

## **21 USC 353b: Outsourcing facilities**

Text contains those laws in effect on October 24, 2022

### **From Title 21-FOOD AND DRUGS**

CHAPTER 9-FEDERAL FOOD, DRUG, AND COSMETIC ACT

SUBCHAPTER V-DRUGS AND DEVICES

Part A-Drugs and Devices

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## **§353b. Outsourcing facilities**

### **(a) In general**

Sections 352(f)(1), 355, and 360eee–1 of this title shall not apply to a drug compounded by or under the direct supervision of a licensed pharmacist in a facility that elects to register as an outsourcing facility if each of the following conditions is met:

#### **(1) Registration and reporting**

The drug is compounded in an outsourcing facility that is in compliance with the requirements of subsection (b).

#### **(2) Bulk drug substances**

The drug is compounded in an outsourcing facility that does not compound using bulk drug substances (as defined in section 207.3(a)(4) of title 21, Code of Federal Regulations (or any successor regulation)), unless-

(A)(i) the bulk drug substance appears on a list established by the Secretary identifying bulk drug substances for which there is a clinical need, by-

(I) publishing a notice in the Federal Register proposing bulk drug substances to be included on the list, including the rationale for such proposal;

(II) providing a period of not less than 60 calendar days for comment on the notice; and

(III) publishing a notice in the Federal Register designating bulk drug substances for inclusion on the list; or

(ii) the drug compounded from such bulk drug substance appears on the drug shortage list in effect under section 356e of this title at the time of compounding, distribution, and dispensing;

(B) if an applicable monograph exists under the United States Pharmacopeia, the National Formulary, or another compendium or pharmacopeia recognized by the Secretary for purposes of this paragraph, the bulk drug substances each comply with the monograph;

(C) the bulk drug substances are each manufactured by an establishment that is registered under section 360 of this title (including a foreign establishment that is registered under section 360(i) of this title); and

(D) the bulk drug substances are each accompanied by a valid certificate of analysis.

#### **(3) Ingredients (other than bulk drug substances)**

If any ingredients (other than bulk drug substances) are used in compounding the drug, such ingredients comply with the standards of the applicable United States Pharmacopeia or National Formulary monograph, if such monograph exists, or of another compendium or pharmacopeia recognized by the Secretary for purposes of this paragraph if any.

#### **(4) Drugs withdrawn or removed because unsafe or not effective**

The drug does not appear on a list published by the Secretary of drugs that have been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective.

#### **(5) Essentially a copy of an approved drug**

The drug is not essentially a copy of one or more approved drugs.

#### **(6) Drugs presenting demonstrable difficulties for compounding**

The drug-

(A) is not identified (directly or as part of a category of drugs) on a list published by the Secretary, through the process described in subsection (c), of drugs or categories of drugs that present demonstrable difficulties for compounding that are reasonably likely to lead to an adverse effect on the safety or effectiveness of the drug or category of drugs, taking into account the risks and benefits to patients; or

(B) is compounded in accordance with all applicable conditions identified on the list described in subparagraph (A) as conditions that are necessary to prevent the drug or category of drugs from presenting the demonstrable difficulties described in subparagraph (A).

## **(7) Elements to assure safe use**

In the case of a drug that is compounded from a drug that is the subject of a risk evaluation and mitigation strategy approved with elements to assure safe use pursuant to section 355–1 of this title, or from a bulk drug substance that is a component of such drug, the outsourcing facility demonstrates to the Secretary prior to beginning compounding that such facility will utilize controls comparable to the controls applicable under the relevant risk evaluation and mitigation strategy.

## **(8) Prohibition on wholesaling**

The drug will not be sold or transferred by an entity other than the outsourcing facility that compounded such drug. This paragraph does not prohibit administration of a drug in a health care setting or dispensing a drug pursuant to a prescription executed in accordance with section 353(b)(1) of this title.

## **(9) Fees**

The drug is compounded in an outsourcing facility that has paid all fees owed by such facility pursuant to section 379j–62 of this title.

