

FOOD DEFENSE FROM A LEGAL PERSPECTIVE

ADT FOOD STRATEGY EXCHANGE

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Food Defense-Legal Overview

- Describe the Research/Review Process
- Organize Food Defense legislation, regulations & “standards”
- Help you get make sense of the scope & value of Food Defense policies

Food Defense-Definition

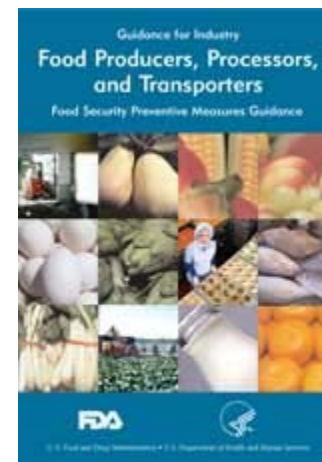
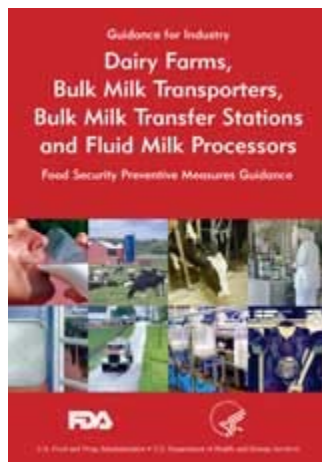
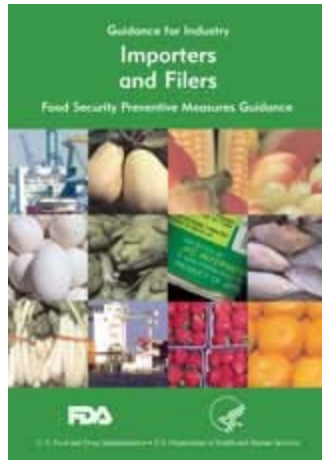
“the protection of food products from the intentional adulteration by biological, chemical, physical or radiological agents. It addresses additional concerns including physical, personnel and operational security.”

Source: [http://www.fsis.usda.gov/Food Defense & Emergency Response/index.asp](http://www.fsis.usda.gov/Food_Defense_&_Emergency_Response/index.asp)
on July 3, 2009

Food Defense- Research

- Deliverables: Review Critique Govt. & NGO
- Scope: Over 100 Sources, including:
 - USDA: 22 Sources
 - FDA: 11 Sources
 - DHS: 6 Sources
 - EU: 19 Sources
 - WHO: 12 Sources
 - Canada: 8 Sources
 - NGO's: Numerous...
- Goal: Two fold-
 1. User Friendly (Matrix- "C" & "VP" Level)
 2. Comprehensive (Charts & References)

FDA Food Defense Manuals



USDA Food Defense Manuals



U.S. Department of Agriculture
Food Safety and Inspection Service



U.S. Department of Agriculture
Food Safety and Inspection Service

**GUIDE TO
DEVELOPING A FOOD DEFENSE PLAN
FOR
WAREHOUSE AND DISTRIBUTION CENTERS**

JANUARY 2008

**BY COMPLETING PAGE 11 IN THIS GUIDE, WAREHOUSE
AND DISTRIBUTION CENTERS WILL HAVE A FOOD
DEFENSE PLAN FOR THEIR OPERATION**

**DEVELOPING A FOOD DEFENSE PLAN
FOR
MEAT AND POULTRY
SLAUGHTER AND PROCESSING PLANTS**

**JANUARY 2007
(UPDATED JUNE 2008)**

**BY COMPLETING PAGES 13 THROUGH 16 IN THIS GUIDE, SLAUGHTER
AND PROCESSING PLANTS WILL HAVE A FOOD DEFENSE PLAN FOR
THEIR OPERATION**

Operative Questions & Observations

- Laws/Regulations: Legislation...
- Directives: Presidential/Regulatory (FSIS)...
 - Legal power?
 - Food Defense Plan (mandatory?)
- Guidelines: Vast majority are “guidelines”
 - Clear Government involvement
 - Guideline language often very similar
 - Some view these as “discretionary”
 - Are guidelines actually “discretionary”?

