

111TH CONGRESS
1ST SESSION

S. 429

To ensure the safety of imported food products for the citizens of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2009

Mr. CASEY (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To ensure the safety of imported food products for the citizens of the United States, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Ending Agricultural Threats: Safeguarding America’s
6 Food for Everyone (EAT SAFE) Act of 2009”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Food safety training, personnel, and coordination.

Sec. 5. Reporting of smuggled food products.

Sec. 6. Civil penalties relating to illegally imported meat and poultry products.

Sec. 7. Certification of food safety labs.

Sec. 8. Data sharing.

Sec. 9. Public notice regarding recalled food products.

Sec. 10. Foodborne illness education and outreach competitive grants program.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the safety of the food supply of the United
4 States is vital to—

5 (A) the health of the citizens of the United
6 States;

7 (B) the preservation of the confidence of
8 those citizens in the food supply of the United
9 States; and

10 (C) the success of the food sector of the
11 United States economy;

12 (2) the United States has the safest food supply
13 in the world, and maintaining a secure domestic food
14 supply is imperative for the national security of the
15 United States;

16 (3) in a report published by the Government
17 Accountability Office in January 2007, the Comp-
18 troller General of the United States described food
19 safety oversight as 1 of the 29 high-risk program
20 areas of the Federal Government; and

1 (4) the task of preserving the safety of the food
2 supply of the United States is complicated by pres-
3 sures relating to—

4 (A) food products that are smuggled or im-
5 ported into the United States without being
6 screened, monitored, or inspected as required by
7 law; and

8 (B) the need to improve the enforcement of
9 the United States in reducing the quantity of
10 food products that are—

11 (i) smuggled into the United States;

12 and

13 (ii) imported into the United States
14 without being screened, monitored, or in-
15 spected as required by law.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) **ADMINISTRATION.**—The term “Administra-
19 tion” means the Food and Drug Administration.

20 (2) **ADMINISTRATOR.**—The term “Adminis-
21 trator” means the Administrator of the Animal and
22 Plant Health Inspection Service.

23 (3) **DEPARTMENT.**—The term “Department”
24 means the Department of Agriculture.

1 (4) **FOOD DEFENSE THREAT.**—The term “food
2 defense threat” means any intentional contamina-
3 tion, including any disease, pest, or poisonous agent,
4 that could adversely affect the safety of human or
5 animal food products.

6 (5) **SMUGGLED FOOD PRODUCT.**—The term
7 “smuggled food product” means a prohibited human
8 or animal food product that a person fraudulently
9 brings into the United States.

10 (6) **SECRETARY.**—The term “Secretary” means
11 the Secretary of Agriculture.

12 **SEC. 4. FOOD SAFETY TRAINING, PERSONNEL, AND CO-**
13 **ORDINATION.**

14 (a) **DEPARTMENT.**—

15 (1) **TRAINING PROGRAMS.**—

16 (A) **AGRICULTURAL SPECIALISTS.**—

17 (i) **ESTABLISHMENT.**—The Secretary
18 shall establish training programs to edu-
19 cate each Federal employee who is em-
20 ployed in a position described in section
21 421(g) of the Homeland Security Act of
22 2002 (6 U.S.C. 231(g)) on issues relating
23 to food safety and agroterrorism.

24 (ii) **AUTHORIZATION OF APPROPRIA-**
25 **TIONS.**—There is authorized to be appro-

1 riated to carry out this subparagraph
2 \$1,700,000.

3 (B) CROSS-TRAINING OF EMPLOYEES OF
4 UNITED STATES CUSTOMS AND BORDER PRO-
5 TECTION.—

6 (i) ESTABLISHMENT.—The Secretary
7 shall establish training programs to edu-
8 cate border patrol agents employed by the
9 United States Customs and Border Protec-
10 tion of the Department of Homeland Secu-
11 rity about identifying human, animal, and
12 plant health threats and referring the
13 threats to the appropriate agencies.

14 (ii) AUTHORIZATION OF APPROPRIA-
15 TIONS.—There is authorized to be appro-
16 priated to carry out this subparagraph
17 \$4,800,000.

