

(b) Initial reports

Annual reports under subsection (a) for fiscal years 2004 through 2006 may be combined into a single report, by not later than June 1, 2008, for purposes of publication under subsection (a). Thereafter such reports shall be completed by June 1 of each year for the data collected for the year that was 2-years prior to the year in which the report is published.

(c) Memorandum of understanding

The Commissioner of Food and Drugs, the Administrator of the Food Safety and Inspection Service, the Department of Commerce, and the head of the Agricultural Marketing Service shall enter into a memorandum of understanding to permit inclusion of data in the reports under subsection (a) relating to testing carried out by the Food Safety and Inspection Service and the Agricultural Marketing Service on meat, poultry, eggs, and certain raw agricultural products, respectively.

(Pub. L. 110-85, title X, § 1010, Sept. 27, 2007, 121 Stat. 970.)

§ 2110. Rule of construction

Nothing in this chapter (or an amendment made by this chapter) shall be construed to affect—

- (1) the regulation of dietary supplements under the Dietary Supplement Health and Education Act of 1994 (Public Law 103-417); or
- (2) the adverse event reporting system for dietary supplements created under the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109-462).

(Pub. L. 110-85, title X, § 1011, Sept. 27, 2007, 121 Stat. 971.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title X of Pub. L. 110-85, Sept. 27, 2007, 121 Stat. 962, which enacted this chapter and section 350f of this title, amended sections 321 and 331 of this title, and enacted provisions set out as notes under this section and section 350f of this title. For complete classification of title X to the Code, see Tables.

The Dietary Supplement Health and Education Act of 1994, referred to in par. (1), is Pub. L. 103-417, Oct. 25, 1994, 108 Stat. 4325, which enacted sections 343-2 and 350b of this title and section 287c-11 of Title 42, The Public Health and Welfare, amended sections 321, 331, 342, 343, and 350 of this title and section 281 of Title 42, and enacted provisions set out as notes under sections 321 and 343 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendments note set out under section 301 of this title and Tables.

The Dietary Supplement and Nonprescription Drug Consumer Protection Act, referred to in par. (2), is Pub. L. 109-462, Dec. 22, 2006, 120 Stat. 3469, which enacted sections 379aa and 379aa-1 of this title, amended sections 331, 343, 352, and 381 of this title, and enacted provisions set out as notes under sections 331, 343, 352, 379aa, and 381 of this title. For complete classification of this Act to the Code, see Short Title of 2006 Amendment note set out under section 301 of this title and Tables.

CONSTRUCTION

Pub. L. 110-85, title X, § 1005(g), Sept. 27, 2007, 121 Stat. 969, provided that: “Nothing in this title [enacting this chapter and section 350f of this title, amending

sections 321 and 331 of this title, and enacting provisions set out as notes under section 350f of this title], or an amendment made by this title, shall be construed to alter the jurisdiction between the Secretaries of Agriculture and of Health and Human Services, under applicable statutes and regulations.”

**CHAPTER 27—FOOD SAFETY
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**SUBCHAPTER I—IMPROVING CAPACITY TO
PREVENT FOOD SAFETY PROBLEMS****§ 2201. Performance standards****(a) In general**

The Secretary shall, in coordination with the Secretary of Agriculture, not less frequently than every 2 years, review and evaluate relevant health data and other relevant information, including from toxicological and epidemiological studies and analyses, current Good Manufacturing Practices issued by the Secretary relating to food, and relevant recommendations of relevant advisory committees, including the Food Advisory Committee, to determine the most significant foodborne contaminants.

(b) Guidance documents and regulations

Based on the review and evaluation conducted under subsection (a), and when appropriate to reduce the risk of serious illness or death to humans or animals or to prevent adulteration of the food under section 342 of this title or to prevent the spread by food of communicable disease under section 264 of title 42, the Secretary shall issue contaminant-specific and science-based guidance documents, including guidance documents regarding action levels, or regulations. Such guidance, including guidance regarding action levels, or regulations—

- (1) shall apply to products or product classes;

(2) shall, where appropriate, differentiate between food for human consumption and food intended for consumption by animals other than humans; and

(3) shall not be written to be facility-specific.

