ploy to significantly minimize or prevent the hazards identified under the hazard analysis conducted under subsection (b) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, or holding at the time of the analysis. Those procedures, practices, and processes may include the following:

(A) Sanitation procedures for food contact surfaces and utensils and food-contact surfaces of equipment.

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

(C) An environmental monitoring program to verify the effectiveness of pathogen controls in processes where a food is exposed to a potential contaminant in the environment.

(D) A food allergen control program.

(E) A recall plan.

(F) Current Good Manufacturing Practices (cGMPs) under part 110 of title 21, Code of Federal Regulations (or any successor regulations).

(G) Supplier verification activities that relate to the safety of food.

(June 25, 1938, ch. 675, §418, as added Pub. L. 111–353, title I, §103(a), Jan. 4, 2011, 124 Stat. 3889.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 111–353, title I, §103(i), Jan. 4, 2011, 124 Stat. 3898, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section and amending section 331 of this title] shall take effect 18 months after the date of enactment of this Act [Jan. 4, 2011].

''(2) FLEXIBILITY FOR SMALL BUSINESSES.—Notwithstanding paragraph (1)—

''(A) the amendments made by this section shall apply to a small business (as defined in the regulations promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 350g(n)] (as added by this section)) beginning on the date that is 6 months after the effective date of such regulations; and

''(B) the amendments made by this section shall apply to a very small business (as defined in such regulations) beginning on the date that is 18 months after the effective date of such regulations.''

CONSTRUCTION

Nothing in this section to be construed to apply to certain alcohol-related facilities, to alter jurisdiction and authorities established under certain other Acts, or in a manner inconsistent with international agreements to which the United States is a party, see sections 2206, 2251, and 2252 of this title.

GUIDANCE DOCUMENT

Pub. L. 111–353, title I, §103(b), Jan. 4, 2011, 124 Stat. 3896, provided that: ''The Secretary shall issue a guidance document related to the regulations promulgated under subsection (b)(1) [probably means 21 U.S.C. 350g(n)(1)] with respect to the hazard analysis and preventive controls under section 418 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 350g] (as added by subsection (a)).''

SMALL ENTITY COMPLIANCE POLICY GUIDE

Pub. L. 111–353, title I, §103(d), Jan. 4, 2011, 124 Stat. 3898, provided that: ''Not later than 180 days after the issuance of the regulations promulgated under subsection (n) of section 418 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 350g(n)] (as added by subsection (a)), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 418 and this section [enacting this section, amending section 331 of this title, and enacting provisions set out as notes under this section and sections 342 and 350d of this title] to assist small entities in complying with the hazard analysis and other activities required under such section 418 and this section.''

NO EFFECT ON HACCP AUTHORITIES

Pub. L. 111–353, title I, §103(f), Jan. 4, 2011, 124 Stat. 3898, provided that: ''Nothing in the amendments made by this section [enacting this section and amending section 331 of this title] 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.) to revise, issue, or enforce Hazard Analysis Critical Control [Points] programs and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.''

DIETARY SUPPLEMENTS

Pub. L. 111–353, title I, §103(g), Jan. 4, 2011, 124 Stat. 3898, provided that: ''Nothing in the amendments made by this section [enacting this section and amending section 331 of this title] shall apply to any facility with regard to the manufacturing, processing, packing, or holding of a dietary supplement that is in compliance with the requirements of sections 402(g)(2) and 761 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(g)(2), 379aa–1).''

§ 350h. Standards for produce safety

(a) Proposed rulemaking

(1) In general

(A) Rulemaking

Not later than 1 year after January 4, 2011, the Secretary, in coordination with the Secretary of Agriculture and representatives of State departments of agriculture (including with regard to the national organic program established under the Organic Foods Production Act of 1990 [7 U.S.C. 6501 et seq.]), and in consultation with the Secretary of Homeland Security, shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

(B) Determination by Secretary

With respect to small businesses and very small businesses (as such terms are defined in the regulation promulgated under subparagraph (A)) that produce and harvest those types of fruits and vegetables that are raw agricultural commodities that the Secretary has determined are low risk and do not present a risk of serious adverse health consequences or death, the Secretary may determine not to include production and harvesting of such fruits and vegetables in such rulemaking, or may modify the applicable requirements of regulations promulgated pursuant to this section.

