

1                   (E) 5,000 staff members in fiscal year 2014.

2                   (2) *FIELD STAFF FOR FOOD DEFENSE*.—The goal  
3                   under paragraph (1) shall include an increase of 150  
4                   employees by fiscal year 2011 to—

5                   (A) provide additional detection of and re-  
6                   sponse to food defense threats; and

7                   (B) detect, track, and remove smuggled food  
8                   (as defined in section 310) from commerce.

9   **SEC. 402. WHISTLEBLOWER PROTECTIONS.**

10           Chapter X of the Federal Food, Drug, and Cosmetic  
11   Act (21 U.S.C. 391 et seq.), as amended by section 210,  
12   is further amended by adding at the end the following:

13   **“SEC. 1012. WHISTLEBLOWER PROTECTIONS.**

14           “(a) *IN GENERAL*.—No entity engaged in the manu-  
15   facture, processing, packing, transporting, distribution, re-  
16   ception, holding, or importation of food may discharge an  
17   employee or otherwise discriminate against an employee  
18   with respect to compensation, terms, conditions, or privi-  
19   leges of employment because the employee, whether at the  
20   employee’s initiative or in the ordinary course of the em-  
21   ployee’s duties (or any person acting pursuant to a request  
22   of the employee)—

23                   “(1) provided, caused to be provided, or is about  
24                   to provide or cause to be provided to the employer, the  
25                   Federal Government, or the attorney general of a

1       *State information relating to any violation of, or any*  
2       *act or omission the employee reasonably believes to be*  
3       *a violation of any provision of this Act or any order,*  
4       *rule, regulation, standard, or ban under this Act, or*  
5       *any order, rule, regulation, standard, or ban under*  
6       *this Act;*

7               “(2) *testified or is about to testify in a pro-*  
8       *ceeding concerning such violation;*

9               “(3) *assisted or participated or is about to assist*  
10       *or participate in such a proceeding; or*

11               “(4) *objected to, or refused to participate in, any*  
12       *activity, policy, practice, or assigned task that the*  
13       *employee (or other such person) reasonably believed to*  
14       *be in violation of any provision of this Act, or any*  
15       *order, rule, regulation, standard, or ban under this*  
16       *Act.*

17       “(b) *PROCESS.—*

18               “(1) *IN GENERAL.—A person who believes that*  
19       *he or she has been discharged or otherwise discrimi-*  
20       *nated against by any person in violation of sub-*  
21       *section (a) may, not later than 180 days after the*  
22       *date on which such violation occurs, file (or have any*  
23       *person file on his or her behalf) a complaint with the*  
24       *Secretary of Labor (referred to in this section as the*  
25       *‘Secretary’) alleging such discharge or discrimination*

1 *and identifying the person responsible for such act.*  
2 *Upon receipt of such a complaint, the Secretary shall*  
3 *notify, in writing, the person named in the complaint*  
4 *of the filing of the complaint, of the allegations con-*  
5 *tained in the complaint, of the substance of evidence*  
6 *supporting the complaint, and of the opportunities*  
7 *that will be afforded to such person under paragraph*  
8 *(2).*

9 “(2) *INVESTIGATION.—*

10 “(A) *IN GENERAL.—Not later than 60 days*  
11 *after the date of receipt of a complaint filed*  
12 *under paragraph (1) and after affording the*  
13 *complainant and the person named in the com-*  
14 *plaint an opportunity to submit to the Secretary*  
15 *a written response to the complaint and an op-*  
16 *portunity to meet with a representative of the*  
17 *Secretary to present statements from witnesses,*  
18 *the Secretary shall initiate an investigation and*  
19 *determine whether there is reasonable cause to*  
20 *believe that the complaint has merit and notify,*  
21 *in writing, the complainant and the person al-*  
22 *leged to have committed a violation of subsection*  
23 *(a) of the Secretary’s findings.*

24 “(B) *REASONABLE CAUSE FOUND; PRELIMI-*  
25 *NARY ORDER.—If the Secretary concludes that*

1           *there is reasonable cause to believe that a viola-*  
2           *tion of subsection (a) has occurred, the Secretary*  
3           *shall accompany the Secretary's findings with a*  
4           *preliminary order providing the relief prescribed*  
5           *by paragraph (3)(B). Not later than 30 days*  
6           *after the date of notification of findings under*  
7           *this paragraph, the person alleged to have com-*  
8           *mitted the violation or the complainant may file*  
9           *objections to the findings or preliminary order,*  
10          *or both, and request a hearing on the record. The*  
11          *filing of such objections shall not operate to stay*  
12          *any reinstatement remedy contained in the pre-*  
13          *liminary order. Any such hearing shall be con-*  
14          *ducted expeditiously. If a hearing is not re-*  
15          *quested in such 30-day period, the preliminary*  
16          *order shall be deemed a final order that is not*  
17          *subject to judicial review.*

