The SPEAKER pro tempore. The gentleman has 17 minutes remaining.

Mr. BARTON of Texas. Whoa, a lot of time. Okay.

I want to yield 3 minutes to the gentleman from Woodland, Texas (Mr. BRADY).

□ 1400

Mr. BRADY of Texas. I thank Ranking Member BARTON.

Mr. Speaker, I rise today in support of House Resolution 631, which I sponsored with my good friend Congressman GENE GREEN of Texas, to congratulate Continental Airlines and its exceptional employees on the company's 75th anniversary this year.

Continental got started in 1934 in El Paso, Texas, going on to aid in the war efforts by working to expand its services domestically. Now headquartered in Houston, Texas, with hubs in Cleveland, Ohio, and Newark, New Jersey, Continental has grown to become the fifth largest carrier in the world, and in my mind, the best.

This followed one of the most successful business turnarounds in history after it restructured in the 1990s. Continental's impressive climb is a tribute to the outstanding leadership, dedicated employees, and excellent service to travelers.

Today, Continental remains a major employer in the Houston area and a valued airline. I hear often from satisfied travelers about the quality of the company's service and commonsense approach to operation. As a Million Mile traveler, I can personally attest to the quality and professionalism of the crew and staff of Continental Airlines, and I may add, a number of my neighbors are proud employees—pilots, attendants, managers—within the Continental system.

I ask my colleagues to join me today in congratulating Continental for its remarkable achievement and contributions to America.

Mr. BARTON of Texas. I yield 3 minutes to another gentleman from Houston, Texas (Mr. POE).

Mr. POE of Texas. Mr. Speaker, I, too, rise in support of this resolution. Along with my friends who have already spoken, we fly Continental every week. Sometimes there are up to 10 Members of Congress on the same flight either going back to Texas or coming from Houston to Reagan National. And I represent probably most of the Continental employees in the Houston area, since my district circles the airport; although, it doesn't include the airport. Something about redistricting, I believe, Mr. GREEN.

But be that as it may, great people, great airline. As my friend, Mr. BRADY, has mentioned, the employees are top-notch, from the flight attendants to the pilots, in the way they treat not only people who fly but the way they treat other people. And I commend Continental Airlines for their success over the years. It is the best airline.

Many years ago, they merged with a little bitty airline called Trans-Texas Airways, and I was one of those that wanted them to adopt the name Trans-Texas Airways after Continental merged with Trans-Texas. But they eliminated the ''Trans-Texas'' phrase and adopted the phrase ''Continental,'' which has served them much better because it is an intercontinental flying community and do a super job.

And I, too, commend the good work they've done and the tenacious employees that work, not only in the planes but on the ground, the mechanics, and the ramp crews. And so I congratulate them, and I appreciate my friend from Texas offering this resolution.

Mr. GENE GREEN of Texas. Mr. Speaker, I will continue to reserve.

Mr. BARTON of Texas. Mr. Speaker, let me simply say that I fly American more than I fly Continental, but I wish I could—having heard the glowing accolades, I do fly Continental some, and I wish they would serve the D/FW area more so I could fly them. I'm very proud of my American Airlines employees and my Southwest employees, but I'm also proud of the Continental employees that we have, and we do sincerely commend Continental and their workers and management for being the great airline that it is, and we wish them 75 years of future success in addition to congratulating them on 75 years of their past success.

With that, I yield back the balance of our time.

Mr. GENE GREEN of Texas. Mr. Speaker, I will be brief, and I want to thank my colleagues on the Republican side for coming to speak for the resolution.

Continental is like all of our airlines. It has problems, but they survived and they're going to grow, and we want to make sure they continue to do it, and that's why we recognize 75 years of success. And like my colleague said, the ranking member of Energy and Commerce, another 75 would be 150. It will be someone else here recognizing them for 150 years. I want to thank the employees of Continental for making it a great airline.

Mr. AL GREEN of Texas. Mr. Speaker, It is with great pleasure that I commend Continental Airlines on its 75th anniversary. I would also like to thank my colleague the Honorable GENE GREEN for introducing this resolution and I am honored to be a cosponsor. Continental Airlines is an outstanding company that has grown internationally without losing sight of the people they serve.

Since the founding of Continental Airlines, the company has consistently served the community. In July of 1934 the company Varney Speed Lines was created in West Texas by Walter T. Varney and Louis Mueller primarily as a mail service. During World War II, they built the Denver Modification Center in Houston, where workers modified B–17 Flying Fortresses and B–29 Super Fortresses to assist in the war effort. Today, Continental Airlines' main headquarters are in Houston and their main hub is located there as well at George Bush Intercontinental Airport.

Continental Airlines has also been a pacesetter in diversity among airlines. The company named Deborah McCoy the first woman in the Nation to head a major commercial airline pilot group in 1999. In 2005, Continental was ranked among HISPANIC Magazine's ''Hispanic Corporate 100: One Hundred Companies Providing the Most Opportunities for Hispanics'' for the eighth year in a row. Continental Airlines has also been named to the Corporate Diversity Honor Roll in Latin Business magazine

Continental has exemplified a dedication to customer service. Following the September 11th attacks, Continental offered special compassion fares to and from the New York area to assist family members of the September 11th victims, relief organizations and volunteers. Continental was the first airline to offer three of the most popular business applications on its fleet of 737, 757, and MD 80 aircraft: two-way e-mail, instant messaging and text messaging. The airline has also been awarded six Customer Satisfaction awards by J.D. Power and Associates since 1996.

Despite its global presence, Continental Airlines has maintained a personal relationship with its customers that is rivaled by many and surpassed by none. I would again like to congratulate Continental Airlines on 75 years of service and wish them many more years to come.

Mr. GENE GREEN of Texas. I yield back my time.

The SPEAKER pro tempore (Mr. SERRANO). The question is on the motion offered by the gentleman from Texas (Mr. GENE GREEN) that the House suspend the rules and agree to the resolution, H. Res. 631.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

FOOD SAFETY ENHANCEMENT ACT OF 2009

Mr. DINGELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2749) to amend the Federal Food, Drug, and Cosmetic Act to improve the safety of food in the global market, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2749

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Food Safety Enhancement Act of 2009''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

SEC. 3. REFERENCES.

Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 4. RULES OF CONSTRUCTION.

(a) Nothing in this Act or the amendments made by this Act shall be construed to prohibit or limit—

(1) any cause of action under State law; or

(2) the introduction of evidence of compliance or noncompliance with the requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) Nothing in this Act or any amendment made by this Act shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes and regulations;

(2) limit the authority of the Secretary of Health and Human Services to issue regulations related to the safety of food under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of the enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of the enactment of this Act; or

(3) impede, minimize, or affect the authority of the Secretary of Agriculture to prevent, control, or mitigate a plant or animal health emergency, or a food emergency involving products regulated under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

SEC. 5. USDA EXEMPTIONS.

(a) USDA-REGULATED PRODUCTS.—Food is exempt from the requirements of this Act to the extent that such food is regulated by the Secretary of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

(b) LIVESTOCK AND POULTRY.—Livestock and poultry that are intended to be presented for slaughter pursuant to the regulations by the Secretary of Agriculture under the Federal Meat Inspection Act or the Poultry Products Inspection Act are exempt from the requirements of this Act. A cow, sheep, or goat that is used for the production of milk is exempt from the requirements of this Act.

(c) USDA-REGULATED FACILITIES.—A facility is exempt from the requirements of this Act to the extent such facility is regulated as an official establishment by the Secretary of Agriculture under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act or under a program recognized by the Secretary of Agriculture as at least equal to Federal regulation under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act.

(d) FARMS.—A farm is exempt from the requirements of this Act to the extent such farm raises animals from which food is derived that is regulated under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act.

SEC. 6. ALCOHOL-RELATED FACILITIES.

(a) IN GENERAL.—With the exception of the amendments made by section 101(a) and (b) and section 113 of this Act, 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. 5291 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 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act, is required to register as a facility because such facility is engaged in manufacturing, processing, packing, or holding 1 or more alcoholic beverages.

(b) LIMITED RECEIPT AND DISTRIBUTION OF NON-ALCOHOL FOOD.—Subsection (a) shall not apply to a facility engaged in the distributing of any non-alcohol food, except that subsection (a) shall apply to a facility described in paragraphs (1) and (2) of subsection (a) 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.—This section shall not be construed to exempt any food, apart from distilled spirits, wine, and malt beverages, as defined in section 211 of the Federal Alcohol Administration Act (27 U.S.C. 211), from the requirements of this Act and the amendments made by this Act.

TITLE I—FOOD SAFETY

Subtitle A—Prevention

SEC. 101. CHANGES IN REGISTRATION OF FOOD FACILITIES.

(a) MISBRANDING.—Section 403 (21 U.S.C. 343) is amended by adding at the end the following:

''(z) If it was manufactured, processed, packed, or held in a facility that is not duly registered under section 415, including a facility whose registration is canceled or suspended under such section.''.

(b) ANNUAL REGISTRATION.—

(1) DEFINITION OF FACILITY.—Paragraph (1) of section 415(b) (21 U.S.C. 350d(b)) is amended to read as follows:

''(1)(A) The term 'facility' means any factory, warehouse, or establishment (including a factory, warehouse, or establishment of an importer) that manufactures, processes, packs, or holds food.

''(B) Such term does not include farms; private residences of individuals; restaurants; other retail food establishments; nonprofit food establishments in which food is prepared for or served directly to the consumer; or fishing vessels (except such vessels engaged in processing as defined in section 123.3(k) of title 21, Code of Federal Regulations, or any successor regulations).

''(C)(i) The term 'retail food establishment' means an establishment that, as its primary function, sells food products (including those food products that it manufactures, processes, packs, or holds) directly to consumers (including by Internet or mail order).

''(ii) Such term includes—

''(I) grocery stores;

''(II) convenience stores;

''(III) vending machine locations; and

''(IV) stores that sell bagged feed, pet food, and feed ingredients or additives over-the-counter directly to consumers and final purchasers for their own personal animals.

''(iii) A retail food establishment's primary function is to sell food directly to consumers if the annual monetary value of sales of food products directly to consumers exceeds the annual monetary value of sales of food products to all other buyers.

''(D)(i) The term 'farm' means an operation in one general physical location devoted to the growing and harvesting of crops, the raising of animals (including seafood), or both.

''(ii) Such term includes—

''(I) such an operation that packs or holds food, provided that all food used in such activities is grown, raised, or consumed on such farm or another farm under the same ownership;

''(II) such an operation that manufactures or processes food, provided that all food used in such activities is consumed on such farm or another farm under the same ownership;

''(III) such an operation that sells food directly to consumers if the annual monetary value of sales of the food products from the farm or by an agent of the farm to consumers exceeds the annual monetary value of sales of the food products to all other buyers;

''(IV) such an operation that manufactures grains or other feed stuffs that are grown and harvested on such farm or another farm

under the same ownership and are distributed directly to 1 or more farms for consumption as food by humans or animals on such farm; and

''(V) a fishery, including a wild fishery, an aquaculture operation or bed, a fresh water fishery, and a saltwater fishery.

''(iii) Such term does not include such an operation that receives manufactured feed from another farm as described in clause (ii)(IV) if the receiving farm releases the feed to another farm or facility under different ownership.

''(iv) The term 'harvesting' includes washing, trimming of outer leaves of, and cooling produce.

''(E) The term 'consumer' does not include a business.''.

(2) REGISTRATION.—Section 415(a) (21 U.S.C. 350d(a)) is amended—

(A) in the first sentence of paragraph (1)—

(i) by striking ''require that'' and inserting ''require that, on or before December 31 of each year,''; and

(ii) by striking ''food for consumption in the United States'' and inserting ''food for consumption in the United States or for export from the United States'';

(B) in subparagraphs (A) and (B) of paragraph (1), by inserting ''and pay the registration fee required under section 743'' after ''submit a registration to the Secretary'' each place it appears;

(C) in the first sentence of paragraph (2), by inserting ''in electronic format'' after ''submit''; and

(D) in paragraph (4), by inserting after the first sentence the following: ''The Secretary shall remove from such list the name of any facility that fails to reregister in accordance with this section, that fails to pay the registration fee required under section 743, or whose registration is canceled by the registrant, canceled by the Secretary in accordance with this section, or suspended by the Secretary in accordance with this section.''.

(3) CONTENTS OF REGISTRATION.—Paragraph (2) of section 415(a) (21 U.S.C. 350d(a)), as amended by paragraph (1), is amended by striking ''containing information'' and all that follows and inserting the following: ''containing information that identifies the following:

''(A) The name, address, and emergency contact information of the facility being registered.

''(B) The primary purpose and business activity of the facility, including the dates of operation if the facility is seasonal.

''(C) The general food category (as defined by the Secretary by guidance) of each food manufactured, processed, packed, or held at the facility.

''(D) All trade names under which the facility conducts business related to food.

''(E) The name, address, and 24-hour emergency contact information of the United States distribution agent for the facility, which agent shall have access to the information required to be maintained under section 414(d) for food that is manufactured, processed, packed, or held at the facility.

''(F) If the facility is located outside of the United States, the name, address, and emergency contact information for a United States agent.

''(G) The unique facility identifier of the facility, as specified under section 1011.

''(H) Such additional information pertaining to the facility as the Secretary may require by regulation.

The registrant shall notify the Secretary of any change in the submitted information not later than 30 days after the date of such change, unless otherwise specified by the Secretary.''.

(4) SUSPENSION AND CANCELLATION AUTHORITY.—Section 415(a) (21 U.S.C. 350d(a)), as amended by paragraphs (1) and (2), is further amended by adding at the end the following:

''(5) SUSPENSION OF REGISTRATION.—

''(A) IN GENERAL.—The Secretary may suspend the registration of any facility registered under this section for a violation of this Act that could result in serious adverse health consequences or death to humans or animals.

''(B) NOTICE OF SUSPENSION.—Suspension of a registration shall be preceded by—

''(i) notice to the facility of the intent to suspend the registration; and

''(ii) an opportunity for an informal hearing, as defined in guidance or regulations issued by the Secretary, concerning the suspension of such registration for such facility.

''(C) REQUEST.—The owner, operator, or agent in charge of a facility whose registration is suspended may request that the Secretary vacate the suspension of registration when such owner, operator, or agent has corrected the violation that is the basis for such suspension.

''(D) VACATING OF SUSPENSION.—If, based on an inspection of the facility or other information, the Secretary determines that adequate reasons do not exist to continue the suspension of a registration, the Secretary shall vacate such suspension.

''(6) CANCELLATION OF REGISTRATION.—

''(A) IN GENERAL.—Not earlier than 10 days after providing the notice under subparagraph (B), the Secretary may cancel a registration if the Secretary determines that—

''(i) the registration was not updated in accordance with this section or otherwise contains false, incomplete, or inaccurate information; or

''(ii) the required registration fee has not been paid within 30 days after the date due.

''(B) NOTICE OF CANCELLATION.—Cancellation shall be preceded by notice to the facility of the intent to cancel the registration and the basis for such cancellation.

''(C) TIMELY UPDATE OR CORRECTION.—If the registration for the facility is updated or corrected no later than 7 days after notice is provided under subparagraph (B), the Secretary shall not cancel such registration.

''(7) REPORT TO CONGRESS.—Not later than March 30th of each year, the Secretary shall submit to the Congress a report, based on the registrations on or before December 31 of the previous year, on the following:

''(A) The number of facilities registered under this section.

''(B) The number of such facilities that are domestic.

''(C) The number of such facilities that are foreign.

''(D) The number of such facilities that are high-risk.

''(E) The number of such facilities that are low-risk.

''(F) The number of such facilities that hold food.

''(8) LIMITATION ON DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or cancel a registration shall not be delegated to any officer or employee other than the Commissioner of Food and Drugs, the Principal Deputy Commissioner, the Associate Commissioner for Regulatory Affairs, or the Director for the Center for Food Safety and Applied Nutrition, of the Food and Drug Administration.''.

(c) REGISTRATION FEE.—Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end of subchapter C the following:

''PART 6—FEES RELATING TO FOOD

''SEC. 743. FACILITY REGISTRATION FEE.

''(a) IN GENERAL.—

''(1) ASSESSMENT AND COLLECTION.—Beginning in fiscal year 2010, the Secretary shall assess and collect an annual fee for the registration of a facility under section 415.

''(2) PAYABLE DATE.—A fee under this section shall be payable—

''(A) for a facility that was not registered under section 415 for the preceding fiscal year, on the date of registration; and

''(B) for any other facility—

''(i) for fiscal year 2010, not later than the sooner of 90 days after the date of the enactment of this part or December 31, 2009; and

''(ii) for a subsequent fiscal year, not later than December 31 of such fiscal year.

''(b) FEE AMOUNTS.—

''(1) IN GENERAL.—The registration fee under subsection (a) shall be—

''(A) for fiscal year 2010, $500; and

''(B) for fiscal year 2011 and each subsequent fiscal year, the fee for fiscal year 2010 as adjusted under subsection (c).

''(2) ANNUAL FEE SETTING.—The Secretary shall, not later than 60 days before the start of fiscal year 2011 and each subsequent fiscal year, establish, for the next fiscal year, registration fees under subsection (a), as described in paragraph (1).

''(3) MAXIMUM AMOUNT.—Notwithstanding paragraph (1), a person who owns or operates multiple facilities for which a fee must be paid under this section for a fiscal year shall be liable for not more than $175,000 in aggregate fees under this section for such fiscal year.

''(c) INFLATION ADJUSTMENT.—For fiscal year 2011 and each subsequent fiscal year, the fee amount under subsection (b)(1) shall be adjusted by the Secretary by notice, published in the Federal Register, to reflect the greater of—

''(1) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; U.S. city average) for the 12-month period ending June 30 preceding the fiscal year for which fees are being established;

''(2) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia; or

''(3) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions for the first 5 years of the preceding 6 fiscal years.

The adjustment made each fiscal year under this subsection shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2010 under this subsection.

''(d) LIMITATIONS.—

''(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2010 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for fiscal year 2010 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

''(2) AUTHORITY.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, for registration under section 415 at any time in such fiscal year.

''(3) ADJUSTMENT FACTOR.—In this subsection, the term 'adjustment factor' applicable to a fiscal year is the Consumer Price

Index for all urban consumers (all items; United States city average) for October of the preceding fiscal year divided by such Index for October 2009.

''(e) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section—

''(A) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation, for such fiscal year; and

''(B) shall only be collected and available to defray the costs of food safety activities.

''(3) AUTHORIZATION OF APPROPRIATIONS.—For each of fiscal years 2010 through 2014, there are authorized to be appropriated for fees under this section such sums as may be necessary.

''(4) PUBLIC MEETINGS.—For each fiscal year, the Secretary shall hold a public meeting on how fees collected under this section will be used to defray the costs of food safety activities in order to solicit the views of the regulated industry, consumers, and other interested stakeholders.

''(f) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(g) CONSTRUCTION.—This section may not be construed to require that the number of full-time equivalent positions in the Department of Health and Human Services, for officers, employees, and advisory committees not engaged in food safety activities, be reduced to offset the number of officers, employees, and advisory committees so engaged.

''(h) ANNUAL FISCAL REPORTS.—Beginning with fiscal year 2011, not later than 120 days after the end of each fiscal year for which fees are collected under this section, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for such fiscal year.

''(i) DEFINITIONS.—In this section:

''(1) The term 'costs of food safety activities' means the expenses incurred in connection with food safety activities for—

''(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees, and costs related to such officers, employees, and committees and to contracts with such contractors;

''(B) laboratory capacity;

''(C) management of information, and the acquisition, maintenance, and repair of technology resources;

''(D) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies; and

''(E) collecting fees under this section and accounting for resources allocated for food safety activities.

''(2) The term 'food safety activities' means activities related to compliance by facilities registered under section 415 with the requirements of this Act relating to food (including research related to and the development of standards (such as performance standards and preventive controls), risk assessments, hazard analyses, inspection planning and inspections, third-party inspections, compliance review and enforcement, import review, information technology support, test development, product sampling, risk communication, and administrative detention).''.

(d) TRANSITIONAL PROVISIONS.—

(1) FEES.—The Secretary of Health and Human Services shall first impose the fee established under section 743 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (c), for fiscal years beginning with fiscal year 2010.

(2) MODIFICATION OF REGISTRATION FORM.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall modify the registration form under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) to comply with the amendments made by this section.

(3) APPLICATION.—The amendments made by this section, other than subsections (b)(2) and (c), shall take effect on the date that is 30 days after the date on which such modified registration form takes effect, but not later than 210 days after the date of the enactment of this Act.

(4) SUNSET DATE.—Section 743 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (c), does not authorize the assessment or collection of a fee for registration under section 415 of such Act (21 U.S.C. 360) occurring after fiscal year 2014.

SEC. 102. HAZARD ANALYSIS, RISK-BASED PREVENTIVE CONTROLS, FOOD SAFETY PLAN, FINISHED PRODUCT TEST RESULTS FROM CATEGORY 1 FACILITIES.

(a) HAZARD ANALYSIS, RISK-BASED PREVENTIVE CONTROLS, FOOD SAFETY PLAN.—

(1) ADULTERATED FOOD.—Section 402 (21 U.S.C. 342) is amended by adding at the end the following:

''(j) If it has been manufactured, processed, packed, transported, or held under conditions that do not meet the requirements of sections 418 and 418A.''.

(2) REQUIREMENTS.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

''SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

''(a) IN GENERAL.—The owner, operator, or agent of a facility shall, in accordance with this section—

''(1) conduct a hazard analysis (or more than one if appropriate);

''(2) identify and implement effective preventive controls;

''(3) monitor preventive controls;

''(4) institute corrective actions when—

''(A) monitoring shows that preventive controls have not been properly implemented; or

''(B) monitoring and verification show that such controls were ineffective;

''(5) conduct verification activities;

''(6) maintain records of monitoring, corrective action, and verification; and

''(7) reanalyze for hazards.

''(b) IDENTIFICATION OF HAZARDS.—

''(1) IN GENERAL.—The owner, operator, or agent of a facility shall evaluate whether there are any hazards, including hazards due to the source of the ingredients, that are reasonably likely to occur in the absence of preventive controls that may affect the safety, wholesomeness, or sanitation of the food manufactured, processed, packed, transported, or held by the facility, including—

''(A) biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, filth, decomposition, parasites, allergens, and unapproved food and color additives; and

''(B) hazards that occur naturally or that may be unintentionally introduced.

''(2) IDENTIFIED BY THE SECRETARY.—The Secretary may, by regulation or guidance, identify hazards that are reasonably likely to occur in the absence of preventive controls.

''(3) HAZARD ANALYSIS.—The owner, operator, or agent of a facility shall identify and describe the hazards evaluated under paragraph (1) or identified under paragraph (2), to the extent applicable to the facility, in a hazard analysis.

