

114TH CONGRESS
1ST SESSION

S. 1332

To require the Secretary of Agriculture to protect against foodborne illnesses, provide enhanced notification of recalled meat, poultry, eggs, and related food products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2015

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To require the Secretary of Agriculture to protect against foodborne illnesses, provide enhanced notification of recalled meat, poultry, eggs, and related food products, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Meat and Poultry Recall Notification Act of 2015”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; purposes.

TITLE I—MEAT AND POULTRY RECALL NOTIFICATION

Sec. 101. Definition of adulterated.

TITLE II—FOOD SAFETY

Sec. 201. Food safety.

TITLE III—CRIMINAL PENALTIES AND OTHER PROVISIONS

Sec. 301. Criminal penalties.

Sec. 302. Reports and evaluation of implementation.

Sec. 303. Authorization of appropriations.

1 SEC. 2. FINDINGS; PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) the safety of the food supply of the United
4 States is vital to the public health, public confidence
5 in the food supply, and the success of the food sector
6 of the economy of the United States;

7 (2) lapses in the protection of the food supply
8 and the loss of public confidence that results from
9 foodborne illness outbreaks and food recalls are
10 damaging to consumers and the food industry, and
11 place a burden on interstate commerce and inter-
12 national trade;

13 (3) the Food Safety and Inspection Service of
14 the Department of Agriculture has jurisdiction over
15 meat, poultry, and egg products;

16 (4)(A) events recent to the date of enactment of
17 this Act demonstrate that the food safety system ad-
18 ministered by the Food Safety and Inspection Serv-
19 ice is not effective in controlling risk in regulated
20 food; and

1 (B) these events have adversely affected con-
2 sumer confidence; and

3 (5) improving Federal oversight of food safety
4 requires a modern food safety mandate and clear au-
5 thorities to effectively protect the public from
6 foodborne diseases associated with the products that
7 the Food Safety and Inspection Service regulates.

8 (b) PURPOSES.—The purposes of this Act are—

9 (1) to establish an effective, preventive food
10 safety system administered by the Food Safety and
11 Inspection Service—

12 (A) to regulate food safety and strengthen
13 the protection of the public health; and

14 (B) to make more effective and efficient
15 use of resources to prevent foodborne illness;
16 and

17 (2) to establish that food establishments have
18 responsibility to ensure that all stages of production,
19 processing, and distribution of the products of the
20 food establishments, or under the control of the food
21 establishments, satisfy the requirements of this Act.

1 **TITLE I—MEAT AND POULTRY**
2 **RECALL NOTIFICATION**

3 **SEC. 101. DEFINITION OF ADULTERATED.**

4 (a) MEAT AND MEAT FOOD PRODUCTS.—Section
5 1(m) of the Federal Meat Inspection Act (21 U.S.C.
6 601(m)) is amended—

7 (1) in paragraph (8), by striking “or” at the
8 end;

9 (2) in paragraph (9), by striking the period at
10 the end and inserting “; or”; and

11 (3) by adding at the end the following:

12 “(10) if it bears or contains a pathogen or con-
13 taminant associated with serious illness or death.”.

14 (b) POULTRY AND POULTRY PRODUCTS.—Section
15 4(g) of the Poultry Products Inspection Act (21 U.S.C.
16 453(g)) is amended—

17 (1) in paragraph (7), by striking “or” at the
18 end;

19 (2) in paragraph (8), by striking the period at
20 the end and inserting “; or”; and

21 (3) by adding at the end the following:

22 “(9) if it bears or contains a pathogen or con-
23 taminant associated with serious illness or death.”.

1 (c) EGGS AND EGG PRODUCTS.—Section 4(a) of the
 2 Egg Products Inspection Act (21 U.S.C. 1033(a)) is
 3 amended—

4 (1) in paragraph (7), by striking “or” at the
 5 end;

6 (2) in paragraph (8), by striking the period at
 7 the end and inserting “; or”; and

8 (3) by adding at the end the following:

9 “(9) if it bears or contains a pathogen or con-
 10 taminant associated with serious illness or death.”.

11 **TITLE II—FOOD SAFETY**

12 **SEC. 201. FOOD SAFETY.**

13 (a) IN GENERAL.—Subtitle G of the Department of
 14 Agriculture Reorganization Act of 1994 (7 U.S.C. 6981
 15 et seq.) is amended—

16 (1) by inserting after the subtitle heading the
 17 following:

18 **“PART I—ADMINISTRATION”;**

19 and

20 (2) by adding at the end the following:

21 **“PART II—FOOD SAFETY**

22 **“SEC. 263. DEFINITIONS.**

23 “In this part:

24 “(1) ADULTERATED.—

1 “(A) IN GENERAL.—The term ‘adulter-
2 ated’ has the meaning given the term in—

3 “(i) in the case of poultry or a poultry
4 product, section 4 of the Poultry Products
5 Inspection Act (21 U.S.C. 453);

6 “(ii) in the case of meat or a meat
7 food product, section 1 of the Federal
8 Meat Inspection Act (21 U.S.C. 601); and

9 “(iii) in the case of an egg or egg
10 product, section 4 of the Egg Products In-
11 spection Act (21 U.S.C. 1033).

