

**(d) Coordination of action by Secretary with Federal Trade Commission**

For the purpose of avoiding unnecessary duplication, the Secretary shall coordinate any action taken under subchapter III of this chapter because of advertising which the Secretary determines causes a food to be misbranded with any action of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] with respect to such advertising.

(June 25, 1938, ch. 675, §707, as added Pub. L. 94-278, title V, §502(b), Apr. 22, 1976, 90 Stat. 412.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (b) and (d), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

**§ 379. Confidential information**

The Secretary may provide any information which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section to a person other than an officer or employee of the Department if the Secretary determines such other person requires the information in connection with an activity which is undertaken under contract with the Secretary, which relates to the administration of this chapter, and with respect to which the Secretary (or an officer or employee of the Department) is not prohibited from using such information. The Secretary shall require as a condition to the provision of information under this section that the person receiving it take such security precautions respecting the information as the Secretary may by regulation prescribe.

(June 25, 1938, ch. 675, §708, as added Pub. L. 94-295, §8, May 28, 1976, 90 Stat. 582.)

**§ 379a. Presumption of existence of jurisdiction**

In any action to enforce the requirements of this chapter respecting a device, tobacco product, food, drug, or cosmetic the connection with interstate commerce required for jurisdiction in such action shall be presumed to exist.

(June 25, 1938, ch. 675, §709, as added Pub. L. 94-295, §8, May 28, 1976, 90 Stat. 583; amended Pub. L. 105-115, title IV, §419, Nov. 21, 1997, 111 Stat. 2379; Pub. L. 111-31, div. A, title I, §103(k), June 22, 2009, 123 Stat. 1837.)

AMENDMENTS

2009—Pub. L. 111-31 inserted “tobacco product,” after “device.”

1997—Pub. L. 105-115 substituted “a device, food, drug, or cosmetic” for “a device”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105-115, set out as a note under section 321 of this title.

**§ 379b. Consolidated administrative and laboratory facility**

**(a) Authority**

The Secretary, in consultation with the Administrator of the General Services Administration, shall enter into contracts for the design, construction, and operation of a consolidated Food and Drug Administration administrative and laboratory facility.

**(b) Awarding of contract**

The Secretary shall solicit contract proposals under subsection (a) of this section from interested parties. In awarding contracts under such subsection, the Secretary shall review such proposals and give priority to those alternatives that are the most cost effective for the Federal Government and that allow for the use of donated land, federally owned property, or lease-purchase arrangements. A contract under this subsection shall not be entered into unless such contract results in a net cost savings to the Federal Government over the duration of the contract, as compared to the Government purchase price including borrowing by the Secretary of the Treasury.

**(c) Donations**

In carrying out this section, the Secretary shall have the power, in connection with real property, buildings, and facilities, to accept on behalf of the Food and Drug Administration gifts or donations of services or property, real or personal, as the Secretary determines to be necessary.

**(d) Authorization of appropriations**

There are authorized to be appropriated to carry out this section \$100,000,000 for fiscal year 1991, and such sums as may be necessary for each of the subsequent fiscal years, to remain available until expended.

(June 25, 1938, ch. 675, §710, as added Pub. L. 101-635, title I, §101, Nov. 28, 1990, 104 Stat. 4583.)

**§ 379c. Transferred**

CODIFICATION

Section, act June 25, 1938, ch. 675, §711, as added Nov. 28, 1990, Pub. L. 101-635, title II, §201, 104 Stat. 4584, which related to recovery and retention of fees for freedom of information requests, was renumbered section 731 of act June 25, 1938, by Pub. L. 102-571, title I, §106(6), Oct. 29, 1992, 106 Stat. 4499, and transferred to section 379f of this title.

**§ 379d. Automation of Food and Drug Administration**

**(a) In general**

The Secretary, acting through the Commissioner of Food and Drugs, shall automate appropriate activities of the Food and Drug Administration to ensure timely review of activities regulated under this chapter.

