

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.)

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].”

§ 350j. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report

(a) Identification and inspection of facilities

(1) Identification

The Secretary shall identify high-risk facilities and shall allocate resources to inspect facilities according to the known safety risks of the facilities, which shall be based on the following factors:

(A) The known safety risks of the food manufactured, processed, packed, or held at the facility.

(B) The compliance history of a facility, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

(C) The rigor and effectiveness of the facility's hazard analysis and risk-based preventive controls.

(D) Whether the food manufactured, processed, packed, or held at the facility meets the criteria for priority under section 381(h)(1) of this title.

(E) Whether the food or the facility that manufactured, processed, packed, or held such food has received a certification as described in section 381(q) or 384b of this title, as appropriate.

(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

(2) Inspections

(A) In general

Beginning on January 4, 2011, the Secretary shall increase the frequency of inspection of all facilities.

(B) Domestic high-risk facilities

The Secretary shall increase the frequency of inspection of domestic facilities identified under paragraph (1) as high-risk facilities such that each such facility is inspected—

(i) not less often than once in the 5-year period following January 4, 2011; and

(ii) not less often than once every 3 years thereafter.

(C) Domestic non-high-risk facilities

The Secretary shall ensure that each domestic facility that is not identified under paragraph (1) as a high-risk facility is inspected—

(i) not less often than once in the 7-year period following January 4, 2011; and

(ii) not less often than once every 5 years thereafter.

(D) Foreign facilities

(i) Year 1

In the 1-year period following January 4, 2011, the Secretary shall inspect not fewer than 600 foreign facilities.

(ii) Subsequent years

In each of the 5 years following the 1-year period described in clause (i), the Secretary shall inspect not fewer than twice the number of foreign facilities inspected by the Secretary during the previous year.

(E) Reliance on Federal, State, or local inspections

In meeting the inspection requirements under this subsection for domestic facilities, the Secretary may rely on inspections conducted by other Federal, State, or local agencies under interagency agreement, contract, memoranda of understanding, or other obligation.

(b) Identification and inspection at ports of entry

The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect any article of food imported into the United States according to the known safety risks of the article of food, which shall be based on the following factors:

(1) The known safety risks of the food imported.

(2) The known safety risks of the countries or regions of origin and countries through which such article of food is transported.

(3) The compliance history of the importer, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

(4) The rigor and effectiveness of the activities conducted by the importer of such article of food to satisfy the requirements of the foreign supplier verification program under section 384a of this title.

(5) Whether the food importer participates in the voluntary qualified importer program under section 384b of this title.

(6) Whether the food meets the criteria for priority under section 381(h)(1) of this title.

(7) Whether the food or the facility that manufactured, processed, packed, or held such food received a certification as described in section 381(q) or 384b of this title.

(8) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

(c) Interagency agreements with respect to seafood

(1) In general

The Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of Homeland Security, the Chairman of the Federal Trade Commission, and the heads of other appropriate agencies may enter into such agreements as may be necessary or appropriate to improve seafood safety.

(2) Scope of agreements

The agreements under paragraph (1) may include—

(A) cooperative arrangements for examining and testing seafood imports that leverage the resources, capabilities, and authorities of each party to the agreement;

(B) coordination of inspections of foreign facilities to increase the percentage of imported seafood and seafood facilities inspected;

(C) standardization of data on seafood names, inspection records, and laboratory testing to improve interagency coordination;