and documentation of corrective actions, if any, the Secretary specifies otherwise in the notice under such subparagraph.

"(C) ELECTION.—If the records required to be submitted to the Secretary under subparagraph (A) or (B) are available in electronic format, such records shall be submitted electronically unless the Secretary specifies otherwise in the notice under such subparagraph.

"(3) LIMITED RECORDS ACCESS ON FARMS.—(A) Paragraphs (1) and (2) do not apply with respect to farms, except as provided in this paragraph.

"(B) IN GENERAL.—A person who is the owner of a fruit, vegetable, or nut farm (as defined in section 415) shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to an article of food produced, manufactured, processed, packed, distributed, receives, holds, or imports such farm, shall by regulation establish requirements regarding the establishment and maintenance, for not longer than 3 years, of records by persons who manufacture, process, pack, transport, distribute, receive, or hold food in the United States or for import into the United States. The Secretary shall take into account the size of a business in promulgating regulations under this subsection. The Secretary shall consult with the Secretary of Agriculture in promulgating regulations with respect to farms under this subsection and shall take into account the nature of and impact on farms in promulgating such regulations. The only distribution records which may be required of restaurants under this subsection are those showing the restaurant’s suppliers and subsequent distribution other than to consumers.

"(C) APPLICATION.—The Secretary of Health and Human Services shall promulgate revised regulations to implement section 414(b) of the Federal Food, Drug, and Cosmetic Act, as added by this subsection, Section 414(b) of the Federal Food, Drug, and Cosmetic Act and regulations thereunder, as in effect on the day before the date of the enactment of this paragraph, or any amendments occurring before the effective date of such revised regulations.
704(a)(1) (21 U.S.C. 374(a)(1)) is amended—
(1) in the second sentence—
(A) by striking "(excluding farms or re-
sraries)" and inserting "(excluding farms,
except as provided in section 414(a)(3))";
(B) by inserting "receives," before "holds;"
and
(C) by striking "described in section 414
and imported described in or required under
section 414;"
and
(D) by striking "when the Secretary has a
reasonable belief that an article of food is
adulterated and presents a threat of serious
adverse health consequences or death to hu-
man or animals" and inserting "bearing on
whether such food is adulterated, mis-
branded, or otherwise in violation of this Act,
including all records collected or devel-
oped to comply with section 418 or 418A;"
and
(2) in the fourth sentence—
(A) by striking "the preceding sentence" and
inserting "either of the preceding two
sentences"; and
(B) by inserting "recipes for food," before
"financial data."

SEC. 107. TRACEABILITY OF FOOD.

(a) PROHIBITED ACT.—Section 301(e) (21
U.S.C. 353(e)) is amended by inserting "(i)
the violation of any requirement of the food
tracing system under section 414(b);" before
"the refusal to permission access to or
verification or copying of any such required
record:".
(b) IMPORTS.—Section 801(a) (21 U.S.C.
331(a)) is amended by inserting "or (4) the re-
quirements of section 414 have not been
satisfied regarding such article," before
"such article shall be refused admis-
sion".
(c) PRODUCT TRACING FOR FOOD.—
Section 414 (21 U.S.C. 350c), as amended by
section 106, is amended—
(1) by redesigning subsections (c) and (d)
as subsections (d) and (e), respectively; and
(2) by inserting after subsection (b) the fol-
lowing:
"(c) TRACING SYSTEM FOR FOOD.—
"(1) In general.—The Secretary shall by
regulation establish a tracing system for
food that is located in the United States or
is for import into the United States.
"(2) TRACING TECHNOLOGIES.—Before
issuing a proposed regulation under this sub-
section, the Secretary shall—
"(I) identify technologies and metho-
dologies for tracing the distribution history of
a food that are, or may be, used by members
of different sectors of the food industry, includ-
ing methods for enabling the Secretary to iden-
tify each person who produces, manufac-
tures, processes, participates, transports, holds,
or sells such food in as short a timeframe as
practicable but no longer than 2 business
days.
"(B) SCOPE OF REGULATION.—The Secretary
may include in the regulations establishing a
tracing system—
"(i) the establishment and maintenance of
lot numbers;
"(ii) a standardized format for pedigree in-
formation; and
"(iii) the use of a common nomenclature
for food.
"(C) IMPLEMENTING THE REGULATIONS.—In
issuing regulations under this paragraph that will
impact farms, the Secretary—
"(1) shall coordinate with the Secretary of
Agriculture; and
"(2) take into account the nature of the
impact of the regulations on farms.
"(d) RECORDKEEPING REGARDING FARM IM-
PORT.—In regulations under this section that will
impact farms, the Secretary—
"(1) shall coordinate with the Secretary of
Agriculture in conducting pilot projects with
farms, in coordination with 1 or more sec-
tors involved, and the Food and Drug
Administration; or
"(2) during such fiscal year is subject to a
food recall.

SEC. 743A. REINSPECTION AND FOOD RECALL
FEES APPLICABLE TO FACILITIES.

(a) IN GENERAL.—The Secretary shall
assess and collect fees from each entity in a
fiscal year—
"(1) that—
"(A) during such fiscal year commits a viola-
tion of any requirement of this Act relat-
ing to food, including any such requirement
relating to good manufacturing practices;
and
"(B) because of such violation, undergoes
additional inspection by the Food and Drug
Administration; or
"(C) during such fiscal year is subject to a
food recall.

(b) AMOUNT OF FEES.—The Secretary shall
set the amount of the fees under this section
to fully cover the costs of—
"(1) in the case of fees collected under sub-
section (a)(1), conducting the additional in-
spections referred to in such subsection; and
"(2) in the case of fees collected under sub-
section (a)(2), conducting food recall activi-
ties, including technical assistance, follow-
up visits, and effectiveness checks; and
"(c) CREDITING AND AVAILABILITY OF FEES.

(a) IN GENERAL.—Fees authorized under subsec-
tion (a)(1), conducting the additional in-
spections referred to in such subsection and
(b) during such fiscal year is subject to a
food recall.

"(2) in the case of fees collected under sub-
section (a)(2), conducting food recall activi-
ties, including technical assistance, follow-
up visits, and effectiveness checks, and notifi-
cations, during the fiscal year involved.

"(d) RECORDKEEPERS AND PRODUCERS.

"(f) Records keepers and producers.

"(1) IN GENERAL.—Fees authorized under subsec-
tion (a)(1), conducting the additional in-
"(1) by redesigning subsections (c) and (d)
as subsections (d) and (e), respectively; and
(2) by inserting after subsection (b) the fol-
lowing:
"(c) TRACING SYSTEM FOR FOOD.—
"(1) In general.—The Secretary shall by
regulation establish a tracing system for
food that is located in the United States or
is for import into the United States.
"(2) TRACING TECHNOLOGIES.—Before
issuing a proposed regulation under this sub-
section, the Secretary shall—
"(I) establish and maintain a system for
identifying technologies and methodolo-
dies, including technical assistance, follow-
up visits, and effectiveness checks, and notifi-
cations, during the fiscal year involved.

"(2) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section—

"(c) CONFIRMING AMENDMENTS.—Section
704(a)(1) (21 U.S.C. 374(a)(1)) is amended—
(1) in the second sentence—
(A) by striking "(excluding farms or re-
sitories)" and inserting "(excluding farms,
except as provided in section 414(a)(3))";
(B) by inserting "receives," before "holds;"
and
(C) by striking "described in section 414
and imported described in or required under
section 414;" and
(D) by striking "when the Secretary has a
reasonable belief that an article of food is
adulterated and presents a threat of serious
adverse health consequences or death to hu-
man or animals" and inserting "bearing on
whether such food is adulterated, mis-
branded, or otherwise in violation of this Act,
including all records collected or devel-
oped to comply with section 418 or 418A;" and
(2) in the fourth sentence—
(A) by striking "the preceding sentence" and
inserting "either of the preceding two
sentences"; and
(B) by inserting "recipes for food," before
"financial data."
(a) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriated Acts, or otherwise made available for obligation, for such fiscal year;

(b) shall only be collected and available to defray the costs referred to in subsection (b);

(3) Authorization of appropriations.—For each of fiscal years 2010 through 2014, there are authorized to be appropriated for fees under this section such sums as may be necessary.

(d) Waiver.—The Secretary shall waive and, if applicable, refund the amount of any fee charged under this section or subsection (a) if the Secretary determines that the fee was collected inappropriately or as a result of a food recall that the Secretary determined was inappropriately ordered.

(b) Effective date.—The amendment made by subsection (a) shall apply to inspections and fees described in subsection (a) and fees described in subsection (b) during the period beginning on the date of enactment of this Act and ending on the date of enactment of the Act of July 30, 2009.

§ 110. Certification and Accreditation

(a) Misbranding.—(1) In general.—Section 403 (21 U.S.C. 343), as amended by section 101(a), is amended by adding at the end the following:

(2) Effective date.—The amendment made by paragraph (1) shall apply to shipments offered for import on or after the date that is 3 years after the date of enactment of this Act.

(b) Certification of Compliance for Imports.—Chapter VIII (21 U.S.C. 381 et seq.) is amended—

(1) in section 801(a), as amended by section 107(b), by inserting after the third sentence the following:

(B) in the second sentence of section 801(b), by striking the word "requirements" and inserting the following:

(2) Notice of Cancellation or Suspension of Certification.—As a condition on acceptance of certifications from a qualified certifying entity, the Secretary shall require that the certification include additional information regarding compliance.

(c) Adequate Government Controls.—(1) Process.—Before requiring a certification under subsection (a) for a facility or farm that manufactured, processed, packed, held, grew, harvested, sorted, or transported the article, the Secretary shall determine that the facility or farm was in compliance with the Act as specified by the Secretary, or any other form as the Secretary may specify, including a listing of certified facilities or other entities.

(2) Specific Government Controls.—(A) The Secretary shall apply this section consistently with United States obligations under international agreements.

(3) Authorization of Appropriations.—(A) Shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriated Acts, or otherwise made available for obligation, for such fiscal year.

(d) Output.—(1) In General.—The Secretary shall require that the certification include additional information regarding compliance.

(2) Specific Government Controls.—(A) The Secretary shall apply this section consistently with United States obligations under international agreements.

(3) Authorization of Appropriations.—(A) Shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriated Acts, or otherwise made available for obligation, for such fiscal year.

§ 119. Renewal and Refusal of Certifications

(a) Requirement.—The Secretary may require that a certifying entity (or spouse or minor children) that he or she has no financial interest in a company that is engaged in the production of the type of food it certifies;

(b) Forms of Certification.—A certification under paragraph (a) may take the form of a permit issued by the Secretary for the facility or farm that manufactured, processed, packed, held, grew, harvested, sorted, or transported the article, as the case may be, to ensure that the article was in compliance with the Act as specified by the Secretary, or any other form as the Secretary may specify, including a listing of certified facilities or other entities.

(c) Definitions.—In this paragraph:

(1) The term "financial interest" includes gifts, gratuities, reimbursement of non audit-related expenses, entertainment, loans, or any other form of compensation in cash or in kind.

(2) The term "direct financial interest" does not include any ownership of mutual funds that have a financial interest in a company.

(3) Renewal and Refusal of Certifications.—The Secretary shall—

(A) require that, to the extent applicable, any certification provided by a qualified certifying entity be reviewed by such entity at such times as the Secretary determines appropriate; and
form analytical testing for the purposes of this section. The Secretary shall issue regulations or guidance to implement this program.

(e) Onsite Audits.—In evaluating whether an accrediting body complies with the standards for recognition under subsection (b), the Secretary may—

(1) observe onsite audits of laboratories by such accrediting bodies;

(2) for any laboratory that is accredited by such accrediting body under this section, upon request of an officer or employee designated by the Secretary and upon presentation of appropriate credentials, at reasonable times and within reasonable limits and in a reasonable manner, conduct an on-site audit of the facility, which shall include access to, and copying and verification of, any related records.