12 “(B) INCLUSION.—The term ‘adulterated’
13 includes bearing or containing a contaminant
14 that has the potential to cause serious illness or
15 death.

16 “(2) AGENCY.—The term ‘agency’ has the
17 meaning given the term in section 551 of title 5,
18 United States Code.

19 “(3) CONTAMINANT.—The term ‘contaminant’
20 includes a biological, chemical, physical, or radio-
21 logical food safety hazard that when found on or in
22 food can cause human illness, injury, or death.

23 “(4) FOOD.—The term ‘food’ means—

1 “(A) a meat or a meat food product (with-
 2 in the meaning of the Federal Meat Inspection
 3 Act (21 U.S.C. 601 et seq.));

4 “(B) an egg or egg product (as defined in
 5 section 4 of the Egg Products Inspection Act (21
 6 U.S.C. 1033)); or

7 “(C) a poultry or poultry product (as de-
 8 fined in section 4 of the Poultry Products In-
 9 spection Act (21 U.S.C. 453)).

10 “(5) FOOD ESTABLISHMENT.—

11 “(A) IN GENERAL.—The term ‘food estab-
 12 lishment’ means a slaughterhouse, factory,
 13 warehouse, or facility owned or operated by a
 14 person located in any State that processes food
 15 or a facility that holds, stores, or transports
 16 food or food ingredients.

17 “(B) EXCLUSIONS.—The term ‘food estab-
 18 lishment’ does not include a farm, restaurant,
 19 other retail food establishment, or nonprofit
 20 food establishment in which food is prepared for
 21 or served directly to the consumer.

22 “(6) FOOD SAFETY LAW.—The term ‘food safe-
 23 ty law’ means—

24 “(A) the Poultry Products Inspection Act
 25 (21 U.S.C. 451 et seq.);

1 “(B) the Federal Meat Inspection Act (21
2 U.S.C. 601 et seq.);

3 “(C) the Egg Products Inspection Act (21
4 U.S.C. 1031 et seq.);

5 “(D) the provisions of Public Law 85–765
6 (commonly known as the ‘Humane Methods of
7 Slaughter Act of 1958’) (7 U.S.C. 1901 et seq.)
8 administered by the Food Safety and Inspection
9 Service;

10 “(E) this part; and

11 “(F) such other provisions of law relating
12 to and requiring food safety, labeling, inspec-
13 tion, and enforcement as the President des-
14 ignates by Executive order as appropriate to in-
15 clude within the jurisdiction of the Secretary.

16 “(7) INTERSTATE COMMERCE.—The term
17 ‘interstate commerce’ has the meaning given the
18 term in section 201 of the Federal Food, Drug, and
19 Cosmetic Act (21 U.S.C. 321).

20 “(8) MISBRANDED.—The term ‘misbranded’
21 has the meaning given the term in—

22 “(A) in the case of poultry or a poultry
23 product, section 4 of the Poultry Products In-
24 spection Act (21 U.S.C. 453);

1 “(B) in the case of meat or a meat food
2 product, section 1 of the Federal Meat Inspec-
3 tion Act (21 U.S.C. 601); and

4 “(C) in the case of an egg or egg product,
5 section 4 of the Egg Products Inspection Act
6 (21 U.S.C. 1033).

7 “(9) PROCESS.—The term ‘process’ or ‘proc-
8 essing’ means the commercial harvesting, slaughter,
9 packing, preparation, or manufacture of food.

10 “(10) SAFE.—The term ‘safe’ refers to human
11 and animal health.

12 “(11) SECRETARY.—The term ‘Secretary’
13 means the Secretary of Agriculture, acting through
14 the Under Secretary of Food Safety.

15 “(12) STATE.—The term ‘State’ means—

16 “(A) a State;

17 “(B) the District of Columbia;

18 “(C) the Commonwealth of Puerto Rico;

19 and

20 “(D) any other territory or possession of
21 the United States.

