21 USC 331: Prohibited acts
Text contains those laws in effect on September 11, 2024

From Title 21-FOOD AND DRUGS
CHAPTER 9-FEDERAL FOOD, DRUG, AND COSMETIC ACT
SUBCHAPTER III-PROHIBITED ACTS AND PENALTIES

Jump To:

Source Credit
Miscellaneous
References In Text
Amendments
Effective Date
Regulations
Savings Provision

§331. Prohibited acts

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, tobacco product, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 344, 350d, 355,,[1] 360bbb–3, or 364c of this title.

(e) The refusal to permit access to or copying of any record as required by section 350a, 350c, 350f(j), 350e, 354, 360bbb–3, 364a, 373, 374(a), 379aa, or 379aa–1 of this title; or the failure to establish or maintain any record, or make any report, required under section 350a, 350c(b), 350f, 350e, 354, 355(i) or (k), 360b(a)(4)(C), 360b(j), (l) or (m), 360ccc–1(i), 360e(f), 360i, 360bbb–3, 364a, 364g, 379aa, 379aa–1, 387i, or 387t of this title or the refusal to permit access to or verification or copying of any such required record; or the violation of any recordkeeping requirement under section 2223 [2] of this title (except when such violation is committed by a farm).

(f) The refusal to permit entry or inspection as authorized by section 374 of this title.

(g) The manufacture within any Territory of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 333(c)(2) of this title, which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, tobacco product, or cosmetic; or the giving of a guaranty or undertaking referred to in section 333(c)(3) of this title, which guaranty or undertaking is false.

(i)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 344 or 379e of this title.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(3) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

(j) The using by any person to his own advantage, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of section 344, 348, 350a, 350c, 355, 360, 360b, 360c, 360d, 360e, 360f, 360h, 360i, 360j, 360ccc, 360ccc–1, 360ccc–2, 374, 379, 379e, 387d, 387e, 387f, 387g, 387h, 387i, or 387t(b) of this title concerning any method or process which as a trade secret is entitled to protection; or the violating of section 346a(i)(2) of this title or any regulation issued under that section..[1]This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, tobacco product, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

(l) Repealed. Pub. L. 105–115, title IV, §421, Nov. 21, 1997, 111 Stat. 2380 .

JHU 2150
Merck Sharp v. Johns Hopkins
IPR2024-00648

(m) The sale or offering for sale of colored oleomargarine or colored margarine, or the possession or serving of colored oleomargarine or colored margarine in violation of subsections (b) or (c) of section 347 of this title.

(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 374 of this title.

(o) In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(p) The failure to register in accordance with section 360 or 387e of this title, the failure to provide any information required by section 360(j), 360(k), 387e(i), or 387e(j) of this title, or the failure to provide a notice required by section 360(j)(2) or 387e(i)(3) of this title.

(q)(1) The failure or refusal-

(A) to comply with any requirement prescribed under section 360h, 360j(g), 387c(b), 387g, 387h, or 387o of this title;

(B) to furnish any notification or other material or information required by or under section 360i, 360j(g), 387d, 387i, or 387t of this title; or

(C) to comply with a requirement under section 360l or 387m of this title.

(2) With respect to any device or tobacco product, the submission of any report that is required by or under this chapter that is false or misleading in any material respect.

(3) The failure to comply with any requirement under section 360n–2(b)(2) of this title (relating to ensuring device cybersecurity).

(r) The movement of a device, drug, or tobacco product in violation of an order under section 334(g) of this title or the removal or alteration of any mark or label required by the order to identify the device, drug, or tobacco product as detained.

(s) The failure to provide the notice required by section 350a(c) or 350a(e) of this title, the failure to make the reports required by section 350a(f)(1)(B) of this title, the failure to retain the records required by section 350a(b)(4) of this title, or the failure to meet the requirements prescribed under section 350a(f)(3) of this title.

(t) The importation of a drug in violation of section 381(d)(1) of this title, the sale, purchase, or trade of a drug or drug sample or the offer to sell, purchase, or trade a drug or drug sample in violation of section 353(c) of this title, the sale, purchase, or trade of a coupon, the offer to sell, purchase, or trade such a coupon, or the counterfeiting of such a coupon in violation of section 353(c)(2) of this title, the distribution of a drug sample in violation of section 353(d) of this title or the failure to otherwise comply with the requirements of section 353(d) of this title, the distribution of drugs in violation of section 353(e) of this title, failure to comply with the requirements under section 360eee–1 of this title, the failure to comply with the requirements under section 360eee–3 of this title, as applicable, or the failure to otherwise comply with the requirements of section 353(e) of this title.

(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 360b(a)(4)(A), 360b(a)(4)(D), or 360b(a)(5) of this title.

(v) The introduction or delivery for introduction into interstate commerce of a dietary supplement that is unsafe under section 350b of this title.