(c) No duplication of efforts

The Secretary shall coordinate with the Secretary of Agriculture to avoid issuing duplicative guidance on the same contaminants.

(d) Review

The Secretary shall periodically review and revise, as appropriate, the guidance documents, including guidance documents regarding action levels, or regulations promulgated under this section.

(Pub. L. 111-353, title I, §104, Jan. 4, 2011, 124 Stat. 3899.)

REFERENCES IN TEXT

The Secretary, referred to in text, probably means the Secretary of Health and Human Services.

SHORT TITLE

Pub. L. 111-353, §1(a), Jan. 4, 2011, 124 Stat. 3885, provided that: “This Act [enacting this chapter and sections 350g to 350l-1, 379j-3l, 384a to 384d, 399c, and 399d of this title, section 7625 of Title 7, Agriculture, and section 280g-16 of Title 42, The Public Health and Welfare, amending sections 331, 333, 334, 350b to 350d, 350f, 374, 381, 393, and 399 of this title and section 247b-20 of Title 42, and enacting provisions set out as notes under sections 331, 334, 342, 350b, 350d, 350e, 350g to 350j, 350l, and 381 of this title] may be cited as the ‘FDA Food Safety Modernization Act.’”

§ 2202. National Agriculture and Food Defense strategy

(a) Development and submission of strategy

(1) In general

Not later than 1 year after January 4, 2011, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and transmit to the relevant committees of Congress, and make publicly available on the Internet Web sites of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) Implementation plan

The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) Research

The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) Revisions

Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and

Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

(5) Consistency with existing plans

The strategy described in paragraph (1) shall be consistent with—

- (A) the National Incident Management System;
- (B) the National Response Framework;
- (C) the National Infrastructure Protection Plan;
- (D) the National Preparedness Goals; and
- (E) other relevant national strategies.

(b) Components

(1) In general

The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

- (A) to achieve each goal described in paragraph (2); and
- (B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) Goals

The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) Preparedness goal

Enhance the preparedness of the agriculture and food system by—

- (i) conducting vulnerability assessments of the agriculture and food system;
- (ii) mitigating vulnerabilities of the system;
- (iii) improving communication and training relating to the system;
- (iv) developing and conducting exercises to test decontamination and disposal plans;
- (v) developing modeling tools to improve event consequence assessment and decision support; and
- (vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) Detection goal

Improve agriculture and food system detection capabilities by—

- (i) identifying contamination in food products at the earliest possible time; and
- (ii) conducting surveillance to prevent the spread of diseases.

(C) Emergency response goal

Ensure an efficient response to agriculture and food emergencies by—

- (i) immediately investigating animal disease outbreaks and suspected food contamination;
- (ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) Recovery goal

Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture, food production, and international trade;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

(3) Evaluation

The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall—

(A) develop metrics to measure progress for the evaluation process described in paragraph (1)(B); and

(B) report on the progress measured in subparagraph (A) as part of the National Agriculture and Food Defense strategy described in subsection (a)(1).

(c) Limited distribution

In the interest of national security, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, may determine the manner and format in which the National Agriculture and Food Defense strategy established under this section is made publicly available on the Internet Web sites of the Department of Health and Human Services, the Department of Homeland Security, and the Department of Agriculture, as described in subsection (a)(1).

(Pub. L. 111-353, title I, §108, Jan. 4, 2011, 124 Stat. 3910.)

REFERENCES IN TEXT

The Secretary, referred to in subsec. (b)(3), probably means the Secretary of Health and Human Services.

