alternative preservative has not yet been shown to be as effective or where adequate integrity and stability data for the reformulated product are not yet available. The component of a preservative system whether hexachlorophene or other antimicrobial agent, should be selected on the basis of the effect on the total microbial ecology of the product, not merely on gram-positive bacteria.

(1) Adequate safety data do not presently exist to justify wider use of hexachlorophene in cosmetics.

(2) Antibacterial ingredients used as substitutes for hexachlorophene in cosmetic products, and finished cosmetic products containing such ingredients, shall be adequately tested for safety prior to marketing. Any such ingredient or product whose safety is not adequately substantiated prior to marketing may be adulterated and will in any event be deemed misbranded unless it contains a conspicuous front panel statement that the product has not been adequately tested for safety and may be hazardous.

(f) *Content statement.* All reference to hexachlorophene limit in this order is on a weight-in-weight (w/w) basis. Quantitative declaration of hexachlorophene content on the labeling of the products, where required, shall be on a w/w basis.

(g) *Shipments of products.* Shipments of products falling within the scope of paragraphs (c), (d), or (e) of this section which are not in compliance with the guidelines stated herein shall be the subject of regulatory proceedings after the effective date of the final order.

(h) *Prior notices.* This order preempts any conditions for marketing products set forth in the following prior notices.

1. DESI No. 4749 (34 FR 15389, October 2, 1969), ''Certain OTC Drugs for Topical Use.''
2. DESI No. 2855 (35 FR 12423, August 4, 1970), ''Certain Mouthwash and Gargle Preparations.''
3. DESI No. 8940 (36 FR 14510, August 6, 1971), ''Topical Cream Containing Pyrilamine Maleate, Benzocaine, Hexachlorophene, and Cetrimonium Bromide.''
4. DESI No. 6615 (36 FR 18022, September 8, 1971), ''Deodorant/Antiperspirant.''
5. DESI No. 6270 (36 FR 23330, December 8, 1971), ''Certain Preparations Containing Hexachlorophene''.

[40 FR 14033, Mar. 27, 1975, as amended at 42 FR 63773, Dec. 20, 1977; 55 FR 11577, Mar. 29, 1990; 67 FR 4906, Feb. 1, 2002; 69 FR 18763, Apr. 8, 2004]

PART 251—SECTION 804 IMPORTATION PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Section 804 Importation Program Proposals and Pre-Import Requests

Subpart C—Certain Requirements for Section 804 Importation Programs

AUTHORITY: 21 U.S.C. 351, 352, 353, 355, 360, 360eee–1, 371, 374, 381, 384.

SOURCE: 85 FR 62126, Oct. 1, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 251.1 Scope of the part.

(a) This part sets forth the procedures that Section 804 Importation Program sponsors (SIP Sponsors) must

follow when submitting plans to implement time-limited programs to begin importation of drugs from Canada under section 804 of the Federal Food, Drug, and Cosmetic Act. This part also sets forth certain requirements that are necessary for such programs to be authorized by the Food and Drug Administration (FDA). Additionally, this part sets forth requirements for eligible prescription drugs and requirements for entities that engage in importation of eligible prescription drugs.

(b) This part includes provisions that exempt eligible prescription drugs that meet certain requirements from section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act. This part also includes provisions that exempt certain transactions involving eligible prescription drugs from certain requirements in section 582 of the Federal Food, Drug, and Cosmetic Act.

§ 251.2 Definitions.

The definitions of terms in section 804 of the Federal Food, Drug, and Cosmetic Act apply to the terms used in this part, if not otherwise defined in this section. The following definitions apply to this part:

Active ingredient has the meaning set forth in § 314.3 of this chapter.

Adverse event means any untoward medical occurrence associated with the use of a drug product in humans, whether or not it is considered related to the drug product. An adverse event can occur in the course of the use of a drug product; from overdose of a drug product, whether accidental or intentional; from abuse of a drug product; from discontinuation of the drug product (e.g., physiological withdrawal); and it includes any failure of expected pharmacological action.

Combination product has the meaning set forth in § 3.2(e) of this chapter.

Constituent part has the meaning set forth in § 4.2 of this chapter.

Disability means a substantial disruption of a person's ability to conduct normal life functions.

Eligible prescription drug:

(1) Means a drug subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act that has been approved and has received a Notice of Compliance and a Drug Identification Number (DIN) from the Health Products and Food Branch of Health Canada (HPFB) and, but for the fact that it deviates from the required U.S. labeling, also meets the conditions in an FDA-approved new drug application (NDA) or abbreviated new drug application (ANDA) for a drug that is currently commercially marketed in the United States, including those relating to the drug substance, drug product, production process, quality controls, equipment, and facilities.

(2) The term *eligible prescription drug* does not include:

(i) A controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(ii) A biological product (as defined in section 351(i)(1) of the Public Health Service Act (42 U.S.C. 262(i)(1)));

(iii) An infused drug (including a peritoneal dialysis solution);

(iv) An intravenously injected drug;

(v) A drug that is inhaled during surgery;

(vi) An intrathecally or intraocularly injected drug;

(vii) A drug that is subject to a risk evaluation and mitigation strategy under section 505–1 of the Federal Food, Drug, and Cosmetic Act; or

(viii) A drug that is not a ''product'' for purposes of section 582 as defined in section 581(13) of the Federal Food, Drug, and Cosmetic Act.

Entered (or entry) for consumption has the meaning set forth in 19 CFR 141.0a(f).

Entry means the information or data filed electronically in the Automated Commercial Environment (ACE) or any other U.S. Customs and Border Protection (CBP)-authorized electronic data interchange system to secure the release of imported merchandise from CBP, or the act of filing that information or data.

Foreign Seller means an establishment within Canada engaged in the distribution of an eligible prescription drug that is imported or offered for importation into the United States. A Foreign Seller must have an active Drug Establishment License to wholesale drugs by Health Canada. A Foreign Seller must be registered with provincial regulatory authorities to distribute HPFB-approved drugs. A Foreign Seller must

not be licensed by a provincial regulatory authority with an international pharmacy license that allows it to distribute drugs that are approved by countries other than Canada and that are not HPFB-approved for distribution in Canada. A Foreign Seller must also be registered with FDA under section 804 of the Federal Food, Drug, and Cosmetic Act in accordance with the requirements described in this part.

Illegitimate foreign product means a drug purchased by a Foreign Seller from a manufacturer, and intended for sale to the Importer in the United States, where the Foreign Seller has credible evidence that shows that the product:

(1) Is counterfeit, diverted, or stolen;

(2) Is intentionally adulterated such that the product would result in serious adverse health consequences or death to humans;

(3) Is the subject of a fraudulent transaction; or

(4) Appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences or death to humans.

Importer means a pharmacist or wholesaler. An Importer must be a State-licensed pharmacist, or a State- or FDA-licensed wholesale distributor, who is the U.S. owner of an eligible prescription drug at the time of entry into the United States. The Importer's pharmacist license or wholesale distributor license (if issued by a State and not FDA) must be issued by a State that is a SIP Sponsor or SIP Co-Sponsor. An Importer's pharmacist or wholesale distributor license must be in effect (*i.e.,* not expired) and the Importer's license must be in good standing with the licensor.

Individual case safety report (ICSR) means a description of an adverse event related to an individual patient or subject.

ICSR attachments means any document related to the adverse event described in an ICSR, such as medical records, hospital discharge summaries, or other documentation.

Life-threatening adverse event means any adverse event that places the patient, in the view of the initial reporter, at immediate risk of death from the adverse event as it occurred, *i.e.,* it does not include an adverse event that, had it occurred in a more severe form, might have caused death.

Manufacturer means an applicant, as defined in § 314.3 of this chapter, or a person who owns or operates an establishment that manufactures an eligible prescription drug. Manufacturer also means a holder of a drug master file containing information necessary to conduct the Statutory Testing, prepare the manufacturer's attestation and information statement, or otherwise comply with section 804 of the Federal Food, Drug, and Cosmetic Act or this part.

Minimum data set for an adverse event means the minimum four elements required for reporting an ICSR of an adverse event: An identifiable patient, an identifiable reporter, a suspect drug product, and an adverse event.

Pharmacist means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

Pre-Import Request means a request made to FDA by an Importer that must be granted by FDA before the Importer can start importation under a Section 804 Importation Program.

Qualifying laboratory means a laboratory in the United States that has been approved by FDA for the purposes of section 804 of the Federal Food, Drug, and Cosmetic Act.

Relabel has the meaning set forth in § 207.1 of this chapter.

Relabeler has the meaning set forth in § 207.1 of this chapter.

Repack or repackage has the meaning set forth in § 207.1 of this chapter.

Responsible individual(s) means an individual or individuals who are designated in the Section 804 Importation Program compliance plan. Such individuals are responsible for ensuring compliance with the requirements of the Section 804 Importation Program under their oversight and with the applicable provisions of the Federal Food, Drug, and Cosmetic Act and this part.

Section 804 Importation Program (''SIP'') means a program under section 804 of the Federal Food, Drug, and Cosmetic Act, and this part, that has been authorized by FDA for the importation

of eligible prescription drugs from Canada.

Section 804 Importation Program Sponsor (''SIP Sponsor'') means a State or Indian Tribe that regulates wholesale drug distribution and the practice of pharmacy that submits a proposal to FDA that describes a program to facilitate the importation of prescription drugs from Canada under section 804 of the Federal Food, Drug, and Cosmetic Act and is responsible for oversight of the implementation of the program. After an initial 2-year period beginning on the date of the first import entry under any SIP authorized under this part, the Secretary may determine, based on experience under the program, that there is a sufficient likelihood that a proposal that does not include a State or Indian Tribe as the SIP sponsor could provide the same level of assurance of safety as a proposal that does include such a sponsor, such that FDA may begin receiving, reviewing, and potentially authorizing applications for SIPs without such a sponsor. After the Secretary makes such a determination, a pharmacist or wholesaler may propose a SIP that does not include a State or Indian Tribe as a sponsor, and FDA may authorize such a SIP if the sponsor demonstrates that the SIP meets the criteria for authorization with the same level of assurance of safety as a proposal that includes a State or Indian Tribe as the SIP sponsor, which FDA shall evaluate consistent with any considerations described in the Secretary's determination, including by evaluating whether the application demonstrates that the proposed sponsor has sufficient relevant experience, such as participating in a SIP and demonstrating compliance with the requirements of the Federal Food, Drug, and Cosmetic Act and this part.