LAWS/REGULATIONS

1. FDA Registration
2. Health & Safety Standards
3. Establish & Maintenance of Records
--1 Up/1 Down
4. Prior Notice of Shipment
5. Regulate Agents & Toxics
6. Product Recall/Traceability
7. Administrative Detention & Quarantine

DIRECTIVES

- Draft Plan
- Present Plan
- Protect Plan
- Implement Plan
- Test/Inspect Plan
- Assess Plan
- Maintain Plan

GUIDELINES

- Security Methods
- Functional Buckets:
 1. HR/Personnel
 2. Training/Awareness
 3. Physical Security
 4. Access Control
 5. Key/Card Control
 6. Computer
 7. Utilities
 8. Process/Manufacturing
 9. Sanitation
 10. Environmental/ Hazardous
 11. Mail (security + handling)
 12. Storage/Inventory
 13. Shipping & Receiving
 14. Customer Service/Logistics
 15. Product Tampering
 16. Procurement
 17. Poultry/Cattle

REFERENCE MATERIALS

U.S. GOVERNMENT ENTITIES

I. LAWS & EXECUTIVE ORDERS:

1. *Homeland Security Presidential Directive (HSPD-9)*. Accessed on July 8, 2008 at <http://www.whitehouse.gov/news/releases/2004/02/text/20040203-2.html>
2. Executive Order 13416- *Strengthening Surface Transportation Security*, Federal Register, Vol. 71, No. 235 (December 7, 2006).
3. *Public Health Security & Bioterrorism Preparedness & Response Act of 2002* (Public Law 107-188) (June 12, 2002)

II. DEPARTMENT OF HOMELAND SECURITY (DHS):

4. Department of Homeland Security (DHS) Custom-Trade Partnership Against Terrorism (C-TPAT) @ http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/security_criteria/criteria_importers/ctpat_importer_criteria.xml
5. Department of Homeland Security (DHS) *Procedural Manual- Safeguarding Information Designated as Chemical-Terrorism Vulnerability Information* (CVI June 2007)
6. Department of Homeland Security (DHS) *Advisory System- Food & Agricultural Sector Guidance Template* (Pre-Decisional Draft April 2008)
7. Department of Homeland Security (DHS) *Fact Sheet: National Incident Management System* (2004)

III. UNITED STATES DEPARTMENT OF AGRICULTURE (USDA):

8. United States Department of Agriculture (USDA) FSIS Directive # 5420.1 (Revision 4) *Homeland Security Threat Condition Response: Food Defense Verification Procedures* (January 7, 2008)
9. United States Department of Agriculture (USDA) FSIS Directive # 5420.2 (Revision 1) *Homeland Security Threat Condition Response: Food Defense Verification Procedures* (January 26, 2005)
10. United States Department of Agriculture (USDA) FSIS Directive # 47.08 *Food Defense Survey* (July 14, 2008)

Charts (Functional Buckets)

Process

- Designed to “drill down” from the Matrix
- Cross citations from the Matrix
- Citations from the Reference
- Language from the Reference
- Highlighted Language from Firm documents

Value

- Quickly catalogue & locate/cite resource
- “Neutralize” the process
- Validated document to support policy
- Facilitated (actually wrote) policy & procedures