(2) Public input

During the comment period on the notice of proposed rulemaking under paragraph (1), the

Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(3) Content

The proposed rulemaking under paragraph (1) shall—

(A) provide sufficient flexibility to be applicable to various types of entities engaged in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including small businesses and entities that sell directly to consumers, and be appropriate to the scale and diversity of the production and harvesting of such commodities;

(B) include, with respect to growing, harvesting, sorting, packing, and storage operations, science-based minimum standards related to soil amendments, hygiene, packaging, temperature controls, animals in the growing area, and water;

(C) consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism;

(D) take into consideration, consistent with ensuring enforceable public health protection, conservation and environmental practice standards and policies established by Federal natural resource conservation, wildlife conservation, and environmental agencies;

(E) in the case of production that is certified organic, not include any requirements that conflict with or duplicate the requirements of the national organic program established under the Organic Foods Production Act of 1990, while providing the same level of public health protection as the requirements under guidance documents, including guidance documents regarding action levels, and regulations under the FDA Food Safety Modernization Act; and

(F) define, for purposes of this section, the terms ''small business'' and ''very small business''.

(4) Prioritization

The Secretary shall prioritize the implementation of the regulations under this section for specific fruits and vegetables that are raw agricultural commodities based on known risks which may include a history and severity of foodborne illness outbreaks.

(b) Final regulation

(1) In general

Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum science-based standards for those types of fruits and vegetables, including specific mixes or categories of fruits or vegetables, that are raw agricultural commodities, based on known safety risks, which may include a history of foodborne illness outbreaks.

(2) Final regulation

The final regulation shall—

(A) provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States or the appropriate elected State official as recognized by State statute; and

(B) include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

(3) Flexibility for small businesses

Notwithstanding paragraph (1)—

(A) the regulations promulgated under this section shall apply to a small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 1 year after the effective date of the final regulation under paragraph (1); and

(B) the regulations promulgated under this section shall apply to a very small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 2 years after the effective date of the final regulation under paragraph (1).

(c) Criteria

(1) In general

The regulations adopted under subsection (b) shall—

(A) set forth those procedures, processes, and practices that the Secretary determines to minimize the risk of serious adverse health consequences or death, including procedures, processes, and practices that the Secretary determines to be reasonably necessary 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 fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 342 of this title;

(B) provide sufficient flexibility to be practicable for all sizes and types of businesses, including small businesses such as a small food processing facility co-located on a farm;

(C) comply with chapter 35 of title 44 (commonly known as the ''Paperwork Reduction Act''), with special attention to minimizing the burden (as defined in section 3502(2) of such title) on the business, and collection of information (as defined in section 3502(3) of such title), associated with such regulations;

(D) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

(E) not require a business to hire a consultant or other third party to identify, implement, certify, compliance[1] with these procedures, processes, and practices, except in the case of negotiated enforcement reso-

[1] So in original. Probably should be ''or certify compliance''.

lutions that may require such a consultant or third party; and

(F) permit States and foreign countries from which food is imported into the United States to request from the Secretary variances from the requirements of the regulations, subject to paragraph (2), where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 342 of this title and to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

(2) Variances

(A) Requests for variances

A State or foreign country from which food is imported into the United States may in writing request a variance from the Secretary. Such request shall describe the variance requested and present information demonstrating that the variance does not increase the likelihood that the food for which the variance is requested will be adulterated under section 342 of this title, and that the variance provides the same level of public health protection as the requirements of the regulations adopted under subsection (b). The Secretary shall review such requests in a reasonable timeframe.

(B) Approval of variances

The Secretary may approve a variance in whole or in part, as appropriate, and may specify the scope of applicability of a variance to other similarly situated persons.

(C) Denial of variances

The Secretary may deny a variance request if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 342 of this title and is not reasonably likely to provide the same level of public health protection as the requirements of the regulation adopted under subsection (b). The Secretary shall notify the person requesting such variance of the reasons for the denial.

(D) Modification or revocation of a variance

The Secretary, after notice and an opportunity for a hearing, may modify or revoke a variance if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 342 of this title and is not reasonably likely to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

(d) Enforcement

The Secretary may coordinate with the Secretary of Agriculture and, as appropriate, shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

(e) Guidance

(1) In general

Not later than 1 year after January 4, 2011, the Secretary shall publish, after consultation with the Secretary of Agriculture, representatives of State departments of agriculture, farmer representatives, and various types of entities engaged in the production and harvesting or importing of fruits and vegetables that are raw agricultural commodities, including small businesses, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce under this section.