''(c) PREVENTIVE CONTROLS.—

''(1) IN GENERAL.—The owner, operator, or agent of a facility shall identify and implement effective preventive controls to prevent, eliminate, or reduce to acceptable levels the occurrence of any hazards identified in the hazard analysis under subsection (b)(3).

''(2) IDENTIFIED BY THE SECRETARY.—

''(A) ESTABLISHMENT.—The Secretary may establish by regulation or guidance preventive controls for specific product types to prevent unintentional contamination throughout the supply chain. The owner, operator, or agent of a facility shall implement any preventive controls identified by the Secretary under this paragraph.

''(B) ALTERNATIVE CONTROLS.—Such regulation or guidance shall allow the owner, operator, or agent of a facility to implement an alternative preventive control to one established by the Secretary, provided that, in response to a request by the Secretary, the owner, operator, or agent can present to the Secretary data or other information sufficient to demonstrate that the alternative control effectively addresses the hazard, including meeting any applicable performance standard.

''(C) LIMITATION.—Subparagraph (B) shall not apply to any preventive control described in subparagraph (A), (B), or (E) of subsection (i)(2).

''(d) MONITORING.—The owner, operator, or agent of a facility shall monitor the implementation of preventive controls under subsection (c) to identify any circumstances in which the preventive controls are not fully implemented or verification shows that such controls were ineffective.

''(e) CORRECTIVE ACTIONS.—The owner, operator, or agent of a facility shall establish and implement procedures to ensure that, if the preventive controls under subsection (c) are not fully implemented or are not found effective—

''(1) no affected product from such facility enters commerce; and

''(2) appropriate action is taken to reduce the likelihood of recurrence of the implementation failure.

''(f) VERIFICATION.—The owner, operator, or agent of a facility shall ensure that—

''(1) the system of preventive controls identified under subsection (c) has been validated as scientifically and technically sound so that, if such system is implemented, the hazards identified in the hazard analysis under subsection (b)(3) will be prevented, eliminated, or reduced to an acceptable level;

''(2) the facility is conducting monitoring in accordance with subsection (d);

''(3) the facility is taking effective corrective actions under subsection (e); and

''(4) the preventive controls are effectively preventing, eliminating, or reducing to an

acceptable level the occurrence of identified hazards, including through the use of environmental and product testing programs and other appropriate means.

''(g) REQUIREMENT TO REANALYZE AND REVISE.—

''(1) REQUIREMENT.—The owner, operator, or agent of a facility shall—

''(A) review the evaluation under subsection (b) for the facility and, as necessary, revise the hazard analysis under subsection (b)(3) for the facility—

''(i) not less than every 2 years;

''(ii) if there is a change in the process or product that could affect the hazard analysis; and

''(iii) if the Secretary determines that it is appropriate to protect public health; and

''(B) whenever there is a change in the hazard analysis, revise the preventive controls under subsection (c) for the facility as necessary to ensure that all hazards that are reasonably likely to occur are prevented, eliminated, or reduced to an acceptable level, or document the basis for the conclusion that no such revision is needed.

''(2) NONDELEGATION.—Any revisions ordered by the Secretary under this subsection shall be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the director of the district under this Act in which the facility involved is located, or is an official senior to such director.

''(h) RECORDKEEPING.—The owner, operator, or agent of a facility shall maintain, for not less than 2 years, records documenting the activities described in subsections (a) through (g).

''(i) DEFINITIONS.—For purposes of this section:

''(1) FACILITY.—The term 'facility' means a domestic facility or a foreign facility that is required to be registered under section 415.

''(2) PREVENTIVE CONTROLS.—The term 'preventive controls' means those risk-based procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, transporting, or holding of food would employ to prevent, eliminate, or reduce to an acceptable level the hazards identified in the hazard analysis under subsection (b)(3) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, transporting, or holding at the time of the analysis. Those procedures, practices, and processes shall include the following, as appropriate to the type of facility or food:

''(A) Sanitation procedures and practices.

''(B) Supervisor, manager, and employee hygiene training.

''(C) Process controls.

''(D) An allergen control program to minimize potential allergic reactions in humans from ingestion of, or contact with, human and animal food.

''(E) Good manufacturing practices.

''(F) Verification procedures, practices, and processes for suppliers and incoming ingredients, which may include onsite auditing of suppliers and testing of incoming ingredients.

''(G) Other procedures, practices, and processes established by the Secretary under subsection (c)(2).

''(3) HAZARD THAT IS REASONABLY LIKELY TO OCCUR.—A food safety hazard that is reasonably likely to occur is one for which a prudent person who, as applicable, manufactures, processes, packs, transports, or holds food, would establish controls because experience, illness data, scientific reports, or other information provides a basis to conclude that there is a reasonable possibility that the hazard will occur in the type of food being manufactured, processed, packed, transported, or held in the absence of those controls.

''SEC. 418A. FOOD SAFETY PLAN.

''(a) IN GENERAL.—Before a facility (as defined in section 418(i)) introduces or delivers for introduction into interstate commerce any shipment of food, the owner, operator, or agent of the facility shall develop and implement a written food safety plan (in this section referred to as a 'food safety plan').

''(b) CONTENTS.—The food safety plan shall include each of the following elements:

''(1) The hazard analysis and any reanalysis conducted under section 418.

''(2) A description of the preventive controls being implemented under subsection 418(c), including those to address hazards identified by the Secretary under subsection 418(b)(2).

''(3) A description of the procedures for monitoring preventive controls.

''(4) A description of the procedures for taking corrective actions.

''(5) A description of verification activities for the preventive controls, including validation that the system of controls, if implemented, will prevent, eliminate, or reduce to an acceptable level the identified hazards, review of monitoring and corrective action records, and procedures for determining whether the system of controls as implemented is effectively preventing, eliminating, or reducing to an acceptable level the occurrence of identified hazards, including the use of environmental and product testing programs.

''(6) A description of the facility's recordkeeping procedures.

''(7) A description of the facility's procedures for the recall of articles of food, whether voluntarily or when required under section 422.

''(8) A description of the facility's procedures for tracing the distribution history of articles of food, whether voluntarily or when required under section 414.

''(9) A description of the facility's procedures to ensure a safe and secure supply chain for the ingredients or components used in making the food manufactured, processed, packed, transported, or held by such facility.

''(10) A description of the facility's procedures to implement the science-based performance standards issued under section 419.''.

(3) GUIDANCE OR REGULATIONS.—

(A) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall issue guidance or promulgate regulations to establish science-based standards for conducting a hazard analysis, documenting hazards, identifying and implementing preventive controls, and documenting the implementation of the preventive controls, including verification and corrective actions under sections 418 and 418A of the Federal Food, Drug, and Cosmetic Act (as added by paragraph (2)).

(B) INTERNATIONAL STANDARDS.—In issuing guidance or regulations under subparagraph (A), the Secretary shall review international hazard analysis and preventive control standards that are in existence on the date of the enactment of this Act and relevant to such guidelines or regulations to ensure that the programs under sections 418 and 418A of the Federal Food, Drug, and Cosmetic Act (as added by paragraph (2) are consistent, to the extent the Secretary determines practicable and appropriate, with such standards.

(C) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section and the amendments made by this section with respect to facilities that are solely engaged in—

(i) the production of food for animals other than man or the storage of packaged foods that are not exposed to the environment; or

(ii) the storage of raw agricultural commodities for further distribution or processing.

(D) SMALL BUSINESSES.—The Secretary—

(i) shall consider the impact of any guidance or regulations under this section on small businesses; and

(ii) shall issue guidance to assist small businesses in complying with the requirements of this section and the amendments made by this section.

(4) NO EFFECT ON EXISTING HACCP AUTHORITIES.—Nothing in this section or the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.), as in effect on the day before the date of the enactment of this Act, to revise, issue, or enforce product- and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(5) CONSIDERATION.—When implementing sections 418 and 418A of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (2), the Secretary may take into account differences between food intended for human consumption and food intended for consumption by animals other than man.

(6) EFFECTIVE DATE.—

(A) GENERAL RULE.—The amendments made by subsection (a) and this subsection shall take effect 18 months after the date of the enactment of this Act.

(B) EXCEPTIONS.—Notwithstanding subparagraph (A)—

(i) the amendments made by subsection (a) and this subsection shall apply to a small business (as defined by the Secretary) after the date that is 2 years after the date of the enactment of this Act; and

(ii) the amendments made by subsection (a) and this subsection shall apply to a very small business (as defined by the Secretary) after the date that is 3 years after the date of the enactment of this Act.

(b) FINISHED PRODUCT TEST RESULTS FROM CATEGORY 1 FACILITIES.—

(1) ADULTERATION.—Section 402 (21 U.S.C. 342), as amended by subsection (a), is amended by adding at the end the following:

''(k) If it is manufactured or processed in a facility that is in violation of section 418B.''.

(2) REQUIREMENTS.—Chapter IV (21 U.S.C. 341 et seq.), as amended, is further amended by adding at the end the following:

''SEC. 418B. FINISHED PRODUCT TEST RESULTS FROM CATEGORY 1 FACILITIES.

''(a) AUTHORITY.—Beginning on the date specified in subsection (c), the Secretary shall require, after public notice and an opportunity for comment, the submission to the Secretary of finished product test results by the owner, operator, or agent of each category 1 facility subject to good manufacturing practices regulations documenting the presence of contaminants in food in the possession or control of such facility posing a risk of severe adverse health consequences or death.

''(b) CONSIDERATIONS.—The Secretary shall require submissions under subsection (a)—

''(1) as the Secretary determines feasible and appropriate; and

''(2) taking into consideration available data and information on the potential risks posed by the facility.

''(c) BEGINNING DATE.—The date specified in this subsection is the sooner of—

''(1) the date of completion of the pilot projects and feasibility study under subsections (d) and (e); and

''(2) the date that is 2 years after the date of the enactment of this section.

''(d) PILOT PROJECTS.—The Secretary shall conduct 2 or more pilot projects to evaluate the feasibility of collecting positive finished product testing results from category 1 facilities, including the value and feasibility of reporting corrective actions taken when positive finished product test results are reported to the Secretary.

''(e) FEASIBILITY STUDY.—The Secretary shall assess the feasibility and benefits of the reporting by facilities subject to good manufacturing practices regulations of appropriate finished product testing results from category 1 facilities to the Secretary, including the extent to which the collection of such finished product testing results will help the Secretary assess the risk presented by a facility or product category.

''(f) LIMITATIONS.—Nothing in this section shall be construed—

''(1) to require the Secretary to mandate testing or submission of test results that the Secretary determines would not provide useful information in assessing the potential risk presented by a facility or product category; or

''(2) to limit the Secretary's authority under any other provisions of law to require any person to provide access, or to submit information or test results, to the Secretary, including the ability of the Secretary to require field or other testing and to obtain test results in the course of an investigation of a potential food-borne illness or contamination incident.

''(g) DEFINITION.—In this section, the term 'category 1 facility' means a category 1 facility within the meaning of section 704(h).''.

(c) FOOD DEFENSE.—

(1) ADULTERATION.—Section 402(j), as added by subsection (a), is amended by striking ''and 418A'' and inserting '', 418A, or 418C''.

(2) REQUIREMENTS.—Chapter IV (21 U.S.C. 341 et seq.), as amended, is further amended by adding at the end the following:

''SEC. 418C. FOOD DEFENSE.

''(a) IN GENERAL.—Before a facility (as defined in section 418(i)) introduces or delivers for introduction into interstate commerce any shipment of food, the owner, operator, or agent of the facility shall develop and implement a written food defense plan (in this section referred to as a 'food defense plan').

''(b) CONTENTS.—The food defense plan shall include each of the following elements:

''(1) A food defense assessment to identify conditions and practices that may permit a hazard that may be intentionally introduced, including by an act of terrorism. This assessment shall evaluate processing security, cybersecurity, material security (including ingredients, finished product, and packaging), personnel security, storage security, shipping and receiving security, and utility security.

''(2) A description of the preventive measures being implemented as a result of such assessment to minimize the risk of intentional contamination.

''(3) A description of the procedures to check for and identify any circumstances in which the preventive measures are not fully implemented or were ineffective.

''(4) A description of the procedures for taking corrective actions to ensure that when preventive measures have not been properly implemented or have been ineffective, appropriate action is taken—

''(A) to reduce the likelihood of recurrence of the failure; and

''(B) to assess the consequences of the failure.

''(5) A description of evaluation activities for the preventive measures, including a review of records provided for under paragraph (6) and procedures to periodically test the effectiveness of the plan.

''(6) A description of the facility's recordkeeping procedures, including records documenting implementation of the procedures under paragraphs (3), (4), and (5).

''(c) HAZARD.—For purposes of this section, the term 'hazard that may be intentionally introduced, including by an act of terrorism' means a hazard for which a prudent person who, as applicable, manufactures, processes, packs, transports, or holds food, would establish preventive measures because the hazard has been identified by a food defense assessment by application of—

''(1) a targeting assessment tool recommended by the Secretary by guidance; or

''(2) a comparable targeting assessment tool.

''(d) FOOD DEFENSE HAZARDS IDENTIFIED BY THE SECRETARY.—

''(1) ESTABLISHMENT.—The Secretary may establish by regulation or guidance preventive measures for specific product types to prevent intentional contamination throughout the supply chain. The owner, operator, or agent of a facility shall implement any preventive measures identified by the Secretary under this paragraph.

''(2) ALTERNATIVE MEASURES.—Such regulation or guidance shall allow the owner, operator, or agent of a facility to implement an alternative preventive measure to one established by the Secretary, provided that, in response to a request by the Secretary, the owner, operator, or agent can present to the Secretary data or other information sufficient to demonstrate that the alternative measure effectively addresses the hazard.

''(e) REQUIREMENT TO REASSESS AND REVISE.—

''(1) REQUIREMENT.—The owner, operator, or agent of a facility shall—

''(A) review the food defense assessment under subsection (b)(1) for the facility and, as necessary, revise the food defense assessment under subsection (b)(1) for the facility—

''(i) not less than every 2 years;

''(ii) if there is a change in the process or product that could affect the food defense assessment; and

''(iii) if the Secretary determines that it is appropriate to protect public health; and

''(B) whenever there is a change in the food defense assessment, revise the preventive measures under subsection (b)(2) for the facility as necessary to ensure that for all hazards identified, the risk is minimized, or document the basis for the conclusion that no such revision is needed.

''(2) NONDELEGATION.—Any revisions ordered by the Secretary under this subsection shall be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the director of the district under this Act in which the facility involved is located, or is an official senior to such director.

''(f) RECORDKEEPING.—The owner, operator, or agent of a facility shall maintain, for not less than 2 years, records documenting the activities described in subsections (b) and (e).

''(g) ACCESS TO PLAN.—

''(1) ON INSPECTION.—An officer or employee of the Secretary shall have access to the food defense plan of a facility under section 414(a) only if the Secretary, through an official who is the director of the district under this Act in which the facility is located or an official who is senior to such a director, provides notice under section 414(a)(1)(C).

''(2) NONDISCLOSURE.—A food defense plan, and any information derived from such a plan, shall be exempt from disclosure under section 552 of title 5, United States Code.''.

(3) PROHIBITION.—Section 301(j) (21 U.S.C. 331(j)) is amended by inserting after ''entitled to protection'' the following: ''or a food defense plan, or any information derived from such a plan, under section 418C''.

SEC. 103. PERFORMANCE STANDARDS.

(a) ADULTERATED FOOD.—Section 402 (21 U.S.C. 342), as amended by section 102, is amended by adding at the end the following:

''(l) If it has been manufactured, processed, packed, transported, or held under conditions that do not meet the standards issued under section 419.''.

(b) REQUIREMENTS.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 102(b), is further amended by adding at the end the following:

''SEC. 419. PERFORMANCE STANDARDS.

''(a) PERFORMANCE STANDARDS.—The Secretary shall, not less frequently than every 2 years, review and evaluate epidemiological data and other appropriate sources of information, including research under section 123 of the Food Safety Enhancement Act of 2009, to identify the most significant food-borne contaminants and the most significant resulting hazards. The Secretary shall issue, as soon as practicable, through guidance or by regulation, science-based performance standards (which may include action levels) applicable to foods or food classes, as appropriate, to minimize to an acceptable level, prevent, or eliminate the occurrence of such hazards. Such standards shall be applicable to foods and food classes. Notwithstanding the timelines set forth in this paragraph, the Secretary shall as appropriate establish such science-based performance standards for identified contaminants as necessary to protect the public health.

''(b) LIST OF CONTAMINANTS.—Following each review under subsection (a), the Secretary shall publish in the Federal Register a list of food-borne contaminants that have the greatest adverse impact on public health. In determining whether a particular food-borne contaminant should be added to such list, the Secretary shall consider the number and severity of illnesses and the number of deaths associated with the foods associated with such contaminants.

''(c) SAMPLING PROGRAM.—In conjunction with the establishment of a performance standard under this section, the Secretary may make recommendations to industry for conducting product sampling.

''(d) REVOCATION BY SECRETARY.—All performance standards of the Food and Drug Administration applicable to foods or food classes in effect on the date of the enactment of this section, or issued under this section, shall remain in effect until revised or revoked by the Secretary.''.

(c) REPORT TO CONGRESS.—The Secretary of Health and Human Services shall submit to the Congress by March 30th of the year following each review under section 419 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (b), a report on the results of such review and the Secretary's plans to address the significant food-borne hazards identified, or the basis for not addressing any significant food-borne hazards identified, including any resource limitations or limitations in data that preclude further action at that time.

SEC. 104. SAFETY STANDARDS FOR PRODUCE AND CERTAIN OTHER RAW AGRICULTURAL COMMODITIES.

(a) ADULTERATED FOOD.—Section 402 (21 U.S.C. 342), as amended by sections 102 and 103(a), is amended by adding at the end the following:

''(m) If it has been grown, harvested, processed, packed, sorted, transported, or held under conditions that do not meet the standards established under section 419A.''.

(b) STANDARDS.—Chapter IV (21 U.S.C. 341 et seq.), as amended by sections 102(b) and 103(b), is amended by adding at the end the following:

''SEC. 419A. SAFETY STANDARDS FOR PRODUCE AND CERTAIN OTHER RAW AGRICULTURAL COMMODITIES.

''(a) STANDARDS.—The Secretary, in coordination with the Secretary of Agriculture, shall establish by regulation scientific and risk-based food safety standards for the growing, harvesting, processing, packing, sorting, transporting, and holding of those types of raw agricultural commodities—

''(1) that are a fruit, vegetable, nut, or fungus; and

''(2) for which the Secretary has determined that such standards are reasonably necessary to minimize the risk of serious adverse health consequences or death to humans or animals.

''(b) CONTENTS.—The regulations under subsection (a)—

''(1) may set forth such procedures, processes, and practices as the Secretary determines to be reasonably necessary—

''(A) to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into raw agricultural commodities that are a fruit, vegetable, nut, or fungus; and

''(B) to provide reasonable assurances that such commodity is not adulterated under section 402;

''(2) may include, with respect to growing, harvesting, processing, packing, sorting, transporting, and storage operations, standards for safety as the Secretary determines to be reasonably necessary;

''(3) may include standards addressing manure use, water quality, employee hygiene, sanitation and animal control, and temperature controls, as the Secretary determines to be reasonably necessary;

''(4) may include standards for such other elements as the Secretary determines necessary to carry out subsection (a);

''(5) shall provide a reasonable period of time for compliance, taking into account the needs of small businesses for additional time to comply;

''(6) may provide for coordination of education and enforcement activities;

''(7) shall take into consideration, consistent with ensuring enforceable public health protection, the impact on small-scale and diversified farms, and on wildlife habitat, conservation practices, watershed-protection efforts, and organic production methods;

''(8) may provide for coordination of education and training with other government agencies, universities, private entities, and others with experience working directly with farmers; and

''(9) may provide for recognition through guidance of other existing publicly available procedures, processes, and practices that the Secretary determines to be equivalent to those established under paragraph (1).

''(c) EDUCATION AND COMPLIANCE.—The Secretary shall coordinate with the Secretary of Agriculture to provide for effective implementation of education and compliance activities. The Secretary may contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.''.

(c) TIMING.—

(1) PROPOSED RULE.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue a proposed rule to carry out section 419A of the Federal Food, Drug, and Cosmetic Act, as added by subsection (b).

(2) FINAL RULE.—Not later than 3 years after such date, the Secretary of Health and Human Services shall issue a final rule under such section.

(d) NO EFFECT ON EXISTING HACCP AUTHORITIES.—Nothing in this section or the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.), as in effect on the day before the date of the enactment of this Act, to revise, issue, or enforce product- and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(e) UPDATE EXISTING GUIDANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall update the guidance document entitled ''Guidance For Industry: Guide To Minimize Microbial Food Safety Hazards For Fresh Fruits And Vegetables'' (issued on October 26, 1998) in accordance with this section and the amendments made by this section.

SEC. 105. RISK-BASED INSPECTION SCHEDULE.

(a) IN GENERAL.—Section 704 (21 U.S.C. 374) is amended by adding at the end the following:

''(h)(1) Each facility registered under section 415 shall be inspected—

''(A)(i) by one or more officers duly designated under section 702 or other statutory authority by the Secretary;

''(ii) for domestic facilities, by a Federal, State, or local official recognized by the Secretary under paragraph (2); or

''(iii) for foreign facilities, by an agency or a representative of a country that is recognized by the Secretary under paragraph (2); and

''(B) at a frequency determined pursuant to a risk-based schedule.

''(2) For purposes of paragraph (1)(A), the Secretary—

''(A) may recognize Federal, State, and local officials and agencies and representatives of foreign countries as meeting standards established by the Secretary for conducting inspections under this Act; and

''(B) may limit such recognition to inspections of specific commodities or food types.

''(3) The risk-based schedule under paragraph (1)(B) shall be implemented beginning not later than 18 months after the date of the enactment of this subsection.

''(4) Such risk-based schedule shall provide for a frequency of inspections commensurate with the risk presented by the facility and shall be based on the following categories and inspection frequencies:

''(A) CATEGORY 1.—A category 1 food facility is a high-risk facility that manufactures or processes food. The Secretary shall randomly inspect a category 1 food facility at least every 6 to 12 months.

''(B) CATEGORY 2.—A category 2 food facility is a low-risk facility that manufactures or processes food or a facility that packs or labels food. The Secretary shall randomly inspect a category 2 facility at least every 18 months to 3 years.

''(C) CATEGORY 3.—A category 3 food facility is a facility that holds food. The Secretary shall randomly inspect a category 3 facility at least every 5 years.

