

107TH CONGRESS  
1ST SESSION

# H. R. 3075

To amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of food from foreign countries, including detecting the intentional adulteration of food.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2001

Mr. DINGELL (for himself, Mr. BROWN of Ohio, Mr. WAXMAN, Mr. MARKEY, Mr. BOUCHER, Mr. TOWNS, Mr. PALLONE, Mr. GORDON, Mr. DEUTSCH, Mr. STUPAK, Mr. WYNN, Mr. GREEN of Texas, Ms. McCARTHY of Missouri, Mr. STRICKLAND, Mrs. CAPPS, and Mr. DOYLE) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

## A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of food from foreign countries, including detecting the intentional adulteration of food.

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

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Imported Food Safety  
5       Act of 2001”.

**6 SEC. 2. FINDINGS.**

7       The Congress finds as follows:

1 (1) The Food and Drug Administration (FDA)  
2 has confirmed that the number of produce-related  
3 foodborne illness outbreaks in the United States has  
4 increased in recent years.

15 (3) FDA data demonstrate that the pesticide  
16 violation rate for imported food entering the United  
17 States is nearly three time as great as for domesti-  
18 cally produced food.

19 (4) FDA says its resources to deal with im-  
20 ported food safety are limited. The General Account-  
21 ing Office reported that between 1992 and 1997, the  
22 number of imported food entries increased by more  
23 than 200 percent, from 1.1 million to 2.7 million. At  
24 the same time, FDA inspection of imported food has

1 fallen from an estimated 8 percent in fiscal year  
2 1992 to 1.7 percent in fiscal year 1997.

3 (5) FDA confirms that there is a critical need  
4 for rapid, accurate methods to detect, identify, and  
5 quantify pathogens. For example, FDA can identify  
6 only about half of the approximately 400 pesticides  
7 for which the Environmental Protection Agency has  
8 established tolerances. In addition, FDA says its  
9 method for detecting hepatitis A on shellfish is inef-  
10 fective for strawberries, and its method for detecting  
11 cyclospora on raspberries is also ineffective.

12 (6) FDA lacks statutory authority to maintain  
13 physical custody of imported foods until the admissi-  
14 bility of the food has been determined, creating a  
15 critical need for pathogen detection tests that will  
16 produce real-time results while imported food is still  
17 before FDA inspectors at the international border.

18 (7) The Secretary of Health and Human Serv-  
19 ices has said that protecting the Nation's food sup-  
20 ply from imported food that has been intentionally  
21 adulterated is a priority that should be addressed.

1 **SEC. 3. ADDITIONAL AUTHORITIES OF FOOD AND DRUG AD-**2 **MINISTRATION REGARDING IMPORTED FOOD**3 **SAFETY.**

4 (a) REQUIREMENT FOR PRIOR APPROVAL OF SEC-  
5 RETARY FOR COMMERCIAL DISTRIBUTION AND RELATED  
6 ACTIVITIES.—Section 801 of the Federal Food, Drug, and  
7 Cosmetic Act (21 U.S.C. 381) is amended—

8 (1) by striking “(b) Pending decision” and in-  
9 serting “(b)(1) Pending decision”, and by redesign-  
10 nating subsection (c) as paragraph (2) of subsection  
11 (b); and

12 (2) by inserting after subsection (b) the fol-  
13 lowing subsection:

14 “(c)(1) Food entering the United States shall not,  
15 without the prior approval of the Secretary, be—

16 “(A) transferred from the control of the person  
17 who held control when the food entered the United  
18 States;

19 “(B) transported within the United States;

20 “(C) commercially distributed within the United  
21 States; or

22 “(D) removed from its intact state, with respect  
23 to the manner in which the food was packed for  
24 transport.

25 “(2) In determining whether to grant approval under  
26 paragraph (1), the Secretary shall consider the following:

1               “(A) Whether there is a reasonable basis for be-  
2       lieving that the food involved may have been inten-  
3       tionally adulterated.

4                   “(B) Whether the person or persons preparing,  
5                   packing, holding, manufacturing, or processing the  
6                   food cooperate with the Secretary in inspections re-  
7                   garding the food that are conducted by the Sec-  
8                   retary (including inspections conducted in foreign  
9                   countries).

