

§ 121.126

(e)(1) This part does not apply with respect to alcoholic beverages at a facility that meets the following two conditions:

(i) 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.*) the facility is required to obtain a permit from, register with, or obtain approval of a notice or application from the Secretary of the Treasury as a condition of doing business in the United States, or is a foreign facility of a type that would require such a permit, registration, or approval if it were a domestic facility; and

(ii) Under section 415 of the Federal Food, Drug, and Cosmetic Act the facility is required to register as a facility because it is engaged in manufacturing, processing, packing, or holding one or more alcoholic beverages.

(2) This part does not apply with respect to food that is not an alcoholic beverage at a facility described in paragraph (e)(1) of this section, provided such food:

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

(ii) Constitutes not more than 5 percent of the overall sales of the facility, as determined by the Secretary of the Treasury.

(f) This part does not apply to the manufacturing, processing, packing, or holding of food for animals other than man.

(g) This part does not apply to on-farm manufacturing, processing, packing, or holding of the following foods on a farm mixed-type facility, when conducted by a small or very small business if such activities are the only activities conducted by the business subject to section 418 of the Federal Food, Drug, and Cosmetic Act.

(1) Eggs (in-shell, other than raw agricultural commodities, *e.g.*, pasteurized); and

(2) Game meats (whole or cut, not ground or shredded, without secondary ingredients).

Subpart B—Reserved

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Subpart C—Food Defense Measures

§ 121.126 Food defense plan.

(a) *Requirement for a food defense plan.* You must prepare, or have prepared, and implement a written food defense plan.

(b) *Contents of a food defense plan.* The written food defense plan must include:

(1) The written vulnerability assessment, including required explanations, to identify significant vulnerabilities and actionable process steps as required by §121.130(c);

(2) The written mitigation strategies, including required explanations, as required by §121.135(b);

(3) The written procedures for the food defense monitoring of the implementation of the mitigation strategies as required by §121.140(a);

(4) The written procedures for food defense corrective actions as required by §121.145(a)(1); and

(5) The written procedures for food defense verification as required by §121.150(b).

(c) *Records.* The food defense plan required by this section is a record that is subject to the requirements of subpart D of this part.

§ 121.130 Vulnerability assessment to identify significant vulnerabilities and actionable process steps.

(a) *Requirement for a vulnerability assessment.* You must conduct or have conducted a vulnerability assessment for each type of food manufactured, processed, packed, or held at your facility using appropriate methods to evaluate each point, step, or procedure in your food operation to identify significant vulnerabilities and actionable process steps. Appropriate methods must include, at a minimum, an evaluation of:

(1) The potential public health impact (*e.g.*, severity and scale) if a contaminant were added;

(2) The degree of physical access to the product; and

(3) The ability of an attacker to successfully contaminate the product.

(b) *Inside attacker.* The assessment must consider the possibility of an inside attacker.

(c) *Written vulnerability assessment.* Regardless of the outcome, the vulnerability assessment must be written and must include an explanation as to why each point, step, or procedure either was or was not identified as an actionable process step.

§ 121.135 Mitigation strategies for actionable process steps.

(a) You must identify and implement mitigation strategies at each actionable process step to provide assurances that the significant vulnerability at each step will be significantly minimized or prevented and the food manufactured, processed, packed, or held by your facility will not be adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act. For each mitigation strategy implemented at each actionable process step, you must include a written explanation of how the mitigation strategy sufficiently minimizes or prevents the significant vulnerability associated with the actionable process step.

(b) Mitigation strategies and accompanying explanations must be written.

§ 121.138 Mitigation strategies management components.

Mitigation strategies required under § 121.135 are subject to the following mitigation strategies management components as appropriate to ensure the proper implementation of the mitigation strategies, taking into account the nature of each such mitigation strategy and its role in the facility's food defense system:

(a) Food defense monitoring in accordance with § 121.140;

(b) Food defense corrective actions in accordance with § 121.145; and

(c) Food defense verification in accordance with § 121.150.

§ 121.140 Food defense monitoring.

As appropriate to the nature of the mitigation strategy and its role in the facility's food defense system:

(a) *Written procedures.* You must establish and implement written procedures, including the frequency with which they are to be performed, for food defense monitoring of the mitigation strategies.

(b) *Food defense monitoring.* You must monitor the mitigation strategies with adequate frequency to provide assurances that they are consistently performed.

(c) *Records*—(1) *Requirement to document food defense monitoring.* You must document the monitoring of mitigation strategies in accordance with this section in records that are subject to verification in accordance with § 121.150(a)(1) and records review in accordance with § 121.150(a)(3)(i).

(2) *Exception records.* Records may be affirmative records demonstrating the mitigation strategy is functioning as intended. Exception records demonstrating the mitigation strategy is not functioning as intended may be adequate in some circumstances.

§ 121.145 Food defense corrective actions.

(a) *Food defense corrective action procedures.* As appropriate to the nature of the actionable process step and the nature of the mitigation strategy:

(1) You must establish and implement written food defense corrective action procedures that must be taken if mitigation strategies are not properly implemented.

(2) The food defense corrective action procedures must describe the steps to be taken to ensure that:

(i) Appropriate action is taken to identify and correct a problem that has occurred with implementation of a mitigation strategy; and

(ii) Appropriate action is taken, when necessary, to reduce the likelihood that the problem will recur.

(b) *Records.* All food defense corrective actions taken in accordance with this section must be documented in records that are subject to food defense verification in accordance with § 121.150(a)(2) and records review in accordance with § 121.150(a)(3)(i).

§ 121.150 Food defense verification.

(a) *Food defense verification activities.* Food defense verification activities must include, as appropriate to the nature of the mitigation strategy and its role in the facility's food defense system: