

(5) with intent to defraud, sells, or distributes, a pre-retail medical product that is expired or stolen; or

(6) attempts or conspires to violate any of paragraphs (1) through (5);

shall be punished as provided in subsection (c) and subject to the other sanctions provided in this section.

(b) **AGGRAVATED OFFENSES.**—An offense under this section is an aggravated offense if—

(1) the defendant is employed by, or is an agent of, an organization in the supply chain for the pre-retail medical product; or

(2) the violation—

(A) involves the use of violence, force, or a threat of violence or force;

(B) involves the use of a deadly weapon;

(C) results in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved; or

(D) is subsequent to a prior conviction for an offense under this section.

(c) **CRIMINAL PENALTIES.**—Whoever violates subsection (a)—

(1) if the offense is an aggravated offense under subsection (b)(2)(C), shall be fined under this title or imprisoned not more than 30 years, or both;

(2) if the value of the medical products involved in the offense is \$5,000 or greater, shall be fined under this title, imprisoned for not more than 15 years, or both, but if the offense is an aggravated offense other than one under subsection (b)(2)(C), the maximum term of imprisonment is 20 years; and

(3) in any other case, shall be fined under this title, imprisoned for not more than 3 years, or both, but if the offense is an aggravated offense other than one under subsection (b)(2)(C), the maximum term of imprisonment is 5 years.

(d) **CIVIL PENALTIES.**—Whoever violates subsection (a) is subject to a civil penalty in an amount not more than the greater of—

(1) three times the economic loss attributable to the violation; or

(2) \$1,000,000.

(e) **DEFINITIONS.**—In this section—

(1) the term “pre-retail medical product” means a medical product that has not yet been made available for retail purchase by a consumer;

(2) the term “medical product” means a drug, biological product, device, medical food, or infant formula;

(3) the terms “device”, “drug”, “infant formula”, and “labeling” have, respectively, the meanings given those terms in section 201 of the Federal Food, Drug, and Cosmetic Act;

(4) the term “biological product” has the meaning given the term in section 351 of the Public Health Service Act;

(5) the term “medical food” has the meaning given the term in section 5(b) of the Orphan Drug Act; and

(6) the term “supply chain” includes manufacturer, wholesaler, repacker, own-labeled distributor, private-label distributor, jobber,

broker, drug trader, transportation company, hospital, pharmacy, or security company.

(Added Pub. L. 112-186, §2(a), Oct. 5, 2012, 126 Stat. 1427.)

#### REFERENCES IN TEXT

Section 201 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(3), is classified to section 321 of Title 21, Food and Drugs.

Section 351 of the Public Health Service Act, referred to in subsec. (e)(4), is classified to section 262 of Title 42, The Public Health and Welfare.

Section 5(b) of the Orphan Drug Act, referred to in subsec. (e)(5), is classified to section 360ee(b) of Title 21.

#### PRIORITY GIVEN TO CERTAIN INVESTIGATIONS AND PROSECUTIONS

Pub. L. 112-186, §4(e), Oct. 5, 2012, 126 Stat. 1429, provided that: “The Attorney General shall give increased priority to efforts to investigate and prosecute offenses under section 670 of title 18, United States Code, that involve pre-retail medical products.”

#### CHAPTER 33—EMBLEMS, INSIGNIA, AND NAMES

Sec. 700.	Desecration of the flag of the United States; penalties.
701.	Official badges, identification cards, other insignia.
702.	Uniform of armed forces and Public Health Service.
703.	Uniform of friendly nation.
704.	Military medals or decorations.
705.	Badge or medal of veterans' organizations.
706.	Red Cross.
706a.	Geneva distinctive emblems.
707.	4-H Club emblem fraudulently used. <sup>1</sup>
708.	Swiss Confederation coat of arms.
709.	False advertising or misuse of names to indicate Federal agency.
710.	Cremation urns for military use.
711.	“Smokey Bear” character or name.
711a.	“Woodsy Owl” character, name, or slogan.
712.	Misuse of names, words, emblems, or insignia.
713.	Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress.
[714.	Repealed.]
715.	“The Golden Eagle Insignia”.
716.	Public employee insignia and uniform.

#### AMENDMENTS

2007—Pub. L. 109-481, §2(b), Jan. 12, 2007, 120 Stat. 3674, added item 706a.

2006—Pub. L. 109-162, title XI, §1191(b), Jan. 5, 2006, 119 Stat. 3129, substituted “Public employee insignia and uniform” for “Police badges” in item 716.

2000—Pub. L. 106-547, §3(b), Dec. 19, 2000, 114 Stat. 2740, added item 716.

1997—Pub. L. 105-55, title III, §308(e), Oct. 7, 1997, 111 Stat. 1198, substituted “Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress” for “Use of likenesses of the great seal of the United States, the seals of the President and Vice President, and the seal of the United States Senate” in item 713.

1991—Pub. L. 102-229, title II, §210(e), Dec. 12, 1991, 105 Stat. 1717, substituted “Use of likenesses of the great seal of the United States, the seals of the President and

<sup>1</sup> So in original. Does not conform to section catchline.