Section 804 Importation Program Co-Sponsor (''SIP Co-Sponsor'') means any other State or Indian Tribe, or a pharmacist or a wholesale distributor that, with the SIP Sponsor, signs a proposal to FDA that describes a program to facilitate the importation of prescription drugs from Canada under section 804 of the Federal Food, Drug, and Cosmetic Act.

Section 804 Serial Identifier (''SSI'') means a unique alphanumeric serial number of up to 20 characters that is assigned and placed on or affixed by the Foreign Seller to each package and homogenous case of the product that the Foreign Seller intends to sell to an Importer. For purposes of the SSI, ''package'' means the smallest individual saleable unit of product for distribution that is intended by the Foreign Seller for sale to an Importer located in the United States, and ''individual saleable unit'' means the smallest container of product sold by the Foreign Seller to the Importer.

Serious adverse event means:

(1) An adverse event is considered ''serious'' if it results in any of the following outcomes:

(i) Death;

(ii) A life-threatening adverse event;

(iii) Inpatient hospitalization or prolongation of existing hospitalization;

(iv) A persistent or significant incapacity or substantial disruption of the ability to conduct normal life functions; and/or

(v) A congenital anomaly/birth defect.

(2) Other events that may be considered serious adverse events: Important medical events that may not result in one of the listed outcomes in this definition may be considered serious adverse events when, based upon appropriate medical judgment, they may jeopardize the patient or study subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples include: Allergic bronchospasm requiring intensive treatment in an emergency department or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of product dependency or product abuse.

Statutory Testing means the testing of an eligible prescription drug as required by section 804(d)(1)(J) and (L) and section 804(e) of the Federal Food, Drug, and Cosmetic Act, including for authenticity, for degradation, and to ensure that the prescription drug is in compliance with established specifications and standards.

Suspect foreign product means a drug purchased by a Foreign Seller from a

manufacturer, and intended for sale to an Importer in the United States, for which the Foreign Seller has reason to believe that such product:

(1) Is potentially counterfeit, diverted, or stolen;

(2) Is potentially intentionally adulterated such that the product would result in serious adverse health consequences or death to humans;

(3) Is potentially the subject of a fraudulent transaction; or

(4) Appears otherwise unfit for distribution such that the product would result in serious adverse health consequences or death to humans.

Transaction means the transfer of product between persons in which a change of ownership occurs, in accordance with section 581(24) of the Federal Food, Drug, and Cosmetic Act. For the purposes of this part, ''transaction'' includes the sale and transfer of product between the manufacturer and Foreign Seller. The sale and transfer of product between Foreign Seller and Importer also constitutes a ''transaction.''

Unexpected adverse event means an adverse event that is not included in the current U.S. labeling for the drug product. Events that may be symptomatically or pathophysiologically related to an adverse event included in the labeling but differ from the labeled event because of greater severity or specificity would be considered unexpected. ''Unexpected,'' as used in this definition, also refers to adverse events that are mentioned in the product labeling as occurring with a class of products or anticipated from the pharmacological properties of the product but are not specifically mentioned as occurring with the particular product.

(1) *Example of greater severity*. Under this definition, hepatic necrosis would be unexpected if the labeling referred only to elevated hepatic enzymes or hepatitis.

(2) *Example of greater specificity*. Cerebral thromboembolism and cerebral hemorrhage would be unexpected if the labeling included only cerebrovascular accidents.

Unique facility identifier means the identifier required to be submitted by the registrant for drug establishment registration under section 510 of the Federal Food, Drug, and Cosmetic Act in accordance with § 207.25 of this chapter. For Foreign Sellers registering under section 804 of the Federal Food, Drug, and Cosmetic Act, the term ''unique facility identifier'' means the identifier required to be submitted under § 251.9 in accordance with the system specified under section 510 of the Federal Food, Drug, and Cosmetic Act.

Wholesaler means a person licensed as a wholesale distributor, as the terms ''licensed'' and ''wholesale distributor'' are defined in section 581(9)(A) and 581(29), respectively. The term ''wholesaler'' does not include a person authorized to import drugs under section 801(d)(1).

Subpart B—Section 804 Importation Program Proposals and Pre-Import Requests

§ 251.3 SIP proposal submission requirements.

(a) A SIP Sponsor may delegate implementation activities to a SIP co-sponsor but the SIP Sponsor remains responsible for oversight of the implementation of the program.

(b) A SIP Sponsor must only designate one Foreign Seller and one Importer per initial proposal. Additional Foreign Sellers and Importers may be added to an authorized SIP through a supplemental proposal under § 251.8.

(c) A SIP Sponsor that intends to implement a SIP under this part must submit a proposal to FDA in electronic format via FDA's Electronic Submissions Gateway (ESG) or to an alternative transmission point identified by FDA. The proposal must include:

(1) A cover sheet containing the following:

(i) Name or names of SIP Sponsor and co-sponsors, if any;

(ii) Name and contact information for a person authorized to serve as the point of contact with FDA during its review of the proposal; and

(iii) The signature of the SIP Sponsor and co-sponsors, if any, or authorized representative who is an employee or agent of the Sponsor or co-sponsor and has been authorized to sign the proposal for the Sponsor or co-sponsor. The signatory must reside or have a place of business within the United

States, and the proposal cover sheet must contain the name, title, and business address of the signatory.

(2) A table of contents;

(3) An introductory statement that includes an overview of the SIP Sponsor's SIP Proposal; and

(4) The SIP Sponsor's importation plan.

(d) The overview of the SIP Proposal must include:

(1) The name of the SIP, if any, and the name or names and address or addresses of the SIP Sponsor and co-sponsors, if any;

(2) The name, email address, and telephone number of the responsible individual(s);

(3) The name and DIN of each eligible prescription drug that the SIP Sponsor seeks to include in the SIP;

(4) The name and address of the applicant that holds the approved NDA or ANDA for each eligible prescription drug's FDA-approved counterpart, and the approved NDA or ANDA number;

(5) The name and address of the manufacturer of the finished dosage form of the eligible prescription drug, if known or reasonably known;

(6) The name and address of the manufacturer of the active ingredient or ingredients of the eligible prescription drugs, if known or reasonably known;

(7) The name and address of the Foreign Seller;

(8) A copy of the Foreign Seller's Health Canada Drug Establishment License;

(9) The name and address of the Importer;

(10) The name and address of the FDA-registered repackager or relabeler, if different from the Importer, that will relabel the eligible prescription drugs (including any limited repackaging in accordance with the requirements in this part), along with adequate evidence of registration and of satisfactory resolution of any objectionable conditions or practices identified during its most recent FDA inspection, if applicable; and

(11) A summary of how the SIP Sponsor will ensure that:

(i) The imported eligible prescription drugs meet the Statutory Testing requirements;

(ii) The supply chain is secure;

(iii) The labeling requirements of the Federal Food, Drug, and Cosmetic Act and this part are met;

(iv) The post-importation pharmacovigilance and other requirements of the Federal Food, Drug, and Cosmetic Act and this part are met; and

(v) The SIP will result in a significant reduction in the cost to the American consumer of the eligible prescription drugs that the SIP Sponsor seeks to import.

(e) The SIP Sponsor's importation plan must:

(1) Identify the SIP Sponsor, including any co-sponsors, identify the responsible individual(s), and identify the applicant that holds the approved NDA or ANDA for each eligible prescription drug's FDA-approved counterpart, the manufacturer(s) of the finished dosage form and the active ingredient or ingredients of each eligible prescription drug that the SIP Sponsor seeks to import, if known or reasonably known, the Foreign Seller, if known or reasonably known, and the Importer, and explain the legal relationship, if any, of each of these entities to the SIP Sponsor.

(2) Include an attestation and information statement containing a complete disclosure of any past criminal convictions or violations of State, Federal, or Canadian laws regarding drugs or devices against or by the responsible individual(s), Foreign Seller, or Importer or an attestation that the responsible individual(s), Foreign Seller, or Importer has not been involved in, or convicted of, any such violations. Such attestation and information statement must include principals, any shareholder who owns 10 percent or more of outstanding stock in any nonpublicly held corporation, directors, officers, and any facility manager or designated representative of such manager.

(3) Include a list of all disciplinary actions, to include the date of and parties to any action imposed against the responsible individual(s), Foreign Seller, or Importer by State, Federal, or Canadian regulatory bodies, including any such actions against the principals, owners, directors, officers, quality unit, or any facility manager or

designated representative of such manager for the previous 7 years prior to submission of the SIP Proposal.

(4) Include:

(i) The Health Canada inspectional history for the Foreign Seller for the previous 5 years or, if the Foreign Seller has been licensed for less than 5 years, for the duration of its period of licensure; and

(ii) The State and Federal inspectional history for the Importer for the previous 5 years or, if the Importer has been licensed for less than 5 years, for the duration of its period of licensure.

(5) Include the proprietary name (if any), the established name, the approved application numbers, and the DIN and National Drug Code (NDC) for each eligible prescription drug that the SIP Sponsor seeks to import from Canada and for its FDA-approved counterpart. The SIP Sponsor's importation plan must also include as much of the information that is required by § 251.5 about the HPFB-approved product and its FDA-approved counterpart as is available, including the name and quantity of the active ingredient, the inactive ingredients, and the dosage form.

(6) Provide adequate evidence that each HPFB-approved drug's FDA-approved counterpart drug is currently commercially marketed in the United States.

(7) Describe, to the extent possible, the testing that will be done to establish that the HPFB-approved drug meets the conditions in the NDA or ANDA for the HPFB-approved drug's FDA-approved counterpart. The SIP Sponsor's importation plan must also identify the qualifying laboratory that will conduct the Statutory Testing for the Importer, if the Importer is responsible for conducting the Statutory Testing, and it must establish that the laboratory is qualified in accordance with § 251.15 to conduct the tests.

(8) Include a copy of the FDA-approved drug labeling for the FDA-approved counterpart of the eligible prescription drug, a copy of the proposed labeling that will be used for the eligible prescription drug, and a side-by-side comparison of the FDA-approved labeling and the proposed labeling, including the Prescribing Information, carton and container labeling, and patient labeling (e.g., Medication Guide, Instructions for Use, patient package inserts), with all differences annotated and explained. The SIP Proposal must also include a copy of the HPFB-approved labeling.