''(5) The Secretary—

''(A) may, by guidance, modify the types of food facilities within a category under paragraph (4);

''(B) may alter the inspection frequencies specified in paragraph (4) based on the need to respond to food-borne illness outbreaks and food recalls; and

''(C) may inspect a facility more frequently than the inspection frequency provided by paragraph (4);

''(D) beginning 6 months after submitting the report required by section 105(b)(2) of the Food Safety Enhancement Act of 2009, may—

''(i) publish in the Federal Register adjustments to the inspection frequencies specified in subparagraphs (B) and (C) of paragraph (4) for category 2 and category 3 food facilities, which adjustments shall be in accordance with the Secretary's recommendations in such report; and

''(ii) after such publication, implement the adjustments; and

''(E) except as provided in subparagraphs (B) and (C), may not alter the inspection frequency specified in paragraph (4)(A) for category 1 food facilities.

''(6) In determining the appropriate frequency of inspection, the Secretary shall consider—

''(A) the type of food manufactured, processed, packed, or held at the facility;

''(B) the compliance history of the facility;

''(C) whether the facility importing or offering for import into the United States food is certified by a qualified certifying entity in accordance with section 801(q); and

''(D) such other factors as the Secretary determines by guidance to be relevant to assessing the risk presented by the facility.

''(7) Before establishing or modifying the categorization under paragraph (4) of any food facility or type of food facility, the Secretary shall publish a notice of the proposed categorization in the Federal Register and provide a period of not less than 60 days for public comment on the proposed categorization.''.

(b) REPORTS ON RISK-BASED INSPECTIONS OF FOOD FACILITIES.—

(1) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Health and Human Services shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate describing—

(A) the number of foreign and domestic facilities, by risk category, inspected under the risk-based inspection schedule established under section 704(h) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), in the preceding fiscal year; and

(B) the costs of implementing the risk-based inspection schedule for the preceding 12 months.

(2) THIRD-YEAR REPORT.—Not later than 3 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate describing recommendations on the risk-based inspection schedule under section 704(h) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), including recommendations for adjustments to the timing of the schedule and other ways to improve the risk-based allocation of resources by the Food and Drug Administration. In making such recommendations, the Secretary shall consider—

(A) the nature of the food products being processed, stored, or transported;

(B) the manner in which food products are processed, stored, or transported;

(C) the inherent likelihood that the products will contribute to the risk of food-borne illness;

(D) the best available evidence concerning reported illnesses associated with the foods processed, stored, held, or transported in the category of facilities; and

(E) the overall record of compliance with food safety law among facilities in the category, including compliance with applicable performance standards and the frequency of recalls.

SEC. 106. ACCESS TO RECORDS.

(a) RECORDS ACCESS.—Subsection (a) of section 414 (21 U.S.C. 350c) is amended to read as follows:

''(a) RECORDS ACCESS.—

''(1) RECORDS ACCESS DURING AN INSPECTION.—

''(A) IN GENERAL.—Except as provided in paragraph (3), each person who manufactures, processes, packs, transports, distributes, receives, or holds an article of food in the United States or for import into the United States shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article bearing on whether the food may be adulterated, misbranded, or otherwise in violation of this Act, including all records collected or developed to comply with section 418 or 418A.

''(B) SCOPE OF RECORDS.—The requirement under subparagraph (A) applies to all records relating to the manufacture, processing, packing, transporting, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.

''(C) IMMEDIATE AVAILABILITY WITH NOTICE.—Records not required to be made available immediately on commencement of an inspection under subparagraph (A) shall nonetheless be made available immediately on commencement of such an inspection if, by a reasonable time before such inspection, the Secretary by letter to the person identifies the records to be made available during such inspection. Nothing in this subparagraph shall be construed as permitting a person to refuse to produce records required under and in accordance with subparagraph (A) due to failure of the Secretary to provide notice under this paragraph.

''(2) ADDITIONAL AUTHORITIES TO ACCESS RECORDS REMOTELY; SUBMISSION OF RECORDS TO THE SECRETARY.—

''(A) REMOTE ACCESS IN EMERGENCIES.—If the Secretary has a reasonable belief that an article of food presents a threat of serious adverse health consequences or death to humans or animals, the Secretary may require each person who manufactures, processes, packs, transports, distributes, receives, holds, or imports such article of food, or any article of food that the Secretary determines may be affected in a similar manner, to submit to the Secretary all records reasonably related to such article of food as soon as is reasonably practicable, after receiving written notice (including by notice served personally and outside normal business hours to an agent identified under subparagraph (E) or (F) of section 415(a)(2)) of such requirement.

''(B) REMOTE ACCESS TO RECORDS RELATED TO FOOD SAFETY PLANS.—With respect to a facility subject to section 418 and 418A, the Secretary may require the owner, operator, or agent of such facility to submit to the Secretary, as soon as reasonably practicable after receiving written notice of such requirement, the food safety plan, supporting information relied on by the facility to select the preventive controls to include in its food safety plan, and documentation of corrective actions, if any, taken under section 418(e) within the preceding 2 years.

''(C) ELECTRONIC SUBMISSION.—If the records required to be submitted to the Secretary under subparagraph (A) or (B) are available in electronic format, such records shall be submitted electronically unless the Secretary specifies otherwise in the notice under such subparagraph.

''(3) LIMITED RECORDS ACCESS ON FARMS.—

''(A) APPLICATION.—Paragraphs (1) and (2) do not apply with respect to farms, except as provided in this paragraph.

''(B) IN GENERAL.—A person who is the owner, operator, or agent of a farm (as defined in section 415) shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to an article of food produced, manufactured, processed, packed, or held on such farm as specified in paragraphs (1) and (2) if—

''(i) such article of food is a fruit, vegetable, nut, or fungus that is the subject of a standard issued under section 419A; or

''(ii) such article of food is the subject of an active investigation by the Secretary of a food borne illness outbreak and is not a grain or similarly handled commodity as defined in subsection (c)(4)(C)(ii).

''(C) RECORDS ACCESS ON FARMS PRIOR TO RULEMAKING.—

''(i) IN GENERAL.—As soon as practicable after the enactment of this paragraph, the Secretary shall, in coordination with the Secretary of Agriculture, identify 1 or more fruits, vegetables, nuts, or fungi for which the Secretary shall have access to records on farms. Such identification shall be made by guidance, following notice and public comment.

''(ii) IDENTIFICATION OF RAW AGRICULTURAL COMMODITIES.—The Secretary, in coordination with the Secretary of Agriculture, shall make the identification in clause (i), based on any past food borne illness outbreak attributed to the fruit, vegetable, nut, or fungus—

''(I) in the United States and the risk that a similar outbreak could occur again in the United States; or

''(II) in a foreign country and the risk that a similar outbreak could occur in the United States.

''(iii) DURATION OF AUTHORITY.—The authority to have access to records for a fruit, vegetable, nut, or fungus under this subparagraph shall begin on the date on which the Secretary identifies such fruit, vegetable, nut, or fungus under clause (i) and shall terminate on the effective date of a final rule issued by the Secretary under section 419A.

''(iv) SCOPE OF RECORDS ACCESS.—In the guidance under clause (i), and for the period specified in clause (iii), the Secretary, in coordination with the Secretary of Agriculture, shall determine the scope of the records to which the Secretary shall have access under this subparagraph.

''(D) RULE OF CONSTRUCTION.—This paragraph shall not be construed as limiting access to any records authorized under—

''(i) this Act or the Public Health Service Act, as in effect on the day before the date of the enactment of this paragraph; or

''(ii) regulations issued under such Acts on any date before the date of the enactment of this paragraph.''.

(b) REGULATIONS CONCERNING RECORDKEEPING.—

(1) AMENDMENT.—Subsection (b) of section 414 (21 U.S.C. 350c) is amended to read as follows:

''(b) REGULATIONS CONCERNING RECORDKEEPING.—The Secretary, in consultation and coordination, as appropriate, with other Federal departments and agencies with responsibilities for regulating food safety, shall by regulation establish requirements regarding the establishment and maintenance, for not longer than 3 years, of records by persons who manufacture, process, pack, transport, distribute, receive, or hold food in the United States or for import into the United States. The Secretary shall take into account the size of a business in promulgating regulations under this subsection. The Secretary shall consult with the Secretary of Agriculture in promulgating regulations with respect to farms under this subsection and shall take into account the nature of and impact on farms in promulgating such regulations. The only distribution records which may be required of restaurants under this subsection are those showing the restaurant's suppliers and subsequent distribution other than to consumers.''.

(2) APPLICATION.—The Secretary of Health and Human Services shall promulgate revised regulations to implement section 414(b) of the Federal Food, Drug, and Cosmetic Act, as amended by this subsection. Section 414(b) of the Federal Food, Drug, and Cosmetic Act and regulations thereunder, as in effect on the day before the date of the enactment of this Act, shall apply to acts and omissions occurring before the effective date of such revised regulations.

(c) CONFORMING AMENDMENTS.—Section 704(a)(1) (21 U.S.C. 374(a)(1)) is amended—

(1) in the second sentence—

(A) by striking ''(excluding farms or restaurants)'' and inserting ''(excluding farms, except as provided in section 414(a)(3))'';

(B) by inserting ''receives,'' before ''holds'';

(C) by striking ''described in section 414'' and inserting ''described in or required under section 414''; and

(D) by striking ''when the Secretary has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals'' and inserting ''bearing on whether such food is adulterated, misbranded, or otherwise in violation of this Act, including all records collected or developed to comply with section 418 or 418A''; and

(2) in the fourth sentence—

(A) by striking ''the preceding sentence'' and inserting ''either of the preceding two sentences''; and

(B) by inserting ''recipes for food,'' before ''financial data,''.

SEC. 107. TRACEABILITY OF FOOD.

(a) PROHIBITED ACT.—Section 301(e) (21 U.S.C. 331(e)) is amended by inserting '', the violation of any requirement of the food tracing system under section 414(c);'' before ''or the refusal to permit access to or verification or copying of any such required record''.

(b) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting ''or (4) the requirements of section 414 have not been complied with regarding such article,'' before ''then such article shall be refused admission''.

(c) PRODUCT TRACING FOR FOOD.—Section 414 (21 U.S.C. 350c), as amended by section 106, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

''(c) TRACING SYSTEM FOR FOOD.—

''(1) IN GENERAL.—The Secretary shall by regulation establish a tracing system for food that is located in the United States or is for import into the United States.

''(2) INFORMATION GATHERING.—

''(A) TRACING TECHNOLOGIES.—Before issuing a proposed regulation under this subsection, the Secretary shall—

''(i) identify technologies and methodologies for tracing the distribution history of a food that are, or may be, used by members of different sectors of the food industry, including technologies and methodologies to enable each person who produces, manufactures, processes, pack, transports, or holds a food to—

''(I) maintain the full pedigree of the origin and previous distribution history of the food;

''(II) link that history with the subsequent distribution of the food;

''(III) establish and maintain a system for tracing the food that is interoperable with the systems established and maintained by other such persons; and

''(IV) use a unique identifier for each facility owned or operated by such person for such purpose, as specified under section 1011; and

''(ii) to the extent practicable, assess—

''(I) the costs and benefits associated with the adoption and use of such technologies;

''(II) the feasibility of such technologies for different sectors of the food industry; and

''(III) whether such technologies are compatible with the requirements of this subsection.

''(B) PUBLIC MEETINGS.—Before issuing a proposed regulation under this subsection, the Secretary shall conduct not less than 2 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to provide input and information to the Secretary.

''(C) PILOT PROJECTS.—Before issuing a proposed regulation under this subsection, the Secretary shall conduct 1 or more pilot projects in coordination with 1 or more sectors of the food industry to explore and evaluate tracing systems for food. The Secretary shall coordinate with the Secretary of Agriculture in conducting pilot projects with respect to farms under this subsection.

''(3) REGULATION.—

''(A) IN GENERAL.—Taking into account information obtained through information gathering under paragraph (2), the Secretary shall issue regulations establishing a tracing system that enables the Secretary to identify each person who grows, produces, manufactures, processes, packs, transports, holds, or sells such food in as short a timeframe as practicable but no longer than 2 business days.

''(B) SCOPE OF REGULATION.—The Secretary may include in the regulations establishing a tracing system—

''(i) the establishment and maintenance of lot numbers;

''(ii) a standardized format for pedigree information; and

''(iii) the use of a common nomenclature for food.

''(C) COORDINATION REGARDING FARM IMPACT.—In issuing regulations under this paragraph that will impact farms, the Secretary—

''(i) shall coordinate with the Secretary of Agriculture; and

''(ii) take into account the nature of the impact of the regulations on farms.

''(4) EXEMPTIONS AND LIMITATIONS.—

''(A) DIRECT SALES BY FARMS.—Food is exempt from the requirements of this subsection if such food is—

''(i) produced on a farm; and

''(ii) sold by the owner, operator, or agent in charge of such farm directly to a consumer or to a restaurant or grocery store.

''(B) FISHING VESSELS.—Food is exempt from the requirements of this subsection if such food is produced through the use of a fishing vessel as defined in section 3(18) of the Magnuson-Stevens Fishery Conservation and Management Act until such time as the food is sold by the owner, operator, or agent in charge of such fishing vessel.

''(C) GRAINS AND SIMILARLY HANDLED COMMODITIES.—

''(i) LIMITATION ON EXTENT OF TRACING.—In addition to the exemption under subparagraph (A), any tracing system established under this subsection with regard to any grain or similarly handled commodity shall be limited to enabling the Secretary to identify persons who received, processed, packed, transported, distributed, held, or sold the grain or similarly handled commodity from the initial warehouse operator that held the grain or similarly handled commodity for any period of time to the ultimate consumer.

''(ii) DEFINITIONS.—In this subparagraph:

''(I) The term 'grain or similarly handled commodity' means wheat, corn, grain sorghum, barley, oats, rice, wild rice, rye, soybeans, legumes, sugar cane, sugar beets, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, camelina, cottonseed, cocoa beans, grass hay, and honey. The term may include any other commodity as determined by the Secretary in coordination with the Secretary of Agriculture.

''(II) The term 'warehouse operator' has the meaning given that term in section 2 of the United States Warehouse Act (7 U.S.C. 241), except that the term also includes any person or entity that handles or stores agricultural products for other persons or entities or, in the case of a cooperative, handles or stores agricultural products for its members, as determined by the Secretary in coordination with the Secretary of Agriculture.

''(D) EXEMPTION OF OTHER FOODS.—The Secretary may by notice in the Federal Register exempt a food or a type of facility, farm, or restaurant from, or modify the requirements with respect to, the requirements of this subsection if the Secretary determines that a tracing system for such food or type of facility, farm, or restaurant is not necessary to protect the public health.

''(E) RECORDKEEPING REGARDING PREVIOUS SOURCES AND SUBSEQUENT RECIPIENTS.—For a food or person covered by a limitation or exemption under subparagraph (B), (C), or (D), the Secretary shall require each person who produces, receives, manufactures, processes, packs, transports, distributes, or holds such food to maintain records to identify the immediate previous sources of such food and its ingredients and the immediate subsequent recipients of such food.

''(F) RECORDKEEPING BY RESTAURANTS AND GROCERY STORES.—For a food covered by an exemption under subparagraph (A), restaurants and grocery stores shall keep records documenting the farm that was the source of the food.

''(G) RECORDKEEPING BY FARMS.—For a food covered by an exemption under subparagraph (A), farms shall keep records, in electronic or non-electronic format, for at least 6 months documenting the restaurant or grocery store to which the food was sold.''.

SEC. 108. REINSPECTION AND FOOD RECALL FEES APPLICABLE TO FACILITIES.

(a) IN GENERAL.—Part 6 of subchapter C of chapter VII (21 U.S.C. 371 et seq.), as added by section 101(c), is amended by adding at the end the following:

''SEC. 743A. REINSPECTION AND FOOD RECALL FEES APPLICABLE TO FACILITIES.

''(a) IN GENERAL.—The Secretary shall assess and collect fees from each entity in a fiscal year—

''(1) that—

''(A) during such fiscal year commits a violation of any requirement of this Act relating to food, including any such requirement relating to good manufacturing practices; and

''(B) because of such violation, undergoes additional inspection by the Food and Drug Administration; or

''(2) during such fiscal year is subject to a food recall.

''(b) AMOUNT OF FEES.—The Secretary shall set the amount of the fees under this section to fully cover the costs of—

''(1) in the case of fees collected under subsection (a)(1), conducting the additional inspections referred to in such subsection; and

''(2) in the case of fees collected under subsection (a)(2), conducting food recall activities, including technical assistance, follow-up effectiveness checks, and public notifications, during the fiscal year involved.

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section—

''(A) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation, for such fiscal year; and

''(B) shall only be collected and available to defray the costs referred to in subsection (b).

''(3) AUTHORIZATION OF APPROPRIATIONS.—For each of fiscal years 2010 through 2014, there are authorized to be appropriated for fees under this section such sums as may be necessary.

''(d) WAIVER.—The Secretary shall waive and, if applicable, refund the amount of any fee collected under this section from an entity as a result of a food recall that the Secretary determines was inappropriately ordered.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to additional inspections and food recall activities occurring after the date of the enactment of this Act.

SEC. 109. CERTIFICATION AND ACCREDITATION.

(a) MISBRANDING.—

(1) IN GENERAL.—Section 403 (21 U.S.C. 343), as amended by section 101(a), is amended by adding at the end the following:

''(aa) If it is part of a shipment offered for import into the United States and such shipment is in violation of section 801(q) (requiring a certification of compliance for certain food shipments).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to shipments offered for import on or after the date that is 3 years after the date of the enactment of this Act.

(b) CERTIFICATION OF COMPLIANCE FOR IMPORTS.—Chapter VIII (21 U.S.C. 381 et seq.) is amended—

(1) in section 801(a), as amended by section 107(b), by inserting after the third sentence the following: ''If such article is food being imported or offered for import into the United States and is not in compliance with the requirement of subsection (q) (relating to certifications of compliance with this Act), then such article shall be refused admission.'';

(2) in the second sentence of section 801(b), by striking ''the fourth sentence'' and inserting ''the fifth sentence''; and

(3) by adding at the end of section 801 the following:

''(q) CERTIFICATIONS CONCERNING IMPORTED ARTICLES.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—The Secretary may require, as an additional condition of granting admission to an article of food being imported or offered for import into the United States, that a qualified certifying entity provide a certification that the article complies with requirements of this Act as specified by the Secretary if—

''(i) for food imported from a particular country, territory, or region, the Secretary finds, based on scientific, risk-based evidence, that the government controls in such country, territory, or region are inadequate to ensure that the article is safe and that certification would assist the Secretary in determining whether to refuse to admit such article under subsection (a);

''(ii) for a type of food for which there is scientific evidence that there is a particular risk associated with the food that presents a threat of serious adverse health consequences or death, the Secretary finds that certification would assist the Secretary in determining whether to refuse to admit such article under subsection (a); or

''(iii) for an article imported from a particular country or territory, there is an agreement between the Secretary and the government of such country or territory providing for such certification.

''(B) FORM OF CERTIFICATION.—A certification under subparagraph (A) may take the form of a statement that the article or the facility or farm that manufactured, processed, packed, held, grew, harvested, sorted, or transported the article, as the case may be, complies with requirements of this Act as specified by the Secretary, or any other form as the Secretary may specify, including a listing of certified facilities or other entities. The Secretary may require that the certification include additional information regarding compliance.

''(C) ADEQUATE GOVERNMENT CONTROLS.—

''(i) PROCESS.—Before requiring a certification under clause (ii) of subparagraph (A) with respect to a food, the Secretary shall establish a process by which a country or territory may demonstrate that its government controls are adequate to ensure that such food exported from its territory to the United States is safe.

''(ii) DEMONSTRATION.—The Secretary shall not require a certification under clause (ii) of subparagraph (A) for a food exported from a country or territory, if that country or territory has demonstrated, pursuant to the process established by the Secretary under clause (i), that its government controls are adequate to ensure that such food exported from its territory to the United States is safe.

''(D) NOTICE OF CANCELLATION OR SUSPENSION OF CERTIFICATION.—As a condition on acceptance of certifications from a qualified certifying entity, the Secretary shall require the qualified certifying entity to notify the Secretary whenever the qualified certifying entity cancels or suspends the certification of any facility or other entity included in a listing under subparagraph (B).

''(E) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS.—The Secretary shall apply this paragraph consistently with United States obligations under international agreements.

''(2) QUALIFIED CERTIFYING ENTITY.—For purposes of this subsection, the term 'qualified certifying entity' means—

''(A) an agency or a representative of the government of the country from which the article originated, as designated by such government or the Secretary; or

''(B) an individual or entity determined by the Secretary or an accredited body recognized by the Secretary to be qualified to provide a certification under paragraph (1).

''(3) NO CONFLICTS OF INTEREST.—

''(A) IN GENERAL.—The Secretary shall issue regulations to ensure that any qualified certifying entity and its auditors are free from conflicts of interest. In issuing these regulations, the Secretary may rely on or incorporate international certification standards.

''(B) REGULATIONS.—Such regulations shall require that—

''(i) the qualified certifying entity shall have a committee or management structure for safeguarding impartiality;

''(ii) conflict of interest policies for a qualified certifying entity and auditors acting for the qualified certifying entity shall be written;

''(iii) the qualified certifying entity shall not be owned, operated, or controlled by a producer, manufacturer, processor, packer, holder, supplier, or vendor of any article of the type it certifies;

''(iv) the qualified certifying entity shall not have any ownership or financial interest in any product, producer, manufacturer, processor, packer, holder, supplier or vendor of the type it certifies;

''(v) no auditor acting for the qualified certifying entity (or spouse or minor children) shall have any significant ownership or other financial interest regarding any product of the type it certifies;

''(vi) the qualified certifying entity shall—

''(I) obtain and maintain annual declarations from all personnel who may be directly involved in the performance of audits as to whether they do or do not have direct financial interests in any producer, manufacturer, processor, packer, holder, supplier, or vendor of foods, and a list of any such companies in which they do have financial interests or by which they were employed in the past year; and

''(II) when an auditor is assigned to audit a facility, require that individual to affirm that he or she has no financial interest in the company that owns or operates that facility and was not employed by that facility in the previous year;

''(vii) neither the qualified certifying entity nor any of its auditors acting for the qualified certifying entity shall participate in the production, manufacture, processing, packing, holding, promotion, or sale of any product of the type it certifies;

''(viii) neither the qualified certifying entity nor any of its auditors shall provide consultative services to any facility certified by the qualified certifying entity, or the owner, operator, or agent in charge of such a facility, unless the qualified certifying entity has procedures in place, approved by the Secretary, to ensure separation of functions between auditors providing consultative services and auditors providing certification services under this subsection;

''(ix) no auditors acting for the qualified certifying entity shall participate in an audit of a facility they were employed by within the last 12 months;

''(x) fees charged or accepted shall not be contingent or based upon the report made by the qualified certifying entity or any personnel involved in the audit process;

''(xi) neither the qualified certifying entity nor any of its auditors shall accept anything of value from anyone in connection with the facility being audited other than the audit fee;

''(xii) the qualified certifying entity shall not be owned, operated, or controlled by a trade association whose member companies operate facilities that it certifies;

''(xiii) the qualified certifying entity and its auditors shall be free from any other conflicts of interest that threaten impartiality;

''(xiv) the qualified certifying entity and its auditors shall sign a statement attesting to compliance with the conflict of interests requirements under this paragraph; and

''(xv) the qualified certifying entity shall ensure that any subcontractors that might be used (such as laboratories and sampling services) provide similar assurances, except that it shall not be a violation of this subsection to the extent such subcontractors perform additional nutritional testing services unrelated to the testing under this subsection.

