

to an article of food if the Secretary has credible evidence or information indicating that an article of food presents a threat of serious health consequences or death to humans or animals. This provision excludes farms and restaurants and is subject to certain limitations including limitations to ensure the protection of trade secrets and confidential information.

Section 304 authorizes the Secretary to issue a regulation requiring maintenance of additional records that are needed to trace the source and chain of distribution of food, in order to address credible threats of serious adverse health consequences to humans or animals. This provision excludes restaurants and farms, and the Secretary is provided the authority to take into account the size of the business when imposing any record keeping requirements and tailor the requirements to accommodate burden and costs considerations for small businesses.

Section 304 authorizes the issuance of regulations to require the maintenance of so-called "chain of distribution" records that would enable the Secretary to trace the source and distribution of food in the event of a problem with food that presented a threat of serious adverse health consequences or death to humans or animals. This authority may not be used to require a business to maintain records regarding transactions or activities to which it was not a party. The Secretary has indicated that chain of distribution records that document the person from whom food was directly received, and to whom it was directly delivered, would sufficiently enable adequate tracing of the source and distribution of food.

This records access would not extend to the most commercially sensitive or confidential records, including recipes, financial data, pricing data, personnel data, research data, or sales data (other than shipment data regarding sales). This authority would not permit access to any records regarding employees, research or customers (other than shipment data). Nor does it permit access to marketing plans.

Under Section 304 the Secretary must take appropriate measures to prevent the unauthorized disclosure of trade secret or confidential information obtained by the Secretary pursuant to this section. The Secretary shall ensure that adequate procedures are in place to ensure agency personnel will not have access to records without a specific reason and need for such access, and that possession of all copies of records will be strictly controlled, and that detailed records regarding all handling and access to these records will be kept.

Section 305 requires all facilities (excluding farms) that manufacture, process, pack or hold food for consumption in the United States to file with the Secretary, and keep up to date, a registration that contains the identity and address of the facility and the general category of food manufactured, processed, packed or held at the facility. This section authorizes the Secretary to exempt certain retail establishments only if the Secretary determines that the registration of such facilities is not needed for effective enforcement. The purpose of registration under this section is to authorize the Secretary to compile an up-to-date list of relevant facilities to enable the Secretary to rapidly identify and contact potentially affected fa-

ilities in the context of an investigation of bioterrorism involving the food supply.

Enforcement of Section 305 would be delayed 180 days from the date of enactment, and this section requires the Secretary to take sufficient measures to notify and issue guidance within 60 days identifying facilities required to register. This section also requires the Secretary to promulgate adequate guidance, where needed, to enable facilities to determine whether and how to comply with these registration requirements. The Secretary is encouraged to utilize the notice and comment process as an appropriate method for notifying potential registrants of their obligation to register and to receive advice and assistance from registrants on how best to develop a registration system that is both workable and cost-effective. In many instances, additional steps may be needed since the notice and comment may not be adequate to inform small businesses and other importers who may not have the resources or capabilities to research and track federal regulatory notices in a timely manner prior to the expiration of the 180-day enforcement bar.

This section does not impose a registration fee, and calls for a one-time registration. In other words, once a facility is registered it will only have to amend its original registration in a timely manner to reflect any changes. This section also allows and encourages electronic registration to help reduce paperwork and reporting burden, but registration would also be permitted using a paper form. The Department should work in a cooperative manner with facilities in terms of their obligations to register, and should be reasonable in situations where facilities are making good faith efforts to comply.

Registration should be made as simple as possible (such as permitting both electronic and paper registration, as well as permitting a headquarters to register on behalf of all establishments of a company) and the Secretary shall promptly complete a rulemaking regarding exemption from registration requirements for various types of retail establishments. As part of this rulemaking the Secretary should look broadly at the various types of the food establishments in order to ascertain whether they should be exempted and shall exempt from registration those facilities that are not necessary to accomplish the purpose of this section. The Secretary should assure that implementation of this section does not unnecessarily disrupt the flow of commerce.

Section 306 requires the Secretary to promulgate a rule to provide for prior notice to the Secretary of food being offered for import. The prior notice is to occur between 24 and 72 hours before the article is offered for import. In circumstances where timely prior notice is not given, the article is to be held at the port until such notice is given and the Secretary, in no more than 24 hours, examines the notice and determines whether it is in accordance with the notice regulations. At that time, the Secretary must also determine whether there is in his possession any credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals. This determination by the Secretary should not delay or unnecessarily disrupt the flow of commerce.

Section 306 is not intended as a limitation on the port of entry for an article of food. In some instances, such as inclement weather, routine shipping delays, or natural disasters, a shipment of food may arrive at a port of entry other than the anticipated port of entry provided on the notice. When such situations arise, arrival at a port other than the anticipated port should not be the sole basis for invalidating a notice that is otherwise in accordance with the regulations. Also, the importer of an article of food is required to provide information about the grower of the article of food, if that information is known to the importer at the time that prior notice is being provided in accordance with the regulations. This provision only requires the importer to provide any information he has in his possession at the time that prior notice is being provided. The Secretary shall closely coordinate this prior notice regulation with similar notifications that are required by the U.S. Customs Service with the goal of minimizing or eliminating unnecessary, multiple or redundant notifications.

#### PERSONAL EXPLANATION

**HON. HAROLD E. FORD, JR.**

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 20, 2001*

Mr. FORD. Mr. Speaker, regrettably, I was not present for the vote on final passage of H.R. 3529, the Economic Security and Worker Assistance Act, or the preceding motion to recommit.

Had I been present, I would have voted "Yea" on rollcall vote number 508, the motion to recommit, and "Nay" on rollcall vote 509 final passage of H.R. 3529.

#### UNITED STATES FOREST SERVICE AND FISH AND WILDLIFE SERVICE REPORTS

**HON. GEORGE R. NETHERCUTT, JR.**

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 20, 2001*

Mr. NETHERCUTT. Mr. Speaker, the recent published reports about the planting of false evidence by biologists with the United States Forest Service and the United States Fish and Wildlife Service are alarming.

An internal Forest Service investigation has found that the science of the habitat study had been skewed by seven government officials: three U.S. Forest Service employees, two U.S. Fish and Wildlife Service officials and two employees of the Washington Department of Fish and Wildlife.

These officials, according to published reports, planted three separate samples of Canadian lynx hair on rubbing posts used to identify existence of the creatures in the two national forests. Had the deception not been discovered, the government likely would have banned many forms of recreation and use of natural resources in the Gifford Pinchot National Forest and Wenatchee National Forest in Washington State. The restrictions would