uted to a death, serious injury, or serious illness. Such an entity need not admit, and may deny, that the report or information submitted by the entity constitutes an admission that the product involved malfunctioned, caused or contributed to an adverse experience, or caused or contributed to a death, serious injury, or serious illness.

(June 25, 1938, ch. 675, § 756, as added Pub. L. 105–115, title IV, § 420, Nov. 21, 1997, 111 Stat. 2379.)

EFFECTIVE DATE

Section effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as an Effective Date of 1997 Amendment note under section 321 of this title.

PART H—SERIOUS ADVERSE EVENT REPORTS

§ 379aa. Serious adverse event reporting for nonprescription drugs

(a) Definitions

In this section:

(1) Adverse event

The term ''adverse event'' means any health-related event associated with the use of a nonprescription drug that is adverse, including—

(A) an event occurring from an overdose of the drug, whether accidental or intentional;

(B) an event occurring from abuse of the drug;

(C) an event occurring from withdrawal from the drug; and

(D) any failure of expected pharmacological action of the drug.

(2) Nonprescription drug

The term ''nonprescription drug'' means a drug that is—

(A) not subject to section 353(b) of this title; and

(B) not subject to approval in an application submitted under section 355 of this title.

(3) Serious adverse event

The term ''serious adverse event'' is an adverse event that—

(A) results in—

(i) death;

(ii) a life-threatening experience;

(iii) inpatient hospitalization;

(iv) a persistent or significant disability or incapacity; or

(v) a congenital anomaly or birth defect; or

(B) requires, based on reasonable medical judgment, a medical or surgical intervention to prevent an outcome described under subparagraph (A).

(4) Serious adverse event report

The term ''serious adverse event report'' means a report that is required to be submitted to the Secretary under subsection (b).

(b) Reporting requirement

(1) In general

The manufacturer, packer, or distributor whose name (pursuant to section 352(b)(1) of this title) appears on the label of a nonprescription drug marketed in the United States (referred to in this section as the ''responsible person'') shall submit to the Secretary any report received of a serious adverse event associated with such drug when used in the United States, accompanied by a copy of the label on or within the retail package of such drug.

(2) Retailer

A retailer whose name appears on the label described in paragraph (1) as a distributor may, by agreement, authorize the manufacturer or packer of the nonprescription drug to submit the required reports for such drugs to the Secretary so long as the retailer directs to the manufacturer or packer all adverse events associated with such drug that are reported to the retailer through the address or telephone number described in section 352(x) of this title.

(c) Submission of reports

(1) Timing of reports

The responsible person shall submit to the Secretary a serious adverse event report no later than 15 business days after the report is received through the address or phone number described in section 352(x) of this title.

(2) New medical information

The responsible person shall submit to the Secretary any new medical information, related to a submitted serious adverse event report that is received by the responsible person within 1 year of the initial report, no later than 15 business days after the new information is received by the responsible person.

(3) Consolidation of reports

The Secretary shall develop systems to ensure that duplicate reports of, and new medical information related to, a serious adverse event shall be consolidated into a single report.

(4) Exemption

The Secretary, after providing notice and an opportunity for comment from interested parties, may establish an exemption to the requirements under paragraphs (1) and (2) if the Secretary determines that such exemption would have no adverse effect on public health.

(d) Contents of reports

Each serious adverse event report under this section shall be submitted to the Secretary using the MedWatch form, which may be modified by the Secretary for nonprescription drugs, and may be accompanied by additional information.

(e) Maintenance and inspection of records

(1) Maintenance

The responsible person shall maintain records related to each report of an adverse event received by the responsible person for a period of 6 years.

(2) Records inspection

(A) In general

The responsible person shall permit an authorized person to have access to records re-

quired to be maintained under this section, during an inspection pursuant to section 374 of this title.

(B) Authorized person

For purposes of this paragraph, the term ''authorized person'' means an officer or employee of the Department of Health and Human Services who has—

(i) appropriate credentials, as determined by the Secretary; and

(ii) been duly designated by the Secretary to have access to the records required under this section.