## **(10) Labeling of drugs**

### **(A) Label**

The label of the drug includes-

- (i) the statement "This is a compounded drug." or a reasonable comparable alternative statement (as specified by the Secretary) that prominently identifies the drug as a compounded drug;
- (ii) the name, address, and phone number of the applicable outsourcing facility; and
- (iii) with respect to the drug-
  - (I) the lot or batch number;
  - (II) the established name of the drug;
  - (III) the dosage form and strength;
  - (IV) the statement of quantity or volume, as appropriate;
  - (V) the date that the drug was compounded;
  - (VI) the expiration date;
  - (VII) storage and handling instructions;
  - (VIII) the National Drug Code number, if available;
  - (IX) the statement "Not for resale", and, if the drug is dispensed or distributed other than pursuant to a prescription for an individual identified patient, the statement "Office Use Only"; and
  - (X) subject to subparagraph (B)(i), a list of active and inactive ingredients, identified by established name and the quantity or proportion of each ingredient.

### **(B) Container**

The container from which the individual units of the drug are removed for dispensing or for administration (such as a plastic bag containing individual product syringes) shall include-

- (i) the information described under subparagraph (A)(iii)(X), if there is not space on the label for such information;
- (ii) the following information to facilitate adverse event reporting: [www.fda.gov/medwatch](http://www.fda.gov/medwatch) and 1–800–FDA–1088 (or any successor Internet Web site or phone number); and
- (iii) directions for use, including, as appropriate, dosage and administration.

### **(C) Additional information**

The label and labeling of the drug shall include any other information as determined necessary and specified in regulations promulgated by the Secretary.

## **(11) Outsourcing facility requirement**

The drug is compounded in an outsourcing facility in which the compounding of drugs occurs only in accordance with this section.

## **(b) Registration of outsourcing facilities and reporting of drugs**

### **(1) Registration of outsourcing facilities**

#### **(A) Annual registration**

Upon electing and in order to become an outsourcing facility, and during the period beginning on October 1 and ending on December 31 of each year thereafter, a facility-

- (i) shall register with the Secretary its name, place of business, and unique facility identifier (which shall conform to the requirements for the unique facility identifier established under section 360 of this title), and a point of contact email address; and
- (ii) shall indicate whether the outsourcing facility intends to compound a drug that appears on the list in effect under section 356e of this title during the subsequent calendar year.

#### **(B) Availability of registration for inspection; list**

##### **(i) Registrations**

The Secretary shall make available for inspection, to any person so requesting, any registration filed pursuant to this paragraph.

**(ii) List**

The Secretary shall make available on the public Internet Web site of the Food and Drug Administration a list of the name of each facility registered under this subsection as an outsourcing facility, the State in which each such facility is located, whether the facility compounds from bulk drug substances, and whether any such compounding from bulk drug substances is for sterile or nonsterile drugs.

**(2) Drug reporting by outsourcing facilities**

**(A) In general**

Upon initially registering as an outsourcing facility, once during the month of June of each year, and once during the month of December of each year, each outsourcing facility that registers with the Secretary under paragraph (1) shall submit to the Secretary a report-

- (i) identifying the drugs compounded by such outsourcing facility during the previous 6-month period; and
- (ii) with respect to each drug identified under clause (i), providing the active ingredient, the source of such active ingredient, the National Drug Code number of the source drug or bulk active ingredient, if available, the strength of the active ingredient per unit, the dosage form and route of administration, the package description, the number of individual units produced, and the National Drug Code number of the final product, if assigned.

**(B) Form**

Each report under subparagraph (A) shall be prepared in such form and manner as the Secretary may prescribe by regulation or guidance.

**(C) Confidentiality**

Reports submitted under this paragraph shall be exempt from inspection under paragraph (1)(B)(i), unless the Secretary finds that such an exemption would be inconsistent with the protection of the public health.

**(3) Electronic registration and reporting**

Registrations and drug reporting under this subsection (including the submission of updated information) shall be submitted to the Secretary by electronic means unless the Secretary grants a request for waiver of such requirement because use of electronic means is not reasonable for the person requesting waiver.

**(4) Risk-based inspection frequency**

**(A) In general**

Outsourcing facilities-

- (i) shall be subject to inspection pursuant to section 374 of this title; and
- (ii) shall not be eligible for the exemption under section 374(a)(2)(A) of this title.

**(B) Risk-based schedule**

The Secretary, acting through one or more officers or employees duly designated by the Secretary, shall inspect outsourcing facilities in accordance with a risk-based schedule established by the Secretary.