(d) Publication of List of Recognized Accreditation Bodies.—The Secretary shall publish and maintain on the public Web site of the Food and Drug Administration a list of accreditation bodies recognized by the Secretary under subsection (b).

(c) Accreditation of Laboratory.—An accreditation body that has been recognized pursuant to this section shall promptly notify the Secretary whenever it accrues any causes for the purposes of this section and whenever it withdraws or suspends such accreditation.

(b) Advance Notice.—Whenever analytical testing is conducted pursuant to subsection (a), the laboratory conducting such testing shall submit, directly to the Secretary—

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

(2) all information the Secretary deems appropriate to determine the admissibility of imported articles.

SEC. 714. TESTING BY ACCREDITED LABORATORIES.

(a) Prohibited Act.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

(4) Construction.—In this section shall be construed to limit—

(1) the ability of the Secretary to review and act upon information from the analytical testing conducted by laboratories under this section, including determining the sufficiency of such information and testing; or

(2) the authority of the Secretary to conduct such testing pursuant to any other provisions of law.

(b) Voluntary Recall.—The Secretary may require that any person who distributes an article of food that the Secretary has reason to believe is adulterated, misbranded, or otherwise in violation of this Act voluntarily—

(1) recall such article; and

(2) provide for notice, including to individuals as appropriate, to persons to whom may be affected by the recall.

(c) Order to Cease Distribution.—If the Secretary has reason to believe that the use or consumption of, or exposure to, an article of food may cause serious adverse health consequences or death to humans or animals, the Secretary shall have the authority to issue an order requiring any person who distributes such article to immediately cease distribution of such article and:

(1) Recall.—The Secretary may require that testing for certain products under paragraph (1) be conducted by a laboratory independent of the person on whose behalf such testing is conducted and analyzed.

(b) Certain Tests.—Tests required for purposes of section 801(a) or in response to a finding of noncompliance by the Secretary shall be conducted by a laboratory independent of the person on whose behalf such testing is conducted.

(b) Application of Section 301 (21 U.S.C. 331) as amended by section 110, is amended by adding at the end the following:

(1) (vii) The failure to notify the Secretary in violation of section 302;

(2) The failure to comply with any order issued under section 420.

(b) Voluntary Recall.—The Secretary may require that any person who distributes an article of food that the Secretary has reason to believe is adulterated, misbranded, or otherwise in violation of this Act voluntarily—

(1) recall such article; and

(2) provide for notice, including to individuals as appropriate, to persons to whom may be affected by the recall.

(c) Order to Cease Distribution.—If the Secretary has reason to believe that the use or consumption of, or exposure to, an article of food may cause serious adverse health consequences or death to humans or animals, the Secretary shall have the authority to issue an order requiring any person who distributes such article to immediately cease distribution of such article and:

(1) Recall.—The Secretary may require that testing for certain products under paragraph (1) be conducted by a laboratory independent of the person on whose behalf such testing is conducted and analyzed.

(b) Certain Tests.—Tests required for purposes of section 801(a) or in response to a finding of noncompliance by the Secretary shall be conducted by a laboratory independent of the person on whose behalf such testing is conducted.

(b) Application of Section 301 (21 U.S.C. 331) as amended by section 110, is amended by adding at the end the following:

(1) (vii) The failure to notify the Secretary in violation of section 302;

(2) The failure to comply with any order issued under section 420.

(b) Voluntary Recall.—The Secretary may require that any person who distributes an article of food that the Secretary has reason to believe is adulterated, misbranded, or otherwise in violation of this Act voluntarily—

(1) recall such article; and

(2) provide for notice, including to individuals as appropriate, to persons to whom may be affected by the recall.

(c) Order to Cease Distribution.—If the Secretary has reason to believe that the use or consumption of, or exposure to, an article of food may cause serious adverse health consequences or death to humans or animals, the Secretary shall have the authority to issue an order requiring any person who distributes such article to immediately cease distribution of such article and:

(1) Recall.—The Secretary may require that testing for certain products under paragraph (1) be conducted by a laboratory independent of the person on whose behalf such testing is conducted and analyzed.

(b) Certain Tests.—Tests required for purposes of section 801(a) or in response to a finding of noncompliance by the Secretary shall be conducted by a laboratory independent of the person on whose behalf such testing is conducted.

(b) Application of Section 301 (21 U.S.C. 331) as amended by section 110, is amended by adding at the end the following:

(1) (vii) The failure to notify the Secretary in violation of section 302;

(2) The failure to comply with any order issued under section 420.
(1) AMENDMENT.—Except as provided under subsection (f), if after providing an opportunity for an informal hearing under subsection (d), the Secretary determines that the order should be vacated, the Secretary shall amend the order to require a recall.

(2) The amendment made under paragraph (1) shall—

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

(B) require periodic reports to the Secretary describing the progress of the recall; and

(C) provide for notice, including to individuals as appropriate, to persons who may be affected by the recall.

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

(3) NONDELEGATION.—An amended order under this subsection shall be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the director of the division of the agency in which the article involved is located, or is an official senior to such director.

(4) EMERGENCY RECALL ORDER.—

(1) If the Secretary has credible evidence or information that an article of food subject to an order under subsection (c) presents an imminent threat of serious adverse health consequences or death to humans or animals, the Secretary may issue an order requiring any person who distributes such article—

(A) to immediately recall such article; and

(B) to provide for notice, including to individuals as appropriate, to persons who may be affected by the recall.

(2) ACTION FOLLOWING ORDER.—Any person who is subject to an emergency recall order under this subsection shall immediately recall such article and provide notification as required by such order, and may appeal within 24 hours after issuance such order to the Secretary. An informal hearing shall be held within as soon as practicable but not later than 5 calendar days, or less as determined by the Secretary, after such an appeal is filed, if the party timely agrees to an extension. After affording an opportunity for an informal hearing, the Secretary shall determine whether the order should be amended pursuant to subsection (e)(1). If, after providing an opportunity for such a hearing, the Secretary determines that adequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

(3) NONDELEGATION.—An order under this subsection shall be issued by the Commissioner of Food and Drugs, the Principal Deputy Commissioner, or the Associate Commissioner for Regulatory Affairs of the Food and Drug Administration.

(g) NOTICE TO CONSUMERS AND HEALTH OFFICIALS.—The Secretary shall, as the Secretary determines to be necessary, provide notice of a recall order under this section to appropriate Federal, State, or local government agencies, and to appropriate Federal, State, or local government health officials.

(h) PROHIBITION.—Nothing contained in this section shall be construed as limiting—

(1) the authority of the Secretary to issue an order; (2) the distribution of, or to recall, an article under any other provision of this Act or the Public Health Service Act; or

(2) the ability of the Secretary to request any person to perform a voluntary activity related to any article subject to this Act or the Public Health Service Act.

(c) ARTICLES SUBJECT TO REFUSAL.—The third sentence of subsection (a) of section 801 (21 U.S.C. 381), as amended by section 107(b), is amended by inserting “or (5) such article is subject to an order under section 202 to cease distribution of or recall the article,” before “then such article shall be refused admission”. (d) EFFECTIVE DATE.—Sections 301(k)(1) and 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsections (a) and (b) of section 194(j) to this Act, shall apply to articles of food as of such date, not later than 1 year after the date of the enactment of this Act, as the Secretary of Health and Human Services shall specify.

SEC. 112. REPORTABLE FOOD REGISTRY; EXCHANGE OF INFORMATION.

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

(1) in subsection (a)(1), by striking “meets the criterion” and all that follows through the end of paragraph (4) and inserting the following:

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

(2) a person who owns, operates, or is responsible for such a food establishment (as such term is defined in section 1.227(b)(11) of title 21, Code of Federal Regulations, or successor regulations) at which such food is produced for sale or distribution in interstate commerce;

(3) a person who operates, or is an agent of, a restaurant or other retail food establishment (as such terms are defined in section 1.227(b)(11) and (12), respectively, of title 21, Code of Federal Regulations, or successor regulations) at which such food is offered for sale;

(4) a person that is required to register pursuant to section 808(s) with respect to importation of such food; and

(5) such other information the Secretary determines is necessary to evaluate the adulteration, misbranding, or other violation of such food by such person or such establishment (as the Secretary of Health and Human Services shall specify).”;

(b) EXCHANGE OF INFORMATION.—Section 706 (21 U.S.C. 379) is amended—

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

(2) by adding at the end the following:

“(b) The Secretary shall provide to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”;

(3) in subsection (c), by striking “if the responsible party is required to register” after “415(a)(3)”; and

(4) by adding at the end the following:

“(c) Such additional information as the Secretary deems appropriate.”;

(5) in subsection (d), by striking “and” after “(a)” and inserting “(a) and (b)”;

(6) by adding at the end the following:

“(d) Each Federal agency that receives information pursuant to subsection (c) shall provide the Secretary with such additional information as the Secretary deems necessary and important.”;

(7) in subsection (e), by striking “such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and” and inserting “such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”;

(8) in subsection (f), by inserting “if the responsible party is required to register” after “415(a)(3)”;

(9) by adding at the end the following:

“(4) Such additional information as the Secretary reasonably determines shall be provided to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”;

(10) in subsection (g), by adding at the end the following:

“(c) The Secretary shall provide to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”.

(11) in subsection (h), by adding at the end the following:

“(d) The Secretary shall provide to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”.

(12) in subsection (i), by adding at the end the following:

“(4) Such additional information as the Secretary deems necessary and important.”;

(13) in subsection (j), by adding at the end the following:

“(d) Such additional information as the Secretary reasonably determines shall be provided to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”.

(14) in subsection (k), by adding at the end the following:

“(d) Such additional information as the Secretary reasonably determines shall be provided to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and”.

(15) in subsection (l), by adding at the end the following:

“(d) Such additional information as the Secretary reasonably determines shall be provided to any Federal agency acting within the scope of its jurisdiction any information relating to such article, any other article of food manufactured, processed, packed, or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and.”

(c) If, after providing an opportunity for such a hearing, the Secretary determines that sufficient grounds exist to support the actions required by the order, the Secretary shall vacate the order.

(3) NONDELEGATION.—An order under this subsection shall be issued by the Commissioner of Food and Drugs, the Principal Deputy Commissioner, or the Associate Commissioner for Regulatory Affairs of the Food and Drug Administration.

(g) NOTICE TO CONSUMERS AND HEALTH OFFICIALS.—The Secretary shall, as the Secretary determines to be necessary, provide notice of a recall order under this section to appropriate Federal, State, or local government agencies, and to appropriate Federal, State, or local government health officials.

(h) PROHIBITION.—Nothing contained in this section shall be construed as limiting—

(1) the authority of the Secretary to issue an order; or

(2) the distribution of, or to recall, an article under any other provision of this Act or the Public Health Service Act; or

(3) the ability of the Secretary to request any person to perform a voluntary activity related to any article subject to this Act or the Public Health Service Act.”.
from a Federal, State, or local government agency, or from a foreign government agency, or from an international organization described in subsection (b)(4), if the agency or organization has requested that the information be kept confidential, or has precluded such disclosure under other use limitations, as a condition of providing the information.

(e) Authorization.—The Commissioner responsible for Customs and Border Protection is authorized to withhold information from the Congress or prevent the Secretary from complying with an order of a court of the United States.

"(f) This section shall not affect the authority of the Secretary to provide or disclose information under any other provision of law.

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

SEC. 113. SAFE AND SECURE FOOD IMPORTATION PROGRAM.

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

"SEC. 805. SAFE AND SECURE FOOD IMPORTATION PROGRAM.

"(a) IN GENERAL.—The Secretary may establish by regulation or guidance in coordination with the Commissioner, responsible for Customs and Border Protection a program that facilitates the movement of food through the importation process under this Act if the Secretary determines that food—

"(1) verifies that each facility involved in the production, manufacture, processing, packaging, and holding of the food is in compliance with the food safety and security guidelines developed under subsection (b) with respect to such food;

"(2) ensures that appropriate safety and security guidelines are in place throughout the supply chain for such food; and

"(3) provides supporting information to the Secretary.