(2) Public meetings

The Secretary shall conduct not fewer than 3 public meetings in diverse geographical areas of the United States as part of an effort to conduct education and outreach regarding the guidance described in paragraph (1) for persons in different regions who are involved in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including persons that sell directly to consumers and farmer representatives, and for importers of fruits and vegetables that are raw agricultural commodities.

(3) Paperwork reduction

The Secretary shall ensure that any updated guidance under this section will—

(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm; and

(B) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods.

(f) Exemption for direct farm marketing

(1) In general

A farm shall be exempt from the requirements under this section in a calendar year if—

(A) during the previous 3-year period, the average annual monetary value of the food sold by such farm directly to qualified end-users during such period exceeded the average annual monetary value of the food sold by such farm to all other buyers during such period; and

(B) the average annual monetary value of all food sold during such period was less than $500,000, adjusted for inflation.

(2) Notification to consumers

(A) In general

A farm that is exempt from the requirements under this section shall—

(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this chapter, include prominently and conspicuously on such label the name and business address of the farm where the produce was grown; or

(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provision of

this chapter, prominently and conspicuously display, at the point of purchase, the name and business address of the farm where the produce was grown, on a label, poster, sign, placard, or documents delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

(B) No additional label

Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition to any label required under any other provision of this chapter.

(3) Withdrawal; rule of construction

(A) In general

In the event of an active investigation of a foodborne illness outbreak that is directly linked to a farm subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a farm that are material to the safety of the food produced or harvested at such farm, the Secretary may withdraw the exemption provided to such farm under this subsection.

(B) Rule of construction

Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

(4) Definitions

(A) Qualified end-user

In this subsection, the term ''qualified end-user'', with respect to a food means—

(i) the consumer of the food; or

(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 350d of this title) that is located—

(I) in the same State as the farm that produced the food; or

(II) not more than 275 miles from such farm.

(B) Consumer

For purposes of subparagraph (A), the term ''consumer'' does not include a business.

(5) No preemption

Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production, harvesting, holding, transportation, and sale of fresh fruits and vegetables. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

(6) Limitation of effect

Nothing in this subsection shall prevent the Secretary from exercising any authority granted in the other sections of this chapter.

(g) Clarification

This section shall not apply to produce that is produced by an individual for personal consumption.

(h) Exception for activities of facilities subject to section 350g of this title

This section shall not apply to activities of a facility that are subject to section 350g of this title.

(June 25, 1938, ch. 675, §419, as added Pub. L. 111–353, title I, §105(a), Jan. 4, 2011, 124 Stat. 3899.)

Editorial Notes

REFERENCES IN TEXT

The Organic Foods Production Act of 1990, referred to in subsec. (a)(1)(A), (3)(E), is title XXI of Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3935, which is classified generally to chapter 94 (§6501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 6501 of Title 7 and Tables.

The FDA Food Safety Modernization Act, referred to in subsec. (a)(3)(E), is Pub. L. 111–353, Jan. 4, 2011, 124 Stat. 3885, which enacted chapter 27 (§2201 et seq.) and sections 350g to 350*l*–1, 379j–31, 384a to 384d, 399c, and 399d of this title, section 7625 of Title 7, Agriculture, and section 280g–16 of Title 42, The Public Health and Welfare, amended sections 331, 333, 334, 350b to 350d, 350f, 374, 381, 393, and 399 of this title and section 247b–20 of Title 42, and enacted provisions set out as notes under sections 331, 334, 342, 350b, 350d, 350e, 350g to 350j, 350*l*, and 381 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

Statutory Notes and Related Subsidiaries

CONSTRUCTION

Nothing in this section to be construed to apply to certain alcohol-related facilities, to alter jurisdiction and authorities established under certain other Acts, or in a manner inconsistent with international agreements to which the United States is a party, see sections 2206, 2251, and 2252 of this title.

