

119TH CONGRESS
2D SESSION

S. 4974

To amend the Federal Food, Drug, and Cosmetic Act with respect to food safety.

IN THE SENATE OF THE UNITED STATES

Mr. TUBERVILLE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to food safety.

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.**

4 This Act may be cited as the “Making America’s
5 Food Safer Act”.

6 **SEC. 2. EXPANSION OF THE ACCREDITED THIRD-PARTY**
7 **CERTIFICATION PROGRAM.**

8 (a) REVISED DEFINITIONS.—Section 808(a) of the
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
10 384d(a)) is amended—

1 (1) by striking paragraph (6) and inserting the
2 following:

3 “(6) ELIGIBLE ENTITY.—The term ‘eligible en-
4 tity’ means a foreign or domestic entity, including a
5 foreign or domestic facility subject to registration
6 under section 415, in the food supply chain that
7 chooses to be audited by an accredited third-party
8 auditor or the audit agent of such accredited third-
9 party auditor.”; and

10 (2) in paragraph (7)(B)—

11 (A) in clause (i), by striking “; or” and in-
12 serting a semicolon;

13 (B) in clause (ii), by striking the period
14 and inserting “; or”; and

15 (C) by adding at the end the following:

16 “(iii) whether a facility is eligible to
17 receive a food or facility certification for
18 other purposes described in subsection
19 (c)(2)(B)(ii).”.

20 (b) REMOVING LIMITATIONS ON THE USE OF CER-
21 TIFICATIONS.—Section 808(c)(2) of the Federal Food,
22 Drug, and Cosmetic Act (21 U.S.C. 384d(c)(2)) is amend-
23 ed—

24 (1) in subparagraph (A), by striking “food cer-
25 tification, described in section 801(q), or facility cer-

1 tification under section 806(a), as appropriate, to
2 accompany each food shipment for import into the
3 United States from an eligible entity” and inserting
4 “food certification or facility certification for pur-
5 poses described in subparagraph (B), as appro-
6 priate,”; and

7 (2) by striking subparagraph (B) and inserting
8 the following:

9 “(B) PURPOSE OF CERTIFICATION.—

10 “(i) IN GENERAL.—The Secretary
11 shall use certification provided by accred-
12 ited third-party auditors to—

13 “(I) determine, in conjunction
14 with any other assurances the Sec-
15 retary may require under section
16 801(q), whether a food satisfies the
17 requirements of such section; and

18 “(II) determine whether a facility
19 is eligible to be a facility from which
20 food may be offered for import under
21 the voluntary qualified importer pro-
22 gram under section 806.

23 “(ii) OTHER CONSIDERATIONS.—The
24 Secretary may consider the results of regu-
25 latory audits and food or facility certifi-

1 cations provided by accredited third-party
2 auditors under this section in analyzing
3 risks and prioritizing inspections and other
4 regulatory activities, as appropriate for the
5 protection of public health.”.

6 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
7 Section 808 of the Federal Food, Drug, and Cosmetic Act
8 (21 U.S.C. 384d) is amended—

9 (1) in subsection (b)(1), by amending subpara-
10 graph (A) to read as follows:

11 “(A) RECOGNITION OF ACCREDITATION
12 BODIES.—Not later than 2 years after the date
13 of enactment of the Making America’s Food
14 Safer Act, the Secretary shall establish a sys-
15 tem for the recognition of accreditation bodies
16 that accredit third-party auditors to certify that
17 eligible entities meet the applicable require-
18 ments of this section.”;

19 (2) in subsection (c)—

20 (A) in paragraphs (1) and (2), by striking
21 “(or, in the case of direct accreditation under
22 subsection (b)(1)(A)(ii), the Secretary)” each
23 place it appears;

24 (B) in paragraph (2)(C)(i), by striking
25 “food certification under section 801(q) or a fa-

1 cility certification described under this subpara-
2 graph (B)” and inserting “food certification or
3 a facility certification described in this section”;

4 (C) in paragraph (6)(A)(i), by striking
5 “food certified under section 801(q) or from a
6 facility certified under paragraph (2)(B)” and
7 inserting “food or facility certified under this
8 section”;

9 (D) in paragraph (6)(C), by striking “re-
10 quirements under section 801(q), of certifying
11 the food, or the requirements under paragraph
12 (2)(B) of certifying the entity” and inserting
13 “requirements for certifying the food or facility
14 under this section”; and

15 (E) in paragraph (7)(B)(i), by striking “,
16 through direct accreditation under subsection
17 (b)(1)(A)(ii) or”; and
18 (3) in subsection (d)—

19 (A) in paragraph (1), by striking “or”; and

20 (B) at the end of paragraph (2), by strik-
21 ing the period and inserting “; or”; and

22 (C) by adding at the end the following new
23 paragraph:

24 “(3) otherwise seeks certification for purposes
25 of subsection (c)(2)(B)(ii).”.

