

(e) Powers of enforcement personnel

Any officer or employee of the Department designated by the Secretary to conduct examinations, investigations, or inspections under this chapter relating to counterfeit drugs may, when so authorized by the Secretary—

- (1) carry firearms;
- (2) execute and serve search warrants and arrest warrants;
- (3) execute seizure by process issued pursuant to libel under section 334 of this title;
- (4) make arrests without warrant for offenses under this chapter with respect to such drugs if the offense is committed in his presence or, in the case of a felony, if he has probable cause to believe that the person so arrested has committed, or is committing, such offense; and
- (5) make, prior to the institution of libel proceedings under section 334(a)(2) of this title, seizures of drugs or containers or of equipment, punches, dies, plates, stones, labeling, or other things, if they are, or he has reasonable grounds to believe that they are, subject to seizure and condemnation under such section 334(a)(2). In the event of seizure pursuant to this paragraph (5), libel proceedings under section 334(a)(2) of this title shall be instituted promptly and the property seized be placed under the jurisdiction of the court.

(June 25, 1938, ch. 675, § 702, 52 Stat. 1056; Pub. L. 87-781, title III, §§ 307(b), 308, Oct. 10, 1962, 76 Stat. 796; Pub. L. 89-74, § 8(a), July 15, 1965, 79 Stat. 234; Pub. L. 91-513, title II, § 701(f), Oct. 27, 1970, 84 Stat. 1282; Pub. L. 102-300, § 6(b)(2), June 16, 1992, 106 Stat. 240; Pub. L. 103-80, § 3(dd)(2), Aug. 13, 1993, 107 Stat. 779; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(12)], Nov. 29, 1999, 113 Stat. 1536, 1501A-584; Pub. L. 107-188, title III, § 314, June 12, 2002, 116 Stat. 674; Pub. L. 111-31, div. A, title I, § 103(g), June 22, 2009, 123 Stat. 1837.)

Editorial Notes**AMENDMENTS**

2009—Subsec. (a)(1). Pub. L. 111-31 designated existing provisions as subpar. (A) and added subpar. (B).

2002—Subsec. (a). Pub. L. 107-188 inserted “(1)” before “The Secretary is authorized to conduct”, added par. (2), inserted “(3)” before “In the case of food packed”, and substituted “(4) For the purposes of this subsection,” for “For the purposes of this subsection”.

1999—Subsec. (d). Pub. L. 106-113, in first sentence, substituted “Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office” for “Commissioner of Patents” and “Director” for “Commissioner”.

1993—Subsec. (c). Pub. L. 103-80 struck out “of Agriculture” after “Department”.

1992—Subsec. (c). Pub. L. 102-300, which directed the amendment of subsec. (c) by striking out “of Health, Education, and Welfare”, could not be executed because such words did not appear in the original statutory text. See 1993 Amendment note above and Transfer of Functions note below.

1970—Subsec. (e). Pub. L. 91-513 struck out reference to depressant or stimulant drugs.

1965—Subsec. (e). Pub. L. 89-74 added subsec. (e).

1962—Subsec. (a). Pub. L. 87-781, § 307(b), inserted “the Commonwealth of Puerto Rico or” before “a Territory the Secretary”.

Subsec. (d). Pub. L. 87-781, § 308, added subsec. (d).

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective July 15, 1965, see section 11 of Pub. L. 89-74, set out as a note under section 321 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for any violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs [now Drug Enforcement Administration] on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a note under section 321 of this title.

Executive Documents**TRANSFER OF FUNCTIONS**

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see note set out under section 321 of this title.

§ 372a. Transferred**Editorial Notes****CODIFICATION**

Section, act June 25, 1938, ch. 675, § 702A, formerly June 30, 1906, ch. 3915, § 10A, as added June 22, 1934, ch. 712, 48 Stat. 1204, and amended, which related to examination of sea food, was renumbered section 706 of act June 25, 1938, by Pub. L. 102-571, title I, § 106(3), Oct. 29, 1992, 106 Stat. 4498, and transferred to section 376 of this title.