(9) Explain how the SIP Sponsor will ensure that the SIP will result in a significant reduction in the cost to the American consumer of the eligible prescription drugs that the SIP Sponsor seeks to import. The explanation must include any assumptions and uncertainty, and it must be sufficiently detailed to allow for a meaningful evaluation.

(10) Explain how the SIP Sponsor will ensure that all the participants in the SIP comply with the requirements of section 804 of the Federal Food, Drug, and Cosmetic Act and this part.

(11) Describe the procedures the SIP Sponsor will use to ensure that the requirements of this part are met, including the steps that will be taken to ensure that the:

(i) Storage, handling, and distribution practices of supply chain participants, including transportation providers, meet the requirements of part 205 of this chapter and do not affect the quality or impinge on the security of the eligible prescription drugs;

(ii) Supply chain is secure;

(iii) Importer screens the eligible prescription drugs it imports for evidence that they are adulterated, counterfeit, damaged, tampered with, expired, suspect foreign product, or illegitimate foreign product; and

(iv) Importer fulfills its responsibilities to submit adverse event, field alert, and other reports required by the SIP, the Federal Food, Drug, and Cosmetic Act, or this part.

(12) Explain how the SIP Sponsor will educate pharmacists, healthcare providers, pharmacy benefit managers, health insurance issuers and plans, as appropriate, and patients about the eligible prescription drugs imported under its SIP.

(13) Include the SIP's recall plan, including an explanation of how the SIP Sponsor will obtain recall or market withdrawal information and how it will

ensure that recall or market withdrawal information is shared among the SIP Sponsor, the Foreign Seller, the Importer, and FDA and provided to the manufacturer.

(14) Include the SIP's return plan, including an explanation of how the SIP Sponsor will ensure that product that is returned after distribution in the United States is properly dispositioned in the United States, if it is a non-saleable return, in order to protect patients from expired or unsafe drugs, and an explanation of how the SIP Sponsor will prevent the non-saleable returned eligible prescription drugs from being exported from the United States. In the event that a returned eligible prescription drug may be considered saleable, include an explanation for how the returned product will be determined to be saleable and under what circumstances such eligible prescription drugs may be re-distributed in the United States.

(15) Include the SIP's compliance plan, which must include:

(i) A description of the division of responsibilities among co-sponsors, if any, which includes a plan for timely communication of any compliance issues to the SIP Sponsor;

(ii) Identification of responsible individual(s) and a description of the respective area(s) of the SIP, the Federal Food, Drug, and Cosmetic Act, or this part that will be under each responsible individual's oversight;

(iii) The creation of written compliance policies, procedures, and protocols;

(iv) The provision of education and training to ensure that Foreign Sellers, Importers, qualifying laboratories, and their employees understand their compliance-related obligations;

(v) The creation and maintenance of effective lines of communication, including a process to protect the anonymity of complainants and to protect whistleblowers; and

(vi) The adoption of processes and procedures for uncovering and addressing noncompliance, misconduct, or conflicts of interest.

(16) Explain how the SIP Sponsor will ensure that any information that the manufacturer supplies to authenticate a prescription drug being tested and confirm that the labeling of the prescription drug complies with labeling requirements under the Federal Food, Drug, and Cosmetic Act, and any trade secrets or commercial or financial information that is privileged or confidential that the manufacturer supplies for the purposes of testing or otherwise complying with the Federal Food, Drug, and Cosmetic Act and this part, are kept in strict confidence and used only for the purposes of testing or otherwise complying with the Federal Food, Drug, and Cosmetic Act and this part.

§ 251.4 Review and authorization of importation program proposals.

Based on a review of a SIP Proposal or supplemental proposal submitted under this part, FDA may authorize a SIP, modify a SIP, or extend the authorization period of a SIP, that meets the requirements of this part. FDA may use a phased review process to review a SIP Proposal that does not identify a Foreign Seller in an initial submission, under which FDA may notify the Sponsor of such a SIP Proposal whether the Sponsor's SIP Proposal otherwise meets the requirements of this part. In such a case, the required information regarding importers, relabelers, and repackagers still must be included in the initial submission of the SIP Proposal, and the SIP Proposal will be denied if a Foreign Seller is not identified within 6 months of the initial submission date of the SIP Proposal.

(a) FDA may deny a request for authorization, modification, or extension of a SIP, including if a SIP Proposal or supplemental proposal does not meet the requirements of this part. When a SIP Proposal or supplemental proposal meets the requirements of this part, FDA may nonetheless decide not to authorize the SIP Proposal or supplemental proposal. For example, FDA may decide not to authorize a SIP Proposal or supplemental proposal because of potential safety concerns with the SIP; because a Foreign Seller is not identified within 6 months of the initial submission of the SIP Proposal; because of the degree of uncertainty that

the SIP Proposal or supplemental proposal would adequately ensure the protection of public health; because of, based on the recommendation of another Department of Health and Human Services (HHS) component as directed by the Secretary, the relative likelihood that the SIP Proposal or supplemental proposal would not result in significant cost savings to the American consumer; because of the potential for conflicts of interest; or in order to limit the number of authorized SIPs so FDA can effectively and efficiently carry out its responsibilities under section 804 of the Federal Food, Drug, and Cosmetic Act in light of the amount of resources allocated to carrying out such responsibilities.

(b) FDA will notify a SIP Sponsor in writing when FDA receives the SIP Sponsor's SIP Proposal or supplemental proposal.

(c) FDA will make a reasonable effort to promptly communicate to a SIP Sponsor about any information required by § 251.3 that was not submitted in a SIP Proposal.

(1) FDA may notify a SIP Sponsor if FDA believes additional information would help FDA's review of a SIP Proposal or supplemental proposal.

(2) FDA will notify a SIP Sponsor in writing whether FDA has decided to authorize or not to authorize the SIP Sponsor's SIP Proposal or supplemental proposal.

§ 251.5 Pre-Import Request.

(a) An eligible prescription drug may not be imported or offered for import under this part unless the Importer has filed a Pre-Import Request for that drug in accordance with this section and FDA has granted the Pre-Import Request.

(b) The Importer must submit a complete Pre-Import Request in electronic format via the ESG, or to an alternative transmission point identified by FDA, at least 30 calendar days prior to the scheduled date of arrival or entry for consumption, whichever occurs first, of an eligible prescription drug covered under an authorized SIP.

(c) A complete Pre-Import Request must include, at a minimum:

(1) Identification of the Importer, including Importer name; business type (wholesale distributor or pharmacist); U.S. license number(s) and State(s) of license; business address; unique facility identifier if required to register with FDA as an establishment under section 510 of the Federal Food, Drug, and Cosmetic Act or FDA establishment identification number if not required to register under section 510 of the Federal Food, Drug, and Cosmetic Act; and the name, email address, and phone number of a contact person.

(2) Identification of the FDA-authorized SIP, including the name of the SIP, if any; the name or names of the SIP Sponsor and co-sponsors, if any; business address; and the name, email address, and phone number of a contact person.

(3) Identification of the Foreign Seller, including the name of the Foreign Seller; business address; unique facility identifier; any license numbers issued by Health Canada or a provincial regulatory body; and the name, email address, and phone number of a contact person.

(4) Identification and description of each drug covered by the Pre-Import Request, including, for each drug, the following information:

(i) Established and proprietary name of the HPFB-approved drug, as applicable; DIN; and complete product description, including strength, description of dosage form, and route(s) of administration.

(ii) Active pharmaceutical ingredient (API) information, including:

(A) Name of API;

(B) Manufacturer of API and its unique facility identifier; and

(C) Amount of API and unit measure in the eligible prescription drug;

(iii) Established name and proprietary name, as applicable, of the FDA-approved counterpart drug and NDA or ANDA number.

(iv) Manufacturer of the eligible prescription drug with the business address and unique facility identifier.

(v) Copies of the invoice and any other documents related to the manufacturer's sale of the drug to the Foreign Seller that was provided by the manufacturer to the Importer, and copies of the same documents provided by the Foreign Seller to the Importer.

(vi) Quantity, listed separately by dosage form, strength, batch and lot or control number assigned by the manufacturer to the eligible prescription drug intended to be imported under this Pre-Import Request, compared to the quantity of each batch and lot or control number originally received by the Foreign Seller from the manufacturer, and the date of such receipt.

(vii) Expiration date of the HFPB-approved drug, listed by lot or control number assigned by the manufacturer.

(viii) Expiration date to be assigned to the eligible prescription drug when relabeled by the Importer with a complete description of how that expiration date was determined using the manufacturer's stability studies in accordance with the FDA-approved NDA or ANDA.

(ix) NDC proposed for assignment by the Importer.

(x) FDA product code for the eligible prescription drug(s) to be imported.

(xi) Unless the manufacturer has notified the Importer that it intends to conduct the required testing as provided in §251.16(e), a Statutory Testing plan that includes:

(A) A description of how the samples will be selected from a shipment for the Statutory Testing;

(B) The name and location of the qualifying laboratory in the United States that will conduct the Statutory Testing; and

(C) A description of the testing method(s) that will be used to conduct the Statutory Testing.

(xii) Attestation and information statement from the manufacturer that establishes that the drug proposed for import, but for the fact that it bears the HPFB-approved labeling, meets the conditions in the FDA-approved NDA or ANDA, including any process-related or other requirements for which compliance cannot be established through laboratory testing. Accordingly, the attestation and information statement must include, at a minimum:

(A) Confirmation that the HPFB-approved drug has the active ingredient(s), active ingredient source(s) (including manufacturing facility or facilities), inactive ingredient(s), dosage form, strength(s), and route(s) of administration described in the FDA-approved drug's NDA or ANDA.

(B) Confirmation that the HPFB-approved drug conforms to the specifications in the FDA-approved drug's NDA or ANDA regarding the quality of the drug substance(s), drug product, intermediates, raw materials, reagents, components, in-process materials, container closure systems, and other materials used in the production of the drug.

(C) Confirmation that the HPFB-approved drug was manufactured in accordance with the conditions described in the FDA-approved drug's NDA or ANDA, including with regard to the facilities and manufacturing lines that are used, and in compliance with current good manufacturing practice requirements set forth in section 501 of the Federal Food, Drug, and Cosmetic Act and parts 4 (if a combination product), 210, and 211 of this chapter.

(D) Original date of manufacture or the date used to calculate the labeled expiration date based on the HPFB-approved or scientifically validated expiration period, the expiration period set forth in the FDA-approved drug's NDA or ANDA, and any other information needed to label the drug with an expiration date within the expiration dating period determined by stability studies in the FDA-approved NDA or ANDA.