10                   “(C) Whether the person or persons have a history  
11                   of failing to comply with applicable provisions  
12                   of this Act regarding food.

13                   “(D) Whether the food (as a particular type of  
14                   product) has such a history.

15               “(E) Whether there is such a history with re-  
16               spect to a particular foreign country.

17           “(F) Whether the system of regulating food  
18           maintained in the foreign country provides at least  
19           the same level of protection as domestic laws that  
20           affect the safety of the food supply.

21               “(G) Whether the foreign country permits the  
22               Secretary to conduct within the country inspections  
23               regarding food.

24                   “(H) Such other factors as the Secretary deter-  
25                   mines to be appropriate.

1       “(3) If under paragraph (2)(A) the Secretary deter-  
2 mines that there is a reasonable basis for believing that  
3 a shipment of food may have been intentionally adulter-  
4 ated, the following applies:

5           “(A) The Secretary shall take custody of the  
6 shipment.

7           “(B) The Secretary may not subsequently pro-  
8 vide approval under paragraph (1) for the shipment  
9 unless, on the basis of tests of the shipment, the  
10 Secretary determines that the food is not adulter-  
11 ated.

12          “(C) The Secretary shall require for purposes  
13 of subparagraph (A) that proof be presented that  
14 the shipment has been tested for the presence of mi-  
15 crobial pathogens and pesticide chemicals or related  
16 residues, and for such other pathogens or substances  
17 as the Secretary determines to be appropriate.

18          “(D) If the Secretary determines that the food  
19 is adulterated, the Secretary shall cause the destruc-  
20 tion of the food not later than 30 days thereafter.

21          “(4)(A) If the system of regulating food maintained  
22 in a foreign country does not provide at least the same  
23 level of protection as domestic laws that affect the safety  
24 of the food supply, or if the foreign country does not per-  
25 mit the Secretary to conduct within the country inspec-

1 tions regarding food, the Secretary shall deny approval  
2 under paragraph (1) for all food prepared, packed, held,  
3 manufactured, or processed in the foreign country, except  
4 as provided in subparagraph (B).

5 “(B) In the case of a foreign country with respect  
6 to which approval under paragraph (1) has been denied  
7 under subparagraph (A), a shipment of food prepared,  
8 packed, held, manufactured, or processed in the foreign  
9 country may be granted approval under such paragraph  
10 if the Secretary receives proof satisfactory to the Secretary  
11 that food in the shipment is not adulterated. The Sec-  
12 retary shall require for purposes of the preceding sentence  
13 that proof be presented that the shipment has been tested  
14 for the presence of microbial pathogens and pesticide  
15 chemicals or related residues, and for such other patho-  
16 gens or substances as the Secretary determines to be ap-  
17 propriate.

18 “(C) If the Secretary of State determines that the  
19 government of a foreign country has supported or other-  
20 wise aided or abetted one or more acts of international  
21 terrorism, such country shall be considered to be a foreign  
22 country to which subparagraph (A) applies. Subparagraph  
23 (B) does not apply with respect such a foreign country.

24 “(5)(A) If the Secretary determines that a person has  
25 intentionally adulterated food that is imported or offered

1 for import into the United States, or has aided or abetted  
2 the intentional adulteration of food that is so imported or  
3 offered, or has prepared, packed, held, manufactured, or  
4 processed the food knowing that the food has been inten-  
5 tionally adulterated and is intended to be so imported or  
6 offered, then the Secretary shall by order provide that,  
7 thereafter, any food prepared, packed, held, manufac-  
8 tured, or processed by such person may not be imported  
9 into the United States. Such an order may be modified  
10 or terminated, as determined appropriate by the Sec-  
11 retary.

12       “(B) If the Secretary determines that food imported  
13 or offered for import into the United States has been in-  
14 tentionally adulterated, but that a person who prepared,  
15 packed, held, manufactured, or processed such food did  
16 not know of the adulteration, the Secretary may by order  
17 provide that, for a period not exceeding 180 days, food  
18 prepared, packed, held, manufactured, or processed by  
19 such person may not be imported into the United States.  
20 Such an order may be modified or terminated, as deter-  
21 mined appropriate by the Secretary.