18                   “(C) *DISMISSAL OF COMPLAINT.—*

19                           “(i) *STANDARD FOR COMPLAINANT.—*

20                   *The Secretary shall dismiss a complaint*  
21                   *filed under this subsection and shall not*  
22                   *conduct an investigation otherwise required*  
23                   *under subparagraph (A) unless the com-*  
24                   *plainant makes a prima facie showing that*  
25                   *any behavior described in paragraphs (1)*

1 through (4) of subsection (a) was a contrib-  
2 uting factor in the unfavorable personnel  
3 action alleged in the complaint.

4 “(ii) *STANDARD FOR EMPLOYER.*—Not-  
5 withstanding a finding by the Secretary  
6 that the complainant has made the showing  
7 required under clause (i), no investigation  
8 otherwise required under subparagraph (A)  
9 shall be conducted if the employer dem-  
10 onstrates, by clear and convincing evidence,  
11 that the employer would have taken the  
12 same unfavorable personnel action in the  
13 absence of that behavior.

14 “(iii) *VIOLATION STANDARD.*—The Sec-  
15 retary may determine that a violation of  
16 subsection (a) has occurred only if the com-  
17 plainant demonstrates that any behavior  
18 described in paragraphs (1) through (4) of  
19 subsection (a) was a contributing factor in  
20 the unfavorable personnel action alleged in  
21 the complaint.

22 “(iv) *RELIEF STANDARD.*—Relief may  
23 not be ordered under subparagraph (A) if  
24 the employer demonstrates by clear and con-  
25 vincing evidence that the employer would

1           *have taken the same unfavorable personnel*  
2           *action in the absence of that behavior.*

3           “(3) *FINAL ORDER.*—

4           “(A) *IN GENERAL.*—*Not later than 120*  
5           *days after the date of conclusion of any hearing*  
6           *under paragraph (2), the Secretary shall issue a*  
7           *final order providing the relief prescribed by this*  
8           *paragraph or denying the complaint. At any*  
9           *time before issuance of a final order, a pro-*  
10          *ceeding under this subsection may be terminated*  
11          *on the basis of a settlement agreement entered*  
12          *into by the Secretary, the complainant, and the*  
13          *person alleged to have committed the violation.*

14          “(B) *CONTENT OF ORDER.*—*If, in response*  
15          *to a complaint filed under paragraph (1), the*  
16          *Secretary determines that a violation of sub-*  
17          *section (a) has occurred, the Secretary shall*  
18          *order the person who committed such violation—*

19                  “(i) *to take affirmative action to abate*  
20                  *the violation;*

21                  “(ii) *to reinstate the complainant to*  
22                  *his or her former position together with*  
23                  *compensation (including back pay) and re-*  
24                  *store the terms, conditions, and privileges*  
25                  *associated with his or her employment; and*

1                   “(iii) to provide compensatory dam-  
2                   ages to the complainant.

3                   “(C) *PENALTY.*—If such an order is issued  
4                   under this paragraph, the Secretary, at the re-  
5                   quest of the complainant, shall assess against the  
6                   person against whom the order is issued a sum  
7                   equal to the aggregate amount of all costs and  
8                   expenses (including attorneys’ and expert witness  
9                   fees) reasonably incurred, as determined by the  
10                  Secretary, by the complainant for, or in connec-  
11                  tion with, the bringing of the complaint upon  
12                  which the order was issued.

13                  “(D) *BAD FAITH CLAIM.*—If the Secretary  
14                  finds that a complaint under paragraph (1) is  
15                  frivolous or has been brought in bad faith, the  
16                  Secretary may award to the prevailing employer  
17                  a reasonable attorneys’ fee, not exceeding \$1,000,  
18                  to be paid by the complainant.

19                  “(4) *ACTION IN COURT.*—

20                  “(A) *IN GENERAL.*—If the Secretary has not  
21                  issued a final decision within 210 days after the  
22                  filing of the complaint, or within 90 days after  
23                  receiving a written determination, the complain-  
24                  ant may bring an action at law or equity for de  
25                  novo review in the appropriate district court of

1           *the United States with jurisdiction, which shall*  
2           *have jurisdiction over such an action without re-*  
3           *gard to the amount in controversy, and which*  
4           *action shall, at the request of either party to such*  
5           *action, be tried by the court with a jury. The*  
6           *proceedings shall be governed by the same legal*  
7           *burdens of proof specified in paragraph (2)(C).*

8           “(B) *RELIEF.*—*The court shall have juris-*  
9           *isdiction to grant all relief necessary to make the*  
10           *employee whole, including injunctive relief and*  
11           *compensatory damages, including—*

