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79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
1st Session } { No. 702

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PROVIDING FOR CERTIFICATION OF BATCHES OF DRUGS  
COMPOSED WHOLLY OR PARTLY OF ANY KIND OF  
PENICILLIN OR DERIVATIVES

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JUNE 7, 1945.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. PRIEST, from the Committee on Interstate and Foreign Com-  
merce, submitted the following

REPORT

[To accompany H. R. 3266]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 3266) to amend the Federal Food, Drug, and Cosmetic Act of June 25, 1938, as amended, by providing for the certification of batches of drugs composed wholly or partly of any kind of penicillin or any derivative thereof, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

- Page 1, line 9, strike out "(1)" and insert "(1)".
- Page 2, line 2, strike out "(A)" and insert "(1)".
- Page 2, line 4, strike out "(B)" and insert "(2)".
- Page 3, line 19, strike out "(1)" and insert "(1)".
- Page 4, line 1, strike out "(1)" where it first appears in such line and insert "(1)".
- Page 4, line 2, strike out "repackaged" and insert "repacked".
- Page 4, line 13, strike out "(1)" and insert "(1)".

SECTIONAL ANALYSIS OF BILL

The proposed basic provisions for the certification of penicillin and its products are contained in the new section 507 of the Food, Drug, and Cosmetic Act added by section 3 of the bill. Sections 1 and 2 make amendments to implement the certification provisions so that compliance with such provisions can be enforced under the civil and criminal provisions of the act.

Section 1 so amends the act that its prohibition against forging, counterfeiting, simulating, or falsely representing or using identification devices without proper authority will apply in the case of such identification devices as may be required or authorized for penicillin and its products under the new section 507.

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The new section 502 (e) added by section 2 of the bill includes among drugs which under the act are deemed misbranded any drug which is composed of or contains any kind of penicillin or any derivative thereof which is not from a batch certified or released under the new section 507. Also any such drug, though from a certified or released batch, would be deemed misbranded if the effective period of the certificate or release expires or on failure of the particular drug to comply with the terms of the certification or release.

Section 3 of the bill adds to the drug chapter of the act a new section 507 which contains the basic provisions for the certification procedure. The new section in its main provisions is quite similar to section 506 providing for the certification of insulin preparations, but it contains a number of additional provisions.

Section 507 (a) directs and empowers the Federal Security Administrator to promulgate regulations providing for the certification of batches of penicillin and its products which meet the standards and other requirements designed to insure safety and efficacy of use which are prescribed in such regulations. To avoid interference with commerce in penicillin and its products pending formulation and effective application of certification regulations, provision is also made for the release prior to promulgation of such regulations of batches of penicillin and its products which in the judgment of the Administrator may be released without risk as to safety and efficacy of use. This provision would permit prompt release of batches of penicillin which have already been passed by the Food and Drug Administration under the scheme of pretesting required by the War Production Board in cooperation with the military services.

Section 507 (b) requires that regulations providing for certification shall contain, among other provisions necessary for carrying out the purposes of the section, five specified types of provisions, as follows:

- (1) Standards of identity and of strength, quality, and purity.
- (2) Tests and methods of assay to determine compliance with such standards.
- (3) Effective periods for certificates and other conditions under which they shall cease to be effective. Inasmuch as some forms of penicillin and preparations thereof are known to lose potency with age, such certificates are to be effective only for periods prescribed in the regulations and the certified batches are to be protected by such certificate only for the prescribed period or for such part thereof as the drug continues to meet the requirements prescribed in the regulations for the protection of the public.
- (4) Administration and procedure.
- (5) Fees in such amounts as are necessary to provide, equip, and maintain an adequate certification service.

The final provision of this subsection directs that the tests and methods of assay prescribed by the regulations shall provide for certification or rejection within the shortest time consistent with the necessity for insuring safety and efficacy of use.

Section 507 (c) directs the Administrator to promulgate regulations discontinuing the requirement for certification when, in his judgment, the certification procedure is no longer necessary to insure the safety and efficacy of any drug subject to this section. A primary reason for the type of control proposed by this bill is the fact that penicillin is produced by a biological process and is subject to the vagaries

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inherent in all such processes. Furthermore, the potency of penicillin is determined by biological assay, which itself must be carefully controlled and checked in order to insure its accuracy. Because of the newness of penicillin and the new products that will be made from it, it is impossible to forecast what developments may occur in manufacturing technology or otherwise that may render the need for this special type of control unnecessary with respect to particular drugs. If such developments occur, this provision will permit the issuance of a regulation exempting any such drug from certification requirements and the drug will then be subject only to the general provisions of the law. This exemption can be terminated, however, and certification again required if experience shows that safety and efficacy of use cannot otherwise be insured.