18 (2) ILLEGAL IMPORT DETECTION PER-
19 SONNEL.—Subtitle G of the Department of Agri-
20 culture Reorganization Act of 1994 (7 U.S.C. 6981
21 et seq.) is amended by adding at the end the fol-
22 lowing:

23 **“SEC. 263. FOOD SAFETY PERSONNEL AND TRAINING.**

24 “(a) ADDITIONAL EMPLOYEES.—Not later than 2
25 years after the date of enactment of the Ending Agricul-

1 tural Threats: Safeguarding America’s Food for Everyone
2 (EAT SAFE) Act of 2009, the Secretary shall hire a suffi-
3 cient number of employees to increase the number of full-
4 time field investigators, import surveillance officers, sup-
5 port staff, analysts, and compliance and enforcement ex-
6 perts employed by the Food Safety and Inspection Service
7 as of October 1, 2007, by 100 employees, in order to—

8 “(1) provide additional detection of food de-
9 fense threats;

10 “(2) detect, track, and remove smuggled human
11 food products from commerce; and

12 “(3) impose penalties on persons or organiza-
13 tions that threaten the food supply.

14 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
15 is authorized to be appropriated to carry out this section
16 \$10,000,000.”.

17 (b) ADMINISTRATION.—Chapter IV of the Federal
18 Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.)
19 is amended by adding at the end the following:

20 **“SEC. 418. FOOD SAFETY PERSONNEL AND TRAINING.**

21 “(a) IN GENERAL.—Not later than 2 years after the
22 date of enactment of the Ending Agricultural Threats:
23 Safeguarding America’s Food for Everyone (EAT SAFE)
24 Act of 2009, the Secretary shall hire a sufficient number
25 of employees to increase the number of full-time field in-

1 vestigators, import surveillance officers, support staff, an-
2 alysts, and compliance and enforcement experts employed
3 by the Food and Drug Administration as of October 1,
4 2007, by 150 employees, in order to—

5 “(1) provide additional detection of food de-
6 fense threats;

7 “(2) detect, track, and remove smuggled food
8 products from commerce; and

9 “(3) impose penalties on persons or organiza-
10 tions that threaten the food supply.

11 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
12 is authorized to be appropriated to carry out this section
13 \$15,000,000.”.

14 (c) COORDINATION OF FEDERAL AGENCIES.—Sec-
15 tion 411(b) of the Homeland Security Act of 2002 (6
16 U.S.C. 211(b)) is amended by adding at the end the fol-
17 lowing:

18 “(4) COORDINATION OF FEDERAL AGENCIES.—
19 The Commissioner of United States Customs and
20 Border Protection, in coordination with the Sec-
21 retary of Agriculture and the Commissioner of Food
22 and Drugs, shall conduct activities to target, track,
23 and inspect shipments that—

24 “(A) contain human and animal food prod-
25 ucts; and

1 “(B) are imported into the United
2 States.”.

3 **SEC. 5. REPORTING OF SMUGGLED FOOD PRODUCTS.**

4 (a) DEPARTMENT.—

5 (1) PUBLIC NOTIFICATION.—

6 (A) IN GENERAL.—Not later than 3 days
7 after the date on which the Department identi-
8 fies a smuggled food product, the Secretary
9 shall provide to the public notification describ-
10 ing the food product identified by the Depart-
11 ment and, if available, the individual or entity
12 that smuggled the food product.

13 (B) REQUIRED FORMS OF NOTIFICA-
14 TION.—The Secretary shall provide public noti-
15 fication under subparagraph (A) through—

16 (i) a news release of the Department
17 for each smuggled food product identified
18 by the Department;

19 (ii) a description of each smuggled
20 food product on the website of the Depart-
21 ment;

22 (iii) the management of a periodically
23 updated list that contains a description of
24 each individual or entity that smuggled the

1 food product identified by the Secretary
2 under subparagraph (A); and

3 (iv) any other appropriate means, as
4 determined by the Secretary.