§ 2203. Food and Agriculture Coordinating Councils

The Secretary of Homeland Security, in coordination with the Secretary of Health and

Human Services and the Secretary of Agriculture, shall within 180 days of January 4, 2011, and annually thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help coordinate and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

(Pub. L. 111-353, title I, §109, Jan. 4, 2011, 124 Stat. 3912.)

§ 2204. Building domestic capacity

(a) In general

(1) Initial report

The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall, not later than 2 years after January 4, 2011, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and supply chain security of food and to prevent outbreaks of foodborne illness and other food-related hazards that can be addressed through preventive activities. Such report shall include a description of the following:

(A) Analysis of the need for further regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture Coordinating Councils referred to in section 2203 of this title, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to foodborne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States and local governments to build State and local food safety and food defense capabilities, including progress implementing strategies developed under sections 2202 and 2224 of this title.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(H) The impact of requirements under this Act (including amendments made by this Act) on certified organic farms and facilities (as defined in section 350d of this title).¹

(I) Specific efforts taken pursuant to the agreements authorized under section 350j(c) of this title (as added by section 201),² together with, as necessary, a description of any additional authorities necessary to improve seafood safety.

(2) Biennial reports

On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (H) of paragraph (1), as necessary.

(b) Risk-based activities

The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) Capability for laboratory analyses; research

The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to identify new and rapid analytical techniques, including commercially-available techniques that can be employed at ports of entry and by Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities and progress toward laboratory accreditation under section 350k of this title (as added by section 202).²

(d) Information technology

The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State,

local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 350d of this title, and the prior notice system under section 381(m) of this title with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) Automated risk assessment

The report developed under subsection (a)(1) shall include a description of progress toward developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) Traceback and surveillance report

The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration's performance in foodborne illness outbreaks during the 5-year period preceding January 4, 2011, involving fruits and vegetables that are raw agricultural commodities (as defined in section 321(r) of this title) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public, industry, and State and local governments, as such communication and coordination relates to outbreak identification and traceback.

(g) Biennial food safety and food defense research plan

The Secretary, the Secretary of Agriculture, and the Secretary of Homeland Security shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of foodborne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the subsequent 2-year period.

(h) Effectiveness of programs administered by the Department of Health and Human Services

(1) In general

To determine whether existing Federal programs administered by the Department of Health and Human Services are effective in achieving the stated goals of such programs, the Secretary shall, beginning not later than 1 year after January 4, 2011—

(A) conduct an annual evaluation of each program of such Department to determine the effectiveness of each such program in achieving legislated intent, purposes, and objectives; and

(B) submit to Congress a report concerning such evaluation.

(2) Content

The report described under paragraph (1)(B) shall—

(A) include conclusions concerning the reasons that such existing programs have

¹ So in original. Probably should be "title."

² See References in Text note below.

proven successful or not successful and what factors contributed to such conclusions;

(B) include recommendations for consolidation and elimination to reduce duplication and inefficiencies in such programs at such Department as identified during the evaluation conduct³ under this subsection; and

(C) be made publicly available in a publication entitled “Guide to the U.S. Department of Health and Human Services Programs”.

(i) Unique identification numbers

(1) In general

Not later than 1 year after January 4, 2011, the Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study regarding the need for, and challenges associated with, development and implementation of a program that requires a unique identification number for each food facility registered with the Secretary and, as appropriate, each broker that imports food into the United States. Such study shall include an evaluation of the costs associated with development and implementation of such a system, and make recommendations about what new authorities, if any, would be necessary to develop and implement such a system.

(2) Report

Not later than 15 months after January 4, 2011, the Secretary shall submit to Congress a report that describes the findings of the study conducted under paragraph (1) and that includes any recommendations determined appropriate by the Secretary.

(Pub. L. 111-353, title I, §110, Jan. 4, 2011, 124 Stat. 3913.)

REFERENCES IN TEXT

The Secretary, referred to in subsecs. (a), (b), (d), (f), (g), (h)(1), and (i), probably means the Secretary of Health and Human Services.