The opening words of this subsection, "Whenever in the judgment of the Administrator \* \* \*" are identical with the opening words of section 401 of the act, which authorizes the establishment of food standards. The significance of this language with respect to review by the courts is indicated in a pronouncement by the Supreme Court in the case of *Federal Security Administrator v. Quaker Oats Company* (318 U. S. 218). There the Court said:

Section 401 calls for the exercise of the "judgment of the Administrator." That judgment, if based on substantial evidence of record, and if within statutory and constitutional limitations, is controlling \* \* \*.

Section 507 (d) directs the Administrator to promulgate regulations exempting from the requirements for certification shipments of penicillin and its products made under certain conditions and for certain uses. The first exemption relates to drugs which are to be stored, processed, labeled, or repacked at establishments other than those where manufactured. This exemption is to be conditioned upon the compliance of the drugs with all requirements of the section upon their removal from the establishment to which they were shipped for the specified purposes. This provision is quite similar to the exemption from labeling requirements set up by section 503 (a) of the act. Regulations prescribed under that section provide for the exemption of shipments to warehouses owned and operated by the shipper, as well as warehouses owned and operated by others. It is expected that the regulations under section 507 (d) (1) will be similar in this respect.

The second exemption covers drugs which conform to applicable standards and are intended for use in the manufacture of other drugs. It is expected that these regulations will prescribe all necessary provisions to safeguard against the diversion of the drugs from the manufacturing use for which they were intended.

This exemption may prove of value in avoiding unnecessary duplication of certification in cases where the manufacturing consignee, whose finished product must be certified, is willing to accept the product without prior certification.

The third exemption provided by this subsection applies to drugs which are intended solely for investigational use by experts. This provision is quite similar to section 505 (i) relating to new drugs. It is intended that the regulations shall be similar to those which are contemplated by that section for new drugs.

Since section 507 prescribes for new penicillin drugs all the controls provided by section 505 for "new drugs," as well as additional controls, section 507 (e) exempts penicillin drugs from the operation

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of section 505. It is not intended that the inclusion of this specific provision in the bill will operate to invalidate the administrative interpretation under which insulin preparations subject to section 506 of the act may be shipped for experimental use. This interpretation adapts section 505 (i) to the control of insulin-containing drugs, although such drugs are otherwise not subject to section 505.

Section 507 (c) also provides that compliance of penicillin drugs with sections 501 (b) and 502 (g) shall be determined by the standards and the requirements for packaging and labeling prescribed by regulations promulgated under section 507. This is a departure from the policy that has prevailed from the beginning of food and drug legislation, of adopting the requirements of official compendia for purposes of enforcing drug provisions of the law. It is justified in this instance by the fact that rapid developments will unquestionably occur in making a multitude of penicillin preparations available to the public, and these can be followed more closely by changes in the regulations under section 507 than by the slower procedure involved in changing the requirements of the official compendia.

The authorization to the Administrator to make regulations under this section is designed to permit swift action whenever the factual situation requires. It is intended that the Administrator will continue the practice established under the insulin amendment of advising and consulting with interested persons before regulations are issued, amended, or repealed.

Section 507 (f) is designed to insure the right of protest to all interested parties who have reasonable grounds for dissatisfaction with the Administrator's action with respect to regulations and to provide for court review of the validity of the Administrator's action in the event that a solution satisfactory to all concerned is not reached.

Any interested person may petition the Administrator to adopt a proposal for the issuance, amendment, or repeal of a regulation. The proposal may be set forth in general terms; reasonable grounds for it must be stated. The Administrator is required to give public notice of the proposal and to afford an opportunity for all interested persons to express their views. He is then required to make public his action on the proposal. Within 30 days thereafter (whether or not the action has already become effective) any interested person may file objections to the action, specifying with particularity the changes desired, stating reasonable grounds therefor, and requesting a public hearing upon his objections. The Administrator is then required, after due notice, to hold a public hearing on the objections. As soon as practicable after the hearing the Administrator is required to make findings of fact and publish an order based thereon. Such orders, in cases of actual controversy as to their validity, are subject to review by the circuit courts of appeals under the provisions of section 701 (f) of the act.