22       “(6) The Secretary shall by regulation provide for the  
23 marking of any shipment of food that has been denied ap-  
24 proval under paragraph (1) in a manner making it readily

1 apparent that the food has been refused admission into  
2 the United States.

3       “(7) The Secretary may limit the ports of entry into  
4 the United States through which food, or particular foods  
5 or food products, or food from particular points of origin  
6 or with particular chains of distribution, is authorized to  
7 be imported or offered for import if the Secretary deter-  
8 mines that such action is necessary for the Secretary to  
9 carry out this subsection effectively.”.

10       (b) CRIMINAL PENALTIES.—

11           (1) ACTING WITHOUT APPROVAL OF SEC-  
12 RETARY.—Section 301 of the Federal Food, Drug,  
13 and Cosmetic Act (21 U.S.C. 331) is amended by  
14 adding at the end the following:

15       “(bb)(1) In the case of food, the carrying out of any  
16 act in violation of section 801(c)(1).”.

17           (2) FAILURE TO DISPOSE OF FOODS DENIED  
18 ENTRY.—Section 301(bb) of the Federal Food,  
19 Drug, and Cosmetic Act (21 U.S.C. 331(bb)), as  
20 added by paragraph (1), is amended by adding at  
21 the end the following:

22       “(2) The failure to comply with an order under sec-  
23 tion 801 regarding the disposition of food that for pur-  
24 poses of such section has been refused admission or denied  
25 the approval of the Secretary.”.

(3) FAILURE TO PROVIDE COUNTRY-OF-ORIGIN LABELING FOR CERTAIN FOODS.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

“(t) If it is a food intended for human consumption, it is grown, prepared, packed, manufactured, or processed in a foreign country, and it fails, at the time the food is offered for retail sale, to bear or be accompanied by labeling that identifies the country or countries in which the food was grown, prepared, packed, manufactured, or processed, except that this paragraph does not apply to food offered for retail sale by restaurants or other eating establishments.”.

14 (c) CONFORMING AMENDMENT.—Section 801 of the  
15 Federal Food, Drug, and Cosmetic Act, as amended by  
16 subsection (a), is amended in subsection (b)(2) by striking  
17 “subsection (b)” and inserting “paragraph (1)”.

18 SEC. 4. SIGNIFICANT INCREASES IN FREQUENCY OF IN-  
19 SPECTIONS OF IMPORTED FOOD SAFETY;  
20 MAINTAINING PUBLIC CONFIDENCE; RE-  
21 PORTS TO CONGRESS.

22 Section 801 of the Federal Food, Drug, and Cosmetic  
23 Act, as amended by section 3(a), is amended in subsection  
24 (c) by adding at the end the following paragraphs:

1       “(8)(A) The Secretary shall give high priority to in-  
2 creasing significantly, relative to fiscal year 2001, the  
3 number of inspections under this section, including the  
4 testing of imported food for pesticide and microbial con-  
5 tamination, that are conducted with respect to food at  
6 ports of entry into the United States, with the greatest  
7 priority given to inspections to detect the intentional adul-  
8 teration of food.

9       “(B) In carrying out subparagraph (A), the Secretary  
10 shall provide for such numbers and types of food inspec-  
11 tions at ports of entry into the United States as will, in  
12 the determination of the Secretary, be sufficient for the  
13 public to have confidence that food imported into the  
14 United States has not been intentionally adulterated. For  
15 purposes of the preceding sentence, the Secretary shall  
16 provide for the testing of samples of food from shipments  
17 in order to determine whether there is a high level of sta-  
18 tistical confidence that the shipments have not been inten-  
19 tionally adulterated.

20       “(9)(A) The Secretary shall submit to the Congress  
21 periodic reports describing the activities of the Secretary  
22 under this section with respect to the safety of food.

23       “(B) Each report under subparagraph (A) shall, for  
24 each port of entry into the United States, specify the num-  
25 ber of inspections and tests that were conducted under

1 this section with respect to food during the preceding fis-  
2 cal year, and the extent to which such number is an in-  
3 crease over the number of such inspections specified for  
4 such port in the preceding report under subparagraph (A).

5       “(C) Each report under subparagraph (A) shall state  
6 the statistical methodologies used by the Secretary in sam-  
7 pling food for purposes of inspections under this section,  
8 including the testing of imported food for pesticide and  
9 microbial contamination, and the levels of confidence asso-  
10 ciated with the methodologies.