(w) The making of a knowingly false statement in any statement, certificate of analysis, record, or report required or requested under section 381(d)(3) of this title; the failure to submit a certificate of analysis as required under such section; the failure to maintain records or to submit records or reports as required by such section; the release into interstate commerce of any article or portion thereof imported into the United States under such section or any finished product made from such article or portion, except for export in accordance with section 381(e) or 382 of this title, or with section 262(h) of title 42; or the failure to so export or to destroy such an article or portions thereof, or such a finished product.

(x) The falsification of a declaration of conformity submitted under section 360d(c) of this title or the failure or refusal to provide data or information requested by the Secretary under paragraph (3) of such section.

(y) In the case of a drug, device, or food-

(1) the submission of a report or recommendation by a person accredited under section 360m of this title that is false or misleading in any material respect;

(2) the disclosure by a person accredited under section 360m of this title of confidential commercial information or any trade secret without the express written consent of the person who submitted such information or secret to such person; or

(3) the receipt by a person accredited under section 360m of this title of a bribe in any form or the doing of any corrupt act by such person associated with a responsibility delegated to such person under this chapter.

(z) Omitted.

(aa) The importation of a prescription drug in violation of section 384 of this title, the falsification of any record required to be maintained or provided to the Secretary under such section, or any other violation of regulations under such section.

(bb) The transfer of an article of food in violation of an order under section 334(h) of this title, or the removal or alteration of any mark or label required by the order to identify the article as detained.

(cc) The importing or offering for import into the United States of an article of food or a drug by, with the assistance of, or at the direction of, a person debarred from such activity under section 335a(b)(3) of this title.

(dd) The failure to register in accordance with section 350d of this title.

(ee) The importing or offering for import into the United States of an article of food in violation of the requirements under section 381(m) of this title.

(ff) The importing or offering for import into the United States of a drug or device with respect to which there is a failure to comply with a request of the Secretary to submit to the Secretary a statement under section 381(o) of this title.

(gg) The knowing failure to comply with paragraph (7)(E) of section 374(g) of this title; the knowing inclusion by a person accredited under paragraph (2) of such section of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.

(hh) The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by the Secretary under section 350e of this title.

(ii) The falsification of a report of a serious adverse event submitted to a responsible person (as defined under section 364, 379aa, or 379aa–1 of this title) or the falsification of a serious adverse event report (as defined under section 379aa or 379aa–1 of this title or required under section 364a(a) of this title) submitted to the Secretary.

(jj)(1) The failure to submit the certification required by section 282(j)(5)(B) of title 42, or knowingly submitting a false certification under such section.

(2) The failure to submit clinical trial information required under subsection (j) of section 282 of title 42.

(3) The submission of clinical trial information under subsection (j) of section 282 of title 42 that is false or misleading in any particular under paragraph (5)(D) of such subsection (j).

(kk) The dissemination of a television advertisement without complying with section 353c [2] of this title.

(ll) The introduction or delivery for introduction into interstate commerce of any food to which has been added a drug approved under section 355 of this title, a biological product licensed under section 262 of title 42, or a drug or a biological product for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, unless-

(1) such drug or such biological product was marketed in food before any approval of the drug under section 355 of this title, before licensure of the biological product under such section 262 of title 42, and before any substantial clinical investigations involving the drug or the biological product have been instituted;

(2) the Secretary, in the Secretary's discretion, has issued a regulation, after notice and comment, approving the use of such drug or such biological product in the food;

(3) the use of the drug or the biological product in the food is to enhance the safety of the food to which the drug or the biological product is added or applied and not to have independent biological or therapeutic effects on humans, and the use is in conformity with-

(A) a regulation issued under section 348 of this title prescribing conditions of safe use in food;

(B) a regulation listing or affirming conditions under which the use of the drug or the biological product in food is generally recognized as safe;

(C) the conditions of use identified in a notification to the Secretary of a claim of exemption from the premarket approval requirements for food additives based on the notifier's determination that the use of the drug or the biological product in food is generally recognized as safe, provided that the Secretary has not questioned the general recognition of safety determination in a letter to the notifier;

(D) a food contact substance notification that is effective under section 348(h) of this title; or

(E) such drug or biological product had been marketed for smoking cessation prior to September 27, 2007; or

(4) the drug is a new animal drug whose use is not unsafe under section 360b of this title.

(mm) The failure to submit a report or provide a notification required under section 350f(d) of this title.

(nn) The falsification of a report or notification required under section 350f(d) of this title.

(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 333(f) of this title.

(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 387k of this title.

(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

(rr) The charitable distribution of tobacco products.

(ss) The failure of a manufacturer or distributor to notify the Attorney General and the Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

(tt) Making any express or implied statement or representation directed to consumers with respect to a tobacco product, in a label or labeling or through the media or advertising, that either conveys, or misleads or would mislead consumers into believing, that-

(1) the product is approved by the Food and Drug Administration;

(2) the Food and Drug Administration deems the product to be safe for use by consumers;

(3) the product is endorsed by the Food and Drug Administration for use by consumers; or

(4) the product is safe or less harmful by virtue of-

(A) its regulation or inspection by the Food and Drug Administration; or

(B) its compliance with regulatory requirements set by the Food and Drug Administration;

including any such statement or representation rendering the product misbranded under section 387c of this title.