22 **“SEC. 264. NOTIFICATION AND RECALL.**

23 “(a) DEFINITIONS.—In this section:

24 “(1) CLASS I RECALL.—The term ‘Class I re-
25 call’ means a food recall classification defined by the

1 Secretary that covers a health-hazard situation in
2 which there is a reasonable probability that the use
3 of the food or food product being recalled will cause
4 a serious, adverse health consequence, or death.

5 “(2) RETAIL ESTABLISHMENT.—The term ‘re-
6 tail establishment’ means a grocery store or other
7 retail establishment that sells food and food prod-
8 ucts directly to consumers.

9 “(3) SUMMARY NOTICE.—The term ‘summary
10 notice’ means the 1-page summary notice described
11 in subsection (d).

12 “(b) NOTICE TO SECRETARY OF VIOLATION.—

13 “(1) IN GENERAL.—A person that has reason
14 to believe that any food introduced into or in inter-
15 state commerce, or held for sale (whether or not the
16 first sale) after shipment in interstate commerce,
17 may be in violation of the food safety law shall im-
18 mediately notify the Secretary of the identity and lo-
19 cation of the food.

20 “(2) MANNER OF NOTIFICATION.—Notification
21 under paragraph (1) shall be made in such manner
22 and by such means as the Secretary may require by
23 regulation.

24 “(c) RECALL AND CONSUMER NOTIFICATION.—

1 “(1) VOLUNTARY ACTIONS.—If the Secretary
2 determines that food is in violation of the food safe-
3 ty law when introduced into or while in interstate
4 commerce or while held for sale (whether or not the
5 first sale) after shipment in interstate commerce or
6 that there is a reasonable probability that the food,
7 if consumed, would present a threat to public health,
8 as determined by the Secretary, the Secretary shall
9 give the appropriate persons (including the manufac-
10 turers, importers, distributors, or retailers of the
11 food) an opportunity—

12 “(A) to cease distribution of the food;

13 “(B) to notify all persons—

14 “(i) processing, distributing, or other-
15 wise handling the food to immediately
16 cease such activities with respect to the
17 food; or

18 “(ii) to which the food has been dis-
19 tributed, transported, or sold, to imme-
20 diately cease distribution of the food;

21 “(C) to recall the food;

22 “(D) in conjunction with the Secretary, to
23 provide notice of the finding of the Secretary—

24 “(i) to consumers to whom the food
25 was, or may have been, distributed; and

1 “(ii) to State and local public health
2 officials; or

3 “(E) to take any combination of the meas-
4 ures described in this paragraph, as determined
5 by the Secretary to be appropriate in the cir-
6 cumstances.

7 “(2) MANDATORY ACTIONS.—If a person re-
8 ferred to in paragraph (1) refuses to or does not
9 adequately carry out the actions described in that
10 paragraph within the time period and in the manner
11 prescribed by the Secretary, the Secretary shall—

12 “(A) have authority to control and possess
13 the food or recall the food, including ordering
14 the shipment of the food from the food estab-
15 lishment to the Secretary—

16 “(i) at the expense of the food estab-
17 lishment; or

18 “(ii) in an emergency (as determined
19 by the Secretary), at the expense of the
20 Secretary; and

21 “(B) by order, require, as the Secretary
22 determines to be necessary, the person to imme-
23 diately—

24 “(i) cease distribution of the food;

25 “(ii) notify all persons—

1 “(I) processing, distributing, or
 2 otherwise handling the food to imme-
 3 diately cease such activities with re-
 4 spect to the food; or

5 “(II) if the food has been distrib-
 6 uted, transported, or sold, to imme-
 7 diately cease distribution of the food;
 8 and

9 “(iii) recall contaminated food.

10 “(3) NOTIFICATION TO CONSUMERS BY SEC-
 11 RETARY.—In accordance with subsection (d), the
 12 Secretary shall, as the Secretary determines to be
 13 necessary, provide notice of the finding of the Sec-
 14 retary under paragraph (1)—

15 “(A) to consumers to whom the food was,
 16 or may have been, distributed;

17 “(B) to State and local public health offi-
 18 cials; and

19 “(C) to such other persons as the Sec-
 20 retary determines appropriate.

21 “(4) NONDISTRIBUTION BY NOTIFIED PER-
 22 SONS.—A person that processes, distributes, or oth-
 23 erwise handles the food, or to which the food has
 24 been distributed, transported, or sold, and that is

1 notified under paragraph (1)(B) or (2)(B) shall im-
2 mediately cease distribution of the food.

3 “(5) AVAILABILITY OF RECORDS TO SEC-
4 RETARY.—Each person referred to in paragraph (1)
5 that processed, distributed, or otherwise handled
6 food shall make available to the Secretary informa-
7 tion necessary to carry out this subsection, as deter-
8 mined by the Secretary, regarding—

9 “(A) persons that processed, distributed,
10 or otherwise handled the food; and

11 “(B) persons to which the food has been
12 transported, sold, distributed, or otherwise han-
13 dled.