(E) Information needed to confirm that the labeling of the prescription drug complies with labeling requirements under the Federal Food, Drug, and Cosmetic Act.

(xiii) Information related to the importation, including:

(A) Location of the eligible prescription drugs in Canada and anticipated date of shipment (date the eligible prescription drug(s) leave their location in Canada);

(B) Name, address, email address, and telephone number of the Foreign Seller;

(C) Anticipated date of export from Canada and Canadian port of exportation;

(D) Anticipated date and approximate time of arrival at the port authorized by FDA to import eligible prescription drugs under section 804 of the Federal Food, Drug, and Cosmetic Act;

(E) The name, address, unique facility identifier or FDA establishment identification number, and telephone number of the secured warehouse, location within a specific foreign trade zone, or other secure distribution facility controlled by or under contract with the Importer where the eligible prescription drug will be stored pending testing, relabeling, and FDA determination of admissibility;

(F) Information regarding the facility where the relabeling and any repackaging allowed under the authorized SIP will occur for the eligible prescription drug, including:

(*1*) The facility's unique facility identifier;

(*2*) The facility's name, address, and FDA establishment identifier number;

(*3*) The anticipated date the relabeling and any limited repackaging will be completed; and

(*4*) Information about where the relabeled drug will be stored pending distribution, including the FDA establishment identification number of the storage facility, if available.

(d) The manufacturer must provide the attestation and information statement described in paragraph (c)(4)(xii) of this section to the Importer within 30 calendar days of receiving the Importer's request. If the manufacturer cannot provide the attestation and information statement, it must notify FDA and the Importer of its inability to provide the attestation and information statement and articulate with specificity the reason(s) why it cannot provide the attestation and information statement.

(e)(1) The Importer must provide the executed batch record, including the certificate of analysis, for at least one recently manufactured, commercial-scale batch of the HPFB-approved drug, and at least one recently manufactured, commercial-scale batch of the FDA-approved drug that was produced for and released for distribution to the U.S. market under an NDA or ANDA.

(2) The manufacturer must provide these records to the Importer, within 30 calendar days of receiving the Importer's request, for each manufacturing line that the manufacturer used to produce either or both of the drugs.

§ 251.6 Termination of authorized importation programs.

(a) Unless an extension is granted under this part, authorization for a SIP automatically terminates after 2 years, or a shorter period of time if a shorter period of time is specified in the authorization for the SIP.

(b) The authorization period for a SIP begins when the Importer, or its authorized customs broker, files an electronic import entry for consumption for its first shipment of drugs under the SIP.

(c) Notwithstanding paragraph (a) of this section, authorization for a SIP terminates if the Importer, or its authorized customs broker, does not file an electronic import entry for consumption for a shipment of eligible prescription drugs under the SIP within 1 year of the date that the SIP was authorized.

(d) FDA will terminate authorization of a SIP upon request from the SIP Sponsor.

(e) An eligible prescription drug cannot be shipped into the United States under this part, and is subject to refusal of admission into the United States, if the authorization of the SIP has terminated.

§ 251.7 Suspension and revocation of authorized importation programs.

(a) FDA may suspend a SIP under any of the circumstances set forth in § 251.18, or under any other circumstances in FDA's discretion. An eligible prescription drug cannot be shipped into the United States under this part, and is subject to refusal of admission into the United States, if FDA has suspended the SIP or revoked its authorization.

(b) SIP Sponsors and other SIP participants must agree to submit to audits of their books and records and inspections of their facilities as a condition of participation in a SIP. If a SIP Sponsor, manufacturer, Foreign Seller, Importer, qualifying laboratory, or other participant in the supply chain delays, denies, or limits an inspection, or refuses to permit entry, inspection, or audit of its facility or its records, FDA may suspend the SIP, in whole or in part, immediately.

(c) FDA may revoke authorization of a SIP, in whole or in part, including with respect to one or more drugs in the SIP, at any time if FDA determines that:

(1) The SIP Proposal contained an untrue statement of material fact;

(2) The SIP Proposal omitted material information;

(3) The SIP no longer meets the requirements of section 804 of the Federal Food, Drug, and Cosmetic Act, this part, or the SIP, including, among other things, if FDA finds that the manufacturer, the Foreign Seller, the Importer, or any other supply chain participant is found to be not compliant with section 501(a)(2)(A) or (B) of the Federal Food, Drug, and Cosmetic Act;

(4) Continued implementation of the SIP is reasonably likely to pose additional risk to the public's health and safety;

(5) Confidential manufacturer information was disclosed in violation of § 251.16;

(6) Continued implementation of the SIP is not reasonably likely to result in a significant reduction in the cost of the drugs covered by the SIP to the American consumer;

(7) Continued monitoring of the SIP imposes too much of a burden on FDA or HHS resources for carrying out this part or is inconsistent with FDA or HHS prioritization of resources;

(8) Continued implementation of the SIP is otherwise inappropriate; or

(9) Grounds exist for suspension under paragraph (a) or (b) of this section and FDA determines it should revoke, either instead of, or after, suspension.

§ 251.8 Modification or extension of authorized importation programs.

(a) A supplemental proposal to modify or extend an authorized SIP must be submitted in electronic format via the ESG, or to an alternative transmission point identified by FDA, for FDA's consideration.

(b) FDA's review and authorization of a supplemental proposal to modify or extend an authorized SIP is governed by this part. In reviewing a supplemental proposal, FDA may take into account information learned subsequent to authorization of the SIP.

(c) FDA may authorize a supplemental proposal from a SIP Sponsor to add additional Foreign Sellers or additional Importers to an authorized SIP if FDA determines the SIP Sponsor has adequately demonstrated that the SIP has consistently imported eligible prescription drugs in accordance with section 804 of the Federal Food, Drug, and Cosmetic Act and this part. Each supply chain under a SIP must be limited to one manufacturer, one Foreign Seller, and one Importer.

(d) If FDA authorizes changes to a SIP, the Importer must submit a new Pre-Import Request in accordance with § 251.5.

(e) A SIP Sponsor must not make any changes or permit any changes to be made to a SIP without first securing FDA's authorization.

(f) A SIP Sponsor may request that FDA extend the authorization period of an authorized SIP. Such a request must be submitted at least 90 calendar days before the SIP's authorization period will expire. To be eligible for an extension of the authorized SIP, a SIP must be up to date on all of the information and records-related requirements of section 804 of the Federal Food, Drug, and Cosmetic Act and this part. FDA may extend the authorization period for up to 2 years at a time.

Subpart C—Certain Requirements for Section 804 Importation Programs

§ 251.9 Registration of Foreign Sellers.

(a) Any Foreign Seller(s) designated in a SIP Proposal must be registered with FDA before FDA will authorize the SIP Proposal.

(b) To register, a Foreign Seller must provide the following information:

(1) Name of the owner or operator; if a partnership, the name of each partner; if a corporation, the name of each corporate officer and director, and the place of incorporation;

(2) All names of the Foreign Seller, including names under which the Foreign Seller conducts business or names by which the Foreign Seller is known;

(3) Physical address and telephone number(s) of the Foreign Seller;

(4) Registration number, if previously assigned by FDA;

(5) A unique facility identifier in accordance with the system specified under section 510 of the Federal Food, Drug, and Cosmetic Act;

(6) All types of operations performed by the Foreign Seller;

(7) Name, mailing address, telephone number, and email address of the official contact for the establishment; and

(8) Name, mailing address, telephone number, and email address of:

(i) The U.S. agent;

(ii) The Importer to which the Foreign Seller plans to sell eligible prescription drugs; and

(iii) Each SIP Sponsor with which the Foreign Seller works.

§ 251.10 Reviewing and updating registration information for Foreign Sellers.

(a) *Expedited updates.* A Foreign Seller must update its registration information no later than 30 calendar days after:

(1) Closing or being sold;

(2) Changing its name or physical address; or

(3) Changing the name, mailing address, telephone number, or email address of the official contact or the U.S. agent. A Foreign Seller, official contact, or U.S. agent may notify FDA about a change of information for the designated official contact or U.S. agent, but only a Foreign Seller is permitted to designate a new official contact or U.S. agent.

(b) *Annual review and update of registration information.* A Foreign Seller must review and update all registration information required under § 251.9.

(1) The first review and update must occur during the period beginning on October 1 and ending December 31 of the year of initial registration, if the initial registration occurs prior to October 1. Subsequent reviews and updates must occur annually, during the period beginning on October 1 and ending December 31 of each calendar year.

(2) The updates must reflect new changes not previously required to be reported, along with a summary of the registration updates that were provided to FDA as required during the calendar year.

(3) If no changes have occurred since the last registration, a Foreign Seller must certify that no changes have occurred.

§ 251.11 Official contact and U.S. agent for Foreign Sellers.

(a) *Official contact.* A Foreign Seller subject to the registration requirements of this part must designate an official contact. The official contact is responsible for:

(1) Ensuring the accuracy of registration information as required by § 251.9; and

(2) Reviewing, disseminating, routing, and responding to all communications from FDA, including emergency communications.

(b) *U.S. agent.* (1) A Foreign Seller must designate a single U.S. agent. The U.S. agent must reside or maintain a place of business in the United States and may not be a mailbox, answering machine or service, or other place where a person acting as the U.S. agent is not physically present. The U.S. agent is responsible for:

(i) Reviewing, disseminating, routing, and responding to all communications from FDA, including emergency communications;

(ii) Responding to questions concerning those drugs that are imported or offered for import to the United States; and

(iii) Assisting FDA in scheduling inspections.

(2) FDA may provide certain information and/or documents to the U.S. agent. The provision of information and/or documents by FDA to the U.S. agent is equivalent to providing the same information and/or documents to the Foreign Seller.

§ 251.12 Importer responsibilities.

(a) The Importer is responsible for:

(1) In accordance with the procedures set forth in § 207.33 of this chapter, proposing an NDC for assignment for each eligible prescription drug imported pursuant to this part;

(2) Examining the Canadian labeling of a sample of each shipment of eligible prescription drugs to verify that the labeling is that of the HPFB-approved

drug, and attesting that such examination has been conducted through reports to FDA required under this part;

(3) Screening eligible prescription drugs for evidence that they are adulterated, counterfeit, damaged, tampered with, expired, suspect foreign product, or illegitimate foreign product;

(4) Ensuring the eligible prescription drug is relabeled with the required U.S. labeling, including the container and carton labeling; Prescribing Information; and patient labeling, such as Medication Guides, Instruction for Use documents, and patient package inserts, in accordance with §§ 251.13 and 251.14(d);

(5) Arranging for an entry to be submitted in accordance with § 251.17;

(6) Collecting and submitting the information and documentation to FDA about the imported drug(s) pursuant to section 804(d) of the Federal Food, Drug, and Cosmetic Act, in addition to information about the Foreign Seller, as set forth in § 251.19; and

(7) Submitting the adverse event, field alert, and other reports, and complying with drug recalls, in accordance with § 251.18.