(uu) The operation of a facility that manufactures, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 350g of this title.

(vv) The failure to comply with the requirements under section 350h of this title.

(ww) The failure to comply with section 350i of this title.

(xx) The refusal or failure to follow an order under section 350l of this title.

(yy) The knowing and willful failure to comply with the notification requirement under section 350f(h) of this title.

(zz) The importation or offering for importation of a food if the importer (as defined in section 384a of this title) does not have in place a foreign supplier verification program in compliance with such section 384a of this title.

(aaa) The failure to register in accordance with section 381(s) of this title.

(bbb) The failure to notify the Secretary in violation of section 360bbb–7 of this title.

(ccc)(1) The resale of a compounded drug that is labeled "not for resale" in accordance with section 353b of this title.

(2) With respect to a drug to be compounded pursuant to section 353a or 353b of this title, the intentional falsification of a prescription, as applicable.

(3) The failure to report drugs or adverse events by an entity that is registered in accordance with subsection (b) of section 353b of this title.

(ddd)(1) The manufacture or the introduction or delivery for introduction into interstate commerce of a rinse-off cosmetic that contains intentionally-added plastic microbeads.

(2) In this paragraph-

(A) the term "plastic microbead" means any solid plastic particle that is less than five millimeters in size and is intended to be used to exfoliate or cleanse the human body or any part thereof; and

(B) the term "rinse-off cosmetic" includes toothpaste.

(eee) The failure to comply with any order issued under section 360bbb–8d of this title.

(fff)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification upon any device or container, packaging, or labeling thereof so as to render such device a counterfeit device.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark or imprint of another or any likeness of any of the foregoing upon any device or container, packaging, or labeling thereof so as to render such device a counterfeit device.

(3) The doing of any act which causes a device to be a counterfeit device, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit device.

(ggg) The failure of a sponsor of a product approved under accelerated approval pursuant to section 356(c) of this title-

(1) to conduct with due diligence any postapproval study required under section 356(c) of this title with respect to such product; or

(2) to submit timely reports with respect to such product in accordance with section 356b(a)(2) of this title.

(hhh) The failure to register or submit listing information in accordance with section 364c of this title.

(iii) The refusal or failure to follow an order under section 364g of this title.

(June 25, 1938, ch. 675, §301, 52 Stat. 1042 ; Dec. 22, 1941, ch. 613, §1, 55 Stat. 851 ; July 6, 1945, ch. 281, §1, 59 Stat. 463 ; Mar. 10, 1947, ch. 16, §1, 61 Stat. 11 ; June 24, 1948, ch. 613, §1, 62 Stat. 582 ; Mar. 16, 1950, ch. 61, §3(b), 64 Stat. 20 ; Aug. 7, 1953, ch. 350, §2, 67 Stat. 477 ; Pub. L. 85–929, §5, Sept. 6, 1958, 72 Stat. 1788 ; Pub. L. 86–618, title I, §§104, 105(a), July 12, 1960, 74 Stat. 403 ; Pub. L. 87–781, title I, §§103(c), 104(e)(1), 106(c), 114(a), title III, §304, Oct. 10, 1962, 76 Stat. 784 , 785, 788, 791, 795; Pub. L. 89–74, §§5, 9(c), July 15, 1965, 79 Stat. 232 , 235; Pub. L. 90–399, §103, July 13, 1968, 82 Stat. 352 ; Pub. L. 90–639, §2(b), Oct. 24, 1968, 82 Stat. 1361 ; Pub. L. 91–513, title II, §701(a), Oct. 27, 1970, 84 Stat. 1281 ; Pub. L. 92–387, §4(e), Aug. 16, 1972, 86 Stat. 562 ; Pub. L. 94–295, §§3(b), 4(b)(1), 7(b), May 28, 1976, 90 Stat. 576 , 580, 582; Pub. L. 96–359, §5, Sept. 26, 1980, 94 Stat. 1193 ; Pub. L. 99–570, title IV, §4014(b)(2), Oct. 27, 1986, 100 Stat. 3207–120 ; Pub. L. 100–293, §7(a), Apr. 22, 1988, 102 Stat. 99 ; Pub. L. 101–502, §5(j), Nov. 3, 1990, 104 Stat. 1289 ; Pub. L. 101–508, title IV, §4755(c)(2), Nov. 5, 1990, 104 Stat. 1388–210 ; Pub. L. 102–300, §3(a)(1), June 16, 1992, 106 Stat. 238 ; Pub. L. 102–571, title I, §107(2), (3), Oct. 29, 1992, 106 Stat. 4499 ; Pub. L. 103–80, §3(c), Aug. 13, 1993, 107 Stat. 775 ; Pub. L. 103–396, §2(b)(1), Oct.