11       “(D) The first report under subparagraph (A) shall  
12 be submitted not later than December 1, 2002, and subse-  
13 quent reports shall be submitted annually thereafter.”.

14 **SEC. 5. RESEARCH ON TESTING TECHNIQUES FOR USE IN**  
15                   **INSPECTIONS OF IMPORTED FOOD SAFETY;**  
16                   **PRIORITY REGARDING DETECTION OF INTEN-**  
17                   **TIONAL ADULTERATION.**

18       Section 801 of the Federal Food, Drug, and Cosmetic  
19 Act, as amended by section 4, is amended in subsection  
20 (c) by adding at the end the following paragraph:

21       “(10)(A) The Secretary shall (directly or through  
22 grants or contracts) provide for research on the develop-  
23 ment of tests and sampling methodologies, for use in in-  
24 spections of food under this section—

1           “(i) whose purpose is to determine whether food  
2        is adulterated by reason of being contaminated with  
3        microorganisms or pesticide chemicals or related res-  
4        idues; and

5           “(ii) whose results are available not later than  
6        approximately 60 minutes after the administration  
7        of the tests.

8           “(B) In providing for research under subparagraph  
9        (A), the Secretary shall give priority to conducting re-  
10      search on the development of tests that are suitable for  
11      inspections of food at ports of entry into the United  
12      States, with the greatest priority given to the development  
13      of such tests that the Secretary determines would be use-  
14      ful in detecting the intentional adulteration of food.

15           “(C)(i) In providing for research under subparagraph  
16        (A), the Secretary shall under subparagraph (B) give pri-  
17      ority to conducting research on the development of tests  
18      for detecting the presence in food of the pathogens E. coli,  
19      salmonella, cyclospora, cryptosporidium, hepatitis A, or  
20      listeria, the presence in or on food of pesticide chemicals  
21      and related residues, and the presence in or on food of  
22      such other pathogens or substances as the Secretary deter-  
23      mines to be appropriate, including any pathogen or sub-  
24      stance that the Secretary determines is a candidate for  
25      use to intentionally adulterate food. The Secretary shall

1 establish the goal of developing, by the expiration of the  
2 three-year period beginning on the date of the enactment  
3 of the Imported Food Safety Act of 2001, tests under sub-  
4 paragraph (A) for each of the pathogens and substances  
5 receiving priority under the preceding sentence.

6       “(ii) The Secretary shall submit to the Congress peri-  
7 odic reports describing the progress that has been made  
8 toward the goal referred to in clause (i) and describing  
9 plans for future research toward the goal. Each of the re-  
10 ports shall provide an estimate by the Secretary of the  
11 amount of funds needed to meet such goal, and shall pro-  
12 vide a determination by the Secretary of whether there  
13 is a need for further research under this paragraph. The  
14 first such report shall be submitted not later than March  
15 1, 2002, and subsequent reports shall be submitted semi-  
16 annually after the submission of the first report until the  
17 goal is met.

18       “(D) The Secretary shall carry out the program of  
19 research under subparagraph (A) in consultation with the  
20 Director of the Centers for Disease Control and Preven-  
21 tion, the Director of the National Institutes of Health, and  
22 the Administrator of the Environmental Protection Agen-  
23 cy. The Secretary shall with respect to such research co-  
24 ordinate the activities of the Department of Health and  
25 Human Services. The Secretary shall in addition consult

1 with the Secretary of Agriculture (acting through the  
2 Food Safety Inspection Service of the Department of Agri-  
3 culture) in carrying out the program.

4       “(E) Of the amounts reserved under section  
5 801B(a)(2)(B)(ii) for a fiscal year for carrying out the  
6 program of research under subparagraph (A), the Sec-  
7 retary shall make available not less than 50 percent for  
8 making awards of grants or contracts to private entities  
9 to conduct such research.”.

