Title note set out under section 151 of this title and Tables.

AMENDMENTS

1997—Subsec. (i). Pub. L. 105–115 added subsec. (i).

1996—Pub. L. 104–134 reenacted section catchline without change and amended text generally. Prior to amendment, text related to exports of certain unapproved products, including provisions relating to drugs intended for human or animal use which required approval or licensing, conditions for export, active pursuit of drug approval or licensing, application for export, contents, approval or disapproval, list of eligible countries for export, and criteria for list change, report to Secretary by holder of approved application, events requiring report, and annual report to Secretary on pursuit of approval of drug, export of drug under approved application prohibited under certain conditions, determination by Secretary of noncompliance, failure of active pursuit of drug approval, imminent hazard of drug to public health, or exportation of drug to noneligible country, notices, hearings, and prohibition on exportation of drug under certain circumstances, drugs used in prevention or treatment of tropical disease, and reference to Secretary and holder of application.

Subsec. (f)(5). Pub. L. 104–180 substituted ''if the labeling of the drug or device is not'' for ''if the drug or device is not labeled''.

§ 383. Office of International Relations

(a) Establishment

There is established in the Department of Health and Human Services an Office of International Relations.

(b) Agreements with foreign countries

In carrying out the functions of the office under subsection (a) of this section, the Secretary may enter into agreements with foreign countries to facilitate commerce in devices between the United States and such countries consistent with the requirements of this chapter. In such agreements, the Secretary shall encourage the mutual recognition of—

(1) good manufacturing practice regulations promulgated under section 360j(f) of this title, and

(2) other regulations and testing protocols as the Secretary determines to be appropriate.

(c) Harmonizing regulatory requirements

(1) The Secretary shall support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in meetings with representatives of other countries to discuss methods and approaches to reduce the burden of regulation and harmonize regulatory requirements if the Secretary determines that such harmonization continues consumer protections consistent with the purposes of this chapter.

(2) The Secretary shall support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in efforts to move toward the acceptance of mutual recognition agreements relating to the regulation of drugs, biological products, devices, foods, food additives, and color additives, and the regulation of good manufacturing practices, between the European Union and the United States.

(3)(A) The Secretary shall regularly participate in meetings with representatives of other foreign governments to discuss and reach agreement on methods and approaches to harmonize regulatory requirements.

(B) In carrying out subparagraph (A), the Secretary may participate in appropriate fora, including the International Medical Device Regulators Forum, and may—

(i) provide guidance to such fora on strategies, policies, directions, membership, and other activities of a forum as appropriate;

(ii) to the extent appropriate, solicit, review, and consider comments from industry, academia, health care professionals, and patient groups regarding the activities of such fora; and

(iii) to the extent appropriate, inform the public of the Secretary's activities within such fora, and share with the public any documentation relating to a forum's strategies, policies, and other activities of such fora.

(4) With respect to devices, the Secretary may, when appropriate, enter into arrangements with nations regarding methods and approaches to harmonizing regulatory requirements for activities, including inspections and common international labeling symbols.

(5) Paragraphs (1) through (4) shall not apply with respect to products defined in section 321(ff) of this title.

(June 25, 1938, ch. 675, § 803, as added Pub. L. 101–629, § 15(a), Nov. 28, 1990, 104 Stat. 4525; amended Pub. L. 105–115, title IV, § 410(b), Nov. 21, 1997, 111 Stat. 2373; Pub. L. 112–144, title VI, §§ 609, 610, July 9, 2012, 126 Stat. 1059.)

AMENDMENTS

2012—Subsec. (c)(3). Pub. L. 112–144, § 610, designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(4). Pub. L. 112–144, § 609, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Secretary shall, not later than 180 days after November 21, 1997, make public a plan that establishes a framework for achieving mutual recognition of good manufacturing practices inspections.''

1997—Subsec. (c). Pub. L. 105–115 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

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

REPORT ON ACTIVITIES OF OFFICE OF INTERNATIONAL RELATIONS

Pub. L. 101–629, § 15(b), Nov. 28, 1990, 104 Stat. 4525, directed Secretary of Health and Human Services, not later than 2 years after Nov. 28, 1990, to prepare and submit to the appropriate committees of Congress a report on the activities of the Office of International Relations under 21 U.S.C. 383.

§ 384. Importation of prescription drugs

(a) Definitions

In this section:

(1) Importer

The term ''importer'' means a pharmacist or wholesaler.

(2) Pharmacist

The term ''pharmacist'' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

(3) Prescription drug

The term ''prescription drug'' means a drug subject to section 353(b) of this title, other than—

(A) a controlled substance (as defined in section 802 of this title);

(B) a biological product (as defined in section 262 of title 42);

(C) an infused drug (including a peritoneal dialysis solution);

(D) an intravenously injected drug;

(E) a drug that is inhaled during surgery; or

(F) a drug which is a parenteral drug, the importation of which pursuant to subsection (b) of this section is determined by the Secretary to pose a threat to the public health, in which case section 381(d)(1) of this title shall continue to apply.

(4) Qualifying laboratory

The term ''qualifying laboratory'' means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

(5) Wholesaler

(A) In general

The term ''wholesaler'' means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 353(e)(2)(A) of this title.

(B) Exclusion

The term ''wholesaler'' does not include a person authorized to import drugs under section 381(d)(1) of this title.

(b) Regulations

The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

(c) Limitation

The regulations under subsection (b) of this section shall—

(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 355 of this title (including with respect to being safe and effective for the intended use of the prescription drug), with sections 351 and 352 of this title, and with other applicable requirements of this chapter;

(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e) of this section; and

(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

(d) Information and records

(1) In general

The regulations under subsection (b) of this section shall require an importer of a prescription drug under subsection (b) of this section to submit to the Secretary the following information and documentation:

(A) The name and quantity of the active ingredient of the prescription drug.