''(C) DEFINITIONS.—In this paragraph:

''(i) The term 'anything of value' includes gifts, gratuities, reimbursement of non-audit-related expenses, entertainment, loans, or any other form of compensation in cash or in kind.

''(ii) The term 'direct financial interest' does not include any ownership of mutual funds that have a financial interest in a company.

''(4) RENEWAL AND REFUSAL OF CERTIFICATIONS.—The Secretary shall—

''(A) require that, to the extent applicable, any certification provided by a qualified certifying entity be renewed by such entity at such times as the Secretary determines appropriate; and

''(B) refuse to accept any certification if the Secretary determines that such certification is no longer valid or reliable.

''(5) ON-SITE AUDITS.—In evaluating whether an accreditation body meets, or continues to meet, the standards for recognition under this subsection, or whether to accept certifications from a qualified certifying entity, the Secretary may—

''(A) observe on-site audits of qualified certifying entities by such accreditation body; or

''(B) for any facility that is certified by a qualified certifying entity, upon request of an officer or employee designated by the Secretary and upon presentation of appropriate credentials, at reasonable times and within reasonable limits and in a reasonable manner, conduct an on-site audit of the facility, which shall include access to, and copying and verification of, any related records.

''(6) ELECTRONIC SUBMISSION.—The Secretary shall provide, in coordination with the Commissioner responsible for Customs and Border Protection, for the electronic submission of certifications under this subsection.

''(7) NO LIMIT ON AUTHORITY.—This subsection shall not be construed to limit the authority of the Secretary to conduct random inspections of imported articles or facilities of importers, issue import alerts for detention without physical examination, require submission to the Secretary of documentation or other information about an article imported or offered for import, or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported articles.''.

SEC. 110. TESTING BY ACCREDITED LABORATORIES.

(a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

''(uu) The violation of any requirement of section 714 (relating to testing by accredited laboratories).''.

(b) LABORATORY ACCREDITATION.—Subchapter A of chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end the following:

''SEC. 714. TESTING BY ACCREDITED LABORATORIES.

''(a) IN GENERAL.—

''(1) REQUIREMENT.—Whenever analytical testing of an article of food is conducted as part of testimony for the purposes of section 801(a), or for such other purposes as the Secretary deems appropriate through regulation or guidance, such testing shall be conducted by a laboratory that—

''(A) is accredited, for the analytical method used, by a laboratory accreditation body that has been recognized by the Secretary; and

''(B) samples such article with adequate controls for ensuring the integrity of the samples analyzed.

''(2) INDEPENDENCE OF LABORATORY.—

''(A) CERTAIN TESTS.—Tests required for purposes of section 801(a) or in response to a finding of noncompliance by the Secretary shall be conducted by a laboratory independent of the person on whose behalf such testing is conducted and analyzed.

''(B) CERTAIN PRODUCTS.—The Secretary may require that testing for certain products under paragraph (1) be conducted by a laboratory independent of the person on whose behalf such testing is conducted.

''(b) RECOGNITION OF LABORATORY ACCREDITATION BODIES.—The Secretary shall establish and implement a program for the recognition, based on standards the Secretary deems appropriate, of laboratory accreditation bodies that accredit laboratories to perform analytical testing for the purposes of this section. The Secretary shall issue regulations or guidance to implement this program.

''(c) ONSITE AUDITS.—In evaluating whether an accreditation body meets, or continues to meet, the standards for recognition under subsection (b), the Secretary may—

''(1) observe onsite audits of laboratories by such accreditation bodies; or

''(2) for any laboratory that is accredited by such accreditation body under this section, upon request of an officer or employee designated by the Secretary and upon presentation of appropriate credentials, at reasonable times and within reasonable limits and in a reasonable manner, conduct an onsite audit of the laboratory, which shall include access to, and copying and verification of, any related records.

''(d) PUBLICATION OF LIST OF RECOGNIZED ACCREDITATION BODIES.—The Secretary shall publish and maintain on the public Web site of the Food and Drug Administration a list of accreditation bodies recognized by the Secretary under subsection (b).

''(e) NOTIFICATION OF ACCREDITATION OF LABORATORY.—An accreditation body that has been recognized pursuant to this section shall promptly notify the Secretary whenever it accredits a laboratory for the purposes of this section and whenever it withdraws or suspends such accreditation.

''(f) ADVANCE NOTICE.—Whenever analytical testing is conducted pursuant to subsection (a), the person on whose behalf the testing is conducted shall notify the Secretary before any sample of the article is collected. Such notice shall contain information the Secretary determines is appropriate to identify the article, the location of the article, and each laboratory that will analyze the sample on the person's behalf.

''(g) CONTENTS OF LABORATORY PACKAGES.—Whenever analytical testing is conducted pursuant to subsection (a), the laboratory conducting such testing shall submit, directly to the Secretary—

''(1) the results of all analyses conducted by the laboratory on each sample of such article; and

''(2) all information the Secretary deems appropriate to—

''(A) determine whether the laboratory is accredited by a recognized laboratory accreditation body;

''(B) identify the article tested;

''(C) evaluate the analytical results; and

''(D) determine whether the requirements of this section have been met.

''(h) EXIGENT CIRCUMSTANCES.—The Secretary may waive the requirement of subsection (a)(1)(A) (relating to analytical methods) on a laboratory or method basis due to exigent or other circumstances.

''(i) FEDERAL LABORATORY TESTING.—If Customs and Border Protection laboratory testing concludes that an article of food is adulterated or misbranded, the Secretary shall consider and utilize as appropriate the testing results issued by the Customs and Border Protection laboratories in making a decision about the admissibility of the product.

''(j) NO LIMIT ON AUTHORITY.—Nothing in this section shall be construed to limit—

''(1) the ability of the Secretary to review and act upon information from the analytical testing of food (including under this section), including determining the sufficiency of such information and testing; or

''(2) the authority of the Secretary to conduct, require, or consider the results of analytical testing pursuant to any other provision of law.''.

SEC. 111. NOTIFICATION, NONDISTRIBUTION, AND RECALL OF ADULTERATED OR MISBRANDED FOOD.

(a) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 110, is amended by adding at the end the following:

''(vv)(1) The failure to notify the Secretary in violation of section 420(a).

''(2) The failure to comply with any order issued under section 420.''.

(b) NOTIFICATION, NONDISTRIBUTION, AND RECALL OF ADULTERATED OR MISBRANDED FOOD.—Chapter IV (21 U.S.C. 341 et seq.), as amended by sections 102, 103, and 104, is amended by adding at the end the following:

''SEC. 420. NOTIFICATION, NONDISTRIBUTION, AND RECALL OF ADULTERATED OR MISBRANDED FOOD.

''(a) NOTIFICATION, NONDISTRIBUTION, AND RECALL OF ADULTERATED OR MISBRANDED FOOD.—

''(1) IN GENERAL.—A responsible party as that term is defined in section 417(a)(1) or a person required to register under section 801(s) that has reason to believe that an article of food when introduced into or while in interstate commerce, or while held for sale (regardless of whether the first sale) after shipment in interstate commerce, is adulterated or misbranded in a manner that presents a reasonable probability that the use or consumption of, or exposure to, the article (or an ingredient or component used in any such article) will cause a threat of serious adverse health consequences or death to humans or animals shall, as soon as practicable, notify the Secretary of the identity and location of the article.

''(2) MANNER OF NOTIFICATION.—Notification under paragraph (1) shall be made in such manner and by such means as the Secretary may require by regulation or guidance.

''(b) VOLUNTARY RECALL.—The Secretary may request that any person who distributes an article of food that the Secretary has reason to believe is adulterated, misbranded, or otherwise in violation of this Act voluntarily—

''(1) recall such article; and

''(2) provide for notice, including to individuals as appropriate, to persons who may be affected by the recall.

''(c) ORDER TO CEASE DISTRIBUTION.—If the Secretary has reason to believe that the use or consumption of, or exposure to, an article of food may cause serious adverse health consequences or death to humans or animals, the Secretary shall have the authority to issue an order requiring any person who distributes such article to immediately cease distribution of such article.

''(d) ACTION FOLLOWING ORDER.—Any person who is subject to an order under subsection (c) shall immediately cease distribution of such article and provide notification as required by such order, and may appeal within 24 hours of issuance such order to the Secretary. Such appeal may include a request for an informal hearing and a description of any efforts to recall such article undertaken voluntarily by the person, including after a request under subsection (b). Except as provided in subsection (f), an informal hearing shall be held as soon as practicable, but not later than 5 calendar days, or less as determined by the Secretary, after such an appeal is filed, unless the parties jointly agree to an extension. After affording an opportunity for an informal hearing, the Secretary shall determine whether the order should be amended to require a recall of such article. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(e) ORDER TO RECALL.—

''(1) AMENDMENT.—Except as provided under subsection (f), if after providing an opportunity for an informal hearing under subsection (d), the Secretary determines that the order should be amended to include a recall of the article with respect to which the order was issued, the Secretary shall amend the order to require a recall.

''(2) CONTENTS.—An amended order under paragraph (1) shall—

''(A) specify a timetable in which the recall will occur;

''(B) require periodic reports to the Secretary describing the progress of the recall; and

''(C) provide for notice, including to individuals as appropriate, to persons who may be affected by the recall.

In providing for such notice, the Secretary may allow for the assistance of health professionals, State or local officials, or other individuals designated by the Secretary.

''(3) NONDELEGATION.—An amended order under this subsection shall be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the director of the district under this Act in which the article involved is located, or is an official senior to such director.

''(f) EMERGENCY RECALL ORDER.—

''(1) IN GENERAL.—If the Secretary has credible evidence or information that an article of food subject to an order under subsection (c) presents an imminent threat of serious adverse health consequences or death to humans or animals, the Secretary may issue an order requiring any person who distributes such article—

''(A) to immediately recall such article; and

''(B) to provide for notice, including to individuals as appropriate, to persons who may be affected by the recall.

''(2) ACTION FOLLOWING ORDER.—Any person who is subject to an emergency recall order under this subsection shall immediately recall such article and provide notification as required by such order, and may appeal within 24 hours after issuance such order to the Secretary. An informal hearing shall be held within as soon as practicable but not later than 5 calendar days, or less as determined by the Secretary, after such an appeal is filed, unless the parties jointly agree to an extension. After affording an opportunity for

an informal hearing, the Secretary shall determine whether the order should be amended pursuant to subsection (e)(1). If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(3) NONDELEGATION.—An order under this subsection shall be issued by the Commissioner of Food and Drugs, the Principal Deputy Commissioner, or the Associate Commissioner for Regulatory Affairs of the Food and Drug Administration.

''(g) NOTICE TO CONSUMERS AND HEALTH OFFICIALS.—The Secretary shall, as the Secretary determines to be necessary, provide notice of a recall order under this section to consumers to whom the article was, or may have been, distributed and to appropriate State and local health officials.

''(h) SAVINGS CLAUSE.—Nothing contained in this section shall be construed as limiting—

''(1) the authority of the Secretary to issue an order to cease distribution of, or to recall, an article under any other provision of this Act or the Public Health Service Act; or

''(2) the ability of the Secretary to request any person to perform a voluntary activity related to any article subject to this Act or the Public Health Service Act.''.

(c) ARTICLES SUBJECT TO REFUSAL.—The third sentence of subsection (a) of section 801 (21 U.S.C. 381), as amended by section 107(b), is amended by inserting ''or (5) such article is subject to an order under section 420 to cease distribution of or recall the article,'' before ''then such article shall be refused admission''.

(d) EFFECTIVE DATE.—Sections 301(vv)(1) and 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsections (a) and (b), shall apply with respect to articles of food as of such date, not later than 1 year after the date of the enactment of this Act, as the Secretary of Health and Human Services shall specify.

SEC. 112. REPORTABLE FOOD REGISTRY; EXCHANGE OF INFORMATION.

(a) REPORTABLE FOOD REGISTRY.—Section 417 (21 U.S.C. 350f) is amended—

(1) in subsection (a)(1), by striking ''means a person'' and all that follows through the end of paragraph (1) and inserting the following: ''means—

''(A) a person who submits the registration under section 415(a) for a food facility that is required to be registered under section 415(a), at which such food is manufactured, processed, packed, or held;

''(B) a person who owns, operates, is an agent of, or is otherwise responsible for such food on a farm (as such term is defined in section 1.227(b)(3) of title 21, Code of Federal Regulations, or successor regulations) at which such food is produced for sale or distribution in interstate commerce;

''(C) a person who owns, operates, or is an agent of a restaurant or other retail food establishment (as such terms are defined in section 1.227(b)(11) and (12), respectively, of title 21, Code of Federal Regulations, or successor regulations) at which such food is offered for sale; or

''(D) a person that is required to register pursuant to section 801(s) with respect to importation of such food.'';

(2) in subsection (b), by adding at the end the following:

''(3) REPORTING BY FARMS, RESTAURANTS, AND RETAIL FOOD ESTABLISHMENTS.—In addition to the electronic portal described in paragraph (1), the Secretary shall make available alternative means of reporting under this section with respect to farms, restaurants, and other retail food establishments with limited ability for such reporting.'';

(3) in subsection (d)(1)—

(A) in the matter preceding subparagraph (A), by inserting ''following a timely review of any reasonably available data and information,'' after ''reportable food,'';

(B) in subparagraph (A), by striking ''and'' at the end;

(C) by redesignating subparagraph (B) as subparagraph (C); and

(D) by inserting after subparagraph (A) the following:

''(B) submit, with such report, through the electronic portal, documentation of results from any sampling and testing of such article, including—

''(i) analytical results from testing of such article conducted by or on behalf of the responsible party under section 418, 418A, 419, 419A, or 714;

''(ii) analytical results from testing conducted by or on behalf of such responsible party of a component of such article;

''(iii) analytical results of environmental testing of any facility at which such article, or a component of such article, is manufactured, processed, packed, or held; and

''(iv) any other information the Secretary determines is necessary to evaluate the adulteration of such article, any component of such article, any other article of food manufactured, processed, packed or held in the same manner as, or at the same facility as, such article, or any other article containing a component from the same source as a component of such article; and''; and

(4) in subsection (e)—

(A) in paragraph (1), by inserting ''if the responsible party is required to register'' after ''415(a)(3)''; and

(B) by adding at the end the following:

''(12) Such additional information as the Secretary deems appropriate.''.

(b) EXCHANGE OF INFORMATION.—Section 708 (21 U.S.C. 379) is amended—

(1) by striking ''The Secretary'' and inserting ''(a) The Secretary''; and

(2) by adding at the end the following:

''(b)(1)(A) The Secretary may provide to any Federal agency acting within the scope of its jurisdiction any information relating to food that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section, or that is referred to in section 301(j) or 415(a)(4).

''(B) Any such information provided to another Federal agency shall not be disclosed by such agency except in any action or proceeding under the laws of the United States to which the receiving agency or the United States is a party.

''(2)(A) In carrying out this Act, the Secretary may provide to a State or local government agency any information relating to food that is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b)(4) of such section, or that is referred to in section 301(j) or 415(a)(4).

''(B) Any such information provided to a State or local government agency shall not be disclosed by such agency.

''(3) In carrying out this Act, the Secretary may provide to any person any information relating to food that is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b)(4) of such section, if the Secretary determines that providing the information to the person is appropriate under the circumstances and the recipient provides adequate assurances to the Secretary that the recipient will preserve the confidentiality of the information.

''(4) In carrying out this Act, the Secretary may provide any information relating to food that is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b)(4) of such section, or that is referred to in section 301(j)—

''(A) to any foreign government agency; or

''(B) any international organization established by law, treaty, or other governmental action and having responsibility—

''(i) to facilitate global or regional harmonization of standards and requirements in an area of responsibility of the Food and Drug Administration; or

''(ii) to promote and coordinate public health efforts,

if the agency or organization provides adequate assurances to the Secretary that the agency or organization will preserve the confidentiality of the information.

''(c) Except where specifically prohibited by statute, the Secretary may disclose to the public any information relating to food that is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b)(4) of such section, if the Secretary determines that such disclosure is necessary to protect the public health.

''(d) Except as provided in subsection (e), the Secretary shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law any information relating to food obtained from a Federal, State, or local government agency, or from a foreign government agency, or from an international organization described in subsection (b)(4), if the agency or organization has requested that the information be kept confidential, or has precluded such disclosure under other use limitations, as a condition of providing the information.

''(e) Nothing in subsection (d) authorizes the Secretary to withhold information from the Congress or prevents the Secretary from complying with an order of a court of the United States.

''(f) This section shall not affect the authority of the Secretary to provide or disclose information under any other provision of law.''.

(c) CONFORMING AMENDMENT.—Section 301(j) (21 U.S.C. 331(j)) is amended by striking ''or to the courts when relevant in any judicial proceeding under this Act,'' and inserting ''to the courts when relevant in any judicial proceeding under this Act, or as specified in section 708,''.

SEC. 113. SAFE AND SECURE FOOD IMPORTATION PROGRAM.

Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

''SEC. 805. SAFE AND SECURE FOOD IMPORTATION PROGRAM.

''(a) IN GENERAL.—The Secretary may establish by regulation or guidance in coordination with the Commissioner responsible for Customs and Border Protection a program that facilitates the movement of food through the importation process under this Act if the importer of such food—

''(1) verifies that each facility involved in the production, manufacture, processing, packaging, and holding of the food is in compliance with the food safety and security guidelines developed under subsection (b) with respect to such food;

''(2) ensures that appropriate safety and security controls are in place throughout the supply chain for such food; and

''(3) provides supporting information to the Secretary.

''(b) GUIDELINES.—

''(1) DEVELOPMENT.—For purposes of the program established under subsection (a), the Secretary shall develop in consultation with the Commissioner responsible for Customs and Border Protection safety and security guidelines applicable to the importation of food taking into account, to the extent appropriate, other relevant Federal programs,

such as the Customs-Trade Partnership Against Terrorism (C-TPAT) programs under section 211 of the Security and Accountability for Every Port Act of 2006.

''(2) FACTORS.—Such guidelines shall take into account the following factors:

''(A) The personnel of the person importing the food.

''(B) The physical and procedural safety and security of such person's food supply chain.

''(C) The sufficiency of preventive controls for food and ingredients purchased by such person.

''(D) Vendor and supplier information.

''(E) Other programs for certification or verification by a qualified certifying entity used by the importer.

''(F) Such other factors as the Secretary determines necessary.''.

SEC. 114. INFANT FORMULA.

(a) MISBRANDING.—Section 403 (21 U.S.C. 343), as amended by sections 101(a) and 109(a), is amended by adding at the end the following:

''(bb) If it is a new infant formula and—

''(1) it is not the subject of a registration made pursuant to section 412(c)(1)(A);

''(2) it is not the subject of a submission made pursuant to section 412(c)(1)(B), or

''(3) at least 90 days have not passed since the making of such registration or of such submission to the Secretary.''.

(b) REQUIREMENTS.—Section 412 (21 U.S.C. 350a) is amended—

(1) in subsection (c)(1)(B), by striking ''(c)(1)'' at the end and inserting ''(d)(1), subject to subsection (d)(2)(B)'';

(2) in subsection (d)(1)—

(A) by striking ''and'' at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting '', and''; and

(C) by adding at the end the following:

''(E) information on any new ingredient in accordance with paragraph (2)(A).'';

(3) in subsection (d), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(4) by inserting after paragraph (1) of subsection (d) the following:

''(2)(A) The description of any new infant formula required under paragraph (1) shall include, for any new ingredient for use in the formula—

''(i) a citation to a prior approval by the Secretary of the new ingredient for use in infant formula under section 409;

''(ii) a citation to or information showing a prior consideration of the new ingredient for use in infant formula under any program established by the Secretary for the review of ingredients used in food; or

''(iii) for a new ingredient that is not a food additive or a color additive, information equivalent to that provided under any program established by the Secretary for the review of ingredients used in food.

''(B) If the information submitted under subparagraph (A) is the information described in clause (iii) of such subparagraph, the 90 day period provided by subsection (c)(1)(B) shall not commence until the Secretary has completed review of the information submitted under such clause and has provided the submitter notice of the results of such review.''.

Subtitle B—Intervention

SEC. 121. SURVEILLANCE.

(a) DEFINITION OF FOOD-BORNE ILLNESS OUTBREAK.—In this section, the term ''food-borne illness outbreak'' means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a food.

(b) FOOD-BORNE ILLNESS SURVEILLANCE SYSTEMS.—The Secretary of Health and Human Services (in this subtitle referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention, shall enhance food-borne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on food-borne illnesses by—

(1) coordinating Federal, State, and local food-borne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(2) facilitating sharing of findings on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, and State and local agencies, and with the public;

(3) developing improved epidemiological tools for obtaining quality exposure data, and microbiological methods for classifying cases;

(4) augmenting such systems to improve attribution of a food-borne illness outbreak to a specific food;

(5) expanding capacity of such systems, including fingerprinting and other detection strategies for food-borne infectious agents, in order to identify new or rarely documented causes of food-borne illness;

(6) allowing timely public access to aggregated, de-identified surveillance data;

(7) at least annually, publishing current reports on findings from such systems;

(8) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(9) integrating food-borne illness surveillance systems and data with other biosurveillance and public health situational awareness capabilities at the Federal, State, and local levels; and

(10) other activities as determined appropriate by the Secretary.

(c) IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.—

(1) IN GENERAL.—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

(A) Improve food-borne illness outbreak response and containment.

(B) Accelerate food-borne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal, State, and local partnerships to coordinate food safety and defense resources and reduce the incidence of food-borne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(2) REVIEW.—In developing the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of this Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

SEC. 122. PUBLIC EDUCATION AND ADVISORY SYSTEM.

(a) PUBLIC EDUCATION.—The Secretary, in cooperation with private and public organizations, including the appropriate State entities, shall design and implement a national public education program on food safety. The program shall provide—

(1) information to the public so that individuals can understand the potential impact and risk of food-borne illness, take action to reduce their risk of food-borne illness and injury, and make healthy dietary choices;

(2) information to health professionals so that they may improve diagnosis and treatment of food-related illness and advise individuals whose health conditions place them in particular risk; and

(3) such other information or advice to consumers and other persons as the Secretary determines will promote the purposes of this Act.