5 (2) NOTIFICATION TO DEPARTMENT OF HOME-
6 LAND SECURITY.—Not later than 30 days after the
7 date on which the Department identifies a smuggled
8 food product, the Secretary shall provide to the De-
9 partment of Homeland Security notification of the
10 smuggled food product.

11 (b) ADMINISTRATION.—

12 (1) PUBLIC NOTIFICATION.—

13 (A) IN GENERAL.—Not later than 3 days
14 after the date on which the Administration
15 identifies a smuggled food product, the Sec-
16 retary of Health and Human Services shall pro-
17 vide to the public notification describing the
18 smuggled food product identified by the Admin-
19 istration and, if available, the individual or enti-
20 ty that smuggled the food product.

21 (B) REQUIRED FORMS OF NOTIFICA-
22 TION.—The Secretary of Health and Human
23 Services shall provide public notification under
24 subparagraph (A) through—

1 (i) a press release of the Administra-
2 tion for each smuggled food product identi-
3 fied by the Administration;

4 (ii) a description of each smuggled
5 food product on the website of the Admin-
6 istration;

7 (iii) the management of a periodically
8 updated list that contains a description of
9 each individual or entity that smuggled the
10 food product identified by the Secretary of
11 Health and Human Services under sub-
12 paragraph (A); and

13 (iv) any other appropriate means, as
14 determined by the Secretary of Health and
15 Human Services.

16 (2) NOTIFICATION TO DEPARTMENT OF HOME-
17 LAND SECURITY.—Not later than 30 days after the
18 date on which the Administration identifies a smug-
19 gled food product, the Secretary of Health and
20 Human Services shall provide to the Department of
21 Homeland Security notification of the smuggled food
22 product.

1 **SEC. 6. CIVIL PENALTIES RELATING TO ILLEGALLY IM-**
2 **PORTED MEAT AND POULTRY PRODUCTS.**

3 (a) MEAT PRODUCTS.—Section 20(b) of the Federal
4 Meat Inspection Act (21 U.S.C. 620(b)) is amended—

5 (1) by striking “(b) The Secretary” and insert-
6 ing the following:

7 “(b) DESTRUCTION; CIVIL PENALTIES.—

8 “(1) DESTRUCTION.—The Secretary”; and

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

10 “(2) CIVIL PENALTIES.—Each individual or en-
11 tity that fails to present each meat article that is the
12 subject of the importation of the individual or entity
13 to an inspection facility approved by the Secretary
14 shall be liable for a civil penalty assessed by the Sec-
15 retary in an amount not to exceed \$25,000 for each
16 meat article that the individual or entity fails to
17 present to the inspection facility.”.

18 (b) POULTRY PRODUCTS.—Section 12 of the Poultry
19 Products Inspection Act (21 U.S.C. 461) is amended—

20 (1) by striking the section heading and all that
21 follows through “(a) Any person” and inserting the
22 following:

23 **“SEC. 12. PENALTIES.**

24 “(a) PENALTIES RELATING TO THE VIOLATION OF
25 CERTAIN SECTIONS.—

26 “(1) IN GENERAL.—Any person”; and

1 (2) in subsection (a) (as amended by paragraph
2 (1)), by adding at the end the following:

3 “(2) FAILURE TO PRESENT POULTRY PROD-
4 UCTS AT DESIGNATED INSPECTION FACILITIES.—
5 Each individual or entity that fails to present each
6 poultry product that is the subject of the importa-
7 tion of the individual or entity to an inspection facil-
8 ity approved by the Secretary shall be liable for a
9 civil penalty assessed by the Secretary in an amount
10 not to exceed \$25,000 for each poultry product that
11 the individual or entity fails to present to the inspec-
12 tion facility.”.