Security Function/ Method	Matrix Cite	Reference Original Source	Guideline Language
Perimeter Controls & Checks	8 5 11 12 14 6 9 4 3 14 18 20 20 13 14 21	III-26 (p. 5/9) III-22 (p. 15) IV-30 (sec. IV) IV-31 (sec. IV) VI-40 (app.1-1) III-23 (p. 3) III-27 (Sec. 1/3) III-21 (Sec. 1/3) III-11 (p. 3) VI-40 (app. 1-2) X-57 (sec. 2.1) XII-62 (sec. III) XII-61 (p. 2) II-6 (p. 11) VI-40 (app.1-6) XIII-64 (2-7)	<p>Fence facilities where appropriate. Maintain fences in good repair. Close and secure entrance and exit gates when not in use. Secured perimeters to restrict access to the facility and related outbuildings. Clearly define the outer boundary of the facility, within which access should be limited or controlled. Control access to this restricted area, by use of guards, access cards, etc.</p> <p>Areas adjacent to the fence should be clear of trees, shrubs, boxes, pallets, debris, or any other material that an intruder might use to gain access to the interior. Maintain clear zones of at least three to five feet (90-150 cm) on both sides of the fence.</p> <p>Regularly inspect perimeter fencing for gaps, tampering, and accumulation of materials in clear zones, growth of vegetation, and any indication of intruders stepping on barbed wire. Locations that shut down periodically with no personnel present will have an intrusion system that is monitored at a local site (gate house) as well as an off-site national monitoring location.</p>
	6 14 18 8 13 13 21	III-23 (p. 3) VI-40 (app.1-1) X-57 (sec. 2.8) III-26 (p. 5/6) II-6 (p. 11) II-4 (p. 4) XIII-64 (2-7)	<p>Integrity of the perimeter should be monitored for signs of suspicious activity or unauthorized entry. Periodically conduct random security checks along the perimeter for signs of suspicious activity or unauthorized entry.</p> <p>Request local law enforcement to routinely conduct patrols along your facility's perimeter.</p> <p>Perimeter fencing should enclose the areas around cargo handling and storage facilities. Interior fencing within a cargo handling structure should be used to segregate domestic, international, high value, and hazardous cargo. All fencing must be regularly inspected for integrity and damage.</p> <p>If a chain link fence surrounds the perimeter, it should consist of nine gauge wire with a two-inch mesh (50 mm). The height of the fence will depend on the projected risk to the area, but seven feet (2.4 meters) should be considered a minimum. Three-strand barb wire placed on a forty-five degree angle away from the interior is recommended.</p>





Security Function/ Method	Matrix Cite	Reference Original Source	Guideline Language
Signage	6 8 2 21	III-23 (p. 3) III-26 (p. 7) II-6 (p. 11) XIII-64 (2-7)	Post “No Trespassing” signs along the perimeter of the property and “Do Not Enter” signs outside of all buildings. Post signs that direct visitors to a central sign-in area. Periodically check the signs, and replace or repair them, as necessary. Provide appropriate signage to identify access points and areas with restricted access. As permitted by local ordinances, place Private Property or No Trespassing signs at strategic locations around the perimeter.
	8	III-26 (p. 7)	Post alarm monitoring service signs in highly visible locations.
Parking Areas	6 7 14 5 11 12 18 8 13	III-23 (p. 4) III-24 (p. 26) VI-40 (app. 1-6) III-22 (p. 15) IV-30 (sec. IV) IV-31 (sec. IV) X-57 (sec. 2.7) III-26 (p. 8) II-6 (p. 12)	Parking areas for visitors or guests should be situated at a safe distance from the main facility. Vehicles of authorized visitors, guests and employees should be clearly marked (placards, decals, key cards, keyed or cipher locks, issuing passes, etc.). Provide a secured employee parking lot. System in place to control and identify vehicles authorized to enter and/or park on premises.
	11 12 13	IV-30 (sec. IV) IV-31 (sec. IV) II-4 (p. 4)	Keep parking areas separated from entrances to food storage and processing areas and utilities, where practical. Private passenger vehicles should be prohibited from parking in or adjacent to cargo handling and storage areas.
	8 13	III-26 (p. 7) II-6 (p. 11)	Lock all vehicles parked outside at night or during times of owner and employee absence.