14 “(d) CONSUMER RECALL NOTIFICATION.—

15 “(1) DISTRIBUTION OF INFORMATION.—In the
16 case of any Class I recall, the Secretary shall, to the
17 maximum extent practicable, distribute to each retail
18 establishment that has received or is likely to have
19 received recalled product in the United States a 1-
20 page summary notice containing product information
21 of each food or food product subject to the Class I
22 recall.

23 “(2) DISTRIBUTION OF INFORMATION.—The
24 Secretary shall require each retail establishment that

1 receives a summary notice to perform 2 of the 3 fol-
2 lowing actions:

3 “(A) To post a copy of the summary notice
4 at each cash register of the retail establishment.

5 “(B) To post a copy of the summary notice
6 on the shelving unit on which the food or food
7 product was sold.

8 “(C) In the case of a retail establishment
9 that uses a customer card system to track cus-
10 tomer purchases or demographics—

11 “(i) to place a call to each customer
12 that purchased a recalled food or food
13 product to inform the customer of the
14 Class I recall; or

15 “(ii) to make available to each cus-
16 tomer that purchased a recalled food or
17 food product with a targeted coupon with
18 information about the recalled food or food
19 product.

20 “(3) ASSISTANCE.—In cooperation with and,
21 when necessary, with direct assistance from the Di-
22 rector of the Centers for Disease Control and Pre-
23 vention and the Centers of Excellence of the Food
24 and Drug Administration, the Secretary shall pro-
25 vide assistance to regional, State, and local agencies

1 to assist in carrying out this section through activi-
2 ties such as providing resources, including timely in-
3 formation concerning symptoms and tests, for front-
4 line health professionals interviewing individuals as
5 part of routine surveillance and outbreak investiga-
6 tions.

7 “(4) AVAILABILITY OF LISTS OF RETAIL CON-
8 SIGNEES DURING FOOD RECALLS.—The Secretary
9 shall make publicly available the names and loca-
10 tions of retail establishment consignees of recalled
11 food or food products that the Secretary compiles in
12 connection with a recall for which there is a reason-
13 able probability that the use of the food or food
14 product could cause serious adverse health con-
15 sequences or death.

16 “(e) INFORMAL HEARINGS ON ORDERS.—

17 “(1) IN GENERAL.—The Secretary shall provide
18 any person subject to an order under subsection (c)
19 with an opportunity for an informal hearing, to be
20 held as soon as practicable but not later than 2 busi-
21 ness days after the issuance of the order.

22 “(2) SCOPE OF THE HEARING.—In a hearing
23 under paragraph (1), the Secretary shall consider
24 the actions required by the order and any reasons

1 why the food that is the subject of the order should
2 not be recalled.

3 “(f) POST-HEARING RECALL ORDERS.—

4 “(1) AMENDMENT OF ORDER.—If, after pro-
5 viding an opportunity for an informal hearing under
6 subsection (e), the Secretary determines that there
7 is a reasonable probability that the food that is the
8 subject of an order under subsection (e), if con-
9 sumed, would present a threat to the public health,
10 the Secretary, as the Secretary determines to be nec-
11 essary, may—

12 “(A) amend the order to require recall of
13 the food or other appropriate action;

14 “(B) specify a timetable in which the recall
15 shall occur;

16 “(C) require periodic reports to the Sec-
17 retary describing the progress of the recall; and

18 “(D) provide notice of the recall to con-
19 sumers to whom the food was, or may have
20 been, distributed.

21 “(2) VACATION OF ORDERS.—If, after providing
22 an opportunity for an informal hearing under sub-
23 section (e), the Secretary determines that adequate
24 grounds do not exist to continue the actions required
25 by the order, the Secretary shall vacate the order.

1 “(g) REMEDIES NOT EXCLUSIVE.—The remedies
2 provided in this section shall be in addition to, and not
3 exclusive of, other remedies that may be available.

4 **“SEC. 265. ENFORCEMENT AND ADMINISTRATION.**

5 “(a) CIVIL PENALTIES.—

6 “(1) CIVIL SANCTIONS.—

7 “(A) CIVIL PENALTY.—

8 “(i) IN GENERAL.—Any person that
9 commits an act that violates the food safe-
10 ty law (including a regulation promulgated
11 or order issued under a Federal food safety
12 law) may be assessed a civil penalty by the
13 Secretary of not more than \$10,000 for
14 each such act.