13 (c) EGG PRODUCTS.—Section 12 of the Egg Prod-
14 ucts Inspection Act (21 U.S.C. 1041) is amended—

15 (1) by striking the section heading and all that
16 follows through “(a) Any person” and inserting the
17 following:

18 **“SEC. 12. PENALTIES.**

19 “(a) PENALTIES RELATING TO THE VIOLATION OF
20 CERTAIN PROHIBITED ACTIONS.—

21 “(1) IN GENERAL.—Any person”; and

22 (2) in subsection (a) (as amended by paragraph
23 (1)), by adding at the end the following:

24 “(2) FAILURE TO PRESENT EGG PRODUCTS AT
25 DESIGNATED INSPECTION FACILITIES.—Each indi-

1 vidual or entity that fails to present each egg prod-
2 uct that is the subject of the importation of the indi-
3 vidual or entity to an inspection facility approved by
4 the Secretary shall be liable for a civil penalty as-
5 sessed by the Secretary in an amount not to exceed
6 \$25,000 for each egg product that the individual or
7 entity fails to present to the inspection facility.”.

8 **SEC. 7. CERTIFICATION OF FOOD SAFETY LABS; SUBMIS-**
9 **SION OF TEST RESULTS.**

10 (a) IN GENERAL.—Chapter IV of the Federal Food,
11 Drug, and Cosmetic Act (21 U.S.C. 341 et seq.), as
12 amended by section 4(b), is amended by adding at the end
13 the following:

14 **“SEC. 419. CERTIFICATION OF FOOD SAFETY LABS; SUBMIS-**
15 **SION OF TEST RESULTS.**

16 “(a) DEFINITION OF FOOD SAFETY LAB.—In this
17 section, the term ‘food safety lab’ means an establishment
18 that conducts testing, on behalf of an importer through
19 a contract or other arrangement, to ensure the safety of
20 articles of food.

21 “(b) CERTIFICATION REQUIREMENT.—

22 “(1) IN GENERAL.—A food safety lab shall sub-
23 mit to the Secretary an application for certification.
24 Upon review, the Secretary may grant or deny cer-
25 tification to the food safety lab.

1 “(2) CERTIFICATION STANDARDS.—The Sec-
2 retary shall establish criteria and methodologies for
3 the evaluation of applications for certification sub-
4 mitted under paragraph (1). Such criteria shall in-
5 clude the requirements that a food safety lab—

6 “(A) be accredited as being in compliance
7 with standards set by the International Organi-
8 zation for Standardization;

9 “(B) agree to permit the Secretary to con-
10 duct an inspection of the facilities of the food
11 safety lab and the procedures of such lab before
12 making a certification determination;

13 “(C) agree to permit the Secretary to con-
14 duct routine audits of the facilities of the food
15 safety lab to ensure ongoing compliance with
16 accreditation and certification requirements;

17 “(D) submit with such application a fee es-
18 tablished by the Secretary in an amount suffi-
19 cient to cover the cost of application review, in-
20 cluding inspection under subparagraph (B); and

21 “(E) agree to submit to the Secretary, in
22 accordance with the process established under
23 subsection (c), the results of tests conducted by
24 such food safety lab on behalf of an importer.

1 “(c) SUBMISSION OF TEST RESULTS.—The Sec-
2 retary shall establish a process by which a food safety lab
3 certified under this section shall submit to the Secretary
4 the results of all tests conducted by such food safety lab
5 on behalf of an importer.”.

6 (b) ENFORCEMENT.—Section 303(f) of the Federal
7 Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) is
8 amended—

9 (1) by redesignating paragraphs (5), (6), and
10 (7) as paragraphs (7), (8), and (9), respectively;

11 (2) by inserting after paragraph (4) the fol-
12 lowing:

13 “(5) An importer (as such term is used in section
14 419) shall be subject to a civil penalty in an amount not
15 to exceed \$25,000 if such importer knowingly engages in
16 the falsification of test results submitted to the Secretary
17 by a food safety lab certified under section 419.

18 “(6) A food safety lab certified under section 419
19 shall be subject to a civil penalty in an amount not to
20 exceed \$25,000 for knowingly submitting to the Secretary
21 false test results under section 419.”;

22 (3) in paragraph (2)(C), by striking “paragraph
23 (5)(A)” and inserting “paragraph (7)(A)”;

1 (4) in paragraph (7), as so redesignated, by
2 striking “or (4)” each place it appears and inserting
3 “(4), (5), or (6)”;

4 (5) in paragraph (8), by striking “paragraph
5 (5)(A)” and inserting “paragraph (7)(A)”; and

6 (6) in paragraph (9), as so redesignated, by
7 striking “paragraph (6)” each place it appears and
8 inserting “paragraph (8)”.

