



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-D-1398]

Mitigation Strategies to Protect Food Against Intentional Adulteration; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a supplemental draft guidance for industry entitled “Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.” This supplemental draft guidance document, when finalized, will help food facilities that manufacture, process, pack, or hold food, and that are required to register under the Federal Food, Drug, and Cosmetic Act (FD&C Act) comply with the requirements of our regulation entitled “Mitigation Strategies to Protect Food Against Intentional Adulteration.”

DATES: Submit either electronic or written comments on the draft guidance by [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2018-D-1398 for "Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for

Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the

prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ryan Newkirk, Center for Food Safety and Applied Nutrition (HFS-005), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-3712, [ryan.newkirk@fda.hhs.gov](mailto:ryan.newkirk@fda.hhs.gov).

SUPPLEMENTARY INFORMATION:

#### I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111-353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. FSMA enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur.

FSMA added to the FD&C Act several new sections that reference intentional adulteration. For example, section 418 of the FD&C Act (21 U.S.C. 350g) addresses intentional adulteration in the context of facilities that manufacture, process, pack, or hold food, and that are required to register under section 415 (21 U.S.C. 350d). Section 420 of the FD&C Act (21 U.S.C. 350i) addresses intentional adulteration in the context of high-risk foods and exempts farms except for farms that produce milk.

We are announcing the availability of a supplemental draft guidance for industry entitled “Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.” This multi-chapter supplemental draft guidance for industry is intended to help food facilities required to comply develop and implement some of the components of a food defense plan, and meet other requirements under 21 CFR part 121. We are announcing the availability of the following chapters and appendices:

- Chapter 5--Mitigation Strategies Management Components: Food Defense Corrective Actions
- Chapter 6--Mitigation Strategies Management Components: Food Defense Verification
- Chapter 7--Reanalysis
- Chapter 9--Records
- Appendix 2--Mitigation Strategies in the Food Defense Mitigation Strategies Database
- Appendix 3--Determination of Status as a Very Small Business or Small Business Under Part 121: Mitigation Strategies to Protect Food Against Intentional Adulteration

## II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on food defense measures against intentional adulteration for the regulation “Mitigation Strategies to Protect Food Against Intentional Adulteration.” It does not

establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

### III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 121 have been approved under OMB control number 0910-0812.

### IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/regulatory-information/search-fda-guidance-documents> or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: February 10, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

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