

mines appropriate to ensure that such allocation results in no net change in the total amount of funds otherwise available, for the period from October 1, 2008, through September 30, 2010, for Food and Drug Administration programs and activities (other than tobacco regulation activities) for such period.

**(ii) Treatment of reimbursed amounts**

Amounts reimbursed under clause (i) shall be available for the programs and activities for which funds allocated for the start-up period were available, prior to such allocation, until September 30, 2010, notwithstanding any otherwise applicable limits on amounts for such programs or activities for a fiscal year.

**(D) Fee collected during start-up period**

Notwithstanding the first sentence of paragraph (1), fees under subsection (a) may be collected through September 30, 2009 under subparagraph (B)(ii) and shall be available for obligation and remain available until expended. Such offsetting collections shall be credited to the salaries and expenses account of the Food and Drug Administration.

**(E) Obligation of start-up costs in anticipation of available fee collections**

Notwithstanding any other provision of law, following the enactment of an appropriation for fees under this section for fiscal year 2010, or any portion thereof, obligations for costs of tobacco regulation activities during the start-up period may be incurred in anticipation of the receipt of offsetting fee collections through procedures specified in section 1534 of title 31.

**(3) Authorization of appropriations**

For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

**(d) Collection of unpaid fees**

In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31.

**(e) Applicability to fiscal year 2009**

If the date of enactment of the Family Smoking Prevention and Tobacco Control Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the “quarterly fee amounts”).

(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in

the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).

(June 25, 1938, ch. 675, §919, as added Pub. L. 111-31, div. A, title I, §101(b)(3), June 22, 2009, 123 Stat. 1826.)

REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (c)(2)(A), is div. A of Pub. L. 111-31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of this title.

The date of enactment of the Family Smoking Prevention and Tobacco Control Act and such date of enactment, referred to in subsec. (e), is the date of enactment of Pub. L. 111-31, which was approved June 22, 2009.

**§ 387t. Labeling, recordkeeping, records inspection**

**(a) Origin labeling**

**(1) Requirement**

Beginning 1 year after June 22, 2009, the label, packaging, and shipping containers of tobacco products other than cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement “sale only allowed in the United States”. Beginning 15 months after the issuance of the regulations required by section 1333(d) of title 15, as amended by section 201 of Family<sup>1</sup> Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement “Sale only allowed in the United States”.

**(2) Effective date**

The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

**(b) Regulations concerning recordkeeping for tracking and tracing**

**(1) In general**

The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

**(2) Inspection**

In promulgating the regulations described in paragraph (1), the Secretary shall consider

<sup>1</sup> So in original. Probably should be “the Family”.

which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

**(3) Codes**

The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

**(4) Size of business**

The Secretary shall take into account the size of a business in promulgating regulations under this section.

**(5) Recordkeeping by retailers**

The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

**(c) Records inspection**

If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products. The Secretary shall not authorize an officer or employee of the government of any of the several States to exercise authority under the preceding sentence on Indian country without the express written consent of the Indian tribe involved.

**(d) Knowledge of illegal transaction**

**(1) Notification**

If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

(A) imported, exported, distributed, or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

(B) imported, exported, distributed, or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General and the Secretary of the Treasury of such knowledge.

**(2) Knowledge defined**

For purposes of this subsection, the term “knowledge” as applied to a manufacturer or distributor means—

(A) the actual knowledge that the manufacturer or distributor had; or

(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

**(e) Consultation**

In carrying out this section, the Secretary shall consult with the Attorney General of the United States and the Secretary of the Treasury, as appropriate.

(June 25, 1938, ch. 675, §920, as added Pub. L. 111-31, div. A, title III, §301, June 22, 2009, 123 Stat. 1850.)

REFERENCES IN TEXT

Section 201 of the Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a)(1), is section 201 of div. A of Pub. L. 111-31.

**§ 387u. Studies of progress and effectiveness**

**(a) FDA report**

Not later than 3 years after June 22, 2009, and not less than every 2 years thereafter, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report concerning—

(1) the progress of the Food and Drug Administration in implementing this division, including major accomplishments, objective measurements of progress, and the identification of any areas that have not been fully implemented;

(2) impediments identified by the Food and Drug Administration to progress in implementing this division and to meeting statutory timeframes;

(3) data on the number of new product applications received under section 387j of this title and modified risk product applications received under section 387k of this title, and the number of applications acted on under each category; and

(4) data on the number of full time equivalents engaged in implementing this division.

**(b) GAO report**

Not later than 5 years after June 22, 2009, the Comptroller General of the United States shall conduct a study of, and submit to the Committees described in subsection (a) a report concerning—

(1) the adequacy of the authority and resources provided to the Secretary of Health and Human Services for this division to carry out its goals and purposes; and

(2) any recommendations for strengthening that authority to more effectively protect the public health with respect to the manufacture, marketing, and distribution of tobacco products.

**(c) Public availability**

The Secretary of Health and Human Services and the Comptroller General of the United States, respectively, shall make the reports required under subsection<sup>1</sup> (a) and (b) available to the public, including by posting such reports on

<sup>1</sup> So in original. Probably should be plural.