10 **SEC. 6. RECALL AUTHORITY REGARDING IMPORTED FOOD.**

11       Chapter VIII of the Federal Food, Drug, and Cos-  
12 metic Act (21 U.S.C. 381 et seq.) is amended by inserting  
13 after section 801 the following section:

14       “RECALL AUTHORITY REGARDING IMPORTED FOOD  
15       “SEC. 801A. (a) IN GENERAL.—If the Secretary de-  
16 termines that there is a reasonable basis for believing that  
17 food imported into the United States has been inten-  
18 tionally adulterated, the following applies:

19       “(1) The Secretary shall issue an order requir-  
20 ing the appropriate persons (including importers,  
21 distributors, or retailers) to immediately cease dis-  
22 tribution of the food.

23       “(2) In the case of a food to which an order  
24 under subparagraph (A) applies, the provisions of  
25 paragraphs (1) and (2)(A) of section 518(e) regard-  
26 ing an informal hearing, and amending an order of

1 the Secretary to require a recall, apply with respect  
2 to the food to the same extent and in the same man-  
3 ner as such provisions apply with respect to devices.

4 “(b) INFANT FORMULA.—With respect to the recall  
5 of infant formula, section 412(e) applies in lieu of sub-  
6 section (a) of this section.”.

7 **SEC. 7. USER FEES REGARDING INSPECTIONS OF IM-  
8 PORTED FOOD SAFETY.**

9 Chapter VIII of the Federal Food, Drug, and Cos-  
10 metic Act, as amended by section 6 of this Act, is amended  
11 by inserting after section 801A the following section:

12 “USER FEES REGARDING FOOD SAFETY

13 “SEC. 801B. (a) IN GENERAL.—

14 “(1) ASSESSMENT.—Beginning in fiscal year  
15 2002, the Secretary shall in accordance with this  
16 section assess and collect fees on food imported into  
17 the United States.

18 “(2) PURPOSE OF FEES.—

19 “(A) IN GENERAL.—The purpose of fees  
20 under paragraph (1) is to defray increases in  
21 the costs of the resources allocated for carrying  
22 out section 801 with respect to food over the  
23 costs of carrying out such section with respect  
24 to food in fiscal year 2001 multiplied by the ad-  
25 justment factor. Increases referred to in the  
26 preceding sentence include increases in such

1 costs for an additional number of full-time  
2 equivalent positions in the Department of  
3 Health and Human Services to be engaged in  
4 carrying out such section.

5           “(B) ALLOCATIONS BY SECRETARY.—Of  
6 the total fee revenues collected under paragraph  
7 (1) for a fiscal year, the Secretary shall reserve  
8 and expend amounts in accordance with the fol-  
9 lowing:

10           “(i) The Secretary shall reserve not  
11 less than 50 percent for carrying out sec-  
12 tion 801 with respect to food, other than  
13 research under subsection (c)(10) of such  
14 section. In expending the amount so re-  
15 served, the Secretary shall give priority to  
16 inspections conducted at ports of entry  
17 into the United States, with the greatest  
18 priority given to inspections to detect the  
19 intentional adulteration of food.

20           “(ii) The Secretary shall reserve not  
21 more than 50 percent for carrying out re-  
22 search under section 801(c)(10).

23           “(3) AMOUNT OF FEE; COLLECTION.—A fee  
24 under paragraph (1) shall be assessed on each line  
25 item of food, as defined by the Secretary by regula-

1       tion. The amount of the fee shall be based on the  
2       number of line items, and may not exceed \$20 per  
3       line item, notwithstanding subsection (b). The liabil-  
4       ity for the fee constitutes a personal debt due to the  
5       United States, and such liability accrues on the date  
6       on which the Secretary approves the food under sec-  
7       tion 801(c)(1). The Secretary may coordinate with  
8       and seek the cooperation of other agencies of the  
9       Federal Government regarding the collection of such  
10      fees.

11      “(b) TOTAL FEE REVENUES.—The total fee revenues  
12     collected under subsection (a) for a fiscal year shall be  
13     the amount appropriated under subsection (f)(3).

14      “(c) ADJUSTMENTS.—

15       “(1) INFLATION ADJUSTMENT.—With respect  
16       to the amount of total fee revenues referred to in  
17       subsection (b), the amount authorized in subsection  
18       (f)(3) for a fiscal year shall be adjusted by the Sec-  
19       retary (and as adjusted shall be published in the  
20       Federal Register) to reflect the greater of—

21           “(A) the total percentage change that oc-  
22           curred during the preceding fiscal year in the  
23           Consumer Price Index for all urban consumers  
24           (all items; U.S. city average); or

1               “(B) the total percentage change for such  
2               fiscal year in basic pay under the General  
3               Schedule in accordance with section 5332 of  
4               title 5, United States Code, as adjusted by any  
5               locality-based comparability payment pursuant  
6               to section 5304 of such title for Federal em-  
7               ployees stationed in the District of Columbia.