15 “(ii) SEPARATE OFFENSE.—Each act
16 described in clause (i) and each day during
17 which that act continues shall be consid-
18 ered a separate offense.

19 “(B) OTHER REQUIREMENTS.—

20 “(i) WRITTEN ORDER.—The civil pen-
21 alty described in subparagraph (A) shall be
22 assessed by the Secretary by a written
23 order, which shall specify the amount of
24 the penalty and the basis for the penalty

under clause (ii) considered by the Secretary.

“(ii) AMOUNT OF PENALTY.—Subject to subparagraph (A)(i), the amount of the civil penalty shall be determined by the Secretary, after considering—

“(I) the gravity of the violation;

“(II) the degree of culpability of the person;

“(III) the size and type of the business of the person; and

“(IV) any history of prior offenses by the person under the food safety law.

“(iii) REVIEW OF ORDER.—The order may be reviewed only in accordance with paragraph (2).

“(2) JUDICIAL REVIEW.—

“(A) IN GENERAL.—An order assessing a civil penalty under paragraph (1) shall be a final order unless the person—

“(i) not later than 30 days after the effective date of the order, files a petition for judicial review of the order in the United States court of appeals for the cir-

1 cuit in which that person resides or has its
2 principal place of business or the United
3 States Court of Appeals for the District of
4 Columbia; and

5 “(ii) simultaneously serves a copy of
6 the petition by certified mail to the Sec-
7 retary.

8 “(B) FILING OF RECORD.—Not later than
9 45 days after the service of a copy of the peti-
10 tion under subparagraph (A)(ii), the Secretary
11 shall file in the court a certified copy of the ad-
12 ministrative record upon which the order was
13 issued.

14 “(C) STANDARD OF REVIEW.—The find-
15 ings of the Secretary relating to the order shall
16 be set aside only if found to be unsupported by
17 substantial evidence on the record as a whole.

18 “(3) COLLECTION ACTIONS FOR FAILURE TO
19 PAY.—

20 “(A) IN GENERAL.—If any person fails to
21 pay a civil penalty assessed under paragraph
22 (1) after the order assessing the penalty has be-
23 come a final order, or after the court of appeals
24 described in paragraph (2) has entered final
25 judgment in favor of the Secretary, the Sec-

retary shall refer the matter to the Attorney General, who shall institute in a United States district court of competent jurisdiction a civil action to recover the amount assessed.

“(B) LIMITATION ON REVIEW.—In a civil action under subparagraph (A), the validity and appropriateness of the order of the Secretary assessing the civil penalty shall not be subject to judicial review.

“(4) PENALTIES PAID INTO ACCOUNT.—The Secretary—

“(A) shall deposit penalties collected under this section in an account in the Treasury; and

“(B) may use the funds in the account, without further appropriation or fiscal year limitation—

“(i) to carry out enforcement activities under food safety law; or

“(ii) to provide assistance to States to inspect retail commercial food establishments or other food or firms under the jurisdiction of State food safety programs.

“(5) DISCRETION OF THE SECRETARY TO PROSECUTE.—Nothing in this part requires the Secretary to report for prosecution, or for the commencement

1 of an action, the violation of the food safety law in
2 a case in which the Secretary finds that the public
3 interest will be adequately served by the assessment
4 of a civil penalty under this section.

5 “(6) REMEDIES NOT EXCLUSIVE.—The rem-
6 edies provided in this subsection are in addition to,
7 and not exclusive of, other remedies that may be
8 available under this or any other Act.

9 “(b) PRESUMPTION.—In any action to enforce the re-
10 quirements of the food safety law, the connection with
11 interstate commerce required for jurisdiction shall be pre-
12 sumed to exist.

13 “(c) WHISTLEBLOWER PROTECTION.—

14 “(1) IN GENERAL.—No Federal employee, em-
15 ployee of a Federal contractor or subcontractor, or
16 any individual employed by a company or other enti-
17 ty that is a regulated establishment or any other en-
18 tity involved in the food supply system (referred to
19 in this subsection as a ‘covered individual’), may be
20 discharged, demoted, suspended, threatened, har-
21 assed, or in any other manner discriminated against,
22 because of any lawful act done by the covered indi-
23 vidual—

24 “(A) to provide information, cause infor-
25 mation to be provided, or otherwise assist in an

1 investigation regarding any conduct that the
2 covered individual reasonably believes con-
3 stitutes a violation of this Act or a food safety
4 law, including any related rules or regulations,
5 or that the covered individual reasonably be-
6 lieves constitutes a threat to the public health,
7 if the information or assistance is provided to,
8 or the investigation is conducted by—

9 “(i) a Federal regulatory or law en-
10 forcement agency;

11 “(ii) a Member or committee of Con-
12 gress; or

13 “(iii) a person with supervisory au-
14 thority over the covered individual (or such
15 other individual who has the authority to
16 investigate, discover, or terminate mis-
17 conduct);

18 “(B) to file, cause to be filed, testify, par-
19 ticipate in, or otherwise assist in a proceeding
20 or action filed or about to be filed relating to
21 a violation of any law, rule, or regulation; or

22 “(C) to refuse to violate or assist in the
23 violation of any law, rule, or regulation.