(b) If the Importer is also relabeling the eligible prescription drug, the Importer must also:

(1) Register with FDA as a repackager or relabeler under section 510(b) of the Federal Food, Drug, and Cosmetic Act, in accordance with § 207.25 of this chapter;

(2) Obtain a labeler code from FDA and propose an NDC for each eligible prescription drug pursuant to § 207.33 of this chapter; and

(3) List each eligible prescription drug pursuant to § 207.53 of this chapter.

(c) If the Importer is not itself relabeling the eligible prescription drug, the Importer must:

(1) Obtain its own labeler code from FDA under § 207.33(c) of this chapter;

(2) Ensure that the eligible prescription drug incorporates the NDC the Importer proposed for assignment, which must include the Importer's labeler code; and

(3) Ensure that the entity relabeling an eligible prescription drug on its behalf proposes an NDC pursuant to § 207.33 of this chapter and lists each eligible prescription drug pursuant to § 207.53 of this chapter.

§ 251.13 Labeling of eligible prescription drugs.

(a) Upon the request of a SIP Sponsor or Importer, the manufacturer of an eligible prescription drug must provide an Importer written authorization for the Importer to use, at no cost, the FDA-approved labeling for the drug. If the manufacturer fails to do so within 30 calendar days of receiving the Importer's request, FDA may deem this authorization to have been given.

(b) In addition to the exemption provided in subpart D of part 201 of this chapter, an eligible prescription drug imported for purposes of this part is exempt from section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act if all the following conditions are met:

(1) The Importer or the manufacturer certifies that the drug meets all labeling requirements under the Federal Food, Drug, and Cosmetic Act, including the requirements of this part. The Importer of an eligible prescription drug must either:

(i) Propose an NDC for the drug following the procedures in § 207.33 of this chapter and list the drug following the procedures in § 207.53 of this chapter; or

(ii) Take responsibility to ensure that the entity performing relabeling on its behalf lists each eligible prescription drug and incorporates the NDC the Importer proposed for assignment in accordance with the applicable requirements of part 207 of this chapter.

(2) The drug must be:

(i) In the possession of a person (or his or her agents or employees), including Foreign Sellers and Importers, regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale distribution of prescription drugs;

(ii) In the possession of a retail, hospital, or clinic pharmacy, or a public health agency, regularly and lawfully engaged in dispensing prescription drugs; or

(iii) In the possession of a practitioner licensed by law to administer or prescribe such drugs.

(3) The drug is to be dispensed in accordance with section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(4) At the time the drug is sold or dispensed, the labeling of the drug must be the same as the FDA-approved labeling under the applicable NDA or ANDA, except that the labeling must bear conspicuously:

(i) The Importer's NDC for the eligible prescription drug, and such NDC must replace any other NDC otherwise appearing on the label of the FDA-approved drug;

(ii) The lot number assigned by the manufacturer of the eligible prescription drug, on the carton labeling and on the container label;

(iii) The name and place of business of the Importer;

(iv) The statement: ''[This drug was/These drugs were] imported from Canada without the authorization of [Name of Applicant] under the [Name of SIP Sponsor] Section 804 Importation Program.'' If the SIP maintains a website, the statement could also include the website address. This statement must appear in the HOW SUPPLIED/STORAGE AND HANDLING section for products subject to §§ 201.56(d) and 201.57 of this chapter, or in the HOW SUPPLIED section for products subject to §§ 201.56(e) and 201.80 of this chapter. The statement also must be included on the immediate container label and outside package;

(v) For products subject to §§ 201.56(d) and 201.57(c)(17)(iii) of this chapter, the NDC(s) assigned to the eligible prescription drug in accordance with the procedures in § 207.33 of this chapter must be included in the HOW SUPPLIED/STORAGE AND HANDLING section in place of the NDC(s) assigned to the FDA-approved versions of the drug. The NDC(s) also must be included on the immediate container label and outside package;

(vi) For products subject to §§ 201.56(d) and 201.57(a)(11)(ii) of this chapter, the Adverse Reaction Contact Reporting Statement under the Adverse Reactions heading in the Highlights of Prescribing Information. This statement must include the Importer's name and the telephone number of the firm to provide a structured process for reporting suspected adverse events; and

(vii) For products subject to §§ 201.56(e) and 201.80(k)(3) of this chapter, the NDC(s) assigned to the eligible prescription drug in accordance with the procedures in § 207.33 of this chapter. The NDC(s) must be included in the HOW SUPPLIED section in place of the NDC(s) assigned to the FDA-approved versions of the drug. The NDC(s) also must be included on the immediate container label and outside package.

(c) The Importer is responsible for relabeling the drug, or arranging for it to be relabeled, to meet the requirements of this part. The relabeling and associated limited repackaging activities must meet applicable requirements, including applicable current good manufacturing practice requirements under parts 210 and 211 of this chapter. Except for repackaging that is necessary to perform the relabeling described in this part, further repackaging of drugs imported pursuant to a SIP is prohibited. Repackaging the container closure of a drug is not permitted under this part.

(d) The Importer may submit to FDA, in electronic format via the ESG or to an alternative transmission point identified by FDA, under § 251.8, a supplemental proposal to modify the labeling of an eligible prescription drug, for example if the eligible prescription drug's container is too small to fit the additional information required by this section.

§ 251.14 Supply chain security requirements for eligible prescription drugs.

(a) *SIP Sponsor*. A sponsor of an authorized SIP must ensure that:

(1) Each drug imported under the SIP is HPFB-approved and labeled for sale in Canada by the manufacturer before it reaches the Foreign Seller;

(2) For each drug that is imported under the SIP and that is manufactured outside Canada, the drug was authorized for import into Canada by the manufacturer and was not transshipped through Canada for sale in another country;

(3) For each drug imported under the SIP, the drug was sold by the manufacturer directly to a Foreign Seller;

(4) For each drug imported under the SIP, the Foreign Seller ships the drug directly to the Importer in the United States;

(5) For each drug imported under the SIP, the Foreign Seller identified in the SIP meets applicable supply chain security requirements of this part;

(6) The Importer identified in the SIP meets the applicable requirements of this part and in sections 582(c) and (d) of the Federal Food, Drug, and Cosmetic Act; and

(7) Returned eligible prescription drugs are properly dispositioned in, and not exported from, the United States.

(b) *Manufacturer.* For each transaction of the eligible prescription drug, the manufacturer must provide to the Importer, within 30 calendar days of receiving the Importer's request, a copy of all transaction documents that were provided from the manufacturer to the Foreign Seller.

(c) *Foreign Seller.* (1) A Foreign Seller must have systems in place to:

(i) Determine whether a drug in its possession or control that it intends to sell to the Importer under a SIP is a suspect foreign product. Upon making a determination that a drug in its possession or control is a suspect foreign product, or upon receiving a request for verification from FDA that the Foreign Seller has determined that a product within its possession or control is a suspect foreign product, a Foreign Seller must:

(A) Quarantine such product within its possession or control until such product is cleared or dispositioned;

(B) Promptly conduct an investigation, in coordination with the Importer and the manufacturer, as applicable, to determine whether the product is an illegitimate foreign product, and verify the product at the package level, including the SSI; and

(C) If the Foreign Seller makes the determination that a suspect foreign product is not an illegitimate foreign product, promptly notify FDA of such determination for those products that FDA has requested verification.

(ii) Determine whether a drug in its possession or control that it intends to sell to the Importer under a SIP is an illegitimate foreign product. Upon making a determination that a drug in its possession or control is an illegitimate foreign product, the Foreign Seller must:

(A) Quarantine such product within the possession or control of the Foreign Seller from product intended for distribution until such product is dispositioned;

(B) Disposition the illegitimate foreign product within the possession or control of the Foreign Seller;

(C) Take reasonable and appropriate steps to assist a manufacturer or Importer to disposition an illegitimate product not in the possession or control of the Foreign Seller; and

(D) Retain a sample of the product for further physical examination or laboratory analysis of the product by the manufacturer or FDA (or other appropriate Federal or State official) upon request by FDA (or other appropriate Federal or State official), as necessary and appropriate.

(2)(i) Upon determining that a product in the possession or control of the Foreign Seller is an illegitimate foreign product, the Foreign Seller must notify FDA and the Importer that the Foreign Seller received such illegitimate product not later than 24 hours after making such determination.

(ii) Upon the receipt of a notification from the manufacturer, FDA, the Importer or other wholesale distributor, or dispenser that a determination has been made that a product that had been sold by the Foreign Seller is an illegitimate foreign product, a Foreign Seller must identify all illegitimate foreign product subject to such notification that is in the possession or control of the Foreign Seller, including any product that is subsequently received, and perform the activities to investigate the product described in paragraph (c)(1) of this section.

(iii) Upon making a determination, in consultation with FDA, that a notification is no longer necessary, a Foreign Seller must promptly notify the Importer and person who sent the notification that the notification is terminated.

(iv) A Foreign Seller must keep records of the disposition of an illegitimate foreign product for not less than 6 years after the conclusion of the disposition.

(3) Upon request by FDA, or other appropriate Federal or State official, in the event of a recall or for purposes of investigating a suspect foreign product or an illegitimate foreign product, a Foreign Seller must promptly provide the official with information about its transactions with the manufacturer and the Importer.

(4) A Foreign Seller, upon receiving a shipment of eligible prescription drugs from the manufacturer, must:

(i) Separate the portion of drugs intended for sale to the Importer located in the United States, and store such portion separately from that portion of product intended for sale in the Canadian market;

(ii) Assign an SSI to each package and homogenous case intended for sale to the Importer in the United States, unless each such package and homogenous case displayed a manufacturer-affixed or imprinted product identifier, as such term is defined in section 581(14) of the Federal Food, Drug, and Cosmetic Act, at the time of receipt by the Foreign Seller;

(iii) Affix or imprint the SSI on each package and homogenous case intended for sale to the Importer in the United States. Such SSI must be located on blank space on the package or homogenous case and must not obscure any labeling for the Canadian market, including the DIN; and

(iv) Keep records associating the SSI with the DIN and all the records the Foreign Seller received from the manufacturer upon receipt of the original shipment intended for the Canadian market for not less than 6 years.