8               “(2) ANNUAL FEE ADJUSTMENT.—Not later  
9               than 60 days after the end of each fiscal year begin-  
10               ning after fiscal year 2002, the Secretary, subject to  
11               not exceeding the maximum fee amount specified in  
12               subsection (a)(3), shall adjust the amounts that oth-  
13               erwise would under subsection (a) be assessed as  
14               fees during the fiscal year in which the adjustment  
15               occurs so that the total revenues collected in such  
16               fees for such fiscal year equal the amount applicable  
17               pursuant to subsection (b) for the fiscal year.

18               “(d) FEE WAIVER OR REDUCTION.—The Secretary  
19               shall grant a waiver from or a reduction of a fee assessed  
20               under subsection (a) where the Secretary finds that the  
21               fee to be paid will exceed the anticipated present and fu-  
22               ture costs incurred by the Secretary in carrying out sec-  
23               tion 801 with respect to food (which finding may be made  
24               by the Secretary using standard costs).

25               “(e) ASSESSMENT OF FEES.—

1           “(1) LIMITATION.—Fees may not be assessed  
2 under subsection (a) for a fiscal year beginning after  
3 fiscal year 2002 unless the amount appropriated for  
4 salaries and expenses of the Food and Drug Admin-  
5 istration for such fiscal year is equal to or greater  
6 than the amount appropriated for salaries and ex-  
7 penses of the Food and Drug Administration for fis-  
8 cal year 2002 multiplied by the adjustment factor  
9 applicable to the fiscal year involved, except that in  
10 making determinations under this paragraph for the  
11 fiscal years involved there shall be excluded—

12           “(A) the amounts appropriated under sub-  
13 section (f)(3) for the fiscal years involved; and  
14           “(B) the amounts appropriated under sec-  
15 tion 736(g) for such fiscal years.

16           “(2) AUTHORITY.—If the Secretary does not  
17 assess fees under subsection (a) during any portion  
18 of a fiscal year because of paragraph (1) and if at  
19 a later date in such fiscal year the Secretary may as-  
20 sess such fees, the Secretary may assess and collect  
21 such fees, without any modification in the rate of  
22 the fees, at any time in such fiscal year notwith-  
23 standing the provisions of subsection (a)(3) relating  
24 to the time at which fees are to be paid.

25           “(f) CREDITING AND AVAILABILITY OF FEES.—

1           “(1) IN GENERAL.—Fees collected for a fiscal  
2 year pursuant to subsection (a) shall be credited to  
3 the appropriation account for salaries and expenses  
4 of the Food and Drug Administration and shall be  
5 available in accordance with appropriation Acts until  
6 expended without fiscal year limitation. Such sums  
7 as may be necessary may be transferred from the  
8 Food and Drug Administration salaries and ex-  
9 penses appropriation account without fiscal year lim-  
10 itation to such appropriation account for salaries  
11 and expenses with such fiscal year limitation. The  
12 sums transferred shall be available solely for car-  
13 rying out section 801 with respect to food, and the  
14 sums are subject to allocations under subsection  
15 (a)(2)(B).

16           “(2) COLLECTIONS AND APPROPRIATION  
17 ACTS.—The fees authorized in subsection (a)—

18           “(A) shall be collected in each fiscal year  
19 in accordance with subsections (a)(3) and (b);  
20 and

21           “(B) shall only be collected and available  
22 for the purpose specified in subsection (a)(2).

23           “(3) AUTHORIZATION OF APPROPRIATIONS; AL-  
24 LOCATIONS BY SECRETARY.—Subject to paragraph  
25 (4) and subsection (c)(1), there is authorized to be

1 appropriated for fees under this section \$56,000,000  
2 for each of the fiscal years 2002 through 2006.