24 “(2) ENFORCEMENT ACTION.—

25 “(A) COMPLAINT.—

1 “(i) IN GENERAL.—A covered indi-
2 vidual who alleges discharge or other dis-
3 crimination by any person in violation of
4 paragraph (1) may seek relief under para-
5 graph (3) by filing a complaint with the
6 Secretary of Labor.

7 “(ii) LEGAL ACTION.—If the Sec-
8 retary of Labor has not issued a final deci-
9 sion by the date that is 210 days after the
10 date on which the complaint is filed and
11 there is no showing that the delay is due
12 to the bad faith of the claimant, the claim-
13 ant may bring an action at law or equity
14 for de novo review in the appropriate dis-
15 trict court of the United States, which
16 shall have jurisdiction over such an action
17 without regard to the amount in con-
18 troversy.

19 “(B) PROCEDURE.—An action under sub-
20 paragraph (A) shall be governed under the rules
21 and procedures established in section 1012 of
22 the Federal Food, Drug, and Cosmetic Act (21
23 U.S.C. 399d).

24 “(C) REMEDIES.—A covered individual
25 who prevails in any action under subparagraph

1 (A) shall be entitled to remedies equivalent to
 2 relief provided under section 1012(b)(4)(B) of
 3 the Federal Food, Drug, and Cosmetic Act (21
 4 U.S.C. 399d(b)(4)(B)).

5 “(3) APPLICABILITY.—This subsection shall
 6 apply and be carried out in accordance with section
 7 1012 of the Federal Food, Drug, and Cosmetic Act
 8 (21 U.S.C. 399d), including the relation of the whis-
 9 tleblower protection provided under this subsection
 10 to the rights of employees, other laws, and inter-
 11 national agreements, and the inability of an em-
 12 ployee to waive the whistleblower protection.

13 “(4) RIGHTS RETAINED BY THE COVERED INDIV-
 14 VIDUAL.—

15 “(A) IN GENERAL.—Nothing in this sub-
 16 section diminishes the rights, privileges, or rem-
 17 edies of any covered individual under any Fed-
 18 eral or State law, or under any collective bar-
 19 gaining agreement.

20 “(B) PROHIBITION ON WAIVER.—The
 21 rights and remedies in this subsection may not
 22 be waived by any agreement, policy, form, or
 23 condition of employment.

24 “(d) ADMINISTRATION AND ENFORCEMENT.—

1 “(1) IN GENERAL.—For the efficient adminis-
2 tration and enforcement of the food safety law, the
3 provisions (including provisions relating to penalties)
4 of sections 6, 8, 9, and 10 of the Federal Trade
5 Commission Act (15 U.S.C. 46, 48, 49, and 50) (ex-
6 cept subsections (c) through (h) of section 6 of that
7 Act), relating to the jurisdiction, powers, and duties
8 of the Federal Trade Commission and the Attorney
9 General to administer and enforce that Act, and to
10 the rights and duties of persons with respect to
11 whom the powers are exercised, shall apply to the ju-
12 risdiction, powers, and duties of the Secretary and
13 the Attorney General in administering and enforcing
14 the provisions of the food safety law and to the
15 rights and duties of persons with respect to whom
16 the powers are exercised, respectively.

17 “(2) INQUIRIES AND ACTIONS.—

18 “(A) IN GENERAL.—The Secretary, in per-
19 son or by such agents as the Secretary may
20 designate, may prosecute any inquiry necessary
21 to carry out the duties of the Secretary under
22 the food safety law in any part of the United
23 States.

24 “(B) POWERS.—The powers conferred by
25 sections 9 and 10 of the Federal Trade Com-

1 mission Act (15 U.S.C. 49 and 50) on the
 2 United States district courts may be exercised
 3 for the purposes of this part by any United
 4 States district court of competent jurisdiction.