"(b) GUIDELINES.—

"(1) DEVELOPMENT.—For purposes of the program established under subsection (a), the Secretary shall develop in consultation with the Commissioner a risk management plan responsible for Customs and Border Protection safety and security guidelines applicable to the importation of food taking into account, to the extent appropriate, the relevant Federal programs, such as the Customs-Trade Partnership Against Terrorism (C-TPAT) programs under section 211 of the Security and Accountability Act of 2002.

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

"(A) The personnel of the person importing the food;

"(B) The physical and procedural safety and security of such person’s food supply chain;

"(C) The sufficiency of preventive controls for food and ingredients purchased by such person.

"(D) Vendor and supplier information.

"(E) Other programs for certification or verification by a qualified certifying entity used by the importer.

"(F) Such other factors as the Secretary determines to be necessary.

SEC. 114. INFANT FORMULA.

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

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

"(1) it is not the subject of a registration made pursuant to section 412(c)(1)(B), or

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

"(3) at least 90 days have not passed since the making of such registration or of such submission to the Secretary."

(b) REQUIREMENTS.—Section 412 (21 U.S.C. 352a) is amended by adding at the end the following:

"(1) in subsection (c)(1)(B), by striking "(c)(1)" at the end and inserting "(d)(1), subject to subsection (d)(2)(B)";

"(2) in subsection (d)(1), by striking "and" at the end of subparagraph (C);

"(3) in subsection (d)(2), by striking the period at the end of paragraph (2)(A) and inserting "and";

"(4) in subsection (d)(3), by striking "approved" and inserting "not.";

"(5) in subsection (d)(4), by striking "and" and inserting "and";

"(6) in paragraph (2), by striking "and" and inserting "and";

"(7) in paragraph (3), by striking "and" and inserting "and";

"(8) in subparagraph (A), by striking "and" and inserting "and.";

"(9) in subparagraph (B), by striking "and" and inserting "and.";

"(10) in subparagraph (C), by striking "and" and inserting "and.

"(f) This section shall apply to infant formulas provided for use in infant formula under any program established by the Secretary for the review of ingredients used in food.

"(g) This section shall not affect the authority of the Secretary to establish programs for the review of ingredients for use in infant formula.

"(h) The Secretary may establish program established by the Secretary for the review of ingredients used in food.

"(i) If the information submitted under paragraph (1) shall include, for any new ingredient for use in the formula—

"(1) a citation to a prior approval by the Secretary of the new ingredient for use in infant formula submitted under such clause and has provided the submitter notice of the results of the Secretary's review of ingredients used in food.

"(2) If the information submitted under subparagraph (A) is the information described in clause (i) of such paragraph, the 90 day period provided by subsection (c)(1)(B) shall not commence until the Secretary has completed review of the information submitted under such clause and has provided the submitter notice of the results of such review.

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

"(i) a description of the ingredient used in the formula including the identity of the ingredient, the amount used in the formula, and any information describing the ingredient that is pertinent to the safety and nutrition of the formula;

"(ii) a description of any new ingredient for use in infant formula submitted under any program established by the Secretary for the review of ingredients used in food.

"(iii) for a new ingredient that is not a food additive or a color additive, information equivalent to that provided under any program established by the Secretary for the review of ingredients used in food.

"(B) If the information submitted under subparagraph (A) is the information described in clause (i) of such paragraph, the 90 day period provided by subsection (c)(1)(B) shall not commence until the Secretary has completed review of the information submitted under such clause and has provided the submitter notice of the results of such review.

"(B) The Secretary shall determine what new ingredient is for use in infant formula under any program established by the Secretary for the review of ingredients used in food.

"(1) coordinating Federal, State, and local food-borne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

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

"(3) developing improved epidemiological tools for obtaining accurate exposure data, and microbiological methods for classifying cases;

"(4) augmenting such systems to improve attribution of food-borne illness outbreaks to a specific food;

"(5) expanding capacity of such systems, including fingerprinting and other detection strategies, to identify new or rarely documented causes of food-borne illness;

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

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

"(8) establishing and implementing a flexible mechanism for rapidly initiating scientific research by academic institutions;

"(9) integrating food-borne illness surveillance systems and public health spatial surveillance and public health situational awareness capabilities at the Federal, State, and local levels; and

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

"(c) IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.—

"(1) In general.—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

"(A) Improve food-borne illness outbreak response and containment.

"(B) Accelerate food-borne illness surveillance and outbreak research, investigation, and enforcement activities.

"(C) Improve the timeliness of communication between Federal, State, and local partners to coordinate food safety and defense resources and reduce the incidence of food-borne illnesses.

"(D) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

"(2) Health advisories.—The Secretary

"(a) PUBLIC EDUCATION.—The Secretary, in cooperation with private and public organizations, including the appropriate State entities, shall design and implement a national public education program on food safety. The program shall provide—

"(1) information to the public so that individuals can understand the potential impact and risk of food-borne illnesses, take action to reduce their risk of food-borne illness and injury, and make healthy dietary choices;

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

"(3) such other information or advice to consumers and other persons as the Secretary determines will promote the purposes of this Act.

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

"(1) develop and distribute regional and national advisories concerning food safety;
(2) develop standardized formats for written and broadcast advisories; and
(3) incorporate State and local advisories into the national public education program required under subsection (a).

SEC. 123. RESEARCH.

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

(1) improve sanitation and food safety practices in the production, harvesting, and processing of food products;
(2) develop improved techniques for the monitoring of food and inspection of food products;
(3) develop efficient, rapid, and sensitive methods for determining and detecting the presence of contamination in food products; and
(4) determine the sources of contamination of food and food products, including critical points of risk for fresh produce and other raw agricultural commodities.

(5) develop consumption data with respect to food products;
(6) draw upon research and educational programs that exist at the State and local level;
(7) utilize the DNA matching system and other processes to identify and control pathogens;
(8) address common and emerging zoonotic diseases;
(9) develop methods to reduce or destroy pathogens before, during, and after processing;
(10) analyze the incidence of antibiotic resistance as it pertains to the food supply and evaluate methods to reduce the transfer of antibiotic resistance to humans; and
(11) conduct other research that supports the purposes of this Act.

Subtitle C—Response

SEC. 131. PROCEDURES FOR SEIZURE.

Section 304(b) (21 U.S.C. 334(b)) is amended by inserting “and except that, with respect to proceedings relating to food, Rule G of the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions shall not apply in any such case, exigent circumstances shall be deemed to exist for all seizures brought under this section, and the summons and arrest warrant shall be issued by the clerk of the court without court review in any such case” after “in any such case shall by tried by jury”.

SEC. 132. ADMINISTRATIVE DETENTION.

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

(1) in paragraph (1)(A), by striking “credible evidence or information indicating” and inserting “reason to believe”;
(2) in paragraph (1)(A), by striking “prevents a threat of serious adverse health consequences or death to humans or animals” and inserting “is adulterated, misbranded, or otherwise in violation of this Act”; and
(3) in paragraph (2), by striking “30” and inserting “60”.

(b) REGULATIONS.—The Secretary shall issue regulations or guidance to implement the amendments made by this section.

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

(a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 112 and 113, is amended by adding at the end by adding the following:

“(ww) The violation of a prohibition or restriction under section 304(l)(4).”.

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

“(1) AUTHORITY TO PROHIBIT OR RESTRICT THE MOVEMENT OF FOOD WITHIN A STATE OR PORTION OF A STATE.—

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

(4) After consultation with the Governor or other appropriate official of an affected State, if the Secretary determines that credible evidence that an article of food presents an imminent threat of serious adverse health consequences or death to human or animal health, the Secretary may prohibit or restrict the movement of an article of food within a State or portion of a State for which the Secretary has credible evidence that such food is located within, or originated from, such State or portion thereof.

(5) In carrying out clause (1), the Secretary may prohibit or restrict the movement within a State or portion of a State of any article of food or means of conveyance of such article of food, if the Secretary determines that the prohibition or restriction is a necessary protection from an imminent threat of serious adverse health consequences or death to humans or animals.

(6) DURATION.—Fourteen days after the initiation of an action under paragraph (1), the Secretary shall—

(A) notify the Governor or other appropriate official of the State affected by the proposed action;

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

(C) publish in the Federal Register—

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

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

(iii) a description of the proposed action, including—

(1) the area affected; and

(2) an estimate of the anticipated duration of the action.

(3) NOTICE AFTER ACTION.—If it is not practicable to subject to a civil penalty for each such violation of not more than—

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

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

(B) any person who knowingly violates paragraphs (a), (b), (c), (k), or (v) of section 301 with respect to any food that is misbranded or adulterated shall be imprisoned for not more than 10 years or fined in accordance with title 18, United States Code, or both.”.

SEC. 134. CRIMINAL PENALTIES.

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

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

(2) by adding at the end the following:

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

SEC. 135. IMPROPER IMPORT ENTRY FILINGS.

Section 306(a) (21 U.S.C. 331), as amended by sections 110, 111, and 133, is amended by adding at the end the following:

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

“(ww) The violation of a prohibition or restriction under section 304(l)(4).”.

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

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

(4) After consultation with the Governor or other appropriate official of an affected State, if the Secretary determines that credible evidence that an article of food presents an imminent threat of serious adverse health consequences or death to human or animal health, the Secretary may prohibit or restrict the movement of an article of food within a State or portion of a State for which the Secretary has credible evidence that such food is located within, or originated from, such State or portion thereof.

(5) In carrying out clause (1), the Secretary may prohibit or restrict the movement within a State or portion of a State of any article of food or means of conveyance of such article of food, if the Secretary determines that the prohibition or restriction is a necessary protection from an imminent threat of serious adverse health consequences or death to humans or animals.

(6) DURATION.—Fourteen days after the initiation of an action under paragraph (1), the Secretary shall—

(A) notify the Governor or other appropriate official of the State affected by the proposed action;

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

(C) publish in the Federal Register—

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

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

(iii) a description of the proposed action, including—

(1) the area affected; and

(2) an estimate of the anticipated duration of the action.

(3) NOTICE AFTER ACTION.—If it is not practicable to subject to a civil penalty for each such violation of not more than—

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

(ii) $250,000 in the case of any other person, not to exceed $750,000 in a single proceeding.

(C) Each violation described in subparagraph (A) or (B) and each day during which the violation continues shall be considered to be a separate offense.”.

(b) EFFECTIVE DATE.—The amendment made by this subsection applies to actions commenced on or after the date of the enactment of this Act.

SEC. 136. DOCUMENTATION FOR IMPORTS.

Section 306 (21 U.S.C. 331), as amended by section 109, is amended by adding at the end the following:

“(d) DOCUMENTATION.—The Secretary shall—

(1) SUBMISSION.—The Secretary may require, regulation or guidance the submission of documentation or other information for articles of food that are imported or offered for import into the United States. When developing any regulation or guidance in accordance with this paragraph, to the extent that the collection of documentation or other information involves Customs and Border Protection efforts, the Secretary shall consult with Customs and Border Protection.

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

H9152 CONGRESSIONAL RECORD — HOUSE July 30, 2009
SEC. 201. FOOD SUBSTANCES GENERALLY RECOGNIZED AS SAFE.

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

"(y) Not later than 60 days after the date of enactment of this subsection, the Secretary shall promulgate regulations to establish good importation practices that specify the measures an importer shall take to ensure imported food is in compliance with the requirements of this Act.

(2) The measures under subparagraph (A) shall ensure that the importer of a food—

(i) has adequate information about the food, its hazards, and the requirements of this Act applicable to the food;

(ii) has adequate procedures or processes in place to verify that both the food and each person that produced, manufactured, processed, packaged, warehoused, distributed, or held the food, including components of the food, are in compliance with the requirements of this Act;

(iii) has adequate procedures in place to take corrective action, such as the ability to appropriately trace, withhold, and recall articles of food, if a food imported by the importer is not in compliance with the requirements of this Act.

(C) In promulgating good importer practices regulations, the Secretary may, as appropriate—

(i) incorporate certification of compliance with section 801(q) and participation in the safe and secure food importation program under section 805; and

(ii) take into account differences among importers and the types of imports, including on the level of risk posed by the imported food.