In essence, section 507 authorizes the Administrator to utilize any of three techniques in promulgating regulations that deal with the certification of penicillin products. First, he may act on his own initiative or at the informal request of any interested party. It is anticipated that most of the regulations will be promulgated through this method in close consultation with interested persons. Second, he is required to act on the basis of a formal petition and after informal hearing. Third, if there is objection within 30 days to his action on

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the petition, he is required to act after a formal public hearing. The statutory review provisions of section 701 (f) are intended to be applicable only with respect to the third type of action.

## CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## FOOD, DRUG, AND COSMETIC ACT

## PROHIBITED ACTS

SEC. 301. The following acts and the causing thereof are hereby prohibited:

(i) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using, any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of sections 404, 406 (b), 504, 506, 507, or 604.

## CHAPTER V—DRUGS AND DEVICES

## ADULTERATED DRUGS AND DEVICES

SEC. 501. A drug or device shall be deemed to be adulterated—

(a) (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or (2) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch that has been certified in accordance with regulations as provided by section 504.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, except that whenever tests or methods of assay have not been prescribed in such compendium, or such tests or methods of assay as are prescribed are, in the judgment of the Secretary, insufficient for the making of such determination, the Secretary shall bring such fact to the attention of the appropriate body charged with the revision of such compendium, and if such body fails within a reasonable time to prescribe tests or methods of assay which, in the judgment of the Secretary, are sufficient for purposes of this paragraph, then the Secretary shall promulgate regulations prescribing appropriate tests or methods of assay in accordance with which such determination as to strength, quality, or purity shall be made. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

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(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor.

## MISBRANDED DRUGS AND DEVICES

SEC. 502. A drug or device shall be deemed to be misbranded—

- (a) If its labeling is false or misleading in any particular.
- (b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.
- (c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substance, which derivative has been by the Secretary, after investigation, found to be, and by regulations designated as, habit forming; unless its label bears the name, and quantity or proportion, of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."
- (e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary.
- (f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Secretary shall promulgate regulations exempting such drug or device from such requirement.
- (g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the Secretary. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.
- (h) If it has been found by the Secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Secretary shall by regulations require as necessary for the protection of the public health. No such regulation shall be established for any drug recognized in an official compendium until the Secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

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(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless (1) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506, and (2) such certificate or release is in effect with respect to such drug.

(l) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin or any derivative thereof, unless (A) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507, and (B) such certificate or release is in effect with respect to such drug: *Provided, That this paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507 (c) or (d).*

## EXEMPTIONS IN CASE OF DRUGS AND DEVICES

SEC. 503. (a) The Secretary is hereby directed to promulgate regulations exempting from any labeling or packaging requirement of this Act drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such drugs and devices are not adulterated or misbranded under the provisions of this Act upon removal from such processing, labeling, or repacking establishment.

(b) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall if—

(1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and

(2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian,

be exempt from the requirements of section 502 (b) and (c), and (in case such prescription is marked by the writer thereof as not refillable or its refilling is prohibited by law) of section 502 (d).

## CERTIFICATION OF COAL-TAR COLORS FOR DRUGS

SEC. 504. The Secretary shall promulgate regulations providing for the listing of coal-tar colors which are harmless and suitable for use in drugs for purposes of coloring only and for the certification of batches of such colors, with or without harmless diluents.

## NEW DRUGS

SEC. 505. (a) No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an application filed pursuant to subsection (b) is effective with respect to such drug.

(b) Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a). Such person shall submit to the Secretary as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (6) specimens of the labeling proposed to be used for such drug.

(c) An application provided for in subsection (b) shall become effective on the sixtieth day after the filing thereof unless prior to such day the Secretary by notice to the applicant in writing postpones the effective date of the application to such time (not more than one hundred and eighty days after the filing thereof), as the Secretary deems necessary to enable him to study and investigate the application.

(d) If the Secretary finds, after due notice to the applicant and giving him an opportunity for a hearing, that (1) the investigations, reports of which are required to be submitted to the Secretary pursuant to subsection (b), do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls

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used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; or (4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(e) The effectiveness of an application with respect to any drug shall, after due notice and opportunity for hearing to the applicant, by order of the Secretary be suspended if the Secretary finds (1) that clinical experience, tests by new methods, or tests by methods not deemed reasonably applicable when such application became effective show that such drug is unsafe for use under the conditions of use upon the basis of which the application became effective, or (2) that the application contains any untrue statement of a material fact. The order shall state the findings upon which it is based.

(f) An order refusing to permit an application with respect to any drug to become effective shall be revoked whenever the Secretary finds that the facts so require.

(g) Orders of the Secretary issued under this section shall be served (1) in person by any officer or employee of the department designated by the Secretary or (2) by mailing the order by registered mail addressed to the applicant or respondent at his last-known address in the records of the Secretary.

