

**Editorial Notes**

## CODIFICATION

Section was enacted as part of the Best Pharmaceuticals for Children Act, and not as part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter.

## AMENDMENTS

2017—Subsec. (d). Pub. L. 115-52 substituted “At least” for “For the 5-year period beginning on July 9, 2012, at least”.

2012—Subsec. (c)(2) to (4). Pub. L. 112-144, §511(1), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (d). Pub. L. 112-144, §511(2), added subsec. (d). 2007—Subsec. (b). Pub. L. 110-85 inserted “, including increasing pediatric access to medical devices” before period at end.

**§ 394. Scientific review groups**

Without regard to the provisions of title 5 governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commissioner of Food and Drugs may—

(1) establish such technical and scientific review groups as are needed to carry out the functions of the Food and Drug Administration (including functions prescribed under this chapter); and

(2) appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.

(June 25, 1938, ch. 675, §1004, formerly §903, as added Pub. L. 101-635, title III, §301, Nov. 28, 1990, 104 Stat. 4584; renumbered §904, Pub. L. 103-43, title XX, §2006(1), June 10, 1993, 107 Stat. 209; renumbered §1004, Pub. L. 111-31, div. A, title I, §101(b)(2), June 22, 2009, 123 Stat. 1784.)

**§ 395. Loan repayment program****(a) In general****(1) Authority for program**

Subject to paragraph (2), the Secretary shall carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct research, as employees of the Food and Drug Administration, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than \$20,000 of the principal and interest of the educational loans of such health professionals.

**(2) Limitation**

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the Food and Drug Administration for purposes of paragraph (1) for a period of not less than 3 years.

**(b) Applicability of certain provisions**

With respect to the National Health Service Corps Loan Repayment Program established in

subpart III of part D of title III of the Public Health Service Act [42 U.S.C. 254f et seq.], the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program.

**(c) Authorization of appropriations**

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.

(June 25, 1938, ch. 675, §1005, formerly §905, as added Pub. L. 103-43, title XX, §2006(2), June 10, 1993, 107 Stat. 210; renumbered §1005, Pub. L. 111-31, div. A, title I, §101(b)(2), June 22, 2009, 123 Stat. 1784.)

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## REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart III of part D of title III of the Act is classified generally to subpart III [§254f et seq.] of part D of subchapter II of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

**§ 396. Practice of medicine**

Nothing in this chapter shall be construed to limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device to a patient for any condition or disease within a legitimate health care practitioner-patient relationship. This section shall not limit any existing authority of the Secretary to establish and enforce restrictions on the sale or distribution, or in the labeling, of a device that are part of a determination of substantial equivalence, established as a condition of approval, or promulgated through regulations. Further, this section shall not change any existing prohibition on the promotion of unapproved uses of legally marketed devices.

(June 25, 1938, ch. 675, §1006, formerly §906, as added Pub. L. 105-115, title II, §214, Nov. 21, 1997, 111 Stat. 2348; renumbered §1006, Pub. L. 111-31, div. A, title I, §101(b)(2), June 22, 2009, 123 Stat. 1784.)

**Statutory Notes and Related Subsidiaries**

## 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.

**§ 397. Contracts for expert review****(a) In general****(1) Authority**

The Secretary may enter into a contract with any organization or any individual (who is not an employee of the Department) with relevant expertise, to review and evaluate, for the purpose of making recommendations to

the Secretary on, part or all of any application or submission (including a petition, notification, and any other similar form of request) made under this chapter for the approval or classification of an article or made under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)) with respect to a biological product. Any such contract shall be subject to the requirements of section 379 of this title relating to the confidentiality of information.

**(2) Increased efficiency and expertise through contracts**

The Secretary may use the authority granted in paragraph (1) whenever the Secretary determines that use of a contract described in paragraph (1) will improve the timeliness of the review of an application or submission described in paragraph (1), unless using such authority would reduce the quality, or unduly increase the cost, of such review. The Secretary may use such authority whenever the Secretary determines that use of such a contract will improve the quality of the review of an application or submission described in paragraph (1), unless using such authority would unduly increase the cost of such review. Such improvement in timeliness or quality may include providing the Secretary increased scientific or technical expertise that is necessary to review or evaluate new therapies and technologies.

**(b) Review of expert review**

**(1) In general**

Subject to paragraph (2), the official of the Food and Drug Administration responsible for any matter for which expert review is used pursuant to subsection (a) shall review the recommendations of the organization or individual who conducted the expert review and shall make a final decision regarding the matter in a timely manner.

**(2) Limitation**

A final decision by the Secretary on any such application or submission shall be made within the applicable prescribed time period for review of the matter as set forth in this chapter or in the Public Health Service Act (42 U.S.C. 201 et seq.).

(June 25, 1938, ch. 675, §1007, formerly §907, as added Pub. L. 105-115, title IV, §415, Nov. 21, 1997, 111 Stat. 2377; renumbered §1007, Pub. L. 111-31, div. A, title I, §101(b)(2), June 22, 2009, 123 Stat. 1784.)

**Editorial Notes**

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsection (b)(2), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

**Statutory Notes and Related Subsidiaries**

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.

**§ 398. Notices to States regarding imported food**

**(a) In general**

If the Secretary has credible evidence or information indicating that a shipment of imported food or portion thereof presents a threat of serious adverse health consequences or death to humans or animals, the Secretary shall provide notice regarding such threat to the States in which the food is held or will be held, and to the States in which the manufacturer, packer, or distributor of the food is located, to the extent that the Secretary has knowledge of which States are so involved. In providing notice to a State, the Secretary shall request the State to take such action as the State considers appropriate, if any, to protect the public health regarding the food involved.

**(b) Rule of construction**

Subsection (a) may not be construed as limiting the authority of the Secretary with respect to food under any other provision of this chapter.

(June 25, 1938, ch. 675, §1008, formerly §908, as added Pub. L. 107-188, title III, §310, June 12, 2002, 116 Stat. 673; renumbered §1008, Pub. L. 111-31, div. A, title I, §101(b)(2), June 22, 2009, 123 Stat. 1784.)

**§ 399. Grants to enhance food safety**

**(a) In general**

The Secretary is authorized to make grants to eligible entities to—

(1) undertake examinations, inspections, and investigations, and related food safety activities under section 372 of this title;

(2) train to the standards of the Secretary for the examination, inspection, and investigation of food manufacturing, processing, packing, holding, distribution, and importation, including as such examination, inspection, and investigation relate to retail food establishments;

(3) build the food safety capacity of the laboratories of such eligible entity, including the detection of zoonotic diseases;

(4) build the infrastructure and capacity of the food safety programs of such eligible entity to meet the standards as outlined in the grant application; and

(5) take appropriate action to protect the public health in response to—

(A) a notification under section 398 of this title, including planning and otherwise preparing to take such action; or

(B) a recall of food under this chapter.

**(b) Eligible entities; application**

**(1) In general**

In this section, the term “eligible entity” means an entity—

(A) that is—

(i) a State;

(ii) a locality;

(iii) a territory;

(iv) an Indian tribe (as defined in section 5304(e) of title 25); or