(3) SUSPENSION OF REGISTRATION.—

(A) IN GENERAL.—Registration under this subsection is subject to suspension upon a finding by the Secretary, after notice and an opportunity for an informal hearing, of—

(i) a violation of this Act; or

(ii) the knowing or repeated making of an inaccurate or incomplete statement or submission of information relating to the importation of food.

(B) REQUEST.—The importer whose registration is suspended may request that the Secretary vacate the suspension of registration when such importer has corrected the violation that is the basis for such suspension.

(C) VACATING OF SUSPENSION.—If the Secretary determines that adequate reasons do not exist to continue the suspension of a registration, the Secretary shall vacate such suspension.

(4) CANCELLATION OF REGISTRATION.—

(A) IN GENERAL.—Not earlier than 10 days after providing the notice under subparagraph (B), the Secretary shall cancel a registration if the Secretary determines that the Secretary’s determinations were not updated in accordance with this section or otherwise contains false, incomplete, or inaccurate information.

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

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

(5) EXEMPTIONS.—The Secretary, by notice published in the Federal Register—

(A) may establish other exemptions from the requirements of this subsection for importations for personal use; and

(B) may establish other exemptions from the requirements of this subsection.

(6) REGULATIONS.—Not later than 36 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate the regulations required to carry out section 801(q) and participation in the safe and secure food importation program under section 805; and

(7) TIMELY IMPLEMENTATION.—The Secretary shall ensure that the importer of a food—

(A) is in compliance with the requirements of this subsection; and

(B) is in compliance with the requirements of this Act.

SEC. 202. COUNTRY OF ORIGIN LABELING.

(a) MISREPRESENTATION.—Section 403 (21 U.S.C. 343), as amended by sections 101(a), 109(a), 114(a), and 115(a), is amended by adding at the end the following:

"(cc) In the case of a processed food, if the labeling of the food fails to identify the country in which the final processing of the food occurred occurs—

(1) "the case of nonprocessed food, if the labeling of the food fails to identify the country of origin of the food."; and

(b) REGULATIONS.—

(1) PROMULGATION.—Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to carry out paragraphs (cc) and (dd) of section 403 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) RELATION TO OTHER REQUIREMENTS.—Regulations promulgated under paragraph (1) shall provide that labeling meets the requirements of paragraphs (cc) and (dd) of section 403 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), if—

(1) in the matter preceding clause (i) in subparagraph (A)—

(A) by inserting—

"from the United States" after "exports"; and

(B) by striking—

"the food, drug, animal drug, or device" and inserting—

"a food (including animal feed), drug, animal drug, or device"; and

(2) in subparagraph (A)—

(A) by striking—

"writing"; and

(B) by striking—

"exported drug, animal drug, or device" and inserting—

"exported food, drug, and device"; and

(3) in subparagraph (A)—

(A) by striking—

"writing"; and

(B) by striking—

"the drug, animal drug, or device" and inserting—

"the food, drug, animal drug, or device"; and

(C) by striking—

"the drug or device" and inserting—

"the food, drug, or device";

(4) by redesignating subparagraph (B) as subparagraph (C);

(5) by inserting after subparagraph (A) the following:

"(B) For purposes of this paragraph, a certification by the Secretary shall be made on such basis and in such form (such as a publicly available listing) as the Secretary determines is reasonably related to the cost of issuing certificates under subparagraph (A) with respect to the export of food. The Secretary may only be required to account for inflation and other cost adjustments. Fees collected for a fiscal year pursuant to this subparagraph shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration and shall be available in accordance with appropriations Acts until expended, without fiscal year limitation. Such fees shall be collected in each fiscal year in an amount equal to the amount specified in appropriations Acts for such fiscal year. Such fees shall be collected and available for the costs of the Food and Drug Administration to cover the cost of issuing such certifications. Such sums as may be necessary may be transferred from such appropriation account for salaries and expenses of the Food and Drug Administration without fiscal year limitation to such appropriation account for salaries and expenses with fiscal year limitation."

SEC. 203. REGISTRATION FOR COMMERCIAL IMPORTERS OF FOOD; FEE.

(a) REGISTRATIONS.—

(1) PROHIBITIONS.—Section 301 (21 U.S.C. 331), as amended by sections 110, 111, 131, and 136, is amended by adding at the end the following:

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

(2) MISREPRESENTATION.—Section 415 (21 U.S.C. 343), as amended by sections 101(a), 109(a), 113(a), and 202, is amended by adding at the end the following:

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

(3) REGISTRATION.—Section 801, as amended by sections 101(a), 109(a), and 111(a), is amended by adding the following:

"(1) REGISTRATION.—The Secretary shall—

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

(B) consistent with section 1011, to submit appropriate unique facility identifiers as a condition of registration.

(2) GOOD IMPORTER PRACTICES.—The main-
under section 801(s), the Secretary shall, in consultation with the Commissioner responsible for Customs and Border Protection, as appropriate, provide a reasonable period of time for food to comply with good importer practices, taking into account differences among importers and the types of imports, including based on the level of risk posed by the imported food.

(5) Effective date.—The amendments made by this subsection shall take effect on the date that is 24 months after the date of enactment of this Act.

(b) Fees.—Subchapter C of chapter VII (21 U.S.C. 379i et seq.), as added and amended by sections 201 and 204, is amended by adding at the end the following:

"PART 7—IMPORTERS OF FOOD

SEC. 744. IMPORTERS OF FOOD.

(a) IMPORTERS.—The Secretary shall assess and collect an annual fee for the registration of an importer of food under section 801(s).

(1) Basic amounts.—The registration fee under subsection (a) shall be—

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

(B) for fiscal year 2011 and each subsequent fiscal year, the fee for fiscal year 2010 as adjusted under paragraph (2).

(2) Adjustment.—For fiscal year 2011 and subsequent fiscal years, the fees established pursuant to paragraph (1) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year to reflect the greater of—

(A) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average), for the 12-month period ending June 30 preceding the fiscal year for which fees are being established; or

(B) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5302 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia; or

(C) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions averaged over the first 5 years of the preceding 6 fiscal years.

(3) Compounded basis.—The adjustment made each fiscal year pursuant to this subsection shall be a compounded adjustment determined by adding to the sum of all adjustments made each fiscal year after fiscal year 2010 under this subsection the following:

(A) A,dulteration.—Section 402 (21 U.S.C. 374), as amended by section 204, shall be applied to cover the costs associated with registering importers under section 801(s) and with ensuring compliance with good importer practices respecting food.

(B) Authorization of appropriations.—For each of fiscal years 2010 through 2014, there shall be appropriated the fees under this section such sums as may be necessary.

(4) Inspection.—Section 704 (21 U.S.C. 374), as amended by section 105, is amended by adding at the end the following:

(1) Importers.—Every person engaged in the importing of any food shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to inspect the facilities of such person and have access to, and to copy and verify, any related records.

SEC. 205. REGISTRATION FOR CUSTOMS BROKERS.

(a) Registration.—

(1) Prohibitions.—Section 301(2) (21 U.S.C. 331), as added by section 204, is amended by inserting ‘‘or 801(t)’’ after ‘‘801(s)’’.

(2) Misbranding.—Section 403(e) (21 U.S.C. 343), as added by section 204, is amended—

(A) by inserting ‘‘or a customs broker’’ after ‘‘by an importer’’; and

(B) by inserting ‘‘or 801(t)’’ after ‘‘801(a)’’.

(3) Registration.—Section 801, as amended by sections 159, 160, and 204, is amended by adding at the end the following:

(1) Registration of Customs Brokers.—

(1) Registration.—The Secretary shall require each customs broker, with respect to the importation of food—

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

(B) consistent with section 1011, to submit appropriate unique facility identifiers as a condition of registration.

(2) Cancellation of Registration.—

(A) In general.—Not earlier than 10 days after providing the notice under subparagraph (B), the Secretary may cancel a registration determined to be inaccurate or otherwise contains false, incomplete, or inaccurate information.

(B) Timely Update or Correction.—If the registration for the customs broker is updated or corrected no later than 7 days after notice is provided under subparagraph (B), the Secretary shall not cancel such registration.

(3) Notice.—The Secretary shall notify the Commissioner responsible for Customs and Border Protection whenever the Secretary cancels a registration under this subsection.

(4) Exemptions.—In consultation with the Commissioner responsible for Customs and Border Protection, the Secretary, by notice published in the Federal Register—

(A) shall establish an exemption from the requirements of this subsection for importations for personal use; and

(B) may establish other exemptions from the requirements of this subsection.

(5) Effective date.—The amendments made by this subsection shall take effect on the date that is 24 months after the date of enactment of this Act.

(b) Inspection.—Section 704 (21 U.S.C. 374), as amended by sections 105 and 204, is amended by adding at the end the following:

(1) Brokers.—Every customs broker required to be registered with the Secretary shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to inspect the facilities of such person and have access to, and to copy and verify, any related records.

SEC. 206. UNIQUE IDENTIFICATION NUMBER FOR FOOD FACILITIES, IMPORTERS, AND CUSTOM BROKERS.

Chapter X (21 U.S.C. 331 et seq.) is amended by adding at the end the following:

"SEC. 1011. UNIQUE FACILITY IDENTIFIER.

"(a) Registration of Facility or Establishment.—A person required to register a facility pursuant to section 801(s) or 801(t) shall, at the time of registration, a unique facility identifier for the facility or establishment.

"(b) Registration of Importers and Customs Brokers.—A person required to register pursuant to section 801(s) or 801(t) shall submit, at the time of registration, a unique facility identifier for the principal place of business for which such person is required to register under section 801(s) or 801(t).

"(c) Guidance.—The Secretary may, by guidance, and, with respect to importers and customs brokers, in consultation with the Commissioner responsible for Customs and Border Protection, specify the unique numerical identifier system to be used to meet the requirements of subsections (a) and (b) and the form, manner, and timing of a submission under such subsections. Development of such guidelines shall take into account the utilization of such identification schemes and compatibility with customs automated systems, such as integration with the Automated Commercial Environment (ACE) Automated Trade Data System (ITDS), and any successor systems.

"(d) Importation.—An article of food imported or offered for importation by a broker who violates section 301 because of a condition of registration, not contained in any other provision in this Act, a customs broker who violates section 301 because of a violation of section 408(e), or who violates section 408(e) and who waives the fees under this section, shall not be subject to a civil penalty under section 308(f)(2)."

SEC. 207. PROHIBITION AGAINST DELAYING, LIMITING, OR REFUSING INSPECTION.

(a) Adulteration.—Section 402 (21 U.S.C. 322), as amended by section 102, 103(a), and 106(a), is amended by adding at the end the following:

"(c) If it has been produced, manufactured, processed, packed, or held in any farm, factory, warehouse, or establishment and the owner, operator, or agent of such farm, factory, warehouse, or establishment, or any agent of a governmental authority in the foreign country within which such farm, factory, warehouse, or establishment is located, delays or limits an inspection, or refuses to permit entry or inspection, under section 414 of this Act.

(b) Foreign Inspection.—Section 704(a)(1) (21 U.S.C. 374(a)(1)), as amended by section 106(c), is amended—

(1) in the first sentence, by inserting ‘‘including any such food factory, warehouse, or establishment whether foreign or domestic’’,
after “factory, warehouse, or establishment”; and
(2) in the third sentence, by inserting “, including any food factory, warehouse, establishment, or consulting laboratory whether foreign or domestic,” after “factory, warehouse, establishment, or consulting laboratory”.

SEC. 208. DEDICATED FOREIGN INSPECTORATE.
Section 704 (21 U.S.C. 374), as amended by sections 103, 204, and 205, is amended by adding at the end the following:

“(K) The Secretary Inspectorate.—The Secretary shall establish and maintain a corps of inspectors dedicated to inspections of foreign food facilities. This corps shall be staffed, and funded by the Secretary at a level sufficient to enable it to assist the Secretary in achieving the frequency of inspections for food facilities as described in this Act.”

