

§ 1107a. Emergency use products

(a) Waiver by the President.—(1) In the case of the administration of a product authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act to members of the armed forces, the condition described in section 564(e)(1)(A)(ii)(III) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security.

(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which an individual is required to be informed of an option to accept or refuse administration of a particular product by reason of a determination by the Secretary of Health and Human Services that emergency use of such product is authorized under section 564 of the Federal Food, Drug, and Cosmetic Act.

(b) Provision of Information.—If the President, under subsection (a), waives the condition described in section 564(e)(1)(A)(ii)(III) of the Federal Food, Drug, and Cosmetic Act, and if the Secretary of Defense, in consultation with the Secretary of Health and Human Services, makes a determination that it is not feasible based on time limitations for the information described in section 564(e)(1)(A)(ii)(I) or (II) of such Act and required under paragraph (1)(A) or (2)(A) of such section 564(e), to be provided to a member of the armed forces prior to the administration of the product, such information shall be provided to such member of the armed forces (or next-of-kin in the case of the death of a member) to whom the product was administered as soon as possible, but not later than 30 days, after such administration. The authority provided for in this subsection may not be delegated. Information concerning the administration of the product shall be recorded in the medical record of the member.

(c) Applicability of Other Provisions.—In the case of an authorization by the Secretary of Health and Human Services under section 564(a)(1) of the Federal Food, Drug, and Cosmetic Act based on a determination by the Secretary of Defense under section 564(b)(1)(B) of such Act, subsections (a) through (f) of section 1107 shall not apply to the use of a product that is the subject of such authorization, within the scope of such authorization and while such authorization is effective.

NOTES

Source

(Added Pub. L. 108-136, div. A, title XVI, Sec. 1603(b)(1), Nov. 24, 2003, 117 Stat. 1689; amended Pub. L. 108-375, div. A, title VII, Sec. 726(b), Oct. 28, 2004, 118 Stat. 1992; Pub. L. 109-364, div. A, title X, Sec. 1071(a)(5), (g)(7), Oct. 17, 2006, 120 Stat. 2398, 2402; **Pub. L. 115-91, div. A, title VII, Sec. 716, Dec. 12, 2017, 131 Stat. 1438; Pub. L. 115-92, Sec. 1(c), Dec. 12, 2017, 131 Stat. 2025.**)

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References In Text

Section 564 of the Federal Food, Drug, and Cosmetic Act, referred to in text, is classified to section 360bbb-3 of Title 21, Food and Drugs.

Amendments

2017—Subsec. (d). Pub. L. 115-92 struck out subsec. (d) which related to additional authority to reduce deaths and severity of injuries caused by agents of war.

Pub. L. 115-91 added subsec. (d).

2006—Subsec. (a). Pub. L. 109-364, Sec. 1071(g)(7), made technical correction to directory language of Pub. L. 108-375, Sec. 726(b)(1). See 2004 Amendment note below.

Pub. L. 109-364, Sec. 1071(a)(5), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and, in par. (2), substituted “paragraph (1)” for “subparagraph (A)”.

2004—Subsec. (a). Pub. L. 108-375, Sec. 726(b)(1), as amended by Pub. L. 109-364, Sec. 1071(g)(7), inserted “(A)” after “President.—”.

Subsec. (a)(A). Pub. L. 108-375, Sec. 726(b)(2), struck out “is not feasible, is contrary to the best interests of the members affected, or” after “such requirement”.

Subsec. (a)(B). Pub. L. 108-375, Sec. 726(b)(3), added subpar. (B).

Effective Date Of 2017 Amendment

Pub. L. 115-92, Sec. 1(c), Dec. 12, 2017, 131 Stat. 2025, provided that the amendment made by section 1(c) is effective as of the enactment of the National Defense Authorization Act for Fiscal Year 2018 [Pub. L. 115-91].

Effective Date Of 2006 Amendment

Pub. L. 109-364, div. A, title X, Sec. 1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(7) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108-375 as enacted.

Termination Date

Pub. L. 108-136, div. A, title XVI, Sec. 1603(d), Nov. 24, 2003, 117 Stat. 1690, which provided that section 1603 of Pub. L. 108-136 (enacting this section and section 360bbb-3 of Title 21, Food and Drugs, and amending section 331 of Title 21) would not be in effect (and the law was to read as if that section had never been enacted) as of the date on which, following enactment of the Project Bioshield Act of 2003, the President submits to Congress a notification that the Project Bioshield Act of 2003 provides an effective emergency use authority with respect to members of the Armed Forces, was repealed by Pub. L. 108-276, Sec. 4(b), July 21, 2004, 118 Stat. 859. [The Project Bioshield Act of 2003 was not enacted.]

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