(f) Protected information

A serious adverse event report submitted to the Secretary under this section, including any new medical information submitted under subsection (c)(2), or an adverse event report voluntarily submitted to the Secretary shall be considered to be—

(1) a safety report under section 379v of this title and may be accompanied by a statement, which shall be a part of any report that is released for public disclosure, that denies that the report or the records constitute an admission that the product involved caused or contributed to the adverse event; and

(2) a record about an individual under section 552a of title 5 (commonly referred to as the ''Privacy Act of 1974'') and a medical or similar file the disclosure of which would constitute a violation of section 552 of such title 5 (commonly referred to as the ''Freedom of Information Act''), and shall not be publicly disclosed unless all personally identifiable information is redacted.

(g) Rule of construction

The submission of any adverse event report in compliance with this section shall not be construed as an admission that the nonprescription drug involved caused or contributed to the adverse event.

(h) Preemption

(1) In general

No State or local government shall establish or continue in effect any law, regulation, order, or other requirement, related to a mandatory system for adverse event reports for nonprescription drugs, that is different from, in addition to, or otherwise not identical to, this section.

(2) Effect of section

(A) In general

Nothing in this section shall affect the authority of the Secretary to provide adverse event reports and information to any health, food, or drug officer or employee of any State, territory, or political subdivision of a State or territory, under a memorandum of understanding between the Secretary and such State, territory, or political subdivision.

(B) Personally-identifiable information

Notwithstanding any other provision of law, personally-identifiable information in adverse event reports provided by the Secretary to any health, food, or drug officer or employee of any State, territory, or political subdivision of a State or territory, shall not—

(i) be made publicly available pursuant to any State or other law requiring disclosure of information or records; or

(ii) otherwise be disclosed or distributed to any party without the written consent of the Secretary and the person submitting such information to the Secretary.

(C) Use of safety reports

Nothing in this section shall permit a State, territory, or political subdivision of a State or territory, to use any safety report received from the Secretary in a manner inconsistent with subsection (g) or section 379v of this title.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary.

(June 25, 1938, ch. 675, §760, as added Pub. L. 109–462, §2(a), Dec. 22, 2006, 120 Stat. 3469.)

EFFECTIVE DATE

Section effective 1 year after Dec. 22, 2006, see section 2(e)(1) of Pub. L. 109–462, set out as an Effective Date of 2006 Amendment note under section 352 of this title.

MODIFICATIONS

Pub. L. 109–462, §2(b), Dec. 22, 2006, 120 Stat. 3472, provided that: ''The Secretary of Health and Human Services may modify requirements under the amendments made by this section [enacting this section and amending sections 331 and 352 of this title] in accordance with section 553 of title 5, United States Code, to maintain consistency with international harmonization efforts over time.''

GUIDANCE

Pub. L. 109–462, §2(e)(3), Dec. 22, 2006, 120 Stat. 3472, provided that: ''Not later than 270 days after the date of enactment of this Act [Dec. 22, 2006], the Secretary of Health and Human Services shall issue guidance on the minimum data elements that should be included in a serious adverse event report described under the amendments made by this Act [see Short Title of 2006 Amendment note set out under section 301 of this title].''

Pub. L. 109–462, §3(d)(3), Dec. 22, 2006, 120 Stat. 3475, enacted provisions substantially identical to those enacted by Pub. L. 109–462, §2(b), set out above.

§ 379aa–1. Serious adverse event reporting for dietary supplements

(a) Definitions

In this section:

(1) Adverse event

The term ''adverse event'' means any health-related event associated with the use of a dietary supplement that is adverse.

(2) Serious adverse event

The term ''serious adverse event'' is an adverse event that—

(A) results in—

(i) death;

(ii) a life-threatening experience;

(iii) inpatient hospitalization;

(iv) a persistent or significant disability or incapacity; or