5 “(e) CITIZEN CIVIL ACTIONS.—

6 “(1) CIVIL ACTIONS.—A person may commence
 7 a civil action against the Secretary (in his or her ca-
 8 pacity as the Secretary)—

9 “(A) if the Secretary fails to perform an
 10 act or duty that is not discretionary under a
 11 food safety law and the failure to perform that
 12 act or duty presents a clear, demonstrated, and
 13 serious present threat to public health; but

14 “(B) only after the person has—

15 “(i) filed a petition with the Sec-
 16 retary; and

17 “(ii) given the Secretary 180 days to
 18 comply with nondiscretionary acts or du-
 19 ties.

20 “(2) COURT.—

21 “(A) IN GENERAL.—The action shall be
 22 commenced in the United States district court
 23 for the district in which the defendant resides,
 24 is found, or has an agent.

“(B) JURISDICTION.—The court shall have jurisdiction, without regard to the amount in controversy, or the citizenship of the parties, to require the Secretary to perform a nondiscretionary act or duty under a food safety law, if—

“(i) it is proven that—

“(I)(aa) the act or duty is not discretionary and is critical to public health protection; and

“(bb) the Secretary has the appropriate financial resources to perform the act or duty;

“(II)(aa) the Secretary was given 180 days to perform the act or duty prior to the filing of an action; and

“(bb) the Secretary did not perform the act or duty; and

“(ii) the plaintiff presents credible evidence, including, if applicable, evidence representing the current scientific knowledge, that indicates that an act or duty necessary to regulate or control a food safety hazard has not been performed by the Secretary.

1 “(C) DAMAGES.—The court may—

2 “(i) require the Secretary to perform
3 the act or duty in question towards a
4 standard of protecting public health; and

5 “(ii) award the plaintiff part or all of
6 the costs of suit, including reasonable at-
7 torney’s fees and reasonable expert witness
8 fees, if—

9 “(I) awarding the fees is in the
10 interest of justice;

11 “(II) the failure of the Secretary
12 to perform a required act or duty is
13 found to be capricious or negligent;
14 and

15 “(III) awarding the fees would
16 not reduce resources applied to public
17 health inspections.”.

18 **TITLE III—CRIMINAL PENALTIES** 19 **AND OTHER PROVISIONS**

20 **SEC. 301. CRIMINAL PENALTIES.**

21 (a) POULTRY PRODUCTS INSPECTION ACT.—Section
22 12 of the Poultry Products Inspection Act (21 U.S.C.
23 461) is amended by adding at the end the following:

24 “(d) KNOWING INTRODUCTION INTO COMMERCE OF
25 UNSAFE FOOD.—

1 “(1) CRIMINAL SANCTIONS.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), a person that knowingly pro-
4 duces or introduces into commerce poultry or a
5 poultry product that is unsafe or otherwise
6 adulterated or misbranded shall be imprisoned
7 for not more than 10 years or fined not more
8 than \$25,000, or both.

9 “(B) SEVERE VIOLATIONS.—A person that
10 commits a violation described in subparagraph
11 (A) after a conviction of that person under this
12 subsection has become final, or commits such a
13 violation with the intent to defraud or mislead,
14 shall be imprisoned for not more than 20 years
15 or fined not more than \$100,000, or both.

16 “(2) PENALTIES PAID INTO ACCOUNT.—The
17 Secretary shall deposit penalties collected under this
18 subsection in the account described in section
19 265(a)(4) of the Department of Agriculture Reorga-
20 nization Act of 1994.

21 “(3) DISCRETION OF THE SECRETARY TO PROS-
22 ECUTE.—Nothing in this subsection requires the
23 Secretary to report for prosecution, or for the com-
24 mencement of an action, a violation described in
25 paragraph (1) in a case in which the Secretary finds

1 that the public interest will be adequately served by
2 the assessment of a civil penalty.

3 “(4) REMEDIES NOT EXCLUSIVE.—The rem-
4 edies provided in this subsection are in addition to,
5 and not exclusive of, other remedies that may be
6 available under this or any other Act.”.

7 (b) FEDERAL MEAT INSPECTION ACT.—Section 406
8 of the Federal Meat Inspection Act (21 U.S.C. 676) is
9 amended by adding at the end the following:

10 “(d) KNOWING INTRODUCTION INTO COMMERCE OF
11 UNSAFE FOOD.—

12 “(1) CRIMINAL SANCTIONS.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), a person that knowingly pro-
15 duces or introduces into commerce meat or a
16 meat food product that is unsafe or otherwise
17 adulterated or misbranded shall be imprisoned
18 for not more than 10 years or fined not more
19 than \$25,000, or both.

20 “(B) SEVERE VIOLATIONS.—A person that
21 commits a violation described in subparagraph
22 (A) after a conviction of that person under this
23 subsection has become final, or commits such a
24 violation with the intent to defraud or mislead,

1 shall be imprisoned for not more than 20 years
2 or fined not more than \$100,000, or both.