(b) HEALTH ADVISORIES.—The Secretary shall work with the States and other appropriate entities to—

(1) develop and distribute regional and national advisories concerning food safety;

(2) develop standardized formats for written and broadcast advisories; and

(3) incorporate State and local advisories into the national public education program required under subsection (a).

SEC. 123. RESEARCH.

The Secretary shall conduct research to assist in the implementation of this Act, including studies to—

(1) improve sanitation and food safety practices in the production, harvesting, and processing of food products;

(2) develop improved techniques for the monitoring of food and inspection of food products;

(3) develop efficient, rapid, and sensitive methods for determining and detecting the presence of contaminants in food products;

(4) determine the sources of contamination of food and food products, including critical points of risk for fresh produce and other raw agricultural commodities;

(5) develop consumption data with respect to food products;

(6) draw upon research and educational programs that exist at the State and local level;

(7) utilize the DNA matching system and other processes to identify and control pathogens;

(8) address common and emerging zoonotic diseases;

(9) develop methods to reduce or destroy pathogens before, during, and after processing;

(10) analyze the incidence of antibiotic resistance as it pertains to the food supply and evaluate methods to reduce the transfer of antibiotic resistance to humans; and

(11) conduct other research that supports the purposes of this Act.

Subtitle C—Response

SEC. 131. PROCEDURES FOR SEIZURE.

Section 304(b) (21 U.S.C. 334(b)) is amended by inserting ''and except that, with respect to proceedings relating to food, Rule G of the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions shall not apply in any such case, exigent circumstances shall be deemed to exist for all seizures brought under this section, and the summons and arrest warrant shall be issued by the clerk of the court without court review in any such case'' after ''in any such case shall be tried by jury''.

SEC. 132. ADMINISTRATIVE DETENTION.

(a) AMENDMENTS.—Section 304(h) (21 U.S.C. 334(h)) is amended—

(1) in paragraph (1)(A), by striking ''credible evidence or information indicating'' and inserting ''reason to believe'';

(2) in paragraph (1)(A), by striking ''presents a threat of serious adverse health consequences or death to humans or animals'' and inserting ''is adulterated, misbranded, or otherwise in violation of this Act'';

(3) in paragraph (2), by striking ''30'' and inserting ''60'';

(4) in paragraph (3), by striking the third sentence; and

(5) in paragraph (4)(A) by striking the terms ''five'' and ''five-day'' and inserting ''fifteen'' and ''fifteen-day'', respectively.

(b) REGULATIONS.—The Secretary shall issue regulations or guidance to implement the amendments made by this section.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

SEC. 133. AUTHORITY TO PROHIBIT OR RESTRICT THE MOVEMENT OF FOOD.

(a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by sections 110 and 111, is amended by adding at the end by adding the following:

''(ww) The violation of a prohibition or restriction under section 304(i).''.

(b) IN GENERAL.—Section 304 (21 U.S.C. 334) is amended by adding at the end the following:

''(i) AUTHORITY TO PROHIBIT OR RESTRICT THE MOVEMENT OF FOOD WITHIN A STATE OR PORTION OF A STATE.—

''(1) AUTHORITY TO PROHIBIT OR RESTRICT THE MOVEMENT OF FOOD.—

''(A) IN GENERAL.—

''(i) After consultation with the Governor or other appropriate official of an affected State, if the Secretary determines that there is credible evidence that an article of food presents an imminent threat of serious adverse health consequences or death to humans or animals, the Secretary may prohibit or restrict the movement of an article of food within a State or portion of a State for which the Secretary has credible evidence that such food is located within, or originated from, such State or portion thereof.

''(ii) In carrying out clause (i), the Secretary may prohibit or restrict the movement within a State or portion of a State of any article of food or means of conveyance of such article of food, if the Secretary determines that the prohibition or restriction is a necessary protection from an imminent threat of serious adverse health consequences or death to humans or animals.

''(2) NOTIFICATION PROCEDURES.—Subject to paragraph (3), before any action is taken in a State under this subsection, the Secretary shall—

''(A) notify the Governor or other appropriate official of the State affected by the proposed action;

''(B) issue a public announcement of the proposed action; and

''(C) publish in the Federal Register—

''(i) the findings of the Secretary that support the proposed action;

''(ii) a statement of the reasons for the proposed action; and

''(iii) a description of the proposed action, including—

''(I) the area affected; and

''(II) an estimate of the anticipated duration of the action.

''(3) NOTICE AFTER ACTION.—If it is not practicable to publish in the Federal Register the information required under paragraph (2)(C) before taking action under paragraph (1), the Secretary shall publish the information as soon as practicable, but not later than 10 business days, after commencement of the action.

''(4) APPLICATION OF LEAST DRASTIC ACTION.—No action shall be taken under paragraph (1) unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the imminent threat of serious adverse health consequences or death to humans or animals.

''(5) NONDELEGATION.—An action under paragraph (1) may only be ordered by the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the Commissioner of Food and Drugs or the Principal Deputy Commissioner.

''(6) DURATION.—Fourteen days after the initiation of an action under paragraph (1), and each 14 days thereafter, if the Secretary determines that it is necessary to continue the action, the Secretary shall—

''(A) notify the Governor or other appropriate official of the State affected of the continuation of the action;

''(B) issue a public announcement of the continuation of the action; and

''(C) publish in the Federal Register the findings of the Secretary that support the continuation of the action, including an estimate of the anticipated duration of the action.

''(7) RULEMAKING.—The Secretary shall, consistent with national security interests and as appropriate for known hazards, establish by regulation standards for conducting actions under paragraph (1), including, as appropriate, sanitation standards and procedures to restore any affected equipment or means of conveyance to its status prior to an action under paragraph (1).''.

SEC. 134. CRIMINAL PENALTIES.

Section 303(a) (21 U.S.C. 333) is amended—

(1) in paragraph (1), by striking ''Any'' and inserting ''Except as provided in paragraph (2) or (3), any''; and

(2) by adding at the end the following:

''(3) Notwithstanding paragraph (1), any person who knowingly violates paragraph (a), (b), (c), (k), or (v) of section 301 with respect to any food that is misbranded or adulterated shall be imprisoned for not more than 10 years or fined in accordance with title 18, United States Code, or both.''.

SEC. 135. CIVIL PENALTIES FOR VIOLATIONS RELATING TO FOOD.

(a) IN GENERAL.—Paragraph (2) of section 303(f) (21 U.S.C. 331 et seq.) is amended to read as follows:

''(2)(A) Any person who violates a provision of section 301 relating to food shall be subject to a civil penalty for each such violation of not more than—

''(i) $20,000 in the case of an individual, not to exceed $50,000 in a single proceeding; and

''(ii) $250,000 in the case of any other person, not to exceed $1,000,000 in a single proceeding.

''(B) Any person who knowingly violates a provision of section 301 relating to food shall be subject to a civil penalty for each such violation of not more than—

''(i) $50,000 in the case of an individual, not to exceed $100,000 in a single proceeding; and

''(ii) $500,000 in the case of any other person, not to exceed $7,500,000 in a single proceeding.

''(C) Each violation described in subparagraph (A) or (B) and each day during which the violation continues shall be considered to be a separate offense.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to violations committed on or after the date of the enactment of this Act.

SEC. 136. IMPROPER IMPORT ENTRY FILINGS.

(a) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by sections 110, 111, and 133, is amended by adding at the end the following:

''(xx) The submission of information relating to food that is required by or under section 801 that is inaccurate or incomplete.

''(yy) The failure to submit information relating to food that is required by or under section 801.''.

(b) DOCUMENTATION FOR IMPORTS.—Section 801 (21 U.S.C. 381), as amended by section 109, is amended by adding at the end the following:

''(r) DOCUMENTATION.—

''(1) SUBMISSION.—The Secretary may require by regulation or guidance the submission of documentation or other information for articles of food that are imported or offered for import into the United States. When developing any regulation or guidance in accordance with this paragraph, to the extent that the collection of documentation or other information involves Customs and Border Protection efforts or resources, the Secretary shall consult with Customs and Border Protection.

''(2) FORMAT.—A regulation or guidance under paragraph (1) may specify the format for submission of the documentation or other information.''.

TITLE II—MISCELLANEOUS

SEC. 201. FOOD SUBSTANCES GENERALLY RECOGNIZED AS SAFE.

Section 409 (21 U.S.C. 348) is amended by adding at the end the following:

''Substances Generally Recognized as Safe

''(k)(1) Not later than 60 days after the date of receipt by the Secretary, after the date of the enactment of this subsection, of a determination that a substance is a GRAS food substance, the Secretary shall post notice of such determination and the supporting scientific justifications on the Food and Drug Administration's public Web site.

''(2) Not later than 60 days after the date of receipt of a request under paragraph (1), the Secretary shall acknowledge receipt of such request by informing the requester in writing of the date on which the request was received.

''(3) In this subsection, the term 'GRAS food substance' means a substance excluded from the definition of the term 'food additive' in section 201(s) because such substance is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.''.

SEC. 202. COUNTRY OF ORIGIN LABELING.

(a) MISBRANDING.—Section 403 (21 U.S.C. 343), as amended by sections 101(a), 109(a), and 114(a), is amended by adding at the end the following:

''(cc) In the case of a processed food, if the labeling of the food fails to identify the country in which the final processing of the food occurs.

''(dd) In the case of nonprocessed food, if the labeling of the food fails to identify the country of origin of the food.''.

(b) REGULATIONS.—

(1) PROMULGATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to carry out paragraphs (cc) and (dd) of section 403 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) RELATION TO OTHER REQUIREMENTS.—Regulations promulgated under paragraph (1) shall provide that labeling meets the requirements of paragraphs (cc) and (dd) of section 403 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), if—

(A) in the case of a processed food, the label of the food informs the consumer of the country where the final processing of the food occurred in accordance with country of origin marking requirements of the United States Customs and Border Protection; or

(B) in the case of a nonprocessed food, the label of the food informs the consumer of the country of origin of the food in accordance with labeling requirements of the Department of Agriculture.

(c) EFFECTIVE DATE.—The requirements of paragraphs (cc) and (dd) of section 403 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), take effect on the date that is 2 years after the date of the enactment of this Act.

SEC. 203. EXPORTATION CERTIFICATE PROGRAM.

Section 801(e)(4) (21 U.S.C. 381) is amended—

(1) in the matter preceding clause (i) in subparagraph (A)—

(A) by inserting ''from the United States'' after ''exports''; and

(B) by striking ''a drug, animal drug, or device'' and inserting ''a food (including animal feed), drug, animal drug, or device'';

(2) in subparagraph (A)(i)—

(A) by striking ''in writing''; and

(B) by striking ''exported drug, animal drug, or device'' and inserting ''exported food, drug, animal drug, or device'';

(3) in subparagraph (A)(ii)—

(A) by striking ''in writing'';

(B) by striking ''the drug, animal drug, or device'' and inserting ''the food, drug, animal drug, or device''; and

(C) by striking ''the drug or device'' and inserting ''the food, drug, or device'';

(4) by redesignating subparagraph (B) as subparagraph (C);

(5) by inserting after subparagraph (A) the following:

''(B) For purposes of this paragraph, a certification by the Secretary shall be made on such basis and in such form (such as a publicly available listing) as the Secretary determines appropriate.''; and

(6) by adding at the end the following:

''(D) Notwithstanding subparagraph (C), if the Secretary issues an export certification within the 20 days prescribed by subparagraph (A) with respect to the export of food, a fee for such certification shall not exceed such amount as the Secretary determines is reasonably related to the cost of issuing certificates under subparagraph (A) with respect to the export of food. The Secretary may adjust this fee annually to account for inflation and other cost adjustments. Fees collected for a fiscal year pursuant to this subparagraph shall be credited to the appropriation account for salaries and expenses of the Food and Drug Administration and shall be available in accordance with appropriations Acts until expended, without fiscal year limitation. Such fees shall be collected in each fiscal year in an amount equal to the amount specified in appropriations Acts for such fiscal year and shall only be collected and available for the costs of the Food and Drug Administration to cover the cost of issuing such certifications. Such sums as necessary may be transferred from such appropriation account for salaries and expenses of the Food and Drug Administration without fiscal year limitation to such appropriation account for salaries and expenses with fiscal year limitation.''.

SEC. 204. REGISTRATION FOR COMMERCIAL IMPORTERS OF FOOD; FEE.

(a) REGISTRATION.—

(1) PROHIBITIONS.—Section 301 (21 U.S.C. 331), as amended by sections 110, 111, 133, and 136, is amended by adding at the end the following:

''(zz) The failure to register in accordance with section 801(s).''.

(2) MISBRANDING.—Section 403 (21 U.S.C. 343) as amended by sections 101(a), 109(a), 114(a), and 202, is amended by adding at the end the following:

''(ee) If it is imported or offered for import by an importer not duly registered under section 801(s).''.

(3) REGISTRATION.—Section 801, as amended by sections 109 and 136, is amended by adding at the end the following:

''(s) REGISTRATION OF IMPORTERS.—

''(1) REGISTRATION.—The Secretary shall require an importer of food—

''(A) to be registered with the Secretary in a form and manner specified by the Secretary; and

''(B) consistent with section 1011, to submit appropriate unique facility identifiers as a condition of registration.

''(2) GOOD IMPORTER PRACTICES.—The maintenance of registration under this subsection is conditioned on compliance with good importer practices in accordance with the following:

''(A) The Secretary, in consultation with Customs and Border Protection, shall promulgate regulations to establish good importer practices that specify the measures an importer shall take to ensure imported food is in compliance with the requirements of this Act.

''(B) The measures under subparagraph (A) shall ensure that the importer of a food—

''(i) has adequate information about the food, its hazards, and the requirements of this Act applicable to such food;

''(ii) has adequate information or procedures in place to verify that both the food and each person that produced, manufactured, processed, packed, transported, or held the food, including components of the food, are in compliance with the requirements of this Act; and

''(iii) has adequate procedures in place to take corrective action, such as the ability to appropriately trace, withhold, and recall articles of food, if a food imported by the importer is not in compliance with the requirements of this Act.

''(C) In promulgating good importer practices regulations, the Secretary may, as appropriate—

''(i) incorporate certification of compliance under section 801(q) and participation in the safe and secure food importation program under section 805; and

''(ii) take into account differences among importers and the types of imports, including based on the level of risk posed by the imported food.

''(3) SUSPENSION OF REGISTRATION.—

''(A) IN GENERAL.—Registration under this subsection is subject to suspension upon a finding by the Secretary, after notice and an opportunity for an informal hearing, of—

''(i) a violation of this Act; or

''(ii) the knowing or repeated making of an inaccurate or incomplete statement or submission of information relating to the importation of food.

''(B) REQUEST.—The importer whose registration is suspended may request that the Secretary vacate the suspension of registration when such importer has corrected the violation that is the basis for such suspension.

''(C) VACATING OF SUSPENSION.—If the Secretary determines that adequate reasons do not exist to continue the suspension of a registration, the Secretary shall vacate such suspension.

''(4) CANCELLATION OF REGISTRATION.—

''(A) IN GENERAL.—Not earlier than 10 days after providing the notice under subparagraph (B), the Secretary may cancel a registration that the Secretary determines was not updated in accordance with this section or otherwise contains false, incomplete, or inaccurate information.

''(B) NOTICE OF CANCELLATION.—Cancellation shall be preceded by notice to the importer of the intent to cancel the registration and the basis for such cancellation.

''(C) TIMELY UPDATE OR CORRECTION.—If the registration for the importer is updated or corrected no later than 7 days after notice is provided under subparagraph (B), the Secretary shall not cancel such registration.

''(5) EXEMPTIONS.—The Secretary, by notice published in the Federal Register—

''(A) shall establish an exemption from the requirements of this subsection for importations for personal use; and

''(B) may establish other exemptions from the requirements of this subsection.''.

(4) REGULATIONS.—Not later than 36 months after the date of the enactment of this Act, the Secretary of Health and Human Services in consultation with the Commissioner responsible for Customs and Border Protection shall promulgate the regulations required to carry out section 801(s) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (3). In establishing the effective date of a regulation promulgated under section 801(s), the Secretary shall, in consultation with the Commissioner responsible for Customs and Border Protection, as appropriate, provide a reasonable period of time for importers of food to comply with good importer practices, taking into account differences among importers and the types of imports, including based on the level of risk posed by the imported food.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 24 months after the date of enactment of this Act.

(b) FEE.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) as added and amended by sections 101 and 108, is amended by adding at the end the following:

''PART 7—IMPORTERS OF FOOD

''SEC. 744. IMPORTERS OF FOOD.

''(a) IMPORTERS.—The Secretary shall assess and collect an annual fee for the registration of an importer of food under section 801(s).

''(b) AMOUNT OF FEE.—

''(1) BASE AMOUNTS.—The registration fee under subsection (a) shall be—

''(A) for fiscal year 2010, $500; and

''(B) for fiscal year 2011 and each subsequent fiscal year, the fee for fiscal year 2010 as adjusted under paragraph (2).

''(2) ADJUSTMENT.—For fiscal year 2011 and subsequent fiscal years, the fees established pursuant to paragraph (1) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year to reflect the greater of—

''(A) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average), for the 12-month period ending June 30 preceding the fiscal year for which fees are being established;

''(B) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia; or

''(C) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions for the first 5 years of the preceding 6 fiscal years.

''(3) COMPOUNDED BASIS.—The adjustment made each fiscal year pursuant this subsection shall be added on a compounded basis

to the sum of all adjustments made each fiscal year after fiscal year 2010 under this subsection.

''(4) WAIVER FOR IMPORTERS REQUIRED TO PAY REGISTRATION FEE.—In the case of a person who is required to pay both a fee under section 743 for registration of one or more facilities under section 415 and a fee under this section for registration as an importer of food under section 801(s), the Secretary shall waive the fees applicable to such person under section 743 or the fee applicable to such person under this section.

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section—

''(A) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation, for such fiscal year; and

''(B) shall only be collected and available to cover the costs associated with registering importers under section 801(s) and with ensuring compliance with good importer practices respecting food.

''(3) AUTHORIZATION OF APPROPRIATIONS.—For each of fiscal years 2010 through 2014, there are authorized to be appropriated for fees under this section such sums as may be necessary.''.

(c) INSPECTION.—Section 704 (21 U.S.C. 374), as amended by section 105, is amended by adding at the end the following:

''(i) IMPORTERS.—Every person engaged in the importing of any food shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to inspect the facilities of such person and have access to, and to copy and verify, any related records.''.

SEC. 205. REGISTRATION FOR CUSTOMS BROKERS.

(a) REGISTRATION.—

(1) PROHIBITIONS.—Section 301(zz) (21 U.S.C. 331), as added by section 204, is amended by inserting ''or 801(t)'' after ''801(s)''.

(2) MISBRANDING.—Section 403(ee) (21 U.S.C. 343), as added by section 204, is amended—

(A) by inserting ''or a customs broker'' after ''by an importer''; and

(B) by inserting ''or 801(t)'' after ''801(s)''.

(3) REGISTRATION.—Section 801, as amended by sections 109, 136, and 204, is amended by adding at the end the following:

''(t) REGISTRATION OF CUSTOMS BROKER.—

''(1) REGISTRATION.—The Secretary shall require a customs broker, with respect to the importation of food—

''(A) to be registered with the Secretary in a form and manner specified by the Secretary; and

''(B) consistent with section 1011, to submit appropriate unique facility identifiers as a condition of registration.

''(2) CANCELLATION OF REGISTRATION.—

''(A) IN GENERAL.—Not earlier than 10 days after providing the notice under subparagraph (B), the Secretary may cancel a registration that the Secretary determines was not updated in accordance with this section or otherwise contains false, incomplete, or inaccurate information.

''(B) NOTICE OF CANCELLATION.—Cancellation shall be preceded by notice to the customs broker of the intent to cancel the registration and the basis for such cancellation.

''(C) TIMELY UPDATE OR CORRECTION.—If the registration for the customs broker is updated or corrected no later than 7 days after notice is provided under subparagraph (B), the Secretary shall not cancel such registration.

''(3) NOTIFICATION.—The Secretary shall notify the Commissioner responsible for Customs and Border Protection whenever the Secretary cancels a registration under this subsection.

''(4) EXEMPTIONS.—In consultation with the Commissioner responsible for Customs and Border Protection, the Secretary, by notice published in the Federal Register—

''(A) shall establish an exemption from the requirements of this subsection for importations for personal use; and

''(B) may establish other exemptions from the requirements of this subsection.

''(5) CIVIL PENALTIES.—Notwithstanding any other provision in this Act, a customs broker who violates section 301 because of a violation of section 403(ee), or who violates section 301(xx), 301(yy), or 301(zz), shall not be subject to a civil penalty under section 303(f)(2).''.

(4) REGULATIONS.—Not later than 24 months after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Commissioner responsible for Customs and Border Protection, shall promulgate the regulations required to carry out section 801(t) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (2).

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 24 months after the date of enactment of this Act.

(b) INSPECTION.—Section 704 (21 U.S.C. 374), as amended by sections 105 and 204, is amended by adding at the end the following:

''(j) BROKERS.—Every customs broker required to be registered with the Secretary shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to inspect the facilities of such person and have access to, and to copy and verify, any related records.''.

SEC. 206. UNIQUE IDENTIFICATION NUMBER FOR FOOD FACILITIES, IMPORTERS, AND CUSTOM BROKERS.

Chapter X (21 U.S.C. 391 et seq) is amended by adding at the end the following:

''SEC. 1011. UNIQUE FACILITY IDENTIFIER.

''(a) REGISTRATION OF FACILITY OR ESTABLISHMENT.—A person required to register a facility pursuant to section 415 shall submit, at the time of registration, a unique facility identifier for the facility or establishment.

''(b) REGISTRATION OF IMPORTERS AND CUSTOM BROKERS.—A person required to register pursuant to section 801(s) or 801(t) shall submit, at the time of registration, a unique facility identifier for the principal place of business for which such person is required to register under section 801(s) or 801(t).

''(c) GUIDANCE.—The Secretary may, by guidance, and, with respect to importers and customs brokers, in consultation with the Commissioner responsible for Customs and Border Protection, specify the unique numerical identifier system to be used to meet the requirements of subsections (a) and (b) and the form, manner, and timing of a submission under such subsections. Development of such guidelines shall take into account the utilization of existing unique identification schemes and compatibility with customs automated systems, such as integration with the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS), and any successor systems.

''(d) IMPORTATION.—An article of food imported or offered for import shall be refused admission unless the appropriate unique facility identifiers, as specified by the Secretary, are provided for such article.''.