THEMATIC FUNCTION & SECURITY METHOD	LAWS	DIRECTIVE	GUIDELINES																	INTERNAL					
			USDA						FDA			DHS		International			Trade			Others		Client Documents	Committee Recommendations		
	Food Plan	Trans AF	Food Process	Trans M/PE	Pre-Harvest	Food Saf-Assess	Dairy & Milk	Import & Films	Food Process & Trans	DHS Guide	WHO	E.U.	Canada	ATA	AIB	GMA	J & J XII-60	Exccl XII-61	Policy	Not Determined	Guideline				
	I-3 IV-32 IV-33 IV-34 IV-35 VII-51 VII-52 VII-53	III-8 III-10 III-12 III-11 III-17 II-20 VII-46 VII-53 IX-55	II-21	II-22	III-23	III-24	II-25	II-27	IV-29	IV-30	IV-31	C-TPAT	II-6 Terror Threat Food	VI-40	VII-46	VII-51 VII-52 VIII-53	IX-55	X-57	XI-58	Colgate XII-62					
MATRIX CITE -1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20		21	RM	A	B	C
Legal/Statutory																									
Prior Notice of Imported Food Shipments	n/x/n/x n/x/n/x n/x/n/x				I				I				I				I			X					
Directive/Regulations																									
Non-Routine Incidents		n/x																					I		
Sensitive Security Information		X														X							I		
Food Defense Plan																									
Risk Assessment & Plan Implementation		n/x/n/x		X	X		X	X		X	X	X	X	X				X	X		X		I		
Plan Confidentiality			X	X		X	X		X	X	X	X	X										I		
Human Resources/ Personnel Security																									
Background Screening			X	X	X	X	X	X	X	X	X	X	X					X	X	X	X	X	I		
Employment Eligibility																									
Security- Physical & Facility																									
Facility Security		X	X		X	X	X	X		X	X	X	X					X	X	X	X	X	I		
Security Inspections																									
Security- Access Control																									
Perimeter Controls & Checks		X	X	X	X		X	X		X	X	X	X					X	X	X	X	X	I		
Facility Access Controls																									
Production, Quality & Environmental																									
Food Quality/Product Integrity		n/x/n/x n/x/n/x	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	I			

Government Requirements & Company Requirements

Government:

Company:

Laws/Regulations		•Policy- (Quality, Global Security Manual, etc.)
Directives		•Policy- (Quality, Global Security Manual, etc.)
Guidelines		•Discretionary/Business Decisions
Road Maps		•Judgments (trends & directions)

Road Maps equate to Recommended Practices

Horizon & Anticipated Trends

- “Guidelines” are currently voluntary
- Guidelines are both transitional & misleading
- Road Map: Convert Guidelines to De facto regulations
- Additional requirements will be triggered after high profile events (terrorism to unintentional contamination)

Who “owns” the vision

- Seek to influence government to your interpretation of guidelines versus government dictating to you through laws, regulations or directives THEIR interpretation of the guidelines.
- Best Example is the USDA FSIS Directive of WILL PROVIDE AND PRESENT Food Defense Plan.....

Examples of Transition

- **Presentation of Food Defense Plan (Now required-FSIS Directive #47.08)**
- **FSIS Directive 5420.1, Revision 4 instructs inspectors to:** “identify potential vulnerabilities in the security of an establishment that could lead to deliberate contamination” (water, processing, storage, etc)
- **H.R. 2749 & S. 510- Law?**

In the end...

- “Guidelines” are not actually “voluntary”
- Consumers will assume firms will adhere to Guidelines published by Govt.
- Govt. publishes guidelines as CYA!
- “Don’t blame us, we gave them the guidelines!”
- Media will not focus on or distinguish “legal niceties”
- Public will know guidelines were ignored!
- Substantial PR & Brand implications!
- Conclusion: Consider converting Guidelines into firm Policy

Best Practice

- **“Using a Food Safety plan to identify and mitigate un-intentional product contamination risks and a Food Defense plan to do the same for intentional contamination will lead to redundancies in the plans.”**
- **Separating Food Safety and Food Defense plans may not adequately address all of the risks of product contamination and, as a result, may create gaps in the protective shield.**
- **New definition of Food Defense:**
“Activities associated with protecting food products and the nation’s food supply from intentional or un-intentional contamination.”

Source: William L. Ramsey, “A UNIFIED VIEW OF FOOD DEFENSE,” Security Executive Council.

Value & Significance

- Ultimately FOOD DEFENSE is good for:
 1. Consumer
 2. Food Category
 3. Food Sector
 4. Government
 5. Your Business
- Ultimately a Win-Win for all.....

QUESTIONS?



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