SEC. 209. PLAN AND REVIEW OF CONTINUED OPERATION OF FIELD LABORATORIES.
(a) SUBMISSION OF PLAN.—Not later than 90 days before the Secretary terminates or consolidates any laboratory, district office, or the functions (including the inspection and compliance functions) of any such laboratory or district office as specified in subsection (b), the Secretary shall submit a reorganization plan to the Comptroller General of the United States, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate.
(b) SPECIFIED LABORATORIES AND OFFICES.—The laboratories and offices specified in this subsection are the following:
(1) Any of the 13 field laboratories responsible for analyzing food that were operated by the Division of Laboratory Affairs of the Food and Drug Administration as of January 1, 2007.
(2) Any of the 20 district offices of the Food and Drug Administration with responsibility for food safety functioning as of January 1, 2007.
(c) CONGRESSIONAL REVIEW.—A reorganization plan described in subsection (a) is deemed to be a major rule (as defined in section 804(2) of title 5, United States Code) for purposes of chapter 8 of such title.

SEC. 210. PUNISHING MISLEADING REPORTING TO FDA.
(a) IN GENERAL.—Section 301(q)(2) (21 U.S.C. 331(q)(2)) is amended by inserting after “law’’:
(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed, or about to be filed (with any knowledge of the employer), in any court or administrative forum, relating to any such alleged violation; or
(3) to refuse to commit or assist in such a proceeding, or otherwise assist in a proceeding stemming from the provided information is conducted by—
(A) a Federal regulatory or law enforcement agency;
(B) any Member of Congress or any committee of Congress; or
(C) a person with supervisory authority over the employee (or any other person working for the employer who has the authority to investigate, discover, or terminate the misconduct).

SEC. 211. SUBPOENA AUTHORITY.
(a) PROHIBITED ACT.—Section 301(t) is amended by inserting before the period “or the failure or refusal to obey a subpoena issued pursuant to section 311’’:
(1) to provide information, cause information to be provided, or otherwise assist in any investigation regarding any conduct in which the employer reasonably believes constitutes a violation of this Act, or any other provision of Federal law relating to the safety of a food, if the information or assistance is provided to, or an investigation stemming from the provided information is conducted by—
(A) a Federal regulatory or law enforcement agency;
(B) any Member of Congress or any committee of Congress; or
(C) a person with supervisory authority over the employee (or any other person working for the employer who has the authority to investigate, discover, or terminate the misconduct).

SEC. 311. EXERCISE OF SUBPOENA AUTHORITY.
“(a) IN GENERAL.—For the purpose of—
(1) any hearing, investigation, or other proceeding respecting a violation of a provision of this Act, the Public Health Service Act, or the Federal Anti-Tampering Act, relating to food; or
(2) any hearing, investigation, or other proceeding to determine if a person is in violation of a specific provision of this Act, the Public Health Service Act, or the Federal Anti-Tampering Act, relating to food; or
(3) any hearing, investigation, or other proceeding to determine if a person is in violation of a specific provision of this Act, the Public Health Service Act, or the Federal Anti-Tampering Act, relating to food, the Commissioner may issue subpoenas requiring the attendance and testimony of witnesses and the production of records and other evidence;
(4) Timing of Compliance.—When the Commissioner deems that immediate compliance

when a subpoena issued under this section is necessary to address a threat of serious adverse health consequences or death, the subpoena may require immediate produc-
“(A) IN GENERAL.—Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 4212(b) of title 49, United States Code.

“(B) BURDENS OF PROOF.—An action brought under paragraph (1)(A) or (1)(B) shall be governed by the legal burdens of proof set forth in section 4212(b) of title 49, United States Code.

“(C) DETERMINATION OF LIMITATIONS.—An action under paragraph (1)(A) shall be commenced not later than 180 days after the date on which the violation occurs.

“(D) Remedies.—

“(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

“(2) ISSUANCE OF ORDER.—If, in response to a complaint filed under paragraph (b)(1), the Secretary of Labor or the district court, as applicable, determines that a violation of subsection (a) has occurred, the Secretary or the court shall order the person who committed such violation—

“(A) to take affirmative action to abate the violation;

“(B) to—

“(i) reinstate the complainant to his or her former position with compensation (including back pay); and

“(ii) restore the terms, conditions, and privileges associated with his or her employment; and

“(C) to provide compensatory damages to the complainant.

“If such an order is issued under this paragraph, the Secretary or the court, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

“(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement, and such rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“SEC. 213. EXTRATERRITORIAL JURISDICTION.

“(a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by sections 110, 111, 133, 136, and 204, is amended by adding at the end the following:

“(aaa) The production, manufacture, processing, preparation, packing, holding, or distribution of an adulterated or misbranded food with the knowledge or intent that such article will be imported into the United States.

“(b) JURISDICTION.—Chapter III (21 U.S.C. 331 et seq.), as amended by section 201, is amended by adding at the end the following:

“SEC. 312. EXTRATERRITORIAL JURISDICTION.

“There is extraterritorial Federal jurisdiction over any violation of this Act relating to any article of food if such article was intended for import into the United States or if any act in furtherance of the violation was committed within such jurisdiction.

“SEC. 214. SUPPORT FOR TRAINING INSTITUTES.

“The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall provide financial and other assistance to appropriate entities to establish and maintain one or more university-affiliated food protection training institutes that—

“(1) conduct training related to food protection activities for Federal, State, local, territorial, and tribal officials; and

“(2) meet standards developed by the Secretary.

“SEC. 215. BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS.

“(a) NOTICE OF DETERMINATION.—No later than December 31, 2009, the Secretary of Health and Human Services shall notify the Congress whether the available scientific data support a determination that there is a reasonable certainty of no harm, for infants, young children, pregnant women, and adults, for approved uses of polycarbonate plastic and epoxy resin made with bisphenol A in food and beverage containers, including reusable food and beverage containers, under the conditions of use prescribed in current Food and Drug Administration regulations.

“(b) NOTICE OF ACTIONS TO BE TAKEN.—If the Secretary concludes that such a determination cannot be made, the Secretary shall notify the Congress of the reasons why such a determination cannot be made.

“(c) RULE OF CONSTRUCTION.—Nothing here- in is intended to preclude or modify existing Federal and Drug Administration authority, procedures, or policies for assessing scientific data, making safety determinations, or regulating the safe use of food additives.

“SEC. 216. LEAD CONTENT LABELING REQUIREMENTS FOR CERAMIC TABLEWARE AND COOKWARE.

“(a) IN GENERAL.—Section 403 (21 U.S.C. 343), as amended by sections 101(a), 109(a), 114(a), 202, and 204, is amended by adding at the end the following:

“(ff) If it is ceramic tableware or cookware and includes a glaze or decorations containing lead for an intended functional purpose, unless—

“(1) the product and its packaging bear the statement that the product contains glaze containing lead in a concentration prescribed in current Food and Drug Administration guidelines for such lead; or

“(2) the product is in compliance with the requirements applicable to ornamental and decorative ceramicware in section 109.16 of title 21, Code of Federal Regulations (or any successor regulation).

“(b) EFFECTIVE DATE.—Section 403(ff) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall apply only to ceramic tableware or cookware that is manufactured on or after the date that is 1 year after the date of the enactment of this Act.

“(c) CONSUMER EDUCATION.—Chapter IV (21 U.S.C. 341 et seq.), as amended by sections 102, 103, 104, and 111, is amended by adding at the end the following:

“SEC. 421. CONSUMER EDUCATION ON THE CONSUMER ACCEPTABILITY OF CERAMICWARE AND APPLICABLE LABELING REQUIREMENTS.

“(a) IN GENERAL.—The Secretary shall educate consumers on the safety of ceramicware for food use by posting information on the Web site of the Food and Drug Administration with regard to—

“(1) the content of lead in ceramicware and its glaze;

“(2) existing Federal laws and regulations governing lead in ceramicware;

“(3) as appropriate, existing industry practices and guidelines; and

“(4) the labeling requirements applicable under this Act.

“(b) TOPICS.—The education under this section shall address—

“(1) the broad range of ceramicware types, including traditional pottery, ornamental and decorative ceramicware, cookware, and everyday dinnerware;

“(2) the safety of ceramicware that is aged or damaged;

“(3) the use of ceramicware in microwave ovens;

“(4) the storage of foods in ceramicware;

“(5) the use of home lead test kits by consumers;

“(6) the use of ceramicware by children and women of childbearing age; and

“(7) issues that are especially relevant to subpopulations of consumers who may preferentially use certain types of ceramicware made abroad.

“The SPEAKER pro tempore. The Gentleman from Michigan (Mr. Dingell) and the gentleman from Illinois (Mr. Shimkus) each will control 30 minutes.

“The SPEAKER pro tempore. The Gentleman from Michigan, Mr. Dingell, Mr. Speaker, I yield myself 3 minutes.

“Mr. Speaker, I rise in strong support of H.R. 2749, the Food Safety Enforcement Act of 2009.

“I remind my colleagues that this bill was up before us yesterday and got 280-something votes in favor of it. It is a good piece of legislation. It is bipartisan. It will fundamentally change the way in which we ensure the safety of our food supply and protect American consumers, farmers and business. I would note it came out of committee in a bipartisan fashion, unanimously, by voice vote.

“A series of foodborne disease outbreaks have laid bare unacceptable gaps in our food-safety laws, and this will be the first major change in our food-safety laws with regard to food and drugs since 1938.

“In the past 2 years alone, we have witnessed issues of melamine in infant formula and in milk products, and we have seen tainted peppers from Mexico, harmful seafood and shellfish from China, E. coli in spinach, and problems with strawberries and raspberries. Each year, in spite of the fact that we have the most careful and safe food in the world, we find that 76 million people contact a foodborne illness in the United States. According to CDC, some 5,000 die.

“This legislation contains significant policy solutions that will address this situation. It is largely based upon legislation I introduced last year along with Energy and Commerce subcommittee Chairmen Pallone and Stupak.

“We have worked for months with our Republican colleagues in a bipartisan fashion on the Committee on Energy and Commerce to get this bill right. We have worked with our colleagues on the Agriculture and the Ways and Means Committees to address their concerns, and I believe we have done so.”
In the end, we have a bill that strikes an important balance: it does not create unnecessary burdens for farmers and small businesses, but it does allow FDA to retain all its existing authority. It takes no authority from the Department of Agriculture or the Commodity Credit Corporation, and it gives FDA new authorities that it needs to trace and prevent food-safety problems that may originate on the farm or in other sectors of the food supply chain. And we have carefully protected the farmers against intrusion by the Food and Drug Administration.

I want to talk about key provisions in the bill. Under the legislation, FDA has clear authority to issue and require manufacturers to meet strong, enforceable performance standards to ensure the safety of different types of food.

FDA will establish a food trace-back system so that the public health officials can easily determine the source of foodborne disease outbreaks and protect consumers against unwise and inadequate judgments because of lack of personnel and money.

FDA is going to be required to inspect the riskiest ones at least once per year.

FDA will be given new authority to ensure that imported foods are safe, a source of major concern and hazard to our people.

FDA will be given new tools—recalls, record access, penalties to punish bad actors, and the ability to act quickly when presented with a food-safety emergency.

FDA will get a new dedicated source of funding from a $500 million annual registration fee on food facilities to help it conduct its work of keeping America safe. And this provision and the rest of the bill are supported by American food producers.

FDA will not be the only cop on the beat. Our food producers will focus also on prevention and have a well-deserved and shared responsibility between FDA and food manufacturers to keep our food supplies safe.

The bill will require manufacturers to implement preventive systems to stop outbreaks before they occur. All food facilities will be required to conduct hazard analyses, assess potential food-safety risks, and develop plans to keep foods safe.

Mr. Speaker, there is nothing in this bill that is overly burdensome for farmers small or big. We have worked hard—and I believe we have succeeded—in protecting farms of the family size from burdens that could harm their business and their way of life. My own district has many small farms and people with whom I work closely on agricultural matters, and I believe that they will be satisfied with this legislation.