**(b) Authorization of appropriations**

There are authorized to be appropriated each fiscal year such sums as are necessary to carry out this section.

(June 25, 1938, ch. 675, §711, formerly §712, as added Pub. L. 101-635, title IV, §401, Nov. 28, 1990,

104 Stat. 4585; renumbered §711, Pub. L. 102-571, title I, §106(3), Oct. 29, 1992, 106 Stat. 4498.)

PRIOR PROVISIONS

A prior section 711 of act June 25, 1938, was renumbered section 731 by Pub. L. 102-571 and is classified to section 379f of this title.

**§ 379d-1. Conflicts of interest**

**(a) Definitions**

For purposes of this section:

**(1) Advisory committee**

The term “advisory committee” means an advisory committee under the Federal Advisory Committee Act that provides advice or recommendations to the Secretary regarding activities of the Food and Drug Administration.

**(2) Financial interest**

The term “financial interest” means a financial interest under section 208(a) of title 18.

**(b) Appointments to advisory committees**

**(1) Recruitment**

**(A) In general**

The Secretary shall—

(i) develop and implement strategies on effective outreach to potential members of advisory committees at universities, colleges, other academic research centers, professional and medical societies, and patient and consumer groups;

(ii) seek input from professional medical and scientific societies to determine the most effective informational and recruitment activities; and

(iii) take into account the advisory committees with the greatest number of vacancies.

**(B) Recruitment activities**

The recruitment activities under subparagraph (A) may include—

(i) advertising the process for becoming an advisory committee member at medical and scientific society conferences;

(ii) making widely available, including by using existing electronic communications channels, the contact information for the Food and Drug Administration point of contact regarding advisory committee nominations; and

(iii) developing a method through which an entity receiving funding from the National Institutes of Health, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, or the Veterans Health Administration can identify a person who the Food and Drug Administration can contact regarding the nomination of individuals to serve on advisory committees.

**(2) Evaluation and criteria**

When considering a term appointment to an advisory committee, the Secretary shall review the expertise of the individual and the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978 for each individual under consideration

for the appointment, so as to reduce the likelihood that an appointed individual will later require a written determination as referred to in section 208(b)(1) of title 18, a written certification as referred to in section 208(b)(3) of title 18, or a waiver as referred to in subsection (c)(2) of this section for service on the committee at a meeting of the committee.

**(c) Disclosures; prohibitions on participation; waivers**

**(1) Disclosure of financial interest**

Prior to a meeting of an advisory committee regarding a “particular matter” (as that term is used in section 208 of title 18), each member of the committee who is a full-time Government employee or special Government employee shall disclose to the Secretary financial interests in accordance with subsection (b) of such section 208.

**(2) Prohibitions and waivers on participation**

**(A) In general**

Except as provided under subparagraph (B), a member of an advisory committee may not participate with respect to a particular matter considered in an advisory committee meeting if such member (or an immediate family member of such member) has a financial interest that could be affected by the advice given to the Secretary with respect to such matter, excluding interests exempted in regulations issued by the Director of the Office of Government Ethics as too remote or inconsequential to affect the integrity of the services of the Government officers or employees to which such regulations apply.

**(B) Waiver**

If the Secretary determines it necessary to afford the advisory committee essential expertise, the Secretary may grant a waiver of the prohibition in subparagraph (A) to permit a member described in such subparagraph to—

(i) participate as a non-voting member with respect to a particular matter considered in a committee meeting; or

(ii) participate as a voting member with respect to a particular matter considered in a committee meeting.

**(C) Limitation on waivers and other exceptions**

**(i) Definition**

For purposes of this subparagraph, the term “exception” means each of the following with respect to members of advisory committees:

(I) A waiver under section 355(n)(4) of this title (as in effect on the day before September 27, 2007).

(II) A written determination under section 208(b) of title 18.

(III) A written certification under section 208(b)(3) of such title.

**(ii) Determination of total number of members slots and member exceptions during fiscal year 2007**

The Secretary shall determine—