§ 373. Records**(a) In general**

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving food, drugs, devices, tobacco products, or cosmetics in interstate commerce or holding such articles so received, shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any food, drug, device, tobacco product, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when such request is accompanied by a statement in writing specifying the nature or

kind of food, drug, device, tobacco product, or cosmetic to which such request relates, except that evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained, and except that carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, tobacco products, or cosmetics in the usual course of business as carriers, except as provided in subsection (b).

(b) Food transportation records

A shipper, carrier by motor vehicle or rail vehicle, receiver, or other person subject to section 350e of this title shall, on request of an officer or employee designated by the Secretary, permit the officer or employee, at reasonable times, to have access to and to copy all records that the Secretary requires to be kept under section 350e(c)(1)(E) of this title.

(June 25, 1938, ch. 675, § 703, 52 Stat. 1057; Pub. L. 91-452, title II, § 230, Oct. 15, 1970, 84 Stat. 930; Pub. L. 103-80, § 3(z), Aug. 13, 1993, 107 Stat. 778; Pub. L. 109-59, title VII, § 7202(c), Aug. 10, 2005, 119 Stat. 1913; Pub. L. 111-31, div. A, title I, § 103(h), June 22, 2009, 123 Stat. 1837.)

Editorial Notes

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-31 inserted “tobacco product,” after “device,” in two places and “tobacco products,” after “devices,” in two places.

2005—Pub. L. 109-59 struck out “of interstate shipment” after “Records” in section catchline, designated existing provisions as subsec. (a), inserted subsec. heading, substituted “carriers, except as provided in subsection (b)” for “carriers” before period at end, and added subsec. (b).

1993—Pub. L. 103-80 substituted “, except that” for “: *Provided*, That” and “, and except that” for “: *Provided further*, That”.

1970—Pub. L. 91-452 inserted “, or any evidence which is directly or indirectly derived from such evidence,” after “under this section”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 effective Oct. 1, 2005, see section 7204 of Pub. L. 109-59, set out as a note under section 331 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 374. Inspection

(a) Right of agents to enter; scope of inspection; notice; promptness; exclusions

(1) For purposes of enforcement of this chapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (A) to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, tobacco products, or cosmetics are manufactured, processed, packed, or held, for introduction into interstate commerce or after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, tobacco products, or cosmetics in interstate commerce; and (B) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. In the case of any person (excluding farms and restaurants) who manufactures, processes, packs, transports, distributes, holds, or imports foods, the inspection shall extend to all records and other information described in section 350c of this title, when the standard for records inspection under paragraph (1) or (2) of section 350c(a) of this title applies, subject to the limitations established in section 350c(d) of this title. In the case of a facility (as defined in section 364 of this title) that manufactures or processes cosmetic products, the inspection shall extend to all records and other information described in sections 364a, 364b, and 364f of this title, when the standard for records inspection under such section applies. In the case of any factory, warehouse, establishment, or consulting laboratory in which prescription drugs, nonprescription drugs intended for human use, devices, or tobacco products are manufactured, processed, packed, or held, the inspection shall extend to all things therein (including records, files, papers, processes, controls, and facilities) bearing on whether prescription drugs, nonprescription drugs intended for human use, devices, or tobacco products which are adulterated or misbranded within the meaning of this chapter, or which may not be manufactured, introduced into interstate commerce, or sold, or offered for sale by reason of any provision of this chapter, have been or are being manufactured, processed, packed, transported, or held in any such place, or otherwise bearing on violation of this chapter. No inspection authorized by the preceding sentence or by paragraph (3) shall extend to financial data, sales data other than shipment data, pricing data, personnel data (other than data as to qualification of technical and professional personnel performing functions subject to this chapter), and research data (other than data relating to new drugs, antibiotic drugs, devices, and tobacco products and subject to reporting and inspection under regulations lawfully issued pursuant to section 355(i) or (k) of this title, section 360i of this title, section 360j(g) of this title, or subchapter IX and data relating to other drugs, devices, or tobacco products which in the case of a new drug would be subject to reporting or in-