3       “(4) OFFSET.—Any amount of fees collected  
4 for a fiscal year under subsection (a) that exceeds  
5 the amount of fees specified in appropriation Acts  
6 for such fiscal year shall be credited to the appro-  
7 priation account of the Food and Drug Administra-  
8 tion as provided in paragraph (1), and shall be sub-  
9 tracted from the amount of fees that would other-  
10 wise be authorized to be collected under this section  
11 pursuant to appropriation Acts for a subsequent fis-  
12 cal year.

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

19       “(h) CONSTRUCTION.—This section may not be con-  
20 strued as requiring that the number of full-time equivalent  
21 positions in the Department of Health and Human Serv-  
22 ices, for officers, employees, and advisory committees not  
23 engaged in carrying out section 801 with respect to food  
24 be reduced to offset the number of officers, employees, and  
25 advisory committees so engaged.

1       “(i) DEFINITION OF ADJUSTMENT FACTOR.—For  
2 purposes of this section, the term ‘adjustment factor’ ap-  
3 plicable to a fiscal year is the lower of—

4           “(1) the Consumer Price Index for all urban  
5 consumers (all items; United States city average) for  
6 April of the preceding fiscal year divided by such  
7 Index for April 2001; or

8           “(2) the total of discretionary budget authority  
9 provided for programs in categories other than the  
10 defense category for the immediately preceding fiscal  
11 year (as reported in the Office of Management and  
12 Budget sequestration preview report, if available, re-  
13 quired under section 254(c) of the Balanced Budget  
14 and Emergency Deficit Control Act of 1985) divided  
15 by such budget authority for fiscal year 2001 (as re-  
16 ported in the Office of Management and Budget  
17 final sequestration report submitted after the end of  
18 the 106th Congress, 2d Session).

19 The terms ‘budget authority’ and ‘category’ in subpara-  
20 graph (B) are as defined in the Balanced Budget and  
21 Emergency Deficit Control Act of 1985.”.

1   **SEC. 8. ADDITIONAL FUNDING REGARDING DETECTION OF**  
2                   **INTENTIONAL ADULTERATION OF IMPORTED**  
3                   **FOOD.**

4       Chapter VIII of the Federal Food, Drug, and Cos-  
5   metic Act, as amended by section 7 of this Act, is amended  
6   by inserting after section 801B the following:

7       **“ADDITIONAL FUNDING FOR DETECTING INTENTIONAL**  
8                   **ADULTERATION OF IMPORTED FOOD**

9       **“SEC. 801C. (a) ADDITIONAL AUTHORIZATION OF**  
10   **APPROPRIATIONS.**—For the purpose of carrying out the  
11   responsibilities of the Secretary under sections 801 and  
12   801A with respect to detecting the intentional adulteration  
13   of food imported or offered for import into the United  
14   States, including implementation of the plan developed by  
15   the Secretary under subsection (b) of this section, there  
16   are authorized to be appropriated such sums as may be  
17   necessary for each of the fiscal years 2002 through 2006.  
18   Such authorization is in addition to other authorizations  
19   of appropriations that are available for such purpose.

20       **“(b) EMERGENCY IMPLEMENTATION PLAN; MAIN-**  
21   **TAINING PUBLIC CONFIDENCE REGARDING FOOD SAFE-**  
22   **TY.**—

23       **“(1) IN GENERAL.**—Not later than 30 days  
24   after the date of the enactment of the Imported  
25   Food Safety Act of 2001, the Secretary shall submit  
26   to the Congress a plan for carrying out the respon-

1       sibilities of the Secretary that are described in sub-  
2       section (a).

3           “(2) PUBLIC CONFIDENCE.—The plan under  
4       paragraph (1) shall provide for such numbers and  
5       types of food inspections at ports of entry into the  
6       United States as will in the determination of the  
7       Secretary be sufficient for the public to have con-  
8       fidence that food imported into the United States  
9       has not been intentionally adulterated. For purposes  
10      of the preceding sentence, the plan shall provide for  
11      the testing of samples of food in order to determine  
12      whether there is a high level of statistical confidence  
13      that the food is not intentionally adulterated.

14           “(3) EFFECTIVE DATE.—With respect to the  
15      availability of appropriations under subsection (a) to  
16      implement the plan submitted to the Congress under  
17      paragraph (1), such plan takes effect upon the expi-  
18      ration of the 30-day period beginning on the date on  
19      which the plan is so submitted.”.

○