SEC. 207. PROHIBITION AGAINST DELAYING, LIMITING, OR REFUSING INSPECTION.

(a) ADULTERATION.—Section 402 (21 U.S.C. 342), as amended by section 102, 103(a), and 104(a), is amended by adding at the end the following:

''(n) If it has been produced, manufactured, processed, packed, or held in any farm, factory, warehouse, or establishment and the owner, operator, or agent of such farm, factory, warehouse, or establishment, or any agent of a governmental authority in the foreign country within which such farm, factory, warehouse, or establishment is located, delays or limits an inspection, or refuses to permit entry or inspection, under section 414 or 704.''.

(b) FOREIGN INSPECTIONS.—Section 704(a)(1) (21 U.S.C. 374(a)(1)), as amended by section 106(c), is amended—

(1) in the first sentence, by inserting '', including any such food factory, warehouse, or establishment whether foreign or domestic,'' after ''factory, warehouse, or establishment''; and

(2) in the third sentence, by inserting '', including any food factory, warehouse, establishment, or consulting laboratory whether foreign or domestic,'' after ''factory, warehouse, establishment, or consulting laboratory''.

SEC. 208. DEDICATED FOREIGN INSPECTORATE.

Section 704 (21 U.S.C. 374), as amended by sections 105, 204, and 205, is amended by adding at the end the following:

''(k) DEDICATED FOREIGN INSPECTORATE.—The Secretary shall establish and maintain a corps of inspectors dedicated to inspections of foreign food facilities. This corps shall be staffed and funded by the Secretary at a level sufficient to enable it to assist the Secretary in achieving the frequency of inspections for food facilities as described in this Act.''.

SEC. 209. PLAN AND REVIEW OF CONTINUED OPERATION OF FIELD LABORATORIES.

(a) SUBMISSION OF PLAN.—Not later than 90 days before the Secretary terminates or consolidates any laboratory, district office, or the functions (including the inspection and compliance functions) of any such laboratory or district office, specified in subsection (b), the Secretary shall submit a reorganization plan to the Comptroller General of the United States, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(b) SPECIFIED LABORATORIES AND OFFICES.—The laboratories and offices specified in this subsection are the following:

(1) Any of the 13 field laboratories responsible for analyzing food that were operated by the Office of Regulatory Affairs of the Food and Drug Administration as of January 1, 2007.

(2) Any of the 20 district offices of the Food and Drug Administration with responsibility for food safety functioning as of January 1, 2007.

(c) CONGRESSIONAL REVIEW.—A reorganization plan described in subsection (a) is deemed to be a major rule (as defined in section 804(2) of title 5, United States Code) for purposes of chapter 8 of such title.

SEC. 210. FALSE OR MISLEADING REPORTING TO FDA.

(a) IN GENERAL.—Section 301(q)(2) (21 U.S.C. 331(q)(2)) is amended by inserting after ''device'' the following: '', food,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to submissions made on or after the date of the enactment of this Act.

SEC. 211. SUBPOENA AUTHORITY.

(a) PROHIBITED ACT.—Section 301(f) is amended by inserting before the period ''or the failure or refusal to obey a subpoena issued pursuant to section 311''.

(b) AMENDMENT.—Chapter III (21 U.S.C. 331 et seq.) is amended by adding at the end the following:

''SEC. 311. EXERCISE OF SUBPOENA AUTHORITY.

''(a) IN GENERAL.—For the purpose of—

''(1) any hearing, investigation, or other proceeding respecting a violation of a provision of this Act, the Public Health Service Act, or the Federal Anti-Tampering Act, relating to food; or

''(2) any hearing, investigation, or other proceeding to determine if a person is in violation of a specific provision of this Act, the Public Health Service Act, or the Federal Anti-Tampering Act, relating to food,

the Commissioner may issue subpoenas requiring the attendance and testimony of witnesses and the production of records and other things.

''(b) TIMING OF COMPLIANCE.—When the Commissioner deems that immediate compliance with a subpoena issued under this section is necessary to address a threat of serious adverse health consequences or death, the subpoena may require immediate production.

''(c) SERVICE OF SUBPOENA.—

''(1) IN GENERAL.—Subpoenas of the Commissioner shall be served by a person authorized by the Commissioner by delivering a copy thereof to the person named therein or by certified mail addressed to such person at such person's last known dwelling place or principal place of business.

''(2) CORPORATIONS AND OTHER ENTITIES.—Service on a domestic or foreign corporation, partnership, unincorporated association, or other entity that is subject to suit under a common name may be made by delivering the subpoena to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.

''(3) PERSON OUTSIDE U.S. JURISDICTION.—Service on any person not found within the territorial jurisdiction of any court of the United States may be made in any manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

''(4) PROOF OF SERVICE.—A verified return by the person so serving the subpoena setting forth the manner of service, or, in the case of service by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

''(d) PAYMENT OF WITNESSES.—Witnesses subpoenaed under subsection (a) shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

''(e) ENFORCEMENT.—In the case of a refusal to obey a subpoena duly served upon any person under subsection (a), any district court of the United States for the judicial district in which such person charged with refusal to obey is found, resides, or transacts business, upon application by the Commissioner, shall have jurisdiction to issue an order compelling compliance with the subpoena and requiring such person to appear and give testimony or to appear and produce records and other things, or both. The failure to obey such order of the court may be punished by the court as contempt thereof. If the person charged with failure or refusal to obey is not found within the territorial jurisdiction of the United States, the United States District Court for the District of Columbia shall have the same jurisdiction, consistent with due process, to take any action respecting compliance with the subpoena by such person that such district court would have if such person were personally within the jurisdiction of such district court.

''(f) NONDISCLOSURE.—A United States district court for the district in which the subpoena is or will be served, upon application of the Commissioner, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney to obtain legal advice) the existence of such subpoena for a period of up to 90 days. Such order may be issued on a showing that the records or things being sought may be relevant to the hearing, investigation, proceeding, or other matter and that there is reason to believe that such disclosure may result in—

''(1) furtherance of a potential violation under investigation;

''(2) endangerment to the life or physical safety of any person;

''(3) flight or other action to avoid prosecution or other enforcement remedies;

''(4) destruction of or tampering with evidence; or

''(5) intimidation of potential witnesses.

An order under this subsection may be renewed for additional periods of up to 90 days upon a showing that any of the circumstances described in paragraphs (1) through (5) continue to exist.

''(g) RELATION TO OTHER PROVISIONS.—The subpoena authority vested in the Commissioner and the district courts of the United States by this section is in addition to any such authority vested in the Commissioner or such courts by other provisions of law, or as is otherwise authorized by law.

''(h) NONDELEGATION.—The authority to issue a subpoena under this section is limited to the Secretary or an official designated by the Secretary. An official may not be so designated unless the official is the director of the district under this Act in which the article involved is located, or is an official senior to such director.''.

SEC. 212. WHISTLEBLOWER PROTECTIONS.

Chapter X (21 U.S.C. 391 et seq.), as amended by section 206, is amended by adding at the end the following:

''SEC. 1012 PROTECTIONS FOR EMPLOYEES WHO REFUSE TO VIOLATE, OR WHO DISCLOSE VIOLATIONS OF, THIS ACT.

''(a) IN GENERAL.—No person who submits or is required under this Act or the Public Health Service Act to submit any information related to a food, or any officer, employee, contractor, subcontractor, or agent of such person may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee, including within the ordinary course of the job duties of such employee—

''(1) to provide information, cause information to be provided, or otherwise assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of this Act, or any other provision of Federal law relating to the safety of a food, if the information or assistance is provided to, or an investigation stemming from the provided information is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate the misconduct);

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed, or about to be filed (with any knowledge of the employer), in any court or administrative forum relating to any such alleged violation; or

''(3) to refuse to commit or assist in any such violation.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—An employee who alleges discharge or other discrimination in violation of subsection (a) may seek relief in accordance with the provisions of subsection (c) by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary of Labor has not issued a final decision within 210 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, or within 90 days after receiving a final decision or order from the Secretary, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which court shall have jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

''(2) PROCEDURE.—

''(A) IN GENERAL.—Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification in an action under paragraph (1) shall be made in accordance with section 42121(b)(1) of title 49, United States Code, except that such notification shall be made to the person named in the complaint, the employer, and the Commissioner of Food and Drugs.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(A) or (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1)(A) shall be commenced not later than 180 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) ISSUANCE OF ORDER.—If, in response to a complaint filed under paragraph (b)(1), the Secretary of Labor or the district court, as applicable, determines that a violation of subsection (a) has occurred, the Secretary or the court shall order the person who committed such violation—

''(A) to take affirmative action to abate the violation;

''(B) to—

''(i) reinstate the complainant to his or her former position together with compensation (including back pay); and

''(ii) restore the terms, conditions, and privileges associated with his or her employment; and

''(C) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary or the court, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this

section may not be waived by any agreement, policy, form, or condition of employment.''.

SEC. 213. EXTRATERRITORIAL JURISDICTION.

(a) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by sections 110, 111, 133, 136, and 204, is amended by adding at the end the following:

''(aaa) The production, manufacture, processing, preparation, packing, holding, or distribution of an adulterated or misbranded food with the knowledge or intent that such article will be imported into the United States.''.

(b) JURISDICTION.—Chapter III (21 U.S.C. 331 et seq.), as amended by section 211, is amended by adding at the end the following:

''SEC. 312. EXTRATERRITORIAL JURISDICTION.

''There is extraterritorial Federal jurisdiction over any violation of this Act relating to any article of food if such article was intended for import into the United States or if any act in furtherance of the violation was committed in the United States.''.

SEC. 214. SUPPORT FOR TRAINING INSTITUTES.

The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall provide financial and other assistance to appropriate entities to establish and maintain one or more university-affiliated food protection training institutes that—

(1) conduct training related to food protection activities for Federal, State, local, territorial, and tribal officials; and

(2) meet standards developed by the Secretary.

SEC. 215. BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS.

(a) NOTICE OF DETERMINATION.—No later than December 31, 2009, the Secretary of Health and Human Services shall notify the Congress whether the available scientific data support a determination that there is a reasonable certainty of no harm, for infants, young children, pregnant women, and adults, for approved uses of polycarbonate plastic and epoxy resin made with bisphenol A in food and beverage containers, including reusable food and beverage containers, under the conditions of use prescribed in current Food and Drug Administration regulations.

(b) NOTICE OF ACTIONS TO BE TAKEN.—If the Secretary concludes that such a determination cannot be made for any approved use, the Secretary shall notify the Congress of the actions the Secretary intends to take under the Secretary's authority to regulate food additives to protect the public health, which may include—

(1) revoking or modifying any of the approved uses of bisphenol A in food and beverage containers, including reusable food and beverage containers; and

(2) ensuring that the public is sufficiently informed of such determination and the steps the public may take in response to such determination.

(c) RULE OF CONSTRUCTION.—Nothing herein is intended or shall be construed to modify existing Food and Drug Administration authority, procedures, or policies for assessing scientific data, making safety determinations, or regulating the safe use of food additives.

SEC. 216. LEAD CONTENT LABELING REQUIREMENT FOR CERAMIC TABLEWARE AND COOKWARE.

(a) IN GENERAL.—Section 403 (21 U.S.C. 343), as amended by sections 101(a), 109(a), 114(a), 202, and 204, is amended by adding at the end the following:

''(ff) If it is ceramic tableware or cookware and includes a glaze or decorations containing lead for an intended functional purpose, unless—

''(1) the product and its packaging bear the statement: 'This product is made with lead-based glaze consistent with Food and Drug Administration guidelines for such lead.'; or

''(2) the product is in compliance with the requirements applicable to ornamental and decorative ceramicware in section 109.16 of title 21, Code of Federal Regulations (or any successor regulation).''.

(b) EFFECTIVE DATE.—Section 403(ff) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall apply only to ceramic tableware or cookware that is manufactured on or after the date that is 1 year after the date of the enactment of this Act.

(c) CONSUMER EDUCATION.—Chapter IV (21 U.S.C. 341 et seq.), as amended by sections 102, 103, 104, and 111, is amended by adding at the end the following:

''SEC. 421. CONSUMER EDUCATION ON THE CONTENT OF LEAD IN CERAMICWARE AND APPLICABLE LABELING REQUIREMENTS.

''(a) IN GENERAL.—The Secretary shall educate consumers on the safety of ceramicware for food use by posting information on the Web site of the Food and Drug Administration with regard to—

''(1) the content of lead in ceramicware and its glaze;

''(2) existing Federal laws and regulations governing lead in ceramicware;

''(3) as appropriate, existing industry practices and guidelines; and

''(4) the labeling requirements applicable under this Act.

''(b) TOPICS.—The education under this section shall address—

''(1) the broad range of ceramicware types, including traditional pottery, ornamental and decorative ceramicware, cookware, and everyday dinnerware;

''(2) the safety of ceramicware that is aged or damaged;

''(3) the use of ceramicware in microwave ovens;

''(4) the storage of foods in ceramicware;

''(5) the use of home lead test kits by consumers;

''(6) the use of ceramicware by children and women of childbearing age; and

''(7) issues that are especially relevant to subpopulations of consumers who may preferentially use certain types of ceramicware made with lead.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. DINGELL) and the gentleman from Texas (Mr. BARTON) each will control 20 minutes.

The Chair now recognizes the gentleman from Michigan.

Mr. BARTON of Texas. Before we recognize Chairman DINGELL, I would ask unanimous consent that Mr. LUCAS, the ranking member of the Agriculture Committee, control 10 minutes of my time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and insert extraneous matter into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, this is a remarkable piece of bipartisan work. I want to pay tribute to my dear friend Mr. BARTON, the ranking minority member of the committee; my good friend, the chairman of the committee, for his outstanding leadership on this, Mr. WAXMAN; and also Mr. PALLONE, as chairman of the subcommittee, for their leadership.

I want to tell the House how important the labors of my dear friend Mr. STUPAK have been in the Oversight Investigations Committee in creating the basis from which this legislation can move forward. This has been a piece of legislation which moved unanimously out of the committee. It is something which we would hope this House would always be able to emulate.

I want to congratulate Representatives SUTTON, NATHAN DEAL, and JOHN SHIMKUS for their labors, and the outstanding staff on both sides of the Commerce Committee.

I want to express my appreciation to COLLIN PETERSON and Mr. CARDOZA of California for their labors, and Representative DELAURO and President Obama and the White House food safety group.

The legislation is supported by the Consumers Union, the Centers for Science and Public Interest, the National Consumers League, and a large number of other organizations, including the Grocery Manufacturers, GMA, and United Fresh Produce. Jeanie Ireland and my good friend Virgil Miller have worked very hard at the staff level, and they deserve thanks.

This is a piece of legislation that will stop Americans being killed by bad foods. It is a piece of legislation that will see to it that the Food and Drug Administration has both the authority and the funds to address not only American foods but foods being imported from places like China. It will stop harmful seafood, E. coli in spinach, tainted peppers from Mexico, and a large number of other things.

I urge my colleagues to support this legislation.

I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Speaker, I want to yield 2 minutes to the ranking member of the Health Subcommittee, Mr. DEAL of Georgia.

Mr. DEAL of Georgia. I thank the gentleman for yielding.

I, too, want to thank the sponsor of this legislation and our committee for working in a bipartisan fashion. As many of you will recall, earlier this year, our Nation was rocked with a peanut butter contamination that involved salmonella, and it became very apparent very shortly after the investigation started that a rogue operator, the Peanut Corporation of America, had risked the well-being of thousands of Americans.

In addition, it resulted in millions of dollars of loss to an industry that is very important to my State of Georgia. Peanut sales plummeted. It was in an effort to shore up the company's individual bottom line that PCA had recklessly jeopardized both peanut farmers

and processors and the public in this country.

Now, this is a piece of legislation that is designed to try to correct some of those problems because they are not unique just to the peanut industry. We've seen them in the tomato, jalapeno pepper, the pistachio nuts, the contamination of spinach and many others. This legislation requires the development and implementation of a hazard analysis and food safety plan with regular updating, a requirement which is already in place for USDA-regulated facilities, such as poultry processing that is in my district. These plans have proved to be effective in reducing the hazard of food-borne contamination.

This legislation also implements a risk-based inspection schedule, which improves today's unacceptable status quo and targets our most vulnerable facilities for greater oversight. I know there's been concern about the overlap into USDA activities. There is language in the bill that would exclude the inclusion of farms within the bill. They are excluded. They are not required to register. They're not required to pay a registration fee. Livestock and poultry are also exempt. It does not allow the FDA to regulate what are now USDA-regulated facilities and products.

I commend this legislation and urge my colleagues to adopt it.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished chairman of the Committee on Energy and Commerce, Mr. WAXMAN, whose leadership in this matter has been appreciated.

Mr. WAXMAN. Mr. Speaker, a series of food-borne disease outbreaks in spinach, peanuts, and peppers, to name a few, have not only just sickened and killed American consumers, they've laid bare the unacceptable gaps in our food safety laws. And today, the House will act to close those gaps, give FDA new authorities, new tools, and a new source of funding to carry out this vital mission.

This legislation contains policy solutions that come from many Members on both sides of the aisle. It's largely based on legislation introduced by Chairman Emeritus JOHN DINGELL, Subcommittee Chairmen PALLONE and STUPAK. These three Members have played an instrumental role in this legislation, as have Representatives SUTTON and DEGETTE on our committee.

In addition, I want to single out Chairwoman ROSA DELAURO who introduced the landmark legislation which contributed in a substantial way to this bill. I want to thank our full committee Ranking Member BARTON and subcommittee Ranking Members SHIMKUS and DEAL for their contributions to the legislation as well, and Chairman PETERSON and Chairman RANGEL who gave suggestions to make the bill a better bill.

The coalition of food safety groups worked with the Members to develop and maintain the strong, public health protections in this bill. I think that they deserve an enormous amount of recognition, but I want to thank Rachel Sher of my staff for her thoughtful work and countless hours on this bill. Other key staff on the effort include Eric Flamm, Virgil Miller, Elana Leventhal, and Erika Orloff, as well as several individuals from the minority staff, including Ryan Long, Clay Alspach, Blake Fulenwider, and Chris Sarley.

And finally, I want to thank President Obama and his administration for their contributions to this legislation. The safety of the food supply is a critical issue, and this legislation will give the administration the tools they need to keep this food supply safe.

I urge a ''yes'' vote for the bill.

Mr. LUCAS. I yield myself 5 minutes.

Mr. Speaker, I truly regret that I must rise in opposition to this legislation, H.R. 2749, the Food Safety Enhancement Act of 2009.

Let me begin by saying that I believe our Nation has the safest food supply in the world. I also believe that we must continually examine our food production and regulatory system and look for ways to improve food safety. However, the bill before us today does little to accomplish the goal of enhancing food safety. One glaring example is the fact that the authors of the bill did not require the U.S. Food and Drug Administration—''require'' being the operative phrase—to spend one additional penny on the inspection of food.

□ 1415

The bill before us today is the product of a flawed process. This is just another example of Federal power without the benefit of careful consideration. It is what we have come to expect from the majority leadership of the 111th Congress. We could point to the stimulus package, cap-and-trade, and soon the health care bill as examples of a blatant disregard for the legislative process and for the American people, for whom we work. As of last night, no one had seen a copy of this bill.

It is tragic that despite a clear jurisdictional claim, the chairman of the House Agriculture Committee did not demand that the bill be referred, conduct hearings on its provisions and work at the committee's will to make improvements.

But this is not just a matter of jurisdiction between two committees. The real losers today are farmers, ranchers, and, yes, consumers. During a recent committee hearing on the general topic of food safety, not a single producer witness would support this bill in its current form. This is a stunning failure to fulfill our legislative responsibility.

One provision of particular concern would mandate that the Food and Drug Administration set on-farm production performance standards. For the first time, we would have the Federal Government prescribing how our farmers grow crops. Farming, the growing of crops and the raising of livestock, is one of the first organized activities pursued by man. We have been doing it for a very long time, and we have been doing it without the FDA.

New language to the bill would exclude row crop producers from FDA regulatory authority over growing and harvesting crops. Language was also approved that would relieve livestock producers from some of the burdens of the law. Although these are needed changes, they do not go far enough to make the bill acceptable.

This bill still leaves our Nation's fruit and vegetable producers subject to objectionable regulatory burdens.

There are other problems in the bill as well. New registration authorities for food processing facilities create what amounts to a Federal license to be in the food business. Hundreds of millions of dollars in associated fees represented by a new tax on food production, along with regulatory burdens, will increase the cost of food for consumers, increasingly forcing food production out of this country, unfortunately.

New quarantine authorities for FDA will undermine animal and plant inspection control programs that have been in place at USDA for decades.

The vast majority of these provisions, along with new penalties, record-keeping requirements, traceability, labeling, country-of-origin labeling, will do absolutely nothing to prevent food-borne disease outbreaks, but will do plenty to keep the Federal bureaucracy busy. These issues can be worked out through the normal legislative process, but only if there is a process.

Mr. Speaker, let me return to where I started. We have the safest food supply in the world. Anyone following current events knows that our food production system faces ongoing food safety challenges, and I stand ready to work with my colleagues to address these challenges. But this is not the way to create law.

We should not suspend the rules to pass this bill. Our Nation's farmers, ranchers and consumers deserve better, Mr. Speaker.

Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, I will have a full rebuttal for the remarks of the gentleman who has just spoken.

I yield 1 minute at this time to my dear friend, the chairman of the subcommittee, the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I thank the chairman.

I rise in strong support of H.R. 2749, the Food Safety Enhancement Act of 2009. It is time that we put in place a stronger and more thorough system to prevent food-borne illness rather than continuing to simply react to outbreak after outbreak of contaminated products.

This bill will require that food manufacturers put in place preventive controls to monitor the production lines

and identify, prevent or eliminate hazards, should they arise. It requires them to have food safety plans detailing all the food safety activities that the company is undertaking to ensure the safety of their products.

Under the bill, the FDA will have the authority to set performance standards that companies must incorporate into their food safety plans; it requires the FDA to put in place a traceability system for food products. It requires the FDA to inspect facilities according to a minimum inspection frequency, and it provides the FDA with enhanced enforcement authorities.

Mr. Speaker, this is the strongest bill it can be. It will catapult the FDA into the 21st century, and it will arm the agency with the necessary authorities and enforcement power to protect our Nation's food supply.

Mr. BARTON of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SHIMKUS).

(Mr. SHIMKUS asked and was given permission to revise and extend his remarks.)

Mr. SHIMKUS. Mr. Speaker, I want to thank Chairman Emeritus DINGELL FOR HIS WORK ON THIS BILL. I ALSO WANT TO THANK CHAIRMAN WAXMAN.

Mr. DINGELL. If the gentleman will yield, I want to tell the House how important the labors of the gentleman have been, and also those of Mr. BARTON and Mr. DEAL. We owe a great debt to the gentleman.