(5) Upon receiving a request for verification from the Importer or other authorized repackager, wholesale distributor, or dispenser that is in possession or control of a product such person believes to be distributed by such Foreign Seller, a Foreign Seller must, not later than 24 hours after receiving the request for verification, or in such other reasonable time as determined by the FDA based on the circumstances of the request, notify the person making the request whether the SSI that is the subject of the request corresponds to the SSI affixed or imprinted by the Foreign Seller. If a Foreign Seller responding to a request for verification identifies an SSI that does not correspond to that SSI affixed or imprinted by the Foreign Seller, the Foreign Seller must treat such product as suspect foreign product and conduct an investigation as described in paragraph (c)(1) of this section. If the Foreign Seller determines the product is an illegitimate foreign product, the Foreign Seller must advise the person making the request of such determination at the time such Foreign Seller responds to the request for verification.

(6) For each transaction between the Foreign Seller and the Importer for an eligible prescription drug, the Foreign Seller must provide:

(i) A statement that the Foreign Seller purchased the product directly from the manufacturer;

(ii) The proprietary name (if any) and the established name of the product;

(iii) The strength and dosage form of the product;

(iv) The container size;

(v) The number of containers;

(vi) The lot number of the product assigned by the manufacturer;

(vii) The date of the transaction;

(viii) The date of the shipment, if more than 24 hours after the date of the transaction;

(ix) The business name and address of the person associated with the Foreign Seller from whom ownership is being transferred;

(x) The business name and address of the person associated with the Importer to whom ownership is being transferred;

(xi) The SSI for each package and homogenous case of product; and

(xii) The Canadian DIN for each product transferred.

(7) Upon a request by FDA, or other appropriate Federal or State official, in the event of a recall or for purposes of investigating a suspect foreign product or an illegitimate foreign product, the Foreign Seller must promptly provide the official with information about its transactions with the manufacturer and the Importer.

(d) *Importers.* (1) An Importer of an eligible prescription drug must purchase the drug directly from a Foreign Seller in Canada.

(2) Upon receipt of an eligible prescription drug in a transaction from

the Foreign Seller, an Importer must facilitate the affixation or imprinting of a product identifier, as defined in section 581(14) of the Federal Food, Drug, and Cosmetic Act, for all eligible prescription drugs. The Importer must ensure that such affixation or imprinting occurs at the same time the product is relabeled with the required U.S.-approved labeling for the drug product and, except for repackaging necessary to perform the relabeling described in this part, cannot otherwise relabel or repackage the product. The Importer may affix or imprint the product identifier, or the Importer may contract with an entity registered with FDA under part 207 of this chapter to accomplish such relabeling, provided that the entity does not otherwise relabel or repackage the product, except for repackaging that is necessary to perform the relabeling described in this part. Any entity with which the Importer contracts to accomplish such labeling must, even if not engaged in a repackaging operation with respect to the eligible prescription drug, have systems and processes in place to meet applicable requirements of a ''repackager'' under section 582(e) of the Federal Food, Drug, and Cosmetic Act for any transaction involving the eligible prescription drug.

(3) The repackager that affixes or imprints the product identifier on each package and homogenous case of an eligible prescription drug in accordance with section 582 of the Federal Food, Drug, and Cosmetic Act, which may be the Importer or the Importer's authorized repackager—

(i) May affix or imprint a product identifier only on a package of an eligible prescription drug that has a serial number that was assigned and affixed by the Foreign Seller;

(ii) Must maintain the product identifier information for such drug for not less than 6 years; and

(iii) Must maintain records for not less than 6 years that associate the product identifier the repackager affixes or imprints with the serial number assigned by the Foreign Seller and the Canadian DIN.

(4) An Importer must retain records, for not less than 6 years, that allow the Importer to associate the product identifier affixed or imprinted on each package or homogenous case of product it received from the Foreign Seller, with the SSI that had been assigned by the Foreign Seller, and the Canadian DIN that was on the package when the Foreign Seller received the product from the manufacturer.

(5) An Importer must, upon receipt of an eligible prescription drug and records from a Foreign Seller, compare such information with information the Importer received from the manufacturer, including relevant documentation about the transaction that the manufacturer provided to the Foreign Seller upon its transfer of ownership of the product for the Canadian market.

(6) An Importer must comply with all applicable requirements of section 582 of the Federal Food, Drug, and Cosmetic Act, including requirements that apply to subsequent transactions with trading partners, unless a waiver, exception, or exemption applies.

(7) For transactions of eligible prescription drugs between Importers and Foreign Sellers under a SIP, an Importer is exempt from the following specific supply chain security requirements that are otherwise applicable:

(i) An Importer is exempt from the prohibition on receiving a product for which the previous owner did not provide the transaction history, transaction information, and transaction statement, under sections 582(c)(1)(A) or (d)(1)(A) of the Federal Food, Drug, and Cosmetic Act, as applicable, provided that the Importer receives from the Foreign Seller the information required under paragraph (c) of this section.

(ii) An Importer is exempt from the prohibition on receiving a product that is not encoded with a product identifier, under sections 582(c)(2) or (d)(2) of the Federal Food, Drug, and Cosmetic Act, as applicable, provided that the product the Importer received from the Foreign Seller has an SSI.

(iii) An Importer is exempt from the prohibition on conducting a transaction with an entity that is not an ''authorized trading partner,'' under sections 582(c)(3) or (d)(3) of the Federal Food, Drug, and Cosmetic Act, as applicable.

(iv) An Importer is exempt from the requirement to verify that a product in the Importer's possession or control contains a ''standardized numerical identifier'' at the package level, under sections 582(c)(4)(A)(i)(II) or (d)(4)(A)(ii)(II) of the Federal Food, Drug, and Cosmetic Act as applicable, provided that the Importer verifies that each package and homogenous case of the product includes the SSI affixed or imprinted by the Foreign Seller.

§ 251.15 Qualifying laboratory requirements.

(a) To be considered a qualifying laboratory for purposes of section 804 of the Federal Food, Drug, and Cosmetic Act and this part, a laboratory must have ISO 17025 accreditation.

(b) To be considered a qualifying laboratory for purposes of section 804 of the Federal Food, Drug, and Cosmetic Act and this part, a laboratory must have an FDA inspection history and it must have satisfactorily addressed any objectionable conditions or practices identified during its most recent FDA inspection, if applicable.

(c) To be considered a qualifying laboratory for purposes of section 804 of the Federal Food, Drug, and Cosmetic Act and this part, a laboratory must comply with the applicable current good manufacturing practice requirements, including provisions regarding laboratory controls in § 211.160 of this chapter and laboratory records in § 211.194 of this chapter.

§ 251.16 Laboratory testing requirements.

(a) The manufacturer or the Importer must arrange for drugs imported under an authorized SIP to be tested by a qualifying laboratory.

(b) Unless the manufacturer conducts the Statutory Testing, in accordance with this part, the manufacturer of the drugs imported under an authorized SIP must supply to the Importer, within 30 calendar days of receiving the Importer's request, all information needed to conduct the Statutory Testing, including any testing protocols, Certificate of Analysis, and samples of analytical reference standards that the manufacturer has developed. The manufacturer must also provide the Importer, within 30 calendar days of receiving the Importer's request, with formulation information about the HPFB-approved drug, a stability-indicating assay, and the FDA-approved drug to facilitate authentication.

(c) Testing done on a statistically valid sample of the batch or shipment, as applicable, must be sufficiently thorough to establish, in conjunction with data and information from the manufacturer, that the batch or shipment is eligible for importation under a SIP. The size of the sample must be large enough to enable a statistically valid statement to be made regarding the authenticity and stability of the quantity of the batch in the shipment or the entire shipment, as applicable.

(d) The statistically valid sample of the HPFB-approved drug must be subjected to testing to confirm that the HPFB-approved drug meets the FDA-approved drug's specifications and standards, which include the analytical procedures and methods and the acceptance criteria. In addition, to test for degradation, a stability-indicating assay provided by the manufacturer must be conducted on the sample of the drug that is proposed for import.

(e) If the manufacturer performs the Statutory Testing at a qualifying laboratory, the testing results, a complete set of laboratory records, a detailed description of the selection method for the samples, the testing methods used, complete data derived from all tests necessary to ensure that the eligible prescription drug meets the specifications and standards of the FDA-approved drug that are established in the NDA or ANDA, a Certificate of Analysis, and any other documentation demonstrating that the testing meets the requirements under section 804 must be submitted in electronic format directly to FDA via the ESG or to an alternative transmission point identified by FDA. The manufacturer must notify the Importer and FDA of the manufacturer's intent to perform the Statutory Testing, and identify the qualifying laboratory for FDA review and approval pursuant to section 804 of the Federal Food, Drug, and Cosmetic Act, within 30 calendar days of receipt

of the request from the Importer described in paragraph (b) of this section.

(f) Regardless of whether testing under this section is performed by the manufacturer or Importer, the sample of a batch or shipment of drugs must be randomly selected for testing or, in the alternative, the sample must be selected to be representative of the quantity of the batch in a shipment or of a shipment, as applicable.

(g) Information supplied by the manufacturer to authenticate the prescription drug being tested and confirm that the labeling of the prescription drug complies with labeling requirements under the Federal Food, Drug, and Cosmetic Act, and any trade secrets or commercial or financial information that is privileged or confidential that the manufacturer supplies for the purposes of testing or otherwise complying with the Federal Food, Drug, and Cosmetic Act and this part, must be kept in strict confidence and used only for the purposes of testing or otherwise complying with the Federal Food, Drug, and Cosmetic Act and this part.

(h) To ensure that the information described in paragraph (g) of this section is protected:

(1) The information that the manufacturer supplies about a prescription drug must not be disseminated except for the purpose of testing or otherwise complying with the Federal Food, Drug, and Cosmetic Act and this part; and

(2) The SIP Sponsor must take all of the steps set out in the authorized SIP Proposal to ensure that the information is kept in strict confidence and used only for the purpose of testing or otherwise complying with the Federal Food, Drug, and Cosmetic Act and this part.

§ 251.17 Importation requirements.