It is a fact here—and I want to address the concerns that I have heard—that farmers who sell a majority of their product direct to the consumers are exempt from the fee system in this bill. Farms that sell directly to consumers, restaurants, and grocery stores will also be exempt from the trace-back system.

Some have expressed concern that FDA will have access to confidential farm records and make them available for distribution. This is not so. FDA is already limited in the types of records they can access under the law, and they cannot access financial data, pricing data, personnel data, or sales data other than shipment data regarding sales.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. DINGELL, Mr. Chairman, I yield myself 1 additional minute.

I have also heard concern that FDA will have the authority to issue safety standards that will apply to farms and interfere with organic farming practices. I want to make it clear that that is not so. In fact, FDA is prohibited from imposing safety standards unless it determines those standards are "reasonably necessary to minimize the risk of serious adverse health consequences or death," a very, very high standard that they have to meet. This will ensure protection of the concerns of organic farmers and that they are taken into consideration before issuing standards.

This is why it has the support of the distinguished chairman of the Agriculture Committee and members of that committee from both sides of the aisle.

Mr. Speaker, this is a product of bipartisan cooperation. It is supported by industry. It was approved unanimously by a voice vote in the Energy and Commerce Committee. It reflects findings of more than 20 hearings on the failure of our food system safety processes conducted by five different committees of the House over 3 years. It addresses weaknesses in the food-safety system at FDA that were identified under the Bush administration and included in concerns under the current administration.

H.R. 2749 is a well-vetted, mature piece of legislation. I urge my colleagues to support H.R. 2749. It is old enough to vote; it is over 21 years old. I urge my colleagues to support this legislation. It is a good bill. It will protect the American people, the American consumers, and it will not hurt American industry, which supports this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SHIMKUS. Mr. Speaker, I yield myself such time as I may consume.

I was a member of the Oversight and Investigation Subcommittee in the last Congress serving 10 or 12 months in that position. And every time we had a hearing on some unsafe food product, another outbreak would occur. So we knew that we really had to get our heads together and try to address food-safety issues and we think we've done that with this bill.

I want to thank Chairman Emeritus DINGELL and I want to thank Chairman WAXMAN, Chairman PALLONE and Chairman STUPAK for working with Ranking Member BARTON and DEAL and myself to really move the bill forward in a way that we could pass it on a voice vote. I just only wish—and I think we could do better and do this with energy and we could do this on health if we really sat down and tried to work out the differences.

This is not an easy bill to pass. And as Chairman Emeritus DINGELL said, 21 years he has been working on this. And this is not an easy thing to do. We did all we could. And I do appreciate the time that we spent on the floor and then with staff to work out the difficult options. And so we come here today with a pretty united bill, one that would have passed had it not been on the suspension calendar, and so we bring it up again today.

We have to have confidence in our food supply, and that's what we're trying to do in this bill. And this bill takes the necessary steps to move us forward.

The changes that we have made not just in the original text of the bill, but in addressing some of the concerns we think are very, very helpful. And I want to pledge to my ag Republican friends—and I'm from an agricultural district, and a lot of these groups that support them are good friends of mine. And we want to ensure that we continue to work forward and move forward as the bill does.

A couple of issues that Chairman Emeritus DINGELL said was, you know, the bill does not require farms to register with FDA, and as a result farms do not have to pay a registration fee. Access to farm records is significantly restricted. Livestock and poultry are exempt from the bill. Grain and related commodities are exempt from produce standards. USDA regulated farms, facilities, and products are not subject to the bill. It allows farms to be exempt from the traceability requirements.

We, as a committee, both in the Oversight and Investigation and then as a full committee, we just couldn't sit on the sidelines anymore as we saw case after case of food-borne illnesses. We had to come together in a way to address this.

I think we have done it. I think it's a good product. Can there be some fixes as it moves forward? Yes, there can. But I would ask all my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I want to thank the gentleman for his hard work both in the Investigations Subcommittee and on the legislation. He and Mr. DEAL and the ranking Republican member, our good friend Mr. BARTON, have been enormously valuable in the work that has been done to bring us to where we are. I commend him and I thank him.
Mr. Speaker, I yield at this time 2 minutes to the distinguished chairwoman of the Appropriations Subcommittee of jurisdiction on this matter, Ms. DeLAURO.

Ms. DeLAURO. Mr. Speaker, what is this bill about?

Food-borne illness in the United States of America kills 5,000 people every single year.

We went to war in Iraq and Afghanistan when 3,000 people, unbeknownst that when they went to work that day that they weren’t coming home, and we went to war in Afghanistan as a result.

We know that 5,000 people every year die of a food-borne illness and an illness, my friends, that can be prevented.

Stand with the mother and the father of a 2-year-old child, the parents who went to the grocery store and brought home spinach or lettuce or sprouts or tomatoes and their child died because of E. coli. Let’s put mechanisms in place so that we can trace the contamination and the highest risk? Let’s set up some performance standards to deal with that.

Let’s put mechanisms in place so that consumers will know for pen so that consumers will know for sure that there is a mechanism in place to identify when a product, in fact, is bad, that needs to be recalled. And this bill, as it has moved through our subcommittee and then full committee by a voice vote.

The Oversight and Investigations Subcommittee found severe problems.

We are very aware of those problems because those problems have been exposed nationally. Obviously, we have a number of very bad actors, but they have jeopardized the whole food chain. We remember the peanut butter issue and spinach and tomatoes. We need to be deliberate to tackle the issue and obviously be bipartisan to resolve the issue, and that’s what this legislation does.

As Mr. SHIMKUS indicated, farms are not required to register with the FDA. There are no large fees associated with this bill. There is no duplication with the USDA, as I understand it.

My distinguished friend from Michigan has a whole number of different food sources from fruits and vegetables to giant food processors and great companies like Kellogg’s. Industry is united behind this legislation. It needs to happen so that consumers will know for sure that there is a mechanism in place to identify when a product, in fact, is bad, that needs to be recalled. And this bill, as it has moved through committee, has shown that bipartisan support.

I would urge my colleagues on both sides to support it.

Mr. DINGELL. Mr. Speaker, I yield at this time 3 minutes to the distinguished gentleman from California (Mr. FARR).

Mr. FARR. I thank the chairman for yielding.

Mr. Speaker, I rise to engage in a colloquy with my friend, the distinguished gentleman from Michigan (Mr. DINGELL).

We are passing an historic food safety measure today, and I truly appreciate the effort that you and committee staff have made to move this legislation to the floor today. As a Member of Congress who represents the Salad Bowl of the World, Salinas Valley, I feel landmark legislation is long overdue and look forward to working with my colleague as the process moves to the Senate and to the conference committee.

Also as a member of the Agriculture Appropriations Committee, I look forward to working with the gentleman to allocate the resources necessary to ensure the safest food in the world even safer.

I’d be remiss if I didn’t mention my concerns with the fee structure in this measure, and I appreciate the effort by the chairman and the committee, and it’s my preference to find a more equitable fee that does not inhibit our farm families from taking advantage of new markets. As a member of the Organic Caucus, I have concerns about the interplay between this bill and the National Organic Program.

It is my understanding, Mr. Chairman, that this bill would not establish any requirements for organically produced or processed products which are in conflict with the regulations established in the Organic Foods Production Act of 1990 and USDA’s National Organic Program regulations.

Mr. DINGELL. If the gentleman would yield, the answer to that question is no.

Mr. FARR. I yield to Mr. BLUMENAUER from Oregon, who has worked with Ms. KAPTUR and myself to make sure that the organic and small growers and processors’ concerns have a voice.

Mr. BLUMENAUER. I appreciate the gentleman’s courtesy, as I appreciate the leadership of the chairman. And it’s great to see food safety receive the full attention that it deserves.

I am especially concerned about the language regarding interaction between wildlife, livestock, and farming practices. Biodiversity is a prerequisite for a healthy farm. We should not penalize farmers for utilizing techniques such as nature-scaping, drainfield restoration, and natural hedgerows to encourage crop health, control pests and invasive species, and enhance soil quality.

We should target reform and safety efforts towards practices which have been directly linked to food disease outbreaks rather than limiting approaches that farmers have used for centuries to reduce their dependence on pesticides, herbicides, and other carbon-intensive farming techniques.

I would like the assurance from the chairman that he will work with us as Food and Drug Administration develops these criteria so that they will consider the needs of small farms and the practices of organic farmers.
Mr. DINGELL. The answer to that question is, yes; and I will have a more detailed response.

Mr. BLUMENAUER. Thank you, Mr. Chairman, for your courtesy.

Thank you, Mr. BLUMENAUER, for permitting me to participate in this colloquy.

Mr. DINGELL. If the gentleman from California would yield, I would like to give a more exhaustive response to my friend.

First, we’ve been hearing complaints that the bill will put unfair, inappropriately, and unnecessary burdens on farmers, particularly small, diversified, and organic farms. We have worked hard to avoid doing that. I want to tell my good friends we will be extremely concerned if this bill created a conflict between food safety and other farm practices aimed at protecting and sustaining the environment. The bill therefore has a number of important provisions designed to prevent such conflicts.

For example, it requires FDA to take into consideration the impacts of any produced food safety standards on small and diversified farms; on wildlife habitat; on conservation practices; on watershed protection efforts; and on organic production methods. It prohibits FDA from setting any such standards unless these standards are necessary to minimize the risk of serious adverse health consequences or death.

The bill also requires FDA to work in coordination with the U.S. Department of Agriculture to issue such standards. USDA administers the National Organic Program and will be working with FDA to ensure that the safety standards are compatible with organic standards.

Let me speak now to the question about the traceability system in the bill. The traceability provisions in the bill are a critically important part because they allow FDA to quickly track down the sources of food-borne outbreaks and can establish the origin of any traceability requirements. The bill requires FDA to go through an extensive information-gathering process with public meetings and a pilot project.

As a part of the process, it requires FDA to consider the costs and the benefits and the feasibility for different sectors of the food industry of any traceability technologies under consideration. And for any regulation that would have an impact on farms, FDA must coordinate with USDA and take into account the nature of the impact on the regulation on farms.

Additionally, FDA will be prohibited from requiring farms selling food directly to consumers, restaurants, or grocery stores to participate in this system. So I believe we can be confident that whatever traceability system is developed will appropriately take into account the needs and interests of the farmers.

And I assure my two good friends that I will work with them to see to it that these commitments are kept.

Mr. DINGELL. The gentleman from California would yield.

Mr. BLUMENAUER. Thank you, Mr. Chairman. I really appreciate that.

Mr. DINGELL. Thank you, sir. Mr. DINGELL. I thank my two colleagues for their valuable assistance to the committee.

Mr. SHIMKUS. Mr. Speaker, before I yield time to my colleague, I yield myself 15 seconds.

Mr. Speaker, I want to recognize my colleagues Mr. PUTNAM and Mr. COSTA for their bill, the Safe FEAST Act, which I was an original cosponsor on, which got rolled into this bill, and it was of great help when they did that.

Mr. Speaker, I yield such time as he may consume to my colleague from Florida (Mr. PUTNAM).

Mr. PUTNAM. Thank you, Mr. Chair. I want to thank the gentleman from Illinois for his leadership on this issue and his original cosponsorship of that Safe FEAST Act, which has had a number of its key principles incorporated into the bill that we’re debating today.

I rise in support of the bill that we are debating today. It is a bipartisan bill built on the model of that Safe FEAST Act and a model that could and should be followed for the other big issues facing this Congress. It’s unfortunate that the process that was taken did not adequately include our Agriculture Committee and that as we move this issue forward that it will continue to improve upon that because it is important that our Agriculture Committee and our Representatives from rural America have input into this, and the bill will benefit from their input.

Mr. Speaker, I yield to me just briefly, I want to commend the gentleman from Michigan.

Mr. DINGELL. The gentleman from Michigan would yield.

Mr. PUTNAM. I thank the gentleman. I thank the chairman emeritus and the dean of the House.