Mr. SHIMKUS. Thank you very much. I also want to thank Chairman WAXMAN for mentioning Chris Sarley, who did yeoman's work with the majority staff, and I appreciate their kindness and work effort.

This is a model for what we can do on energy and what we can do on health if we would move in that direction. We can't defend the current system. As a former ranking member on Oversight and Investigations, there are fixes that have to be made.

This bill provides a risk-based inspection regime and gives the FDA flexibility to change the frequency of inspections to lower-risk facilities. It allows FDA access to records. It gives companies flexibility to use different preventative control systems. And where things are working, we let existing authority remain with respect to USDA.

I am an ag Republican, so I understand the concerns of my colleagues on the Ag Committee. But this bill does not require farms to register with the FDA; and as a result, farms do not have to pay a registration fee.

Access to farm records is significantly restricted. Livestock and poultry are exempt from the bill. Grain and related commodities are exempt from produce standards. USDA-regulated farms, facilities and products are not subject to this bill. It allows farms to be exempt from any traceability requirements.

But I will pledge to continue to work with any ag Republican colleagues as this process moves forward to try to address some of the remaining concerns. I do appreciate the majority and their work on this. Again, I think it is a good method for which we can move on energy and health care when we get to a point where we want to do that.

Mr. DINGELL. Mr. Speaker, I am very delighted at this time to yield 1 minute to the distinguished gentleman from Michigan (Mr. STUPAK), chairman of the Subcommittee on Oversight and Investigations, who has done so much to make the investigations which have brought us to the point where people understand the need for this legislation.

Mr. STUPAK. Mr. Speaker, I rise in support of H.R. 2749, the Food Safety Enhancement Act. As chairman of the Subcommittee on Oversight and Investigations, I, along with Ranking Members WHITFIELD, SHIMKUS and WALDEN, have held 10 hearings over the past 2 years to examine the safety and security of our Nation's food supply.

This investigation takes important steps towards addressing the gaping holes in our Nation's food supply by recognizing that the food industry and the FDA must share responsibility for securing our Nation's food supply. Provisions granting the FDA additional authorities, such as quarantine, recall, subpoena power and access to records, are all addressed in H.R. 2749.

I want to thank my colleagues and friends, Chairman DINGELL, Chairman PALLONE and Chairman WAXMAN, for all their hard work on this issue. I also wish to thank their staffs, who have worked diligently to see this bill come before us today. Plus I want to thank the Obama administration for working with us.

All the dedication of all the individuals have paid off with a piece of legislation that will help protect and ensure all Americans have access to safe food. I am proud to be part of such great legislation. I urge all of my colleagues to support its passage.

Mr. LUCAS. Mr. Speaker, I wish to yield 1¼ minutes to the gentleman from Kansas (Mr. MORAN).

Mr. MORAN of Kansas. Mr. Speaker, I thank the gentleman for yielding.

Do not vote in favor of H.R. 2749 thinking that today's vote is a throwaway one to demonstrate one's support for food safety.

We are all interested in food safety. It matters. Those of us involved in agriculture care about food safety. It is a matter of life and health for our consumers, and for the farmers and ranchers it is a matter of their livelihood. Even the rumor of unsafe food causes commodity prices to fall and farm incomes to decline.

While I am unable to tell my colleagues the exact details of this bill, I can say with certainty there are significant adverse consequences to farmers, especially our smallest ones, and those consequences include on-farm performance standards, record-keeping requirements, arbitrary record access requirements and registration fees, none of which may actually improve food safety.

The reason I am unable to describe the details of this bill is that those details became available only this morning. The bill before us was amended, striking everything after the enacting clause and inserting a new text. The entire bill as it existed yesterday was deleted and new language put in its place. There have been few hearings on this bill, constant redrafting by a few people outside the committees, and no referral to the Committee on Agriculture.

Do not let the Suspension Calendar fool you. This bill is substantive legislation with uncertain consequences. Vote ''no.''

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, I rise in support of this bill and thank Chairman WAXMAN and Chairman Emeritus DINGELL for their hard work.

The bill begins a long task of rectifying decades of neglect by updating FDA's ancient tools and outdated mandates. It gives the FDA the means to deal with dangers imposed by a global food system and enhances the agency's ability to prevent food contamination.

It incorporates key provisions from legislation I introduced this year and moves the FDA to a risk-based inspection system. It requires the agency to inspect the highest-risk facilities once every 6 months to a year, rather than once a decade.

It enhances reporting requirements for companies and establishes performance standards for fighting food-based pathogens. Performance standards form the backbone for monitoring the effectiveness of process control systems and identifying the foods at greatest risk.

I continue to strongly believe that the best way to protect our food supply is to streamline the FDA into two separate agencies within Health and Human Services so that food and drug safety both get the full and comprehensive attention they deserve.

This bill is a strong, solid first step in creating a comprehensive food safety system that can protect American families from the many dangers of contaminated food. I urge my colleagues to support this bill.

Mr. BARTON of Texas. I yield 2 minutes to the gentleman from Oregon (Mr. WALDEN), the ranking member of the Oversight Subcommittee of the Committee on Energy and Commerce.

Mr. WALDEN. Mr. Speaker, this really ought to be called Jake's Law, after 3-year-old Jake Hurley of Wilsonville, Oregon. In February, before the Oversight and Investigations Subcommittee, Jake's father, Peter, testified about how Jake contracted salmonella from eating peanut butter products from Peanut Corporation of America in Georgia.

In January, Jake became sick. His doctors asked his parents, what does he like to eat? They recommended some food products. As it turned out, those very food products in their home were contaminated with salmonella that came about because of PCA.

So when Stewart Parnell, the PCA president, testified before our Oversight Committee, I asked him, Would you like to sample some of the products that you sent out to little kids like Jake and other Americans to eat? His response? He took the Fifth Amendment.

Thankfully, Jake recovered. But nine people died from the outbreak, and at least 691 people, half of them children, were sickened.

If PCA had to follow a law like this that would require a fully-functioning food safety plan at food production facilities, traceability of the food chain, increased inspection and recall authority from FDA, there is a good chance that the salmonella outbreak could have been avoided and Jake and hundreds of others never would have been poisoned.

Because of Jake's story and others like it we uncovered in bipartisan O&I food safety hearings since 2007, we now have a bipartisan piece of legislation here to pass the House of Representatives; and I urge your support for it, for the food safety of our country and the citizens that live here.

Mr. DINGELL. If the gentleman will yield, I want to compliment the gentleman on his comments and I want to praise him for his valuable and important contribution to the legislation. As he has said, this is how legislation should be done, bipartisan; and we have gone across the aisle. But we have also gone between committees, working with the distinguished chairman of the Agriculture Committee. I commend the gentleman and thank him.

Mr. WALDEN of Oregon. I thank the gentleman for his comments.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to my distinguished friend, the gentlewoman from California (Ms. DEGETTE), a Member who has worked very hard on this legislation for a long time and who was one of the original sponsors and has been a valuable contributor to the process of bringing it forward.

(Ms. DEGETTE asked and was given permission to revise and extend her remarks.)

□ 1430

Ms. DEGETTE. Mr. Speaker, many of us have been talking about comprehensive food safety for years. Our Nation's business community is calling for it. Our constituents are begging for it. I am so pleased that today, at long last, we are considering this bill on the House floor on a bipartisan basis.

The bill before us will strengthen our food supply in a number of areas. It will transform our system into one that focuses on prevention, rather than reaction. It will provide the FDA with the resources it has lacked; and by giving it mandatory recall authority and subpoena authority, it will give the FDA the tools it needs to deal with an emergency.

Mr. Speaker, this bill also will give the FDA the ability to track our food products along the supply chain, enabling targeted and speedier recalls that will benefit business and consumers alike. This traceability provision of the legislation, we know we can't do it overnight, but it will require the FDA to write regulations undertaking a pilot project, cost-benefit analysis, feasibility studies and public meetings to make sure that we can track food from field to fork. This will improve consumer safety and we exempt the family farm.

I urge adoption of this important bill.

Mr. LUCAS. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. LATTA).

Mr. LATTA. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, section 101 of the bill requires an annual registration for a facility. The term ''facility'' means any factory, warehouse or establishment, including a factory, warehouse or establishment of an importer that manufactures, processes, packs or holds foods.

The user fees under this section require registration each year starting in 2010 to be $500 and each subsequent year to be adjusted for inflation. This will affect small businesses and impose tax increases. For companies and individuals that own or operate multiple facilities, a maximum level for total fees per year is set at $175,000. These will have to be passed on to the consumer and will raise the price of food to cover the fees associated under this bill.

I encourage my colleagues to vote ''no'' on this bill under suspension so that Congress may debate food safety and come to an agreement on how to protect our Nation's farmers and food facilities in order to maintain the United States as having the world's safest, most economically viable food source.

The SPEAKER pro tempore. The Chair will note that the gentleman from Texas has 4 minutes remaining, the gentleman from Oklahoma has 3¼ minutes remaining, and the gentleman from Michigan has 12 minutes remaining.

Mr. DINGELL. Mr. Speaker, just for administrative purposes, does my friend on the Republican side have a sufficiency of time? I speak about Mr. BARTON.

Mr. BARTON of Texas. Mr. Chairman, we could use another 2 to 3 minutes, if you have it.

Mr. DINGELL. I will try to see if we can share, if it is necessary.

Mr. Speaker, at this time I yield to one of the original sponsors of the legislation, the distinguished gentlelady who has done much work to get this legislation to the floor, the distinguished gentlewoman from Ohio (Ms. SUTTON) 1 minute.

Ms. SUTTON. Mr. Speaker, I rise today as a proud cosponsor of the Food Safety Enhancement Act of 2009, and I commend the distinguished Chair Emeritus, JOHN DINGELL, for his dedication to formulating and passing this bill, which is so sorely needed to protect the safety of our food supply.

This year alone, we have experienced a series of outbreaks of food-borne illnesses. These outbreaks have taken a disproportionate toll on our State of Ohio. The peanut-related salmonella outbreak affected 92 individuals in Ohio, and, sadly, resulted in three tragic deaths. Nellie Napier, a constituent of mine, died from salmonella poisoning that she contracted in a nursing facility.

This bill is an essential step toward lowering these tragic numbers and restoring consumer confidence in our food supply. It will increase inspections of food facilities, improve traceability, and provide needed funding to the FDA for food safety activities. And with the increased globalization of our food supply—close to 13 percent of the food we eat comes from abroad—and this bill will help protect consumers from unsafe imported foods.

Mr. BARTON of Texas. I yield 2 minutes to the former Republican Conference chairman and probably future Governor of Florida (Mr. PUTNAM).

Mr. PUTNAM. I thank my friend from Texas.

I rise to support this bill which is built on a bipartisan foundation. I thank my friend from California (Mr. COSTA) who worked with a number of us to put together a strong food safety bill, and many of the key principles embedded in that bill have been built into the bill that we're debating here today. This is an issue that brings together America's farmers, ranchers and the consumers. There is no difference or distinction between the interests of those two parties. As the FDA's false information about the tomatoes implicated in the food-borne illness outbreak illustrates, when there is false information out there, the industry suffers; and when there is food-borne illness out there, consumer confidence is eroded. Both of those outcomes are unacceptable. So there is a need for both sides to come together on this, and I am proud that this is a bipartisan effort.

I would highlight some issues, though, that need additional work as this moves into the Senate. Most importantly, the quarantine and traceability issues need further work as well as the work that is done by our State and local Departments of Health and Departments of Agriculture. They are delegated 80 percent of FDA's authority to implement most of this bill and the other responsibilities of FDA. They must have better coordination and cooperation from the FDA in implementing this legislation as well as

the rest of the food safety mandates already in the law. But overall, it is important that this Nation move forward with a modernization of the food safety system, some of which has not been built upon since the Teddy Roosevelt administration. It is important to our farmers and ranchers, and it is important to our consumers.

So for that reason, I am proud to stand in support of this bill and urge its passage, recognizing that there are issues that we need to continue to work with our friends and colleagues in the Senate on.

Mr. DINGELL. At this time I yield 1 minute to the distinguished chairman of the Agriculture Committee's subcommittee on food safety, the gentleman from Georgia (Mr. SCOTT), with thanks and appreciation for his good work.

Mr. SCOTT of Georgia. Thank you so much, Chairman DINGELL. I appreciate that so much. I really, quite honestly, can't understand how anybody could vote against this bill. We've already had three outbreaks that have definitely taken lives of the American people. But I want to thank, Chairman PETERSON on our Agriculture Committee, as well as Chairman DINGELL; and I certainly want to congratulate and thank our staff on my own subcommittee, Chandler Goule and Gary Woodward, for the excellent job that they have done. And to the gentleman on the other side, we've had hearings on this; but the greatest hearing we've had on this has been the threats to the safety of the American people. If we enact these measures in this bill, we will save American lives.

Let me just tell you about one example: Better access to records in order to prevent the outbreaks. This bill will give the FDA access to the records of food producers and manufacturers during the time that they are inspecting the plants. Under current law, the FDA must wait for the food-borne illness to occur before they can even access the records. Now, ladies and gentlemen, if this had been in place, eight people would be alive today from the peanut outbreak in my district of Georgia. This is an important bill, it's timely, and I urge its passage.

Mr. LUCAS. Mr. Speaker, I yield 1 minute to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. I thank the gentleman from Oklahoma for yielding, and I rise in opposition to this food safety bill, as it's labeled. It will provide some more food safety. I won't dispute that. But the point is that it grows government regulation, and it broadens the FDA's regulations over what I think, if it's going to be regulated, should be USDA.

We are looking at two, three or four individual food safety problems; and instead of looking at that and trying to solve the problem, first, we should try to solve it without legislation. Second, it should be specific to the food rather than the broad stroke that this bill is. I know that there are exemptions for feed grains; but in the end, this is a growth of regulation. It's a burden on our farmers and our food producers. It's a tax on our food producers. It's going to come out of the pockets of the American consumers, and it will diminish the smaller operations among us.

We have here a solution in search of a problem. We can solve this problem without new extra regulatory authority for the FDA. I rise in opposition to this bill, and I believe it should be Ag Committee jurisdiction.

Mr. DINGELL. Mr. Speaker, at this time I yield 2 minutes to the distinguished gentleman from California (Mr. COSTA), one of the great leaders in food safety, a distinguished member of the Committee on Agriculture, a man who has worked very closely with me and with the others who have been working on this, including the distinguished chairman of the Agriculture Committee.

Mr. COSTA. I want to start by thanking Chairman Emeritus JOHN DINGELL for his hard work on this effort, as he does in so many pieces of legislation that have been a part of his legacy; Chairman WAXMAN and Chairman PETERSON for their support and efforts to ensure that we come together in a collective effort; Ranking Member BARTON and my colleague and friend Congressman ADAM PUTNAM from Florida.

We introduced this legislation in the last session of Congress, working to try to put together a bipartisan effort, understanding that food safety is job number one for all American farmers, ranchers and dairymen because they are consumers, their families consume their products, and they must ensure, as we all must ensure, that America's food on our dinner tables is the safest it can possibly be.

Our farmers are to be commended for their tireless efforts to produce the world's safest and most wholesome food, but we can always do better. This legislation intends to address that. Our food safety laws have not been updated for nearly 50 years. They're in need of modernization, both to protect the consumers and to protect our farmers from the loss of the markets. When an outbreak occurs, they're the first to be impacted; and obviously food safety is job number one for all consumers in America. I think it's important for us to note that there is not a one-size-fits-all approach to food safety; therefore, working together with the United States Department of Agriculture and the Food and Drug Administration is critical to making this legislation work.

What does it establish? It establishes science-based, risk-based standards for both producers and processors here and abroad; and let me underline abroad. Any food products that come into this country ought to meet the same standards that we require of our farmers and food processors here in America. This legislation attempts to do that. It means that ensuring our foreign partners, whether they are growing leafy greens or peppers or anything else, that they meet the same standards that American farmers must meet to put those products on the table.

Is this a perfect bill? No. It's a work in progress, but I think it's a good bipartisan bill. I would urge my colleagues to support this measure, and I thank the chairmen for their good work.

Mr. BARTON of Texas. Mr. Speaker, I'm the last speaker on my side in support of the bill, so I'm going to reserve the balance of my time.

Mr. DINGELL. With a great deal of pleasure and pride, at this time I yield 2 minutes to the gentleman from Minnesota (Mr. PETERSON), my good friend, the distinguished chairman of the Committee on Agriculture who has worked so hard not only on food safety but also with us to make this bill something which is acceptable to the House, to him and to American agriculture.

Mr. PETERSON. I thank the gentleman from Michigan for recognizing me, and I want to thank him for his hard work and his practical way of approaching legislation, which is the right way to do things.

I rise today in support of this legislation. Our committee has had hearings regarding food safety, and we had some concerns about the bill as it came out of the Energy and Commerce Committee. Mr. DINGELL was kind enough to sit down and work with us on those concerns; and out of that we were able to especially address the concerns of the livestock industry and the grain industry who were concerned that there may be unintended consequences. So we were able to get exemptions in those areas and also make other changes to make sure that the bill didn't interfere with the production and harvesting parts of agriculture.

□ 1445

We had, at the beginning of this, a number of groups that were concerned or even opposed to this legislation. And now, because of the changes that we have been able to work through with Mr. DINGELL and others, I am happy to report that these organizations are either now neutral or dropped their opposition or are supporting the bill: the United Fresh Fruit and Vegetable folks, Western Growers, the American Farm Bureau Federation, National Wheat Growers, the National Cattlemen's Beef Association, the National Turkey Federation, the National Chicken Council, the National Pork Producers Council, National Corn Growers, the American Soybean Association, the U.S. Rice Federation, American Feed Industry, United Egg Producers, and the American Sheep Industry.

I think this demonstrates that we have been able to move this legislation in a direction where we in agriculture are comfortable. I agree with Mr. PUTNAM that there is some additional work that can be done on this, and we intend

to do that. So I encourage my colleagues to support this legislation.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. DINGELL. I yield the gentleman 30 seconds.

Would the gentleman yield to me?

Mr. PETERSON. I will yield.

Mr. DINGELL. I would just observe to my good friend that we have talked about this before, and I have assured the gentleman that we will continue to work together to address the concerns that he and the very able gentleman from Florida (Mr. PUTNAM) have expressed their concerns about. It has been a privilege to work with the gentleman, and I thank him.

Mr. PETERSON. I thank the gentleman. And I know that he will work with us as he has through this part of the process.

Mr. DINGELL. I thank the gentleman.

Mr. LUCAS. Mr. Speaker, I yield 1 minute to the gentleman from Ohio, the minority leader, Mr. BOEHNER.

Mr. BOEHNER. Mr. Speaker and my colleagues, here we go again. This is a major piece of legislation that was introduced last night at the Rules Committee about 12:15. Then about 9:36 this morning we saw another version of this bill introduced to replace the first version. And then at 10:50 this morning we see a third version of this same bill. Now, this may be a great bill. I have no idea. But the fact is that introducing three different versions of the bill yet this day and then bringing it to the floor some 4 hours later begins to ask the question, Did anybody read the bill?

Now, I think the chairman and the ranking member and the chairman of the subcommittee probably did read the bill and understand what's in it, but how about the other 431 of us who serve in this House who are expected to vote on this?

And my second complaint about this bill is the fact that we are considering it here in the House under a procedure where there is a whopping 40 minutes of debate, 20 minutes on each side, 40 minutes, and no amendments are allowed to be offered. We've got this major food safety bill here on the floor, and nobody gets to offer an amendment, nobody gets to have a debate about it, and nobody, clearly, has much of an idea of what's in the bill.

Now, as a longtime member of the House Ag Committee, I understand that we've got the safest food supply in the world. It's probably not perfect, but it is the safest food supply in the world, and we can do better. But to legislate in this manner under these conditions without Members having a clue about what's in the bill is not, in my view, in the best interest of the House.

Mr. DINGELL. Mr. Speaker, at this time, I am happy to yield 1 minute to the distinguished gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. I thank the chairman emeritus for yielding, and I thank him for his leadership in creating this bipartisan bill that passed unanimously out of our committee and is so important.

This is very personal to me. My dear friend, Nancy Donley, lost her son, Alex, in 1993, her only child, after he ate ground beef contaminated with E. coli. And we heard testimony from people whose children have died and whose family members and loved ones have become sick and died.

Finally, we are able to pass, in a bipartisan way, an overhaul of our food safety system. And so I am pleased to be able to join in this bipartisan agreement to support this legislation. I am also glad that it includes some language directing the FDA to examine antibiotic resistance as it relates to the food supply. I hope we will continue to move forward.

But I urge all of my colleagues to take this great opportunity so never again do we have to look at a victim, a family member of a victim or someone who has died because food that they believed was safe actually killed them. Let's vote for this.

The SPEAKER pro tempore. The Chair will note that the gentleman from Michigan has 4½ minutes remaining, the gentleman from Texas has 2 minutes remaining, and the gentleman from Oklahoma has 1¼ minutes remaining.

The gentleman from Oklahoma is recognized.

Mr. LUCAS. Mr. Chairman, I rise to yield 1 minute to the gentleman from Pennsylvania (Mr. THOMPSON).

Mr. THOMPSON of Pennsylvania. Mr. Speaker, as a member of the Agriculture Committee, I rise in strong opposition to this bill. We all agree that food safety is an extremely important issue, and improvements can be clearly made to our system, but this legislation concerns me for a number of reasons.

First of all, it will do little to actually increase food safety, and it will add new burdens to many small businesses and farms across the country. One provision this bill contains is an expanded registration requirement which creates a license to be in the food industry. The license is expensive, and the provision will make it unlawful to sell food without it. And this bill would have significant impacts on agriculture sectors, particularly with fruits and vegetables.

Fundamentally, I take issue with this legislation because it opens our farms to the Food and Drug Administration. Farms and agricultural activities are already regulated by the USDA. The FDA does not, and should not, have jurisdiction over farms or agricultural practices.

Good policy makes for good politics, and that can only occur with a real, full debate on this issue, which would occur if this bill would have stayed within the jurisdiction of the Agriculture Committee.

I urge my colleagues to vote ''no'' on this misguided legislation.

Mr. DINGELL. Mr. Speaker, I am the last speaker on this side, so I am going to reserve my time, but I want to yield 2 minutes to my dear friend, Mr. BARTON. And I want to commend him for his courage, his decency, and the extraordinary way in which he has worked with the distinguished Agriculture Committee and its great chairman, and also with me and the Democrats. We are handling this bill the way it should be handled, in a proper bipartisan fashion, and I want to commend him.

Mr. BARTON of Texas. I want to inquire of the Chair, with his yielding, I have 4 minutes; is that correct?

The SPEAKER pro tempore. The gentleman now has 4 minutes, yes.