(h) An appeal may be taken by the applicant from an order of the Secretary refusing to permit the application to become effective, or suspending the effectiveness of the application. Such appeal shall be taken by filing in the district court of the United States within any district wherein such applicant resides or has his principal place of business, or in the District Court of the United States for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Secretary be set aside. A copy of such petition shall be forthwith served upon the Secretary, or upon any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm or set aside such order. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary or unless there were reasonable grounds for failure so to do. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If any person shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the setting aside of the original order. The judgment and decree of the court affirming or setting aside any such order of the Secretary shall be final, subject to review as provided in sections 128, 239, and 240 of the Judicial Code, as amended (U. S. C., 1934 ed., title 28, secs. 225, 346, and 347), and in section 7, as amended, of the Act entitled "An Act to establish a Court of Appeals for the District of Columbia," approved February 9, 1893 (D. C. Code, title 18, sec. 26). The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of the Secretary's order.

(i) The Secretary shall promulgate regulations for exempting from the operation of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs.

## CERTIFICATION OF DRUGS CONTAINING INSULIN

SEC. 506. (a) The Federal Security Administrator, pursuant to regulations promulgated by him, shall provide for the certification of batches of drugs composed wholly or partly of insulin. A batch of any such drug shall be certified if such drug has such characteristics of identity and such batch has such characteristics of strength, quality, and purity, as the Administrator prescribes in such regulations as necessary to adequately insure safety and efficacy of use, but shall not otherwise be certified. Prior to the effective date of such regulations the

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Administrator, in lieu of certification, shall issue a release for any batch which, in his judgment, may be released without risk as to the safety and efficacy of its use. Such release shall prescribe the date of its expiration and other conditions under which it shall cease to be effective as to such batch and as to portions thereof.

(b) Regulations providing for such certification shall contain such provisions as are necessary to carry out the purposes of this section, including provisions prescribing (1) standards of identity and of strength, quality, and purity; (2) tests and methods of assay to determine compliance with such standards; (3) effective periods for certificates, and other conditions under which they shall cease to be effective as to certified batches and as to portions thereof; (4) administration and procedure, and (5) such fees, specified in such regulations, as are necessary to provide, equip, and maintain an adequate certification service. Such regulations shall prescribe no standard of identity or of strength, quality, or purity for any drug different from the standard of identity, strength, quality, or purity set forth for such drug in an official compendium.

(c) Such regulations, insofar as they prescribe tests or methods of assay to determine strength, quality, or purity of any drug, different from the tests or methods of assay set forth for such drug in an official compendium, shall be prescribed, after notice and opportunity for revision of such compendium, in the manner provided in the second sentence of section 501 (b). The provisions of subsections (e), (f), and (g) of section 701 shall be applicable to such portion of any regulation as prescribes any such different test or method, but shall not be applicable to any other portion of any such regulation.

## CERTIFICATION OF DRUGS CONTAINING PENICILLIN

*Sec. 507. (a) The Federal Security Administrator, pursuant to regulations promulgated by him, shall provide for the certification of batches of drugs composed wholly or partly of any kind of penicillin or any derivative thereof. A batch of any such drug shall be certified if such drug has such characteristics of identity and such batch has such characteristics of strength, quality, and purity, as the Administrator prescribes in such regulations as necessary to adequately insure safety and efficacy of use, but shall not otherwise be certified. Prior to the effective date of such regulations the Administrator, in lieu of certification, shall issue a release for any batch which, in his judgment, may be released without risk as to the safety and efficacy of its use. Such release shall prescribe the date of its expiration and other conditions under which it shall cease to be effective as to such batch and as to portions thereof.*

*(b) Regulations providing for such certifications shall contain such provisions as are necessary to carry out the purposes of this section, including provisions prescribing (1) standards of identity and of strength, quality, and purity; (2) tests and methods of assay to determine compliance with such standards; (3) effective periods for certificates, and other conditions under which they shall cease to be effective as to certified batches and as to portions thereof; (4) administration and procedure; and (5) such fees, specified in such regulations, as are necessary to provide, equip, and maintain an adequate certification service. Such regulations shall prescribe only such tests and methods of assay as will provide for certification or rejection within the shortest time consistent with the purposes of this section.*

*(c) Whenever in the judgment of the Administrator the requirements of this section and of section 502 (1) with respect to any drug or class of drugs are not necessary to insure safety and efficacy of use, the Administrator shall promulgate regulations exempting such drug or class of drugs from such requirements.*

*(d) The Administrator shall promulgate regulations exempting from any requirement of