Mr. DINGELL. Mr. Speaker, I am delighted at this time to yield 1 minute to the distinguished gentleman from Georgia (Mr. SCOTT), the chairman of the Subcommittee on Livestock, Dairy and Poultry.

And that is really the crux of the matter between our producers and our consumers, that on this issue of food safety, there is no distinction between the interests of the farmer and the consumer in the grocery store, because the consumer loses if FDA and USDA cannot rapidly and accurately trace back the source of food-borne illness. If they paint the industry with a broad brush, economic losses are severe, so the interests of the farmer are the same as those of the consumer. There must be the highest possible standard and the best possible science behind that law.

As this issue moves forward, improvement can be made as relates to the quality, as it relates to traceability, and, most importantly, as it relates to the implementation of this bill for State and local governments, the State Departments of Agriculture and Health, who, by definition, are deluged much of the responsibility by FDA to implement this legislation. They must have the resources and the authority and the full cooperation of FDA. There have been breakdowns in the past where FDA did not have as much as they should. This bill does much to address that, and can do a bit more.

And in an era where organic farming continues to grow in popularity, we must be sensitive to these ever-changing forms and trends in American agriculture.

With that, I am proud to support the legislation, and I appreciate the leadership of my friend from Illinois and my friend from Michigan.

Mr. DINGELL. The gentleman from Georgia would yield.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Speaker, I yield.

Mr. Speaker, I yield to the distinguished gentleman from Georgia (Mr. SCOTT), the chairman of the Subcommittee on Livestock, Dairy and Poultry.
Mr. SCOTT of Georgia. I thank the chairman for yielding.

I just want to state that under the auspices of my subcommittee, food safety is a jurisdiction that we handle. It is very important as we move forward understanding that we have got to make our food supply safe. There is no greater thing we can do for the American people and the people of the world than to give absolute assurance that our food supply is safe.

Now, I come from a State, Georgia, where we had an outbreak from salmonella in which we lost eight lives, eight persons that would be alive today if we had this bill in place, because we would have a process of accessing records that we don’t have now.

Before this bill is passed, in order to get records from a manufacturer or food processing plant, we can’t get it until the food outbreak occurs. But under this bill, when we are inspecting the plant, we will be able to get access to the records. If this was in place, eight Americans would be alive today.

Mr. Speaker, 76 million Americans suffer from food poisoning from our food supply a year; 5,000 are dying.

The SPEAKER pro tempore. The time of the gentleman from Georgia has expired.

Mr. DINGELL. I yield the gentleman 30 seconds more.

Mr. SCOTT of Georgia. Five thousand are dying. There is no more plain thing we can do.

And I have heard some comments from those who oppose this bill that this bill does nothing, but it does, Mr. Speaker. It provides for us to have inspections at food plants every 6 to 12 months. Do you know how often we are inspecting them now? Once every 10 years. The American people deserve better than that. They deserve for us to have a trace-back system so that we can trace back and get the origins of the outbreak as quickly as possible.

This is a tremendous bill, a tremendous bipartisan effort, and the American people are expecting us to pass it, and pass it overwhelmingly.

Mr. SHIMKUS. Mr. Speaker, I don’t have any additional speakers. I reserve my time.

Mr. DINGELL. Mr. Speaker, I yield to the distinguished gentlewoman from New York (Mrs. MALONEY) for purposes of making a unanimous consent request.

(Mrs. MALONEY asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY. Mr. Speaker, I rise in strong support of this bill.

In recent years, a series of outbreaks of food-borne illnesses have made clear the need to effectively secure our nation’s food supply.

From spinach to cookie dough, foods have become contaminated and have threatened the health of the American people, exposing widespread problems with the food safety system in this country. H.R. 2749 will fundamentally change the way we ensure the safety of the foods we eat.

This bipartisan bill will provide the FDA with new powers and the tools it needs to protect the food supply by providing for more frequent inspections of food-processing plants here in the U.S. and by ensuring the safety of foods imported from overseas.

H.R. 2749 will also provide a new focus on the prevention of food-borne illness by putting systems in place that allow us to better track the source of these outbreaks. This legislation is critical to the health and safety of the American people, and I urge my colleagues to support it.

Mr. SHIMKUS. Mr. Speaker, I continue to reserve.

Mr. DINGELL. Mr. Speaker, at this time I yield 2 minutes to my distinguished friend, the gentleman from Utah (Mr. MATHESON), a superb Member of this body and a great friend of mine.

Mr. MATHESON. Mr. Speaker, I thank the gentleman for yielding.

Included in this bill was the manager’s amendment addressing an issue that I raised that Mr. DINGELL has worked long and hard on and helped me figure out a way to address concerns about lead glazing on ceramic plates on which we eat our food.

This issue first came to my attention with respect in my home State of Utah when a child was sick. After they analyzed the child, they determined the child had lead poisoning. They investigated the home where this child was living and couldn’t find any sources of lead.

Ultimately it was discovered that the child’s mother had been heating food in the microwave oven. The ceramic bowl or plate she was using wasn’t properly glazed or wasn’t properly sealed, and lead was leaching out of the plate into the food. Then when she would nurse the baby, the baby would get lead poisoning.

I think we all want to take steps to prevent that kind of thing from happening. What we determined is most people don’t even realize lead glazing is used on these plates. These plates come in with FDA labels, because the Food and Drug Administration has authority over it, so people who see a label from the Federal Government probably assume it safe.

Included in the manager’s amendment is a requirement that there is labeling, just so consumers have the right to know, that it contains a lead-glazed product. If it is properly glazed, it is not necessarily dangerous. But people have the right to know that.

I really commend my friend from Michigan, who has been working on this issue and has been aware of it for a long time. He worked with my office extensively to come up with some way to try to at least make some progress on this issue. It is included in this bill. He is a great legislator, and I am glad he helped me figure that out.

I encourage people to support this bill.

Mr. DINGELL. Mr. Speaker, if the gentleman will yield, I would appreciate it if the gentleman didn’t praise me, and instead let me say good words about him.

He is a valuable member, a valuable member of our committee. He works hard. He is smart and decent and has been great on this issue. We are proud of him.

Mr. SHIMKUS. I continue to reserve, Mr. Speaker.

Mr. DINGELL. Mr. Speaker, at this time it is my privilege to yield 3 minutes to the gentleman from Minnesota (Mr. PETE RSON), a very distinguished Member of this body, the chairman of the Agriculture Committee of the House and an extremely wise defender of American agriculture and American farmers.

Mr. PETE RSON. Mr. Speaker, I thank the gentleman for yielding.

I first want to commend Chairman Emeritus DINGELL for all of his hard work on this issue, not only during this session of Congress but in many sessions past. We are hopeful that we can move this legislation forward and get additional safeguards in place for food safety in this country.

We also want to commend the other members of the Energy and Commerce Committee on our side of the aisle and the Republican side of the aisle for their work on this on a bipartisan basis. It is good to see some bipartisan effort happening in the House, and there was some good work done.

We did have some concerns in the Agriculture Committee that we engaged in some discussions and negotiations with Mr. DINGELL and others on the staff of the Energy and Commerce Committee on, and we think we have further improved the bill in terms of how it relates to agriculture. We were able to clarify things in terms of livestock and grain farmers that there was some concern about the language, so that was cleared up, to make it in terms of performance standards and record keeping.

As the bill came out of Energy and Commerce, there were concerns registered by some of the farm groups. Some of them even indicated they might oppose it. But at this point, because of the changes that have been made, we now have groups that in the past had some concerns, they are now either neutral or supporting this bill. The United Fresh Fruit and Vegetable Group, Western Growers, the American Farm Bureau, National Association of Wheat Growers, the Cattlemen Beef Association, Turkey Federation, Chicken Council, Pork Producers, Corn Growers, Soybean Association, Rice Federation, and the National Pork Producers Association, United Egg Producers, the American Sheep Industry, the Wheat Growers and the Barley Growers, are now either supporting the legislation or are neutral on the legislation.

I believe that we have addressed the concerns of agriculture. We believe this is a good bill. I encourage Members to support this bill, and again commend my good friend and colleague...
Mr. SHIMIKUS. I continue to reserve, Mr. Speaker.

Mr. DINGELL. Mr. Speaker, I am the only speaker remaining on this side, so if my colleagues from Illinois would like to proceed, I will follow him in closing.

Mr. SHIMIKUS. Mr. Speaker, I yield myself such time as I may consume and will just close briefly by saying this has been a happy time in this Committee.

We did take a very difficult issue, one that has been languishing for 21 years, and worked with young Members and new Members, like Adam Putnam, and with the distinguished Chairman Emeritus Dingell, and got into a room and moved a bill that has the support of almost everybody in the food processing and agriculture community and the marketing of this.

I have sat in numerous hearings, as I said in my opening statement, and every time we would have an oversight investigation hearing there would be an alert of another food-borne illness, and we just knew we couldn’t continue down that route.

As my colleague Mr. Putnam said, it is going to be helpful to the farmers. It is going to be helpful to the processors when we bring some more security and safety and knowledge that we continue to produce the best food supply in the world. It also will help us with the importers and producers that that was a big issue in our debate.

So, with that, this has worked well. We should try this bipartisan method on things like energy and things like health, and maybe we will get there in months to come, I hope, because this is a much better process than us fighting each other.

I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield myself such time as I may consume. First, I want to commend my friend and colleague, Mr. Shimkus, and I want to express my gratitude to him. I also want to express my gratitude to Chairman Waxman, Chairman Stupak and Chairman Pallone, the legislative and appropriation and investigative committee chairmen of the Commerce Committee for the outstanding work they did in preparing this legislation. Also Representative DeGette and Representative Shimkus.

My colleagues Mr. Barton, Mr. Deal and Mr. Shimkus on the minority side have worked very well, carefully, thoughtfully with us, and I owe them a debt of thanks and gratitude. Staff Members like Rachel Sher and Eric Flaim have worked hard on this, as has my friend, Virgil Miller, Chairman Peterson and Jim Costa of the Agriculture Committee have been wise advisers and helpers in coming to a bill that could be agreed on by the two committees. Representative Levin, Chair of the Subcommittee on Trade of the Ways and Means Committee has been extremely important, as has Representative DelAuro, the Chair of the Health and Appropriations, and Jeanne Ireland, a former staff member of this committee, has been of enormous help in the drafting of the legislation.

We had a long list of supporters. The Obama administration, Grocery Manufacturers Association—the people who sell are going to understand that they’re being charged a participation fee; the Wine Institute; Wine America; Distilled Spirits Council of the United States; Center for Science in the Public Interest; Consumers Union; Consumers Federation of America; Center for Foodborne Illness Research & Prevention; Food & Water Watch; Government Accountability Project; National Consumers League; Pew Charitable Trusts; and Safe Tables Our Priority are all active supporters of this legislation.

And these agencies which previously had concerns about the legislation have either changed their opposition, become neutral or actively support H.R. 2749: United Fresh Fruit and Vegetable; Western Growers; American Farm Bureau Federation; National Association of Wheat Growers; National Cattlemen’s Beef Association; National Turkey Federation; National Chicken Council; National Pork Producers Council; National Corn Growers Association; American Soybean Association; U.S. Rice Federation; American Feed Industry Association; United Egg Producers; and the American Sheep Industry.

We have seen that in the long time since legislation was passed to bring food and drug up to national needs back in 1938, that many changes have occurred that have required significant changes, both in the authority of FDA, in its moneys and its abilities to deal, not just with domestic producing problems, but with problems overseas, from which we are receiving lots of dangerous and unsafe food commodities and food products.

This legislation gives food and drug the authority that it needs, the ability to trace, the ability to hold producers accountable to the American people, and it sets up a system where foreigners have to participate in the same responsibilities American producers, manufacturers and growers have to, and it enables Food and Drug, for the first time, to have real authorities to enforce the laws of the United States on food safety to protect Americans against unsafe foods coming in from abroad.