This Act, referred to in subsec. (a)(1)(H), is Pub. L. 111-353, Jan. 4, 2011, 124 Stat. 3885, known as the FDA Food Safety Modernization Act, which enacted this chapter and sections 350g to 350l-1, 379j-31, 384a to 384d, 399c, and 399d of this title, section 7625 of Title 7, Agriculture, and section 280g-16 of Title 42, The Public Health and Welfare, amended sections 331, 333, 334, 350b to 350d, 350f, 374, 381, 393, and 399 of this title and section 247b-20 of Title 42, and enacted provisions set out as notes under sections 331, 334, 342, 350b, 350d, 350e, 350g to 350j, 350l, and 381 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

Section 350d of this title, referred to in subsec. (a)(1)(H), and section 321(r) of this title, referred to in subsec. (f), were in the original “section 415 (21 U.S.C. 350d)” and “section 201(r) (21 U.S.C. 321(r))”, respectively, and were translated as meaning sections 415 and 201(r) of the Federal Food, Drug, and Cosmetic Act, act June 25, 1938, ch. 675, to reflect the probable intent of Congress.

Section 201, referred to in subsec. (a)(1)(I), and section 202, referred to in subsec. (c), mean sections 201 and 202, respectively, of Pub. L. 111-353.

§ 2205. Food allergy and anaphylaxis management

(a) Definitions

In this section:

³ So in original. Probably should be “conducted”.

(1) Early childhood education program

The term “early childhood education program” means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) ESEA definitions

The terms “local educational agency”, “secondary school”, “elementary school”, and “parent” have the meanings given the terms in section 7801 of title 20.

(3) School

The term “school” includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(b) Establishment of voluntary food allergy and anaphylaxis management guidelines

(1) Establishment

(A) In general

Not later than 1 year after January 4, 2011, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) Applicability of FERPA

Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of section 1232g of title 20 (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”).

(2) Contents

The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following and may be updated as the Secretary determines necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child’s physician or nurse—

(I) supporting a diagnosis of food allergy, and any risk of anaphylaxis, if applicable;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

- (IV) listing any medication prescribed for the child for the treatment of anaphylaxis;
 - (V) detailing emergency treatment procedures in the event of a reaction;
 - (VI) listing the signs and symptoms of a reaction; and
 - (VII) assessing the child's readiness for self-administration of prescription medication; and
- (ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.
- (B) The creation and maintenance of an individual plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—
- (i) the children are capable of self-administering medication; and
 - (ii) such administration is not prohibited by State law.
- (C) Communication strategies between individual schools or early childhood education programs and providers of emergency medical services, including appropriate instructions for emergency medical response.
- (D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.
- (E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.
- (F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.
- (G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.
- (H) The timely accessibility of epinephrine by school or early childhood education program personnel when the nurse is not immediately available.
- (I) The creation of a plan contained in each individual plan for food allergy management that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as non-academic outings and field trips, before- and after-school programs or before- and after-early child education program programs,¹ and school-sponsored or early childhood education program-sponsored programs held on weekends.
- (J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

- (K) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) Relation to State law

Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) School-based food allergy management grants

(1) In general

The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) Application

(A) In general

To be eligible to receive a grant under this subsection, a local educational agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) Contents

Each application submitted under subparagraph (A) shall include—

- (i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);
- (ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

- (I) how the guidelines will be carried out at individual schools served by the local educational agency;

- (II) how the local educational agency will inform parents and students of the guidelines in place;

- (III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

- (IV) any other activities that the Secretary determines appropriate;

- (iii) an itemization of how grant funds received under this subsection will be expended;

- (iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and

- (v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) Use of funds

Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

- (A) Purchase of materials and supplies, including limited medical supplies such as epi-

¹ So in original.

nephrite and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) Duration of awards

The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) Limitation on grant funding

The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) Maximum amount of annual awards

A grant awarded under this subsection may not be made in an amount that is more than \$50,000 annually.