Mr. BARTON of Texas. Thank you, Chairman DINGELL.

First, I want to acknowledge the strong staff work on both sides on this legislation. It has been a debate whether we would get the bill to the floor or whether Rachel Sher would have her baby first, and I am proud to report that we have gotten the bill to the floor. So we are birthing the food safety bill before she gives birth to another lovely human being.

What our minority leader said just a minute ago is absolutely true in the technical sense about different versions of the bill being introduced at different times, but that is not all of the story, as Paul Harvey used to say in his radio commentary. Those different versions have been introduced in the last day because of changes that I have asked for and other Republican Members have asked for to improve the bill at the request of Congressman LUCAS and his staff on the Agriculture Committee. We have been improving the bill to make it more supportive of agriculture.

I want to read part of a letter that we just got today from the Sheep Industry, the Cattlemen's Association and the Pork Council. It says: ''America's livestock and poultry producers support the tightening of language recognizing the U.S. Department of Agriculture's authorities regarding products, facilities and farms raising animals from which meat and eggs are regulated under the Federal Meat Inspection Act, the Poultry Products Inspection Act or the Egg Products Inspection Act. There have also been great improvements made to the traceability language, the record-keeping provisions, as well as a more targeted approach for the new authority granted to the Food and Drug Administration to prohibit or restrict the movement of food. We also appreciate the strengthening of language that requires the Secretary of Health and Human Services to consult with the Secretary of Agriculture.''

All of these changes were made at the suggestion of Congressman LUCAS and his staff, working through myself and my staff, through Mr. WAXMAN and Mr. DINGELL's staff.

This is a strong food safety bill. This is a necessary improvement to food

safety. We have had outbreaks in the last several years in the peanuts industry, in the pepper industry, and in seafood products that have been imported. We need to bring the FDA authority into the 21st century.

I want to specifically go through some of the things that we have done with regard to agriculture. This bill does not require farms to register with the FDA. Under section 415 of the Food, Drug and Cosmetic Act, farms are not considered facilities, therefore, they do not have to register with the FDA.

This bill does not require farms to pay a registration fee. This bill does not apply to livestock and poultry. This bill does not apply to USDA-regulated farms, facilities and products. This bill allows farms to be exempted from traceability requirements and greatly limits access to records. This bill exempts specifically grains and related commodities from produce standards. This bill does not apply to farmers markets.

So I understand that my friends on the Ag Committee did not have a legislative markup of this bill; they should have, I understand that. I have been in a situation in the Energy and Commerce Committee this year on the climate change bill and the health care bill where we on the Republican side have not been allowed to negotiate in the room. But on this bill, in this case, Chairman WAXMAN, Chairman DINGELL, Chairman STUPAK and Chairman PALLONE have worked with myself and Mr. DEAL and Mr. SHIMKUS and Mr. WALDEN and others. We have had an open, bipartisan process. We've had hearings going back to the prior Congress.

The process is fair on this bill. The product is fair on this bill. We do need an improved food safety bill.

I strongly recommend a ''yes'' vote on this legislation.

The SPEAKER pro tempore. The gentleman from Oklahoma has 15 seconds remaining.

Mr. LUCAS. I yield the entire sum to myself, Mr. Speaker.

I want to thank the chairman emeritus of the Energy and Commerce Committee and the ranking member, Mr. BARTON. You were kind to help us. You were kind to work with us. But the bottom line is the minority party of the Ag Committee should not have to go to the Energy and Commerce committee to work on an ag-related section of the bill.

Thank you, gentlemen. I appreciate you. But you shouldn't have had to have done it.

The SPEAKER pro tempore. The gentleman from Michigan has 2½ minutes remaining.

Mr. DINGELL. Mr. Speaker, I yield myself the balance of the time to close.

Mr. Speaker, this is a bipartisan bill. It has been worked on long and hard by three committees, including the Ways and Means. The chairman, Mr. RANGEL, and subcommittee chairman, Mr. LEVIN, have been extremely cooperative in resolving questions between the two committees.

I would note that staff at all levels of our committee, in the minority and on the majority—Rachel Sher and Eric Flamm—have been of enormous value in these discussions.

The complaint made by my colleague about exclusion of Members I can't comment on. I can only say we have tried to include everybody in this process as much as we could, and we have brought in industry, which supports the bill. But more importantly—and I say this to my friend with affection and respect—the reason for a lot of the changes that they're talking about have been that, right up to the time that we have brought this bill to the floor, we have sought to see to it that we included everyone and took advantage of the wisdom of all the Members that we could possibly take advantage of.

The legislation will address from the point of origin to the consumer's table. It will enable us to get at unsafe foods, not just in this country, but in China, in India, and other places where these foods are coming in. It will provide Food and Drug with the resources they need to address these problems in terms of personnel and money. It will also keep their laboratories open. More importantly, it will see to it that the public comes first, and for the first time in years, know that the foods that we are bringing into this country and that are being made available to the American people are in fact safe. No major reviews of the food provisions of the Food and Drug Act have been done since 1938, and, as was wisely pointed out by my colleagues, some not back to 1912.

This is an important step which will protect the American people, who are today being killed, sickened, and hurt by unsafe foods brought in by unscrupulous people.

□ 1500

It will do something more than this. It will protect the American food industry, the processors, the manufacturers, and the growers, against unfair competition in places like China where they are adding melamine to food and delivering patently unsafe food.

Mr. VAN HOLLEN. Mr. Speaker, I rise in strong support of the Food Safety Enhancement Act of 2009. This bipartisan legislation will address and reform the shortcomings in our food supply system.

Serious gaps have been exposed in the Food and Drug Administration's ability to protect the American public due to recent outbreaks and recalls of food-borne diseases in spinach, peanuts, peppers, and other foods that many Americans depend on daily. These outbreaks have not only shaken consumer confidence in the industry that produces one of our most basic and important commodities, but it has also caused sickness and even death.

We need to ensure that FDA has the necessary tools and resources to fulfill its vital mission in protecting the American public from unsafe products. The Food Safety Enhancement Act will accomplish this by bringing the FDA into the 21st century so that it can address the challenges and problems created by a global food system and to prevent the causes associated with food-borne illnesses. Currently, FDA is only able to inspect approximately one percent of imported food at the border. The bill will require the FDA to inspect high-risk facilities once every six months to a year and create a system to prevent contamination of imported and domestically produced food from occurring.

Mr. Speaker, American consumers should not live in fear of the food they eat. I want to thank Chairman WAXMAN and Chairman DINGELL for their leadership on this very important issue. I urge my colleagues to join me in supporting this much-needed legislation.

Mr. HOYER. Mr. Speaker, I rise in strong support of the Food Safety Enhancement Act of 2009, and I thank Chairman Emeritus DINGELL, Chairmen WAXMAN, PALLONE, and STUPAK, and Representatives DEGETTE and SUTTON for their hard work to bring it to the floor today. This bill gives the Food and Drug Administration the authority and resources it needs to ensure that all Americans can be confident that the food they are putting on their family tables is free of contamination.

A string of recent food safety scares shows that this bill is overdue—from the discovery of E. coli in spinach to salmonella in peppers and peanut butter. In fact, Time magazine reports that contaminated food causes 5,000 deaths and 325,000 hospitalizations each year. Unsafe food does not only put health and lives at risk; it undermines confidence across the board and poses a real threat to Americans' trust in our food industry. And that lack of trust is harmful to both families' peace of mind and the food industry's economic future. So it is in the interest of consumers and industry alike to see safety regulations faithfully enforced.

This bill speeds up the inspection schedule, ensuring that the FDA checks up on high-risk food facilities every six to 12 months, and on lower-risk facilities at least once every 18 months to three years. It requires all food facilities operating in the U.S. or exporting to the U.S. to develop and submit food safety plans. It strengthens safeguards against unsafe imported food products. And it provides for a faster, more effective FDA response in case we do see a food emergency: with an up-to-date registry of food facilities, better traceability of contaminated food, and stronger authority to quarantine and recall dangerous products, the FDA will be empowered to take quick action that can nip outbreaks in the bud and save lives.

These steps, and more, combine to make this what many have called the most sweeping reform of food safety laws in 50 years. One only needs to watch the news to see that this reform is highly needed. I urge my colleagues to support it.

Mr. MARKEY of Massachusetts. Mr. Speaker, I rise in support of the Food Safety Enhancement Act of 2009, and commend Chairmen WAXMAN, BARTON, PALLONE, DINGELL, DEAL and STUPAK for all of their bipartisan and extensive work on this important legislation.

The Food Safety Enhancement Act is a critical part of protecting the health and wellbeing of our citizens from food-borne illnesses and negligent food manufacturers. This bill strengthens the FDA's oversight of our nation's food supply by increasing inspections,

improving traceability, and empowering the agency to order mandatory recalls when necessary.

The FDA is responsible for the safety of 80 percent of our nation's food supply, but only has the resources to inspect food-manufacturing facilities once every 10 years. Over the past several years we have seen an increase in outbreaks of Salmonella, resulting in recalls of tainted food, health problems, and sadly, deaths. The FDA under the Bush Administration failed to take the steps necessary to ensure the safety of our food supply, but this bill, which was approved by the Energy and Commerce Committee with bipartisan support, will change that.

I am pleased that the bill we are considering today also includes a modified version of my bill, the Ban Poisonous Additives—or BPA Act.

BPA is a ubiquitous chemical found in most food and beverage cans and many reusable plastic containers. It was also found in most baby bottles until recently, when major baby bottle manufacturers agreed to voluntarily stop using it because of concerns about its effects on health, which are many: BPA can be linked to increases in breast and prostate cancer risk, heart disease, liver abnormalities and diabetes; BPA can result in adverse impacts to reproductive health; BPA can be linked to increases in obesity, attention deficit and hyperactivity disorder, brain damage, altered immune function and other problems; BPA can be found at dramatically higher levels in infants than in the rest of the population, and is also found in placental tissue and umbilical cord blood; BPA has been found at higher levels in women with a history of repeated spontaneous miscarriages; and BPA has been shown to alter the effectiveness of chemotherapy in cancer patients.

The Food Safety Enhancement Act of 2009 calls on FDA to evaluate the approved uses of BPA in food and beverage containers and to tell the Committee on Energy and Commerce whether each use is safe by the end of this year. If FDA finds that BPA isn't safe, it is additionally directed to tell Congress how it plans to protect public health—which could include banning the chemical as well as efforts such as placing warning labels on products that contain it so that the most vulnerable populations will be better able to avoid it.

Not all industries are as receptive to addressing health concerns as the baby bottle manufacturers were. In fact, just recently, the food and packaging industry convened a meeting in Washington at which they devised an expensive public relations claim to combat their consumer confidence crisis. They even concluded that their "holy grail" spokesperson would be a pregnant woman who could publicly extol the virtues of BPA, and thought about how to create fears that its removal would lead to scarce or unsafe food products.

Although the baby bottle manufacturers' voluntary action and a variety of State laws banning its use are helpful, what we really need is federal leadership on this vital public health issue, and I am pleased that the FDA has commenced a scientific review of all the data. The language in this bill will ensure that the review occurs quickly and that appropriate steps will be taken to protect public health.

I thank my colleagues for working with me to craft this compromise provision, and I urge support for the underlying bill.

Mr. WAXMAN. Mr. Speaker, I submit the following exchange of of letters:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, July 27, 2009.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Committee on Ways and Means applauds your efforts to improve and ensure the security and safety of food offered for consumption and consumed in the United States and appreciates your willingness to work with us to satisfactorily resolve a number of trade-related issues falling within our jurisdiction. Such issues include the regulation of importers and brokers, Customs and Border Protection (CBP) implementation and enforcement of U.S. laws, and compliance with U.S. international trade obligations. In particular, we appreciate your efforts to address our concerns with respect to sections 204 and 205 of your bill, H.R. 2749, the Food Safety Enhancement Act of 2009, regarding the registration of importers and brokers, respectively.

In light of the agreed upon changes, the Committee will forgo action on this bill and will not oppose its consideration on the Suspension Calendar. These changes ensure that the application of the Food Safety Enhancement Act on the registration of importers is carried out in consultation with CBP, taking into consideration time needed for CBP and importers to make necessary adjustments to comply with the new requirements of the Act, and that the registration of customs brokers is consistent with and does not extend beyond current requirements set forth in current law, including granting new authority to any other agency to regulate customs brokers.

This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or the full exercise of its jurisdictional prerogatives on this bill or similar legislation in the future.

The Committee intends to look for opportunities to improve the safety of imported food and the safety of imported goods overall, in accordance with the existing statutory and regulatory scheme under CBP. We look forward to soliciting your suggestions for reform.

Sincerely,

CHARLES B. RANGEL,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, July 29, 2009.

Hon. CHARLES B. RANGEL,
Chairman, Committee on Ways and Means, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 2749, the ''Food Safety Enhancement Act of 2009.'' I appreciate your work and thoughtful input on this bill.

Your letter noted that certain provisions of the bill are within the jurisdiction of the Committee on Ways and Means. The Committee on Energy and Commerce recognizes the jurisdictional interest of the Committee on Ways and Means in this bill. We appreciate your agreement to forgo action on the bill, and I concur that this agreement does not in any way prejudice the Committee on Ways and Means with respect to its jurisdictional prerogatives on this bill or similar legislation in the future.

As the bill moves through the legislative process, we will continue to work with you to ensure that the concerns raised by the Committee on Ways and Means have been addressed to your satisfaction. I will include our letters in the Congressional Record during consideration of the bill on the House floor.

Again, I appreciate your cooperation regarding this important legislation and I look forward to working with the Committee on Ways and Means as the bill moves through the legislative process.

Sincerely,

HENRY A. WAXMAN,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, July 28, 2009.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce, Rayburn HOB, Washington, DC.

DEAR MR. CHAIRMAN: I am writing regarding H.R. 2749, the Food Safety Enhancement Act of 2009, which may be considered this week on the floor, and which contains provisions within the jurisdiction of the Committee on Agriculture.

I would note that our Committees have had a history of working cooperatively on matters that generally concern food safety. In order to permit floor consideration of this bill, the Committee will forgo action with the understanding that it does not prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this bill or similar legislation in the future.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 2749, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during consideration on the House floor.

Sincerely.

COLLIN C. PETERSON,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, July 29, 2009.

Hon. COLLIN C. PETERSON,
Chairman, Committee on Agriculture, Longworth HOB, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 28, 2009, indicating your jurisdictional interest in H.R. 2749, the Food Safety Enhancement Act of 2009. I acknowledge that the bill contains provisions within the jurisdiction of the Committee on Agriculture, and appreciate your willingness to work with us to permit consideration of this bill, which will enhance food safety for all Americans. I understand that this action will in no way waive your Committee's jurisdiction in the subject matter of the legislation.

Furthermore, in the event that a conference with the Senate is requested on this matter, I would support naming Committee on Agriculture Members to the conference committee. A copy of our exchange of letters regarding this bill will be inserted into the Congressional Record during floor consideration.

Sincerely,

HENRY A. WAXMAN,
Chairman.

Mr. GENE GREEN of Texas. Mr. Speaker, I rise today in support of H.R. 2749, the Food Safety Enhancement Act.

Over the past year or so there have been several high profile food contamination incidents in the U.S. involving: spinach, cantaloupes, peanut butter, and tomatoes.

Congress has diligently investigated all of these incidents and found FDA simply does not have the resources, funding, manpower, or technology it needs to protect the American food supply and fulfill its mission.

This bill finally gives the FDA the authority to conduct mandatory recall. We should not to rely on the voluntary efforts of food manufacturers to ensure the safety of their product.

H.R. 2749 will also require the FDA to inspect high-risk facilities once every six months to a year. FDA now inspects food production facilities once a decade on average.

The one shortcoming of the bill is that funding is not dedicated to the creation of additional FDA labs, but it does allow for third party inspection by accredited labs.

The Port of Houston does not have an FDA lab and in fact there is no FDA lab in the entire state of Texas even though we share the longest border with Mexico.

Right now, the FDA is only able to inspect approximately 1 percent of imported food at the border. With its level of trade and southern border with Mexico, it is a glaring hole in the system that Texas does not have an FDA lab. In fact, there are over 300 ports of entry in the U.S. and only 13 ports actually have FDA labs.

It is my hope that we will be able to provide additional funds for the creation of these labs in the future.

H.R. 2749 provides some of those funds to get the FDA moving in the correct direction, and we will have to appropriate more, but I am happy the Food Safety Enhancement Act finally gives the FDA the authority and improved systems to protect our food supply.

I am pleased that after two years of hard work we will finally be moving a comprehensive food safety bill out of House.

I want to commend Chairman Emeritus DINGELL, Chairman WAXMAN, Chairman PALLONE, and Chairman STUPAK for their continued and dedicated work on this issue.

Mr. MATHESON. Mr. Speaker, I would like to thank Chairman WAXMAN and especially Chairman Emeritus DINGELL and his staffer, Virgil Miller, for their work to include an amendment I authored regarding lead in ceramic ware.

A couple years ago in Utah, a young mother used ceramic plates to heat her food in the microwave. Her infant became very sick. Doctors discovered that the baby was suffering from lead poisoning because lead had leached out of the ceramic plates she used. Most of us are unaware of this risk and most people don't know that lead can leach out of ceramic ware when the glaze is improperly fired or when the glaze has broken down over time. When lead is released into food and drink from ceramics, hazardous levels can contaminate food substances and expose children and adults to toxic levels.

FDA regulates the lead levels of ceramic ware and has set acceptable levels of lead-allowed ceramic ware used in food preparation and currently has a safety warning designating ceramic items not intended for food use. However, there is currently no label alerting consumers that the ceramic products they purchase for food use/preparation (i.e. plates, cups, etc.) contain any lead.

My language requires labels on plates and packaging for ceramic ware/cookware containing lead for an intended functional purpose. It focuses on the glazing because all ceramic ware has trace amounts of lead in clay and those trace amounts do not contribute to lead poisoning. Problems arise when ceramicware contains lead-based glaze that is either fired incorrectly or contains high amounts of lead (above safe levels).

This language doesn't affect ornamental plates or decorative ceramics, which are already regulated by FDA and which are not considered safe for food use because of their lead levels.

Finally, my provision requires FDA to set up an educational program on its website to further educate consumers about these issues and about safe practices.

I am hopeful that these measures will enable us to better protect children and families from the potential problems caused by incorrectly fired ceramic ware and lead leaching from ceramics.

Mr. DINGELL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. DINGELL) that the House suspend the rules and pass the bill, H.R. 2749, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. BARTON of Texas. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 of rule XX, this 15-minute vote will be followed by 5-minute votes on suspending the rules and passing:

H.R. 1665, if ordered; and

House Resolution 373, if ordered.

The vote was taken by electronic device, and there were—yeas 280, nays 150, not voting 3, as follows:

[Roll No. 657]

YEAS—280

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Baca
Bachmann
Baird
Baldwin
Barrow
Barton (TX)
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Buchanan
Burgess
Butterfield
Buyer
Camp
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castle
Castor (FL)
Chandler
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Fortenberry
Foster
Frank (MA)
Frelinghuysen
Fudge
Gerlach
Giffords
Gingrey (GA)
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Guthrie
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Himes
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
King (NY)
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kucinich
Lance
Langevin
Larsen (WA)
Larson (CT)
LaTourette
Lee (CA)
Lee (NY)
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lynch
Maffei
Maloney
Marchant
Markey (MA)
Matheson
Matsui
McCollum
McCotter
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (MI)
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paulsen
Payne
Perlmutter
Peters
Peterson
Platts
Polis (CO)
Pomeroy
Price (NC)
Putnam
Quigley
Rahall
Rangel
Reichert
Reyes
Richardson
Rodriguez
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shimkus
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Terry
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Whitfield
Wilson (OH)
Wolf
Wu
Yarmuth

NAYS—150

Aderholt
Akin
Alexander
Arcuri
Austria
Bachus
Barrett (SC)
Bartlett
Bean
Bilbray
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Burton (IN)
Calvert
Campbell
Cantor
Carter
Cassidy
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Conaway
Culberson
Davis (KY)
Dreier
Duncan
Emerson
Fallin
Flake
Fleming
Forbes
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gohmert
Goodlatte
Granger
Graves
Griffith
Hall (TX)
Harper
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Hinchey
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kind
King (IA)
Kingston

Kline (MN)
Kratovil
Lamborn
Latham
Latta
Lewis (CA)
Linder
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Mack
Manzullo
Markey (CO)
Marshall
Massa
McCarthy (CA)
McCaul
McClintock
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller, Gary
Minnick
Moran (KS)
Myrick
Neugebauer
Nunes
Olson
Paul
Pence
Perriello
Petri
Pingree (ME)
Pitts
Poe (TX)
Posey
Price (GA)
Radanovich
Rehberg
Roe (TN)
Rogers (AL)
Rohrabacher
Rooney
Royce
Ryan (WI)
Salazar
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shuler
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Sullivan
Taylor
Teague
Thompson (PA)
Thornberry
Tiahrt
Wamp
Welch
Westmoreland
Wilson (SC)
Wittman
Woolsey
Young (AK)
Young (FL)

NOT VOTING—3

Davis (TN)
McCarthy (NY)
McHugh

□ 1529

Messrs. WAMP, DAVIS of Kentucky, BROWN of South Carolina, WELCH, Ms. BEAN and Ms. WOOLSEY changed their vote from ''yea'' to ''nay.''

Messrs. MARCHANT, TERRY, ROGERS of Kentucky, ROSKAM, BUYER, CAO, FRELINGHUYSEN, GINGREY of Georgia and Mrs. BACHMANN changed their vote from ''nay'' to ''yea.''

So (two-thirds not being in the affirmative) the motion was rejected.

The result of the vote was announced as above recorded.

COAST GUARD ACQUISITION REFORM ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill, H.R. 1665, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. CUMMINGS) that the House suspend the rules and pass the bill, H.R. 1665, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

RECORDED VOTE

Mr. HASTINGS of Florida. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 426, noes 0, not voting 7, as follows:

[Roll No. 658]

AYES—426

Ackerman
Aderholt
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (PA)
Brady (TX)
Braley (IA)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Chu
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Murtha
Myrick
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nunes
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paul
Paulsen
Payne
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stark
Stearns
Stupak
Sullivan
Sutton
Tanner
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Westmoreland
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—7

Abercrombie
Bonner
Cooper
Davis (TN)
McCarthy (NY)
McHugh
Schrader

□ 1537

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

SUPPORTING NATIONAL HYDROCEPHALUS AWARENESS MONTH

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and agreeing to the resolution, H. Res. 373.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. CLAY) that the House suspend the rules and agree to the resolution, H. Res. 373.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

FISCAL SOLVENCY OF CERTAIN TRUST FUNDS

Mr. LEWIS of Georgia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3357) to restore sums to the Highway Trust Fund and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3357

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,