(B) A description of the dosage form of the prescription drug.

(C) The date on which the prescription drug is shipped.

(D) The quantity of the prescription drug that is shipped.

(E) The point of origin and destination of the prescription drug.

(F) The price paid by the importer for the prescription drug.

(G) Documentation from the foreign seller specifying—

(i) the original source of the prescription drug; and

(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

(I) The name, address, telephone number, and professional license number (if any) of the importer.

(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

(i) is approved for marketing in the United States and is not adulterated or misbranded; and

(ii) meets all labeling requirements under this chapter.

(L) Laboratory records, including complete data derived from all tests necessary

to ensure that the prescription drug is in compliance with established specifications and standards.

(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

(2) Maintenance by the Secretary

The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

(e) Testing

The regulations under subsection (b) of this section shall require—

(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) of this section be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

(2) if the tests are conducted by the importer—

(A) that information needed to—

(i) authenticate the prescription drug being tested; and

(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this chapter;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this chapter; and

(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

(f) Registration of foreign sellers

Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment and the name of the United States agent for the establishment.

(g) Suspension of importation

The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) of this section be immediately suspended on discovery of a pattern of importation of that specific prescription drug or by that specific importer of drugs that are counterfeit or in violation of any requirement under this section, until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b) of this section.

(h) Approved labeling

The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

(i) Charitable contributions

Notwithstanding any other provision of this section, section 381(d)(1) of this title continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

(j) Waiver authority for importation by individuals

(1) Declarations

Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

(B) exercise discretion to permit individuals to make such importations in circumstances in which—

(i) the importation is clearly for personal use; and

(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

(2) Waiver authority

(A) In general

The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

(B) Guidance on case-by-case waivers

The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

(3) Drugs imported from Canada

In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

(B) is accompanied by a copy of a valid prescription;

(C) is imported from Canada, from a seller registered with the Secretary;

(D) is a prescription drug approved by the Secretary under subchapter V of this chapter;

(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 360 of this title; and

(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

(k) Construction

Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 381(d)(1) of this title as provided in this section.

***(l)* Effectiveness of section**

(1) Commencement of program

This section shall become effective only if the Secretary certifies to the Congress that the implementation of this section will—

(A) pose no additional risk to the public's health and safety; and

(B) result in a significant reduction in the cost of covered products to the American consumer.

(2) Termination of program

(A) In general

If, after the date that is 1 year after the effective date of the regulations under subsection (b) of this section and before the date that is 18 months after the effective date, the Secretary submits to Congress a certification that, in the opinion of the Secretary, based on substantial evidence obtained after the effective date, the benefits of implementation of this section do not outweigh any detriment of implementation of this section, this section shall cease to be effective as of the date that is 30 days after the date on which the Secretary submits the certification.

(B) Procedure

The Secretary shall not submit a certification under subparagraph (A) unless, after a hearing on the record under sections 556 and 557 of title 5, the Secretary—

(i)(I) determines that it is more likely than not that implementation of this section would result in an increase in the risk to the public health and safety;

(II) identifies specifically, in qualitative and quantitative terms, the nature of the increased risk;

(III) identifies specifically the causes of the increased risk; and

(IV)(aa) considers whether any measures can be taken to avoid, reduce, or mitigate the increased risk; and

(bb) if the Secretary determines that any measures described in item (aa) would require additional statutory authority, submits to Congress a report describing the legislation that would be required;

(ii) identifies specifically, in qualitative and quantitative terms, the benefits that would result from implementation of this section (including the benefit of reductions in the cost of covered products to consumers in the United States, allowing consumers to procure needed medication that consumers might not otherwise be able to procure without foregoing other necessities of life); and

(iii)(I) compares in specific terms the detriment identified under clause (i) with the benefits identified under clause (ii); and

(II) determines that the benefits do not outweigh the detriment.

(m) Authorization of appropriations

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

(June 25, 1938, ch. 675, §804, as added Pub. L. 108–173, title XI, §1121(a), Dec. 8, 2003, 117 Stat. 2464.)

PRIOR PROVISIONS

A prior section 384, act June 25, 1938, ch. 675, §804, as added Pub. L. 106–387, §1(a) [title VII, §745(c)(2)], Oct. 28, 2000, 114 Stat. 1549, 1549A–36, related to importation of covered products, prior to repeal by Pub. L. 108–173, title XI, §1121(a), Dec. 8, 2003, 117 Stat. 2464.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STUDY AND REPORT ON IMPORTATION OF DRUGS

Pub. L. 108–173, title XI, §1122, Dec. 8, 2003, 117 Stat. 2469, directed the Secretary of Health and Human Services to conduct a study on the importation of drugs into the United States pursuant to this section and to submit to Congress, not later than 12 months after Dec. 8, 2003, a report providing the findings of such study.

§ 384a. Foreign supplier verification program

(a) In general

(1) Verification requirement

Except as provided under subsections (e) and (f), each importer shall perform risk-based foreign supplier verification activities for the purpose of verifying that the food imported by the importer or agent of an importer is—

(A) produced in compliance with the requirements of section 350g of this title or section 350h of this title, as appropriate; and

(B) is not adulterated under section 342 of this title or misbranded under section 343(w) of this title.

(2) Importer defined

For purposes of this section, the term ''importer'' means, with respect to an article of food—

(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or

(B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.

(b) Guidance

Not later than 1 year after January 4, 2011, the Secretary shall issue guidance to assist importers in developing foreign supplier verification programs.