1 **SEC. 3. SHARING FOOD SAFETY INFORMATION WITH STATE,**
2 **LOCAL, TRIBAL, AND TERRITORIAL AUTHORI-**
3 **TIES.**

4 (a) IN GENERAL.—Section 708 of the Federal Food,
5 Drug, and Cosmetic Act (21 U.S.C. 379) is amended by
6 adding at the end the following:

7 “(d) SHARING FOOD SAFETY INFORMATION WITH
8 STATE, LOCAL, TRIBAL, AND TERRITORIAL AUTHORI-
9 TIES.—

10 “(1) AUTHORIZATION.—Notwithstanding sec-
11 tion 301(j) and any other law, regulation, or policy,
12 the Secretary may share, with a State, local, Tribal,
13 or territorial authority with counterpart functions
14 related to the protection of public health, unredacted
15 information in the possession of the Food and Drug
16 Administration relating to any of the following:

17 “(A) Foodborne illness surveillance data.

18 “(B) Laboratory sampling testing informa-
19 tion.

20 “(C) Inspectional information and results.

21 “(D) Distribution lists for recalls and out-
22 breaks.

23 “(E) Consumer complaints.

24 “(F) Any other information the Secretary
25 determines will assist such authority in pro-
26 tecting the public.

1 “(2) TIMING.—The Secretary may share infor-
2 mation pursuant to paragraph (1) as soon as is rea-
3 sonably practicable.

4 “(3) LIMITATION ON FURTHER DISCLOSURE.—
5 A State, local, Tribal, or Territorial authority in re-
6 ceipt of information provided by the Secretary under
7 this subsection shall not further disclose such infor-
8 mation without permission of the Food and Drug
9 Administration unless such authority determines
10 that disclosure of such information is necessary to
11 contain a foodborne illness outbreak, carry out a re-
12 call, or carry out other State enforcement activities.

13 “(4) EFFECT OF SUBSECTION.—Nothing in this
14 subsection affects the authority of the Secretary to
15 enter into any written agreement authorized by
16 other provisions of law to share confidential informa-
17 tion.”.

18 (b) CONFORMING AMENDMENT.—The first sentence
19 of section 301(j) of the Federal Food, Drug, and Cosmetic
20 Act (21 U.S.C. 331(j)) is amended by striking the second
21 period at the end.

22 **SEC. 4. DESTRUCTION OF CERTAIN REFUSED ARTICLES.**

23 Section 801 of the Federal Food, Drug, and Cosmetic
24 Act (21 U.S.C. 381) is amended by adding at the end the
25 following:

1 “(v) ORDER TO DESTROY CERTAIN REFUSED ARTI-
2 CLES.—For any article that has been refused admission
3 and is in violation of this Act, the Secretary of Health
4 and Human Services may issue to the owner or consignee
5 an order that the article shall be destroyed, without the
6 opportunity to export, if the Secretary of Health and
7 Human Services finds that the article presents a signifi-
8 cant public health concern. Before issuing an order to de-
9 stroy an article under this subsection, the Secretary of
10 Health and Human Services shall issue regulations pro-
11 viding for notice and an opportunity to appear before the
12 Secretary of Health and Human Services and introduce
13 testimony on the order to destroy. The regulations shall
14 provide that prior to the destruction of any such article,
15 appropriate due process is available to the owner or con-
16 signee seeking to challenge the Secretary of Health and
17 Human Service’s decision to order destruction. Such proc-
18 ess may be combined with the notice and opportunity to
19 appear before the Secretary and introduce testimony on
20 the refusal as long as appropriate notice is provided to
21 the owner or consignee about the potential order to de-
22 stroy. The Secretary of the Treasury shall cause the owner
23 or consignee to complete the destruction of any such arti-
24 cle within 90 days of the order for destruction and the

- 1 owner or consignee shall be responsible for the costs of
- 2 such destruction.”.