(a) Importers must ensure that each shipment of eligible prescription drugs imported or offered for import pursuant to this part is accompanied by an import entry for consumption filed electronically as a formal entry in ACE, or another CBP-authorized electronic data interchange system, and designated in such a system as a drug imported pursuant to this part.

(b) The Importer may make entry for consumption and arrival of shipments containing eligible prescription drugs only at the CBP port of entry authorized by FDA to import eligible prescription drugs under section 804 of the Federal Food, Drug, and Cosmetic Act. The Importer must keep the product at a secured warehouse, location within a specific foreign trade zone, or other secure distribution facility controlled by or under contract with the Importer, and under appropriate environmental conditions to maintain the integrity of the products, until FDA issues an admissibility decision. The secured warehouse or other secure distribution facility must be within 30 miles of the authorized Port of Entry for examination.

(c) If the entry for consumption is filed in ACE before the testing and relabeling of the eligible prescription drug, the Importer must submit an application to bring the drug into compliance and must relabel and test the drug in accordance with the plan approved by FDA pursuant to §§ 1.95 and 1.96 of this chapter.

(d) Upon arrival in the United States of an initial shipment that contains a batch of an eligible prescription drug identified in a Pre-Import Request that has been granted by FDA, the Importer must select a statistically valid sample of that batch to send to a qualifying laboratory for Statutory Testing, unless the manufacturer conducts the Statutory Testing at a qualifying laboratory.

(1) In the case of any subsequent shipment composed entirely of a batch of an eligible prescription drug that has already been tested in accordance with this part, the Importer must select a statistically valid sample of the shipment to send to a qualifying laboratory for Statutory Testing.

(2) The Importer must send three sets of the samples sent to the qualifying laboratory in accordance with § 251.16 to the FDA field lab identified by FDA when the Agency granted the Pre-Import Request.

(3) The Importer must submit to FDA a complete set of laboratory records, a detailed description of the sampling method used to select the sample of the eligible prescription drug sent to the

qualifying laboratory, the testing protocols used, complete data derived from all tests necessary to ensure that the eligible prescription drug meets the specifications of the FDA-approved drug that are established in the NDA or ANDA, a Certificate of Analysis, and all relevant documentation demonstrating that the testing meets the requirements under section 804(e)(1) of the Federal Food, Drug, and Cosmetic Act, as well as any additional information FDA deems necessary to evaluate whether the drug meets manufacturing, quality, and safety standards.

(e) If the manufacturer conducts the Statutory Testing, upon arrival in the United States of an initial shipment that contains a batch of an eligible prescription drug identified in a Pre-Import Request that has been granted by FDA, a statistically valid sample of that batch must be selected to send to a qualifying laboratory for the Statutory Testing.

(1) In the case of any subsequent shipment composed entirely of a batch or batches of an eligible prescription drug that has already been tested in accordance with this part, the manufacturer must select a statistically valid sample of that shipment to send to a qualifying laboratory for that Statutory Testing.

(2) The manufacturer must send three sets of the samples the manufacturer sent to the qualifying laboratory in accordance with §251.16 to the FDA field lab identified by FDA when the Agency granted the Pre-Import Request.

(3) The manufacturer must submit to FDA, directly in electronic form to the ESG or to an alternative transmission point identified by FDA, a complete set of laboratory records, a detailed description of the selection method for the sample of the eligible prescription drug sent to the qualifying laboratory, the testing methods used, complete data derived from all tests necessary to ensure that the eligible prescription drug meets the conditions in the FDA-approved drug's NDA or ANDA, a Certificate of Analysis, and all relevant documentation demonstrating that the testing meets the requirements under section 804(e)(1) of the Federal Food, Drug, and Cosmetic Act, as well as any additional information FDA deems necessary to evaluate whether the drug meets manufacturing, quality, and safety standards.

(f) After FDA has reviewed the testing results provided by the Importer or manufacturer and determined that they are acceptable, FDA will notify the Importer and then the Importer must cause the eligible prescription drug to be relabeled with the required U.S. labeling.

(g) After the eligible prescription drug has been shown by testing and relabeling to meet the requirements of section 804 of the Federal Food, Drug, and Cosmetic Act and this part, the Importer or the manufacturer must provide to FDA the written certification described in section 804(d)(1)(K) of the Federal Food, Drug, and Cosmetic Act in electronic format via the ESG or to an alternative transmission point identified by FDA.

§ 251.18 Post-importation requirements.

(a) *Stopping importation.* If at any point a SIP Sponsor determines that a drug, manufacturer, Foreign Seller, Importer, qualifying laboratory, or other participant in or element of the supply chain in the authorized SIP does not meet all applicable requirements of the Federal Food, Drug, and Cosmetic Act, FDA regulations, and the authorized SIP, the SIP Sponsor must immediately stop importation of all drugs under the SIP, notify FDA, and demonstrate to FDA that importation has in fact been stopped.

(b) *Field alert reports.* Importers must submit NDA and ANDA field alert reports, as described in §§314.81(b)(1) and 314.98 of this chapter, to the manufacturer and to FDA.

(c) *Additional reporting requirements for combination products.* For combination products containing a device constituent part, Importers must submit the reports to the manufacturer and to FDA described in §4.102(c)(1) of this chapter and maintain the records described in §§4.102(c)(1) and 4.105(b) of this chapter.

(d) *Adverse event reports*—(1) *Scope.* An Importer must establish and maintain records and submit to FDA and the manufacturer reports of all adverse

events associated with the use of its drug products imported under this part.

(2) *Review of safety information.* The Importer must promptly review all domestic safety information for the eligible prescription drugs obtained or otherwise received by the Importer.

(3) *Expedited ICSRs.* The Importer must submit expedited ICSRs for each domestic adverse event to FDA and the manufacturer as soon as possible but no later than 15 calendar days from the date when the Importer has both met the reporting criteria described in this paragraph (d) and acquired a minimum data set for that adverse event.

(i) *Serious, unexpected adverse events.* The Importer must submit expedited ICSRs for domestic adverse events reported to the Importer spontaneously (such as reports initiated by a patient, consumer, or healthcare professional) that are both serious and unexpected, whether or not the Importer believes the events are related to the product.

(ii) *Other adverse event reports to be expedited upon notification by FDA.* Upon notification by FDA, the Importer must submit as expedited ICSRs any adverse event reports that do not qualify for expedited reporting under paragraph (d)(3)(i) of this section. The notice will specify the adverse events to be reported and the reason for requiring the expedited reports.

(4) *Followup reports for expedited ICSRs.* The Importer must actively seek any missing data elements under paragraph (d)(7) of this section or updated information for any previously submitted expedited ICSR under paragraph (d)(3) of this section. The Importer must also investigate any new information it obtains or otherwise receives about previously submitted expedited ICSRs. The Importer must submit followup reports for expedited ICSRs to FDA and the manufacturer as soon as possible but no later than 15 calendar days after obtaining the new information. The Importer must document and maintain records of its efforts to obtain missing or incomplete information.

(5) *Nonexpedited ICSRs.* The Importer must submit to FDA and the manufacturer an ICSR for each domestic adverse event not reported under paragraph (d)(3)(i) of this section (all serious, expected adverse events and nonserious adverse events) within 90 calendar days from the date when the Importer has both met the reporting criteria described in this paragraph (d) and acquired a minimum data set for that adverse event.

(6) *Completing and submitting safety reports.* This paragraph (d)(6) describes how to complete and submit ICSRs required under this section. Additionally, upon written notice, FDA may require the Importer to submit any of this section's adverse event reports at a different time period than identified in paragraphs (d)(1) through (5) and (7) through (11) of this section.

(i) *Electronic format for submissions.* (A) ICSR and ICSR attachments must be submitted in an electronic format that FDA can process, review, and archive, as described in §314.80(g)(1) of this chapter.

(B) The Importer may request, in writing, a temporary waiver of the requirements in paragraph (d)(6)(i)(A) of this section, as described in §314.80(g)(2) of this chapter. These waivers will be granted on a limited basis for good cause shown.

(ii) *Completing and submitting ICSRs—* (A) *Single submission.* Submit each ICSR only once.

(B) *Separate ICSR.* The Importer must submit a separate ICSR for each patient who experiences an adverse event reportable under paragraph (d)(3)(i) or (ii) or (d)(4) or (5) of this section.

(C) *Coding terms.* The adverse event terms described in the ICSR must be coded using standardized medical terminology.

(D) *Minimum data set.* All ICSRs submitted under this section must contain at least the minimum data set for an adverse event. The Importer must actively seek the minimum data set in a manner consistent with its written procedures under paragraph (d)(9) of this section. The Importer must document and maintain records of its efforts to obtain the minimum data set.

(E) *ICSR elements.* The Importer must complete all available elements of an ICSR as specified in paragraph (d)(7) of this section.

(*1*) The Importer must actively seek any information needed to complete all

applicable elements, consistent with its written procedures under paragraph (d)(9) of this section.

(*2*) The Importer must document and maintain records of its efforts to obtain the missing information.

(F) *Supporting documentation*. When submitting supporting documentation for expedited ICSRs of adverse events, the Importer must:

(*1*) Submit for each ICSR for a domestic adverse event, if available, a copy of the autopsy report if the patient died, or a copy of the hospital discharge summary if the patient was hospitalized. The Importer must submit each document as an ICSR attachment. The ICSR attachment must be submitted either with the initial ICSR or no later than 15 calendar days after obtaining the document.

(*2*) Include in the ICSR a list of available, relevant documents (such as medical records, laboratory results, death certificates) that are held in its drug product safety files. Upon written notice from FDA, the Importer must submit a copy of these documents within 5 calendar days of the FDA notice.

(7) *Information reported on ICSRs*. ICSRs must include the following information:

(i) Patient information, which includes:

(A) Patient identification code;

(B) Patient age at the time of adverse event, or date of birth;

(C) Patient gender; and

(D) Patient weight.

(ii) Adverse event, which includes:

(A) Outcome attributed to adverse event;

(B) Date of adverse event;

(C) Date of ICSR submission;

(D) Description of adverse event (including a concise medical narrative);

(E) Adverse drug event term(s);

(F) Description of relevant tests, including dates and laboratory data; and

(G) Other relevant patient history, including preexisting medical conditions.

(iii) Suspect medical product(s), which includes:

(A) Name;

(B) Dose, frequency, and route of administration used;

(C) Therapy dates;

(D) Diagnosis for use (indication);

(E) Whether the product is a combination product;

(F) Whether adverse event abated after drug use stopped or dose reduced;

(G) Whether adverse event reappeared after reintroduction of drug;

(H) Lot number;

(I) Expiration date;

(J) NDC; and

(K) Concomitant medical products and therapy dates.