**(C) Risk factors**

In establishing the risk-based schedule, the Secretary shall inspect outsourcing facilities according to the known safety risks of such outsourcing facilities, which shall be based on the following factors:

- (i) The compliance history of the outsourcing facility.
- (ii) The record, history, and nature of recalls linked to the outsourcing facility.
- (iii) The inherent risk of the drugs compounded at the outsourcing facility.
- (iv) The inspection frequency and history of the outsourcing facility, including whether the outsourcing facility has been inspected pursuant to section 374 of this title within the last 4 years.
- (v) Whether the outsourcing facility has registered under this paragraph as an entity that intends to compound a drug that appears on the list in effect under section 356e of this title.
- (vi) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

**(5) Adverse event reporting**

Outsourcing facilities shall submit adverse event reports to the Secretary in accordance with the content and format requirements established through guidance or regulation under section 310.305 of title 21, Code of Federal Regulations (or any successor regulations).

**(c) Regulations**

**(1) In general**

The Secretary shall implement the list described in subsection (a)(6) through regulations.

**(2) Advisory committee on compounding**

Before issuing regulations to implement subsection (a)(6), the Secretary shall convene and consult an advisory committee on compounding. The advisory committee shall include representatives from the National Association of Boards of Pharmacy, the United States Pharmacopeia, pharmacists with current experience and expertise in compounding, physicians with background and knowledge in compounding, and patient and public health advocacy organizations.

### **(3) Interim list**

#### **(A) In general**

Before the effective date of the regulations finalized to implement subsection (a)(6), the Secretary may designate drugs, categories of drugs, or conditions as described such <sup>1</sup> subsection by-

- (i) publishing a notice of such substances, drugs, categories of drugs, or conditions proposed for designation, including the rationale for such designation, in the Federal Register;
- (ii) providing a period of not less than 60 calendar days for comment on the notice; and
- (iii) publishing a notice in the Federal Register designating such drugs, categories of drugs, or conditions.

#### **(B) Sunset of notice**

Any notice provided under subparagraph (A) shall not be effective after the earlier of-

- (i) the date that is 5 years after November 27, 2013; or
- (ii) the effective date of the final regulations issued to implement subsection (a)(6).

### **(4) Updates**

The Secretary shall review, and update as necessary, the regulations containing the lists of drugs, categories of drugs, or conditions described in subsection (a)(6) regularly, but not less than once every 4 years. Nothing in the previous sentence prohibits submissions to the Secretary, before or during any 4-year period described in such sentence, requesting updates to such lists.

### **(d) <sup>2</sup> Definitions**

In this section:

(1) The term "compounding" includes the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug.

(2) The term "essentially a copy of an approved drug" means-

(A) a drug that is identical or nearly identical to an approved drug, or a marketed drug not subject to section 353(b) of this title and not subject to approval in an application submitted under section 355 of this title, unless, in the case of an approved drug, the drug appears on the drug shortage list in effect under section 356e of this title at the time of compounding, distribution, and dispensing; or

(B) a drug, a component of which is a bulk drug substance that is a component of an approved drug or a marketed drug that is not subject to section 353(b) of this title and not subject to approval in an application submitted under section 355 of this title, unless there is a change that produces for an individual patient a clinical difference, as determined by the prescribing practitioner, between the compounded drug and the comparable approved drug.

(3) The term "approved drug" means a drug that is approved under section 355 of this title and does not appear on the list described in subsection (a)(4) of drugs that have been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective.

(4)(A) The term "outsourcing facility" means a facility at one geographic location or address that-

- (i) is engaged in the compounding of sterile drugs;
- (ii) has elected to register as an outsourcing facility; and
- (iii) complies with all of the requirements of this section.

(B) An outsourcing facility is not required to be a licensed pharmacy.

(C) An outsourcing facility may or may not obtain prescriptions for identified individual patients.

(5) The term "sterile drug" means a drug that is intended for parenteral administration, an ophthalmic or oral inhalation drug in aqueous format, or a drug that is required to be sterile under Federal or State law.

### **(d) <sup>2</sup> Obligation to pay fees**

Payment of the fee under section 379j-62 of this title, as described in subsection (a)(9), shall not relieve an outsourcing facility that is licensed as a pharmacy in any State that requires pharmacy licensing fees of its obligation to pay such State fees.

(June 25, 1938, ch. 675, §503B, as added Pub. L. 113-54, title I, §102(a)(2), Nov. 27, 2013, 127 Stat. 588 .)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

A prior section 503B of act June 25, 1938, ch. 675, was renumbered section 503C by Pub. L. 113–54, §102(a)(1), Nov. 27, 2013, 127 Stat. 587 , and transferred to section 353c of this title.

<sup>1</sup> So in original.

<sup>2</sup> So in original. Two subsecs. (d) have been enacted.