And I would remind my colleagues that Food and Drug has neither the resources at the points of entry, nor do they have the authority to conduct those places to inspect foods coming in. This changes that situation. It is also true that the legislation does something else of importance to our people, and that is, it sees to it that where misbehavior occurs abroad, those same penalties that would be assessed against Americans are assessed against foreigners. This is an important matter of competition to American producers and it is a matter of fairness to it that they are fairly treated, and that there is no more unfair competition by people who could market unsafe commodities to the detriment of American consumers and American growers, processors and producers.

So the legislation is good. A system of assuring responsibility and traceability is available for the first time. And Food and Drug has the authority to terminate the ability of foreigners to sell in this country for the first time in a way which is consistent with American trade laws and the obligations of American people with regard to the safety of food. So, it is a good piece of legislation, and I would urge my colleagues to support both, I would have them know that this is bipartisan, this is a good piece of legislation. It is legislation which protects American people, which sees to it that Americans will no longer be dying of dangerous foods imported into the United States, and it will see to it that American producers are treated fairly in the world marketplace without jeopardy of violation of our law.

It also will see that Food and Drug has the personnel, the resources that it needs to protect the American people, and it is kind to the budget of the American taxpayers.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 691, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. Lucas. Mr. Speaker, I have a motion to recommit the bill to the Committee on Energy and Commerce.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk reads as follows:

Mr. Lucas moves to recommit the bill H.R. 2749 to the Committee on Energy and Commerce with instructions to report the bill back to the House forthwith with the following amendments:

Page 21, lines 3 and 4, strike subparagraph (B) and insert the following:

“(B) shall only be collected and available as follows:

(1) Fifty percent shall be available to defray the costs of additional safety inspection of food in the United States.

(2) Fifty percent shall be available for use under section 137 of the Food Safety Enhancement Act of 2009.”

Page 23, line 8, strike “and”. 
Page 23, line 11, strike the period and insert: "...and their purchase without restriction." Page 23, after line 11, insert the following: "(F) preemptive purchase of product from facilities involved in the production of bad food. No further authorization or restriction on the movement of these registration fees for any purpose, none of which involve the broadest kind of purchase of food. This is a serious untruth.

The legislation itself allows certain activities by the Government in carrying out any purpose of this Act or an amendment made by this Act.

POINT OF ORDER
The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. DINGELL. Mr. Speaker, I would observe that the language of the legislation nowhere authorizes purchase of food. Under the number of the legislation appears the language, to amend the Food, Drug and Cosmetic Act to improve the safety of food in the global market and for other purposes. And then, down there where you follow, following the words, a bill, it says, to amend the Federal Food, Drug and Cosmetic Act to improve the safety of food in the global market and for other purposes. Nowhere in the legislation, in my reading, have I been able to find the authority for the purchase of food or the purchase of food to achieve safety.

I would observe that the language of the motion to recommit permits the purchase of the food without restriction, without restraints or limit. It is some of the grandest authority that is given and well beyond any authority which Food and Drug now has or seeks. Food and Drug has authority in this area whatsoever for the purchase of food. And the purchasing of food is not for the purpose of protecting the American people, of seeing to it that Food and Drug can properly assure the safety of the food or the protection of the American consumers. And the language that is, I think, most particularly descriptive of what the proposal does, it follows line 3 at page 2. It says, the Secretary of Health and Human Services may make a preemptive purchase related to activities by the government in carrying out any provisions of this Act or amendment made by this act.

Point of Order 1715
That might be good language for the Committee on Agriculture to present to the House, but it is no language that the Secretary of Health and Human Services may make a preemptive purchase related to activities by the government in carrying out any provisions of this Act or amendment made by this Act.

Mr. DINGELL. Mr. Speaker, I reserve a point of order against the motion to recommit the bill. The motion to recommit permits the purchase of the food without restriction, within the range of methods employed by the amendment available only for purchase of food as a matter of food safety, as in the context of section 415 of the Act. The amendment also would make a portion of the proceeds of certain fees contemplated by the bill available only for purchase of food.

The Chair finds that the amendment pursues the same fundamental purpose of the bill by a method that dwells within the range of methods employed by the bill. The Chair therefore holds that the amendment is germane.

Accordingly, the point of order is overruled. The motion is in order.

The gentleman from Michigan may be recognized for 5 minutes in opposition.

Mr. DINGELL. Mr. Speaker, we have before us a bad motion to recommit. With all due respect for its author, we know that the FDA has been chronically starved of resources, particularly in the food area and particularly in its ability to protect the American people.

The amendment offered before us would raid that money and would use it for the purpose of purchasing food. The food is not designated as to how or why it might be purchased. I would point out that this breaks an agreement and an understanding that the committee had in this legislation with regard to the support by the food production industry, especially the parts of the industry that produce food.

The bill only authorizes a modest $500 registration fee for food facilities. The motion to recommit asserts the bill does not require the FDA to spend one additional penny on the inspection of food. This is a serious untruth.

On Page 23, the bill directs the FDA to spend its registration fees on food safety activities. The bill explicitly provides that food safety activities include conducting inspections. This money would be diverted from the inspection of the food and the protection of the American people, and it will not be available for the activities of Food and Drug. It might give relief to somebody, different things that try to address and protect the supply of domestic food in this country, food in general, I should say. The bill, the language offered, the motion, refers to using 50 percent of these fees collected under section 137 of the motion, which is referenced on the motion to recommit. The additional item to all of the things already outlined in the bill in its present form.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, I would observe that the language of the legislation nowhere authorizes purchase of food. Under the number of the legislation appears the language, to amend the Food, Drug and Cosmetic Act to improve the safety of food in the global market and for other purposes. And then, down there where you follow, following the words, a bill, it says, to amend the Federal Food, Drug and Cosmetic Act to improve the safety of food in the global market and for other purposes. Nowhere in the legislation, in my reading, have I been able to find the authorization for the purchase of food or the purchase of food to achieve safety.

I would observe that the language of the motion to recommit permits the purchase of the food without restriction, without restraint or limit. It is some of the grandest authority that is given and well beyond any authority which Food and Drug now has or seeks. Food and Drug has authority in this area whatsoever for the purchase of food. And the purchasing of food is not for the purpose of protecting the American people, of seeing to it that Food and Drug can properly assure the safety of the food or the protection of the American consumers. And the language that is, I think, most particularly descriptive of what the proposal does, it follows line 3 at page 2. It says, the Secretary of Health and Human Services may make a preemptive purchase related to activities by the government in carrying out any provisions of this Act or amendment made by this Act.

Mr. DINGELL. Mr. Speaker, I raise a point of order against the motion to recommit. The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. DINGELL. Mr. Speaker, I raise a point of order against the motion to recommit the bill. The SPEAKER pro tempore. The gentleman from Michigan will state his point of order.

Mr. DINGELL. Under rule XVI, clause 7, and the language of the rule, it says no motion or proposition on a subject different from that under consideration shall be admitted under color of the amendment. And I'd point out that that is applicable to the questions before us. I would note that the language of the motion does take and separates the receipts that will be gotten from the registration fees, so that 50 percent are available to defray the costs of additional safety inspection of food; but 50 percent shall be available for use under section 137. But the purpose of that is, rather, for the preemptive purchase of product from facilities as described in section 415. This allows the broadest kind of purchase of food. The legislation itself allows certain specific actions, none of which involve purchase of food, particularly under such broad circumstances as the motion allows. The bill only allows expenditure of these registration fees for the following purpose: records access, traceability, recall authority, authority to detain, subpoena authority, prohibition or restriction on the movement of food in the global market and for other purposes for purchase or expenditure of this money are permitted.

This goes well beyond the fundamental purpose of the legislation and, as such, it constitutes a violation of the rules, going beyond that which is the fundamental purpose of the legislation and so constituting a violation of rule XVI, clause 7 of being not germane.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. LUCAS. Mr. Speaker, the nature of this bill contemplates a number of
and it might even be somebody who needs relief, but there's no standards whatsoever given as to who will get the money, how it will be spent, on what, and for what purposes.

The bill requires the FDA to adhere to a mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it takes money away from the protection of the American consumer by having proper inspections at points of entry or inspection in other countries. This is a bad situation and one which is going to seriously hurt the safety of the American public.

The bill is carefully crafted to ensure that the American Farm and Drug Administration will protect American consumers and American manufacturers, processors, growers, and the farmers of this Nation. It enables them to focus on where there is danger, and it enables them to provide the kind of protection that all of those entities need, especially the farmers, the processors and the producers, because today the broad authority that Food and Drug has is no longer sufficiently focused to be able to adequately protect the food-supply chain.

This legislation diversifies 50 percent of the inspections that we will get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

The bill gives Food and Drug modern authorities to safeguard the food supply, but it gives them the money to do the things that they have to do to protect the American industry and the American-consuming public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

The bill gives Food and Drug modern authorities to safeguard the food supply, but it gives them the money to do the things that they have to do to protect the American industry and the American-consuming public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

The bill gives Food and Drug modern authorities to safeguard the food supply, but it gives them the money to do the things that they have to do to protect the American industry and the American-consuming public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

The bill gives Food and Drug modern authorities to safeguard the food supply, but it gives them the money to do the things that they have to do to protect the American industry and the American-consuming public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

The bill gives Food and Drug modern authorities to safeguard the food supply, but it gives them the money to do the things that they have to do to protect the American industry and the American-consuming public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.

The bill gives Food and Drug modern authorities to safeguard the food supply, but it gives them the money to do the things that they have to do to protect the American industry and the American-consuming public.

This legislation diverts 50 percent of the receipts that we would get under the legislation from the protection both of producers and from the protection of the American-consuming public.

The bill has provisions that ensure that FDA cannot use its ability to stop distribution recall or to detain or to prevent transportation in any way to stop the American industry and the American-consuming public.

The bill also requires FDA to adhere to a rigorous mandatory inspection schedule based on risk. This bill does nothing to enhance that, but it does strengthen those punitive authorities as well as the focus on the dangers to the American public.
It violates the rule, and it will weaken the FDA program. This bill impacts the food processing plants at an increased rate, far more than it is doing now. Again, it violates the rule, and it weakens the FDA's program. On those grounds, we reject this motion to recommit.

The SPEAKER pro tempore. Without objection, the previous question is or-
dered on the motion to recommit.

The question is on the motion to recommit.

Mr. SHIMkus. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayeys 283, noes 122, not voting 5, as follows:

[Roll No. 680]

AYES—283

[Names of Representatives who voted 'aye' are listed]

NOT VOTING—7

[Names of Representatives who voted 'not voting' are listed]

RECORDED VOTE

[Names of Representatives who voted 'yea' are listed]

[Names of Representatives who voted 'nay' are listed]
The SPEAKER pro tempore. The vote was taken by electronic device, and there were—ayes 282, noes 144, not voting 7, as follows:

[Vote list]

MESSAGE FROM THE SENATE

A message from the Senate by Mr. CURTIS, one of its clerks, announced that the Senate has passed with an amendment a bill of the House of the following title:

H.R. 3183. An act making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2010, and for other purposes; the Senate, by and with the advice and consent of the Senate, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. DORGAN, Mr. BYRD, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. JOHNSON, Ms. LANDRIEU, Mr. REID, Mr. LAFENNERS, Mr. HARKIN, Mr. TESTER, Mr. INOUYE, Mr. BENNETT, Mr. COCHRAN, Mr. MCCONNELL, Mr. BOND, Mrs. HUTCHISON, Mr. SHELY, Mr. ALExANDER, and Mr. VOINOVICH, to be the conferences on the part of the Senate.

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 1391. An act to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, to prescribe military personnel strengths for such fiscal year, and for other purposes.

S. 1392. An act to authorize appropriations for fiscal year 2010 for military construction, and for other purposes.

S. 1393. An act to authorize appropriations for fiscal year 2010 for defense activities of the Department of Energy, and for other purposes.

PROVIDING FOR HOUSE OF REPRESENTATIVES STAFF PAYDAY CHANGES

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill. H.R. 1723, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mrs. DAVIS) that the House suspend the rules and pass the bill, H.R. 1723, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. LATHAM. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 282, noes 144, not voting 7, as follows:

[Vote list]