SCIENTIFIC AND ECONOMIC ANALYSIS OF THE FDA FOOD SAFETY MODERNIZATION ACT

Pub. L. 113–79, title XII, §12311(a), Feb. 7, 2014, 128 Stat. 992, provided that: ''When publishing a final rule with respect to 'Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption' published by the Department of Health and Human Services on January 16, 2013 (78 Fed. Reg. 3504), the Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall ensure that the final rule (referred to in this section as the 'final rule') includes the following information:

''(1) An analysis of the scientific information used to promulgate the final rule, taking into consideration any information about farming and ranching operations of a variety of sizes, with regional differences, and that have a diversity of production practices and methods.

''(2) An analysis of the economic impact of the final rule.

''(3) A plan to systematically—

''(A) evaluate the impact of the final rule on farming and ranching operations; and

''(B) develop an ongoing process to evaluate and respond to business concerns.''

SMALL ENTITY COMPLIANCE POLICY GUIDE

Pub. L. 111–353, title I, §105(b), Jan. 4, 2011, 124 Stat. 3904, provided that: ''Not later than 180 days after the issuance of regulations under section 419 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 350h] (as added by subsection (a)), the Secretary of Health and Human Services shall issue a small entity compliance policy

guide setting forth in plain language the requirements of such section 419 and to assist small entities in complying with standards for safe production and harvesting and other activities required under such section.''

NO EFFECT ON HACCP AUTHORITIES

Pub. L. 111–353, title I, § 105(d), Jan. 4, 2011, 124 Stat. 3905, provided that: ''Nothing in the amendments made by this section [enacting this section and amending section 331 of this title] limits the authority of the Secretary [of Health and Human Services] 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.) 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 [Points] Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.''

§ 350i. Protection against intentional adulteration

(a) Determinations

(1) In general

The Secretary shall—

(A) conduct a vulnerability assessment of the food system, including by consideration of the Department of Homeland Security biological, chemical, radiological, or other terrorism risk assessments;

(B) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration of food at vulnerable points; and

(C) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

(2) Limited distribution

In the interest of national security, the Secretary, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which determinations made under paragraph (1) are made publicly available.

(b) Regulations

Not later than 18 months after January 4, 2011, the Secretary, in coordination with the Secretary of Homeland Security and in consultation with the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this chapter. Such regulations shall—

(1) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food; and

(2) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate.

(c) Applicability

Regulations promulgated under subsection (b) shall apply only to food for which there is a high risk of intentional contamination, as determined by the Secretary, in consultation with the Secretary of Homeland Security, under subsection (a), that could cause serious adverse health consequences or death to humans or animals and shall include those foods—

(1) for which the Secretary has identified clear vulnerabilities (including short shelf-life or susceptibility to intentional contamination at critical control points); and

(2) in bulk or batch form, prior to being packaged for the final consumer.

(d) Exception

This section shall not apply to farms, except for those that produce milk.

(e) Definition

For purposes of this section, the term ''farm'' has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).

(June 25, 1938, ch. 675, § 420, as added Pub. L. 111–353, title I, § 106(a), Jan. 4, 2011, 124 Stat. 3905.)

Statutory Notes and Related Subsidiaries

CONSTRUCTION

Nothing in this section to be construed to apply to certain alcohol-related facilities, to alter jurisdiction and authorities established under certain other Acts, or in a manner inconsistent with international agreements to which the United States is a party, see sections 2206, 2251, and 2252 of this title.

GUIDANCE DOCUMENTS

Pub. L. 111–353, title I, § 106(b), Jan. 4, 2011, 124 Stat. 3906, provided that:

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Jan. 4, 2011], the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 420 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 450i], as added by subsection (a).

''(2) CONTENT.—The guidance documents issued under paragraph (1) shall—

''(A) include a model assessment for a person to use under subsection (b)(1) of section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a);

''(B) include examples of mitigation strategies or measures described in subsection (b)(2) of such section; and

''(C) specify situations in which the examples of mitigation strategies or measures described in subsection (b)(2) of such section are appropriate.

''(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.''

PERIODIC REVIEW

Pub. L. 111–353, title I, § 106(c), Jan. 4, 2011, 124 Stat. 3906, provided that: ''The Secretary of Health and Human Services shall periodically review and, as appropriate, update the regulations under section 420(b) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 450i(b)], as added by subsection (a), and the guidance documents under subsection (b) [section 106(b) of Pub. L. 111–353, set out above].''