(7) Priority

In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 6333(c) of title 20.

(8) Matching funds

(A) In general

The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) Determination of amount of non-Federal contribution

Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) Administrative funds

A local educational agency that receives a grant under this subsection may use not more

than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) Progress and evaluations

At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(11) Supplement, not supplant

Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$30,000,000 for fiscal year 2011 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) Voluntary nature of guidelines

(1) In general

The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) Exception

Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

(Pub. L. 111-353, title I, §112, Jan. 4, 2011, 124 Stat. 3916.)

REFERENCES IN TEXT

The Head Start Act, referred to in subsec. (a)(1)(A), is subchapter B (§635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

§ 2206. Alcohol-related facilities

(a) In general

Except as provided by sections 102, 206, 207, 302, 304, 402, 403, and 404 of this Act, and the amendments made by such sections, nothing in this Act, or the amendments made by this Act, shall be construed to apply to a facility that—

(1) under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and

(2) under section 350d of this title is required to register as a facility because such facility is

engaged in manufacturing, processing, packing, or holding 1 or more alcoholic beverages, with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages.

(b) Limited receipt and distribution of non-alcohol food

Subsection (a) shall not apply to a facility engaged in the receipt and distribution of any non-alcohol food, except that such paragraph shall apply to a facility described in such paragraph that receives and distributes non-alcohol food, provided such food is received and distributed—

(1) in a prepackaged form that prevents any direct human contact with such food; and

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

(c) Rule of construction

Except as provided in subsections (a) and (b), this section shall not be construed to exempt any food, other than alcoholic beverages, as defined in section 214¹ of the Federal Alcohol Administration Act (27 U.S.C. 214), from the requirements of this Act (including the amendments made by this Act).

(Pub. L. 111-353, title I, §116, Jan. 4, 2011, 124 Stat. 3922.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c), is Pub. L. 111-353, Jan. 4, 2011, 124 Stat. 3885, known as the FDA Food Safety Modernization Act, which enacted this chapter and sections 350g to 350l-1, 379j-31, 384a to 384d, 399c, and 399d of this title, section 7625 of Title 7, Agriculture, and section 280g-16 of Title 42, The Public Health and Welfare, amended sections 331, 333, 334, 350b to 350d, 350f, 374, 381, 393, and 399 of this title and section 247b-20 of Title 42, and enacted provisions set out as notes under sections 331, 334, 342, 350b, 350d, 350e, 350g to 350j, 350l, and 381 of this title. Sections 102, 206, 207, 302, 304, 402, 403, and 404 of the Act enacted sections 350l, 350l-1, 384b, 399d, 2251, and 2252 of this title, amended sections 331, 333, 334, 350d, and 381 of this title, and enacted provisions set out as notes under sections 334, 350d, 350l, and 381 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

The Federal Alcohol Administration Act, referred to in subsecs. (a)(1) and (c), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, which is classified generally to subchapter I (§201 et seq.) of chapter 8 of Title 27, Intoxicating Liquors. Section 214 of the Act probably means section 203 of the Act, which is classified to section 214 of Title 27 and defines “alcoholic beverage”. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code.

SUBCHAPTER II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

§ 2221. Food emergency response network

The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal gov-

¹ See References in Text note below.

ernments shall, not later than 180 days after January 4, 2011, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State, local, and tribal food laboratories, including the adoption of novel surveillance and identification technologies and the sharing of data between Federal agencies and State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

(Pub. L. 111-353, title II, §202(b), Jan. 4, 2011, 124 Stat. 3929.)

REFERENCES IN TEXT

The Secretary, referred to in text, probably means the Secretary of Health and Human Services.

§ 2222. Integrated consortium of laboratory networks

(a) In general

The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services, the Secretary of Agriculture, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

(1) agree on common laboratory methods in order to reduce the time required to detect and respond to foodborne illness outbreaks and facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify means by which laboratory network members could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) Reporting requirement

The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of