9 **SEC. 8. DATA SHARING.**

10 (a) DEPARTMENT OF AGRICULTURE MEMORANDA OF
11 UNDERSTANDING.—The Secretary shall ensure that the
12 agencies within the Department of Agriculture, including
13 the Food Safety and Inspection Service, the Agricultural
14 Research Service, and the Animal and Plant Health In-
15 spection Service, enter into a memorandum of under-
16 standing to ensure the timely and efficient sharing of all
17 information collected by such agencies related to
18 foodborne pathogens, contaminants, and illnesses.

19 (b) INTERAGENCY MEMORANDUM OF UNDER-
20 STANDING.—The Secretary, in collaboration with the Sec-
21 retary of Health and Human Services, shall enter into a
22 memorandum of understanding between the agencies with-
23 in the Department of Agriculture, including those de-
24 scribed in subsection (a), and the agencies within the De-
25 partment of Health and Human Services, including the

1 Centers for Disease Control and Prevention and the Food
2 and Drug Administration, to ensure the timely and effi-
3 cient sharing of all information collected by such agencies
4 related to foodborne pathogens, contaminants, and ill-
5 nesses.

6 **SEC. 9. PUBLIC NOTICE REGARDING RECALLED FOOD**
7 **PRODUCTS.**

8 (a) DEPARTMENT.—

9 (1) NEWS RELEASES REGARDING RECALLED
10 FOOD PRODUCTS.—

11 (A) IN GENERAL.—On the date on which
12 a human or animal food product regulated by
13 the Department is voluntarily recalled, the Sec-
14 retary shall provide to the public a news release
15 describing the human or animal food product.

16 (B) CONTENTS.—Each news release de-
17 scribed in subparagraph (A) shall contain a
18 comprehensive list of each human and animal
19 food product regulated by the Department that
20 is voluntarily recalled.

21 (2) WEBSITE.—The Secretary shall modify the
22 website of the Department to contain—

23 (A) not later than 1 business day after the
24 date on which a human or animal food product
25 regulated by the Department is voluntarily re-

1 called, a news release describing the human or
2 animal food product;

3 (B) if available, an image of each human
4 and animal food product that is the subject of
5 a news release described in subparagraph (A);
6 and

7 (C) not later than 90 days after the date
8 of enactment of this Act, a search engine
9 that—

10 (i) is consumer-friendly, as deter-
11 mined by the Secretary; and

12 (ii) provides a means by which an in-
13 dividual could locate each human and ani-
14 mal food product regulated by the Depart-
15 ment that is voluntarily recalled.

16 (3) STATE-ISSUED AND INDUSTRY PRESS RE-
17 LEASES.—To meet the requirement under paragraph
18 (1)(A), the Secretary—

19 (A) may provide to the public a press re-
20 lease issued by a State; and

21 (B) shall not provide to the public a press
22 release issued by a private industry entity in
23 lieu of a press release issued by the Federal
24 Government or a State.

1 (4) PROHIBITION ON DELEGATION OF DUTY.—

2 The Secretary may not delegate, by contract or oth-
3 erwise, the duty of the Secretary—

4 (A) to provide to the public a news release
5 under paragraph (1); and

6 (B) to make any required modification to
7 the website of the Department under paragraph
8 (2).

9 (b) ADMINISTRATION.—

10 (1) PRESS RELEASES REGARDING RECALLED
11 FOOD PRODUCTS.—

12 (A) IN GENERAL.—On the date on which
13 a human or animal food product regulated by
14 the Administration is voluntarily recalled, the
15 Secretary of Health and Human Services shall
16 provide to the public a press release describing
17 the human or animal food product.