12                   “(i) *reinstatement with the same se-*  
13                   *niority status that the employee would have*  
14                   *had, but for the discharge or discrimina-*  
15                   *tion;*

16                   “(ii) *the amount of back pay, with in-*  
17                   *terest; and*

18                   “(iii) *compensation for any special*  
19                   *damages sustained as a result of the dis-*  
20                   *charge or discrimination, including litiga-*  
21                   *tion costs, expert witness fees, and reason-*  
22                   *able attorney’s fees.*

23           “(5) *REVIEW.*—

24                   “(A) *IN GENERAL.*—*Unless the complainant*  
25           *brings an action under paragraph (4), any per-*



1            *son adversely affected or aggrieved by a final*  
2            *order issued under paragraph (3) may obtain re-*  
3            *view of the order in the United States Court of*  
4            *Appeals for the circuit in which the violation,*  
5            *with respect to which the order was issued, alleg-*  
6            *edly occurred or the circuit in which the com-*  
7            *plainant resided on the date of such violation.*  
8            *The petition for review must be filed not later*  
9            *than 60 days after the date of the issuance of the*  
10           *final order of the Secretary. Review shall con-*  
11           *form to chapter 7 of title 5, United States Code.*  
12           *The commencement of proceedings under this*  
13           *subparagraph shall not, unless ordered by the*  
14           *court, operate as a stay of the order.*

15           “(B) *NO JUDICIAL REVIEW.*—*An order of*  
16           *the Secretary with respect to which review could*  
17           *have been obtained under subparagraph (A) shall*  
18           *not be subject to judicial review in any criminal*  
19           *or other civil proceeding.*

20           “(6) *FAILURE TO COMPLY WITH ORDER.*—*When-*  
21           *ever any person has failed to comply with an order*  
22           *issued under paragraph (3), the Secretary may file a*  
23           *civil action in the United States district court for the*  
24           *district in which the violation was found to occur, or*  
25           *in the United States district court for the District of*

1        *Columbia, to enforce such order. In actions brought*  
2        *under this paragraph, the district courts shall have*  
3        *jurisdiction to grant all appropriate relief including,*  
4        *but not limited to, injunctive relief and compensatory*  
5        *damages.*

6            “(7) *CIVIL ACTION TO REQUIRE COMPLIANCE.—*

7            “(A) *IN GENERAL.—A person on whose be-*  
8        *half an order was issued under paragraph (3)*  
9        *may commence a civil action against the person*  
10       *to whom such order was issued to require com-*  
11       *pliance with such order. The appropriate United*  
12       *States district court shall have jurisdiction,*  
13       *without regard to the amount in controversy or*  
14       *the citizenship of the parties, to enforce such*  
15       *order.*

16           “(B) *AWARD.—The court, in issuing any*  
17       *final order under this paragraph, may award*  
18       *costs of litigation (including reasonable attor-*  
19       *neys’ and expert witness fees) to any party*  
20       *whenever the court determines such award is ap-*  
21       *propriate.*

22           “(c) *EFFECT OF SECTION.—*

23           “(1) *OTHER LAWS.—Nothing in this section pre-*  
24       *empts or diminishes any other safeguards against dis-*  
25       *crimination, demotion, discharge, suspension, threats,*

1        *harassment, reprimand, retaliation, or any other*  
 2        *manner of discrimination provided by Federal or*  
 3        *State law.*

4            “(2) *RIGHTS OF EMPLOYEES.*—*Nothing in this*  
 5        *section shall be construed to diminish the rights,*  
 6        *privileges, or remedies of any employee under any*  
 7        *Federal or State law or under any collective bar-*  
 8        *gaining agreement. The rights and remedies in this*  
 9        *section may not be waived by any agreement, policy,*  
 10       *form, or condition of employment.*

11          “(d) *ENFORCEMENT.*—*Any nondiscretionary duty im-*  
 12       *posed by this section shall be enforceable in a mandamus*  
 13       *proceeding brought under section 1361 of title 28, United*  
 14       *States Code.*

15          “(e) *LIMITATION.*—*Subsection (a) shall not apply with*  
 16       *respect to an employee of an entity engaged in the manufac-*  
 17       *ture, processing, packing, transporting, distribution, recep-*  
 18       *tion, holding, or importation of food who, acting without*  
 19       *direction from such entity (or such entity’s agent), delib-*  
 20       *erately causes a violation of any requirement relating to*  
 21       *any violation or alleged violation of any order, rule, regula-*  
 22       *tion, standard, or ban under this Act.”.*

23        **SEC. 403. JURISDICTION; AUTHORITIES.**

24          *Nothing in this Act, or an amendment made by this*  
 25       *Act, shall be construed to—*