(iv) Initial reporter information, which includes:

(A) Name, address, and telephone number;

(B) Whether the initial reporter is a healthcare professional; and

(C) Occupation, if a healthcare professional.

(v) Importer information, which includes:

(A) Importer name and contact office address;

(B) Importer telephone number;

(C) Date the report was received by the Importer;

(D) Whether the ICSR is an expedited report;

(E) Whether the ICSR is an initial report or followup report; and

(F) Unique case identification number, which must be the same in the initial report and any subsequent followup report(s).

(8) *Recordkeeping*. (i) For a period of 10 years from the initial receipt of information, the Importer must maintain records of information relating to adverse event reports under this section, whether or not submitted to FDA.

(ii) These records must include raw data, correspondence, and any other information relating to the evaluation and reporting of adverse event information that is obtained by the Importer.

(iii) Upon written notice by FDA, the Importer must submit any or all of these records to FDA within 5 calendar days after receipt of the notice. The Importer must permit any authorized FDA employee, at reasonable times, to access, copy, and verify its established and maintained records described in this section.

(9) *Written procedures*. The Importer must develop written procedures needed to fulfill the requirements in this section for the surveillance, receipt, evaluation, and reporting to FDA and

the manufacturer of adverse event information, including procedures for employee training, and for obtaining and processing safety information from the Foreign Seller.

(10) *Patient privacy*. The Importer must not include in reports under this section the names and addresses of individual patients; instead, the Importer must assign a unique code for identification of the patient. The Importer must include the name of the reporter from whom the information was received as part of the initial reporter information, even when the reporter is the patient. As set forth in FDA's public information regulations in part 20 of this chapter, FDA generally may not disclose the names of patients, individual reporters, healthcare professionals, hospitals, and geographical identifiers submitted to FDA in adverse event reports.

(11) *Safety reporting disclaimer*. (i) A report or information submitted by the Importer under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the Importer or by FDA that the report or information constitutes an admission that the eligible prescription drug imported under section 804 of the Federal Food, Drug, and Cosmetic Act caused or contributed to an adverse event.

(ii) The Importer need not admit, and may deny, that the report or information submitted as described in this section constitutes an admission that the drug product caused or contributed to an adverse event.

(e) *Drug recalls*. (1) The SIP Sponsor must establish a procedure to track the public announcements of the manufacturer of each drug it imports under section 804 of the Federal Food, Drug, and Cosmetic Act, and the SIP Sponsor must also monitor FDA's recall website for recall or market withdrawal information relevant to the drugs that it imports under section 804.

(2) If FDA, the SIP Sponsor, the Foreign Seller, the Importer, or the manufacturer determines that a recall is warranted, the SIP Sponsor must effectuate the recall in accordance with its written recall plan under paragraph (e)(3) of this section.

(3) A SIP must have a written recall plan that describes the procedures to perform a recall of the product and specifies who will be responsible for performing the procedures. The recall plan must cover recalls mandated or requested by FDA and recalls initiated by the SIP Sponsor, the Foreign Seller, the Importer, or the manufacturer. The recall plan must include sufficient procedures for the SIP Sponsor to:

(i) Immediately cease distribution of the drugs affected by the recall;

(ii) Directly notify consignees of the drug(s) included in the recall, including how to return or dispose of the recalled drugs;

(iii) Specify the depth to which the recall will extend (e.g., wholesale, intermediate wholesale, retail or consumer level) if not specified by FDA;

(iv) Notify the public about any hazard(s) presented by the recalled drug when appropriate to protect the public health;

(v) Conduct effectiveness checks to verify that all consignees at the specified recall depth have received notification about the recall and have taken appropriate action;

(vi) Appropriately dispose of recalled product; and

(vii) Notify FDA of the recall.

(4) In the event of a recall, the Importer must, upon request by FDA, provide transaction history, information, and statement (as these terms are defined in sections 581(25), 581(26), and 581(27) of the Federal Food, Drug, and Cosmetic Act), in accordance with applicable requirements under sections 582(c)(1)(C) and 582(d)(1)(D).

(i) The Importer must also provide to FDA, upon request, information given by the manufacturer under §251.14(a)(6), including transaction documents that were provided from the manufacturer to the Foreign Seller.

(ii) The Foreign Seller must provide to FDA, upon request, information about its transactions of the recalled drug with the manufacturer and the Importer.

(5) The Foreign Seller and Importer must cooperate with any recalls, including recalls initiated by the SIP Sponsor, FDA, the Foreign Seller, the Importer, or the drug's manufacturer.

§ 251.19 Reports to FDA.

(a) A SIP Sponsor must submit a report to FDA each quarter in electronic format via the ESG or to an alternative transmission point identified by FDA containing the information set forth in this section, beginning after the SIP Sponsor files an electronic import entry for consumption for its first shipment of drugs under the SIP. If the SIP Sponsor specifies in such report that the information contained in the report is being transmitted on behalf of the Importer and in order to fulfill the Importer's obligation under § 251.12, the Importer need not separately submit such information to FDA.

(b) The report in paragraph (a) of this section must contain the following information:

(1) The name, address, telephone number, and professional license number (if any) of the Importer;

(2) The name and quantity of the active ingredient of the imported eligible prescription drug(s);

(3) A description of the dosage form of the eligible prescription drug(s);

(4) The date(s) on which the eligible prescription drug(s) were shipped;

(5) The quantity of the eligible prescription drug(s) that was shipped;

(6) The lot or control number assigned to the eligible prescription drug(s) by the manufacturer of the eligible prescription drug(s);

(7) The point of origin (*i.e.*, the manufacturer) and the destination (*i.e.*, the wholesaler, pharmacy, or patient to whom the Importer sells the drug) of the eligible prescription drug(s);

(8) The per unit price paid by the Importer for the prescription drug(s) in U.S. dollars; and

(9) Any other information that FDA determines is necessary for the protection of the public health.

(c) The Importer must also confirm as part of the report in paragraph (a) of this section that the eligible prescription drug(s) were bought directly from the manufacturer by the Foreign Seller and that the Foreign Seller sold the eligible prescription drug(s) directly to the Importer.

(d) The report in paragraph (a) of this section must include the following documentation:

(1) Documentation from the Foreign Seller specifying the manufacturer of each eligible prescription drug and the quantity of each lot of the eligible prescription drug(s) received by the Foreign Seller from that manufacturer;

(2) Documentation demonstrating that the eligible prescription drug was received by the Foreign Seller from the manufacturer and subsequently shipped by the Foreign Seller to the Importer;

(3) Documentation of the quantity of each lot of the eligible prescription drug(s) received by the Foreign Seller, demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the Foreign Seller; and

(4) Documentation demonstrating that the sampling and testing requirements described in section 804(d)(1)(J)(i)(III) of the Federal Food, Drug, and Cosmetic Act were met for each shipment of each eligible prescription drug.

(e) The report in paragraph (a) of this section must include certifications from the Importer for each shipment of each eligible prescription drug that the drug is approved for marketing in the United States and is not adulterated or misbranded and meets all labeling requirements under the Federal Food, Drug, and Cosmetic Act. This certification must include:

(1) That there is an authorized SIP;

(2) That the imported drug is covered by the authorized SIP;

(3) That the drug is an eligible prescription drug as defined in this part;

(4) That the FDA-approved counterpart of the drug is currently commercially marketed in the United States;

(5) That the drug is approved for marketing in Canada; and

(6) That the drug is not adulterated or misbranded and meets all labeling requirements under the Federal Food, Drug, and Cosmetic Act.

(f) The report in paragraph (a) of this section must include laboratory records, including complete data derived from all tests necessary to ensure that each eligible prescription drug is in compliance with established specifications and standards, and documentation demonstrating that the Statutory Testing was conducted at a

qualifying laboratory, unless the manufacturer conducted the testing and submitted this information directly to FDA.

(g) The report in paragraph (a) of this section must include data, information, and analysis on the SIP's cost savings to the American consumer for the drugs imported under the SIP.

(h) A SIP Sponsor must submit a report to FDA within 10 calendar days, in electronic format via the ESG or to an alternative transmission point identified by FDA, regarding any applicable criminal conviction, violation of law, or disciplinary action as described in § 251.3(e)(2) and (3).

§ 251.20 Severability.

The provisions of this part are not separate and are not severable from one another. If any provision is stayed or determined to be invalid or unenforceable, the remaining provisions shall not continue in effect.

§ 251.21 Consequences for violations.

(a) An article that is imported or offered for import into the United States in violation of section 804 of the Federal Food, Drug, and Cosmetic Act or this part is subject to refusal under section 801 of the Federal Food, Drug, and Cosmetic Act.

(b) The importation of a prescription drug in violation of section 804 of the Federal Food, Drug, and Cosmetic Act; the falsification of any record required to be maintained or provided to FDA under section 804; or any other violation of this part is a prohibited act under section 301(aa) of the Federal Food, Drug, and Cosmetic Act.

PART 290—CONTROLLED DRUGS

Subpart A—General Provisions

Sec.

Subpart B [Reserved]

Subpart C—Requirements for Specific Controlled Drugs [Reserved]

AUTHORITY: 21 U.S.C. 352, 353, 355, 371.

SOURCE: 40 FR 14040, Mar. 27, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 290.1 Controlled substances.

Any drug that is a controlled substance listed in schedule II, III, IV, or V of the Federal Controlled Substances Act or implementing regulations must be dispensed by prescription only as required by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act unless specifically exempted in § 290.2.

[67 FR 4906, Feb. 1, 2002]

§ 290.2 Exemption from prescription requirements.

The prescription-dispensing requirements of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act are not necessary for the protection of the public health with respect to a compound, mixture, or preparation containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams that also includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by codeine alone.

[67 FR 4907, Feb. 1, 2002]

§ 290.5 Drugs; statement of required warning.

The label of any drug listed as a ''controlled substance'' in schedule II, III, or IV of the Federal Controlled Substances Act shall, when dispensed to or for a patient, contain the following warning: ''Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed.'' This statement is not required to appear on the label of a controlled substance dispensed for use in clinical investigations which are ''blind.''

§ 290.6 Spanish-language version of required warning.

By direction of section 305(c) of the Federal Controlled Substances Act, § 290.5, promulgated under section 503(b) of the Federal Food, Drug, and