18 (B) CONTENTS.—Each press release de-
19 scribed in subparagraph (A) shall contain a
20 comprehensive list of each human and animal
21 food product regulated by the Administration
22 that is voluntarily recalled.

23 (2) WEBSITE.—The Secretary of Health and
24 Human Services shall modify the website of the Ad-
25 ministration to contain—

1 (A) not later than 1 business day after the
2 date on which a human or animal food product
3 regulated by the Administration is voluntarily
4 recalled a press release describing the human or
5 animal food product;

6 (B) if available, an image of each human
7 and animal food product that is the subject of
8 a press release described in subparagraph (A);
9 and

10 (C) not later than 90 days after the date
11 of enactment of this Act, a search engine
12 that—

13 (i) is consumer-friendly, as deter-
14 mined by the Secretary of Health and
15 Human Services; and

16 (ii) provides a means by which an in-
17 dividual could locate each human and ani-
18 mal food product regulated by the Admin-
19 istration that is voluntarily recalled.

20 (3) STATE-ISSUED AND INDUSTRY PRESS RE-
21 LEASES.—For purposes of meeting the requirement
22 under paragraph (1)(A), the Secretary of Health
23 and Human Services—

24 (A) may provide to the public a press re-
25 lease issued by a State; and

1 (B) may not provide to the public a press
 2 release issued by a private industry entity in
 3 lieu of a press release issued by a State or the
 4 Federal Government.

5 (4) PROHIBITION ON DELEGATION OF DUTY.—
 6 The Secretary of Health and Human Services may
 7 not delegate, by contract or otherwise, the duty of
 8 the Secretary of Health and Human Services—

9 (A) to provide to the public a press release
 10 under paragraph (1); and

11 (B) to make any required modification to
 12 the website of the Administration under para-
 13 graph (2).

14 **SEC. 10. FOODBORNE ILLNESS EDUCATION AND OUTREACH**
 15 **COMPETITIVE GRANTS PROGRAM.**

16 Title IV of the Agricultural Research, Extension, and
 17 Education Reform Act of 1998 is amended by adding after
 18 section 412 (7 U.S.C. 7632) the following:

19 **“SEC. 413. FOODBORNE ILLNESS EDUCATION AND OUT-**
 20 **REACH COMPETITIVE GRANTS PROGRAM.**

21 “(a) DEFINITIONS.—In this section:

22 “(1) ADMINISTRATOR.—The term ‘Adminis-
 23 trator’ means the Administrator of the Food Safety
 24 and Inspection Service.

1 “(2) COMMISSIONER.—The term ‘Commis-
2 sioner’ means the Commissioner of Food and Drugs.

3 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
4 tity’ means—

5 “(A) the government of a State (including
6 a political subdivision of a State);

7 “(B) an educational institution;

8 “(C) a private for-profit organization;

9 “(D) a private non-profit organization; and

10 “(E) any other appropriate individual or
11 entity, as determined by the Secretary.

12 “(b) ESTABLISHMENT.—The Secretary (acting
13 through the Administrator of the Cooperative State Re-
14 search, Education, and Extension Service), in consultation
15 with the Administrator and the Commissioner, shall estab-
16 lish and administer a competitive grant program to pro-
17 vide grants to eligible entities to enable the eligible entities
18 to carry out educational outreach partnerships and pro-
19 grams to provide to health providers, patients, and con-
20 sumers information to enable those individuals and enti-
21 ties—

22 “(1) to recognize—

23 “(A) foodborne illness as a serious public
24 health issue; and

1 “(B) each symptom of foodborne illness to
2 ensure the proper treatment of foodborne ill-
3 ness;

4 “(2) to understand—

5 “(A) the potential for contamination of
6 human and animal food products during each
7 phase of the production of human and animal
8 food products; and

9 “(B) the importance of using techniques
10 that help ensure the safe handling of human
11 and animal food products; and

12 “(3) to assess the risk of foodborne illness to
13 ensure the proper selection by consumers of human
14 and animal food products.

15 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
16 is authorized to be appropriated to carry out this section
17 \$3,500,000 for fiscal year 2009 and each fiscal year there-
18 after.”.

○