3 “(2) PENALTIES PAID INTO ACCOUNT.—The
4 Secretary shall deposit penalties collected under this
5 subsection in the account described in section
6 265(a)(4) of the Department of Agriculture Reorga-
7 nization Act of 1994.

8 “(3) DISCRETION OF THE SECRETARY TO PROS-
9 ECUTE.—Nothing in this subsection requires the
10 Secretary to report for prosecution, or for the com-
11 mencement of an action, a violation described in
12 paragraph (1) in a case in which the Secretary finds
13 that the public interest will be adequately served by
14 the assessment of a civil penalty.

15 “(4) REMEDIES NOT EXCLUSIVE.—The rem-
16 edies provided in this subsection are in addition to,
17 and not exclusive of, other remedies that may be
18 available under this or any other Act.”.

19 (c) EGG PRODUCTS INSPECTION ACT.—Section 12 of
20 the Egg Products Inspection Act (21 U.S.C. 1041) is
21 amended by adding at the end the following:

22 “(f) KNOWING INTRODUCTION INTO COMMERCE OF
23 UNSAFE FOOD.—

24 “(1) CRIMINAL SANCTIONS.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), a person that knowingly pro-
3 duces or introduces into commerce eggs or egg
4 products that are unsafe or otherwise adulter-
5 ated or misbranded shall be imprisoned for not
6 more than 10 years or fined not more than
7 \$25,000, or both.

8 “(B) SEVERE VIOLATIONS.—A person that
9 commits a violation described in subparagraph
10 (A) after a conviction of that person under this
11 subsection has become final, or commits such a
12 violation with the intent to defraud or mislead,
13 shall be imprisoned for not more than 20 years
14 or fined not more than \$100,000, or both.

15 “(2) PENALTIES PAID INTO ACCOUNT.—The
16 Secretary shall deposit penalties collected under this
17 subsection in the account described in section
18 265(a)(4) of the Department of Agriculture Reorga-
19 nization Act of 1994.

20 “(3) DISCRETION OF THE SECRETARY TO PROS-
21 ECUTE.—Nothing in this subsection requires the
22 Secretary to report for prosecution, or for the com-
23 mencement of an action, a violation described in
24 paragraph (1) in a case in which the Secretary finds

1 that the public interest will be adequately served by
2 the assessment of a civil penalty.

3 “(4) REMEDIES NOT EXCLUSIVE.—The rem-
4 edies provided in this subsection are in addition to,
5 and not exclusive of, other remedies that may be
6 available under this or any other Act.”.

7 **SEC. 302. REPORTS AND EVALUATION OF IMPLEMENTA-**
8 **TION.**

9 (a) SECRETARY.—Not later than 1 year after the
10 date of enactment of this Act and each of the following
11 2 years, the Secretary of Agriculture shall submit to Con-
12 gress a report that—

13 (1) describes the progress of the Secretary in
14 implementing this Act and the amendments made by
15 this Act;

16 (2) includes any requests for additional re-
17 sources or clarification or modification of policy; and

18 (3) suggests any necessary technical or con-
19 forming amendments.

20 (b) COMPTROLLER GENERAL.—Not later than 5
21 years after the date of enactment of this Act, the Comp-
22 troller General of the United States shall—

23 (1) carry out a comprehensive evaluation of the
24 implementation and effectiveness of the implementa-

1 tion of this Act and the amendments made by this
2 Act, including—

- 3 (A) management of agency resources;
- 4 (B) the ability of industry to comply; and
- 5 (C) the public health and food safety out-
- 6 comes achieved; and

7 (2) submit to Congress a report describing the
8 results of the evaluation.

9 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) IN GENERAL.—Subject to subsection (b), there
11 are authorized to be appropriated to carry out this Act
12 and the amendments made by this Act such sums as are
13 necessary for each fiscal year.

14 (b) LIMITATION ON APPROPRIATIONS.—For the fis-
15 cal year that includes the date of enactment of this Act,
16 the amount authorized to be appropriated to carry out this
17 Act and the amendments made by this Act shall not ex-
18 ceed—

- 19 (1) the amount appropriated for that fiscal year
- 20 for the Food Safety and Inspection Service, includ-
- 21 ing any additional separate appropriations for the
- 22 activities of the Under Secretary for Food Safety; or
- 23 (2) the amount appropriated for the Food Safe-
- 24 ty and Inspection Service and the Under Secretary
- 25 for Food Safety for the preceding fiscal year, if as

1 of the date of enactment of this Act, the relevant ap-
2 propriations for the fiscal year that includes the date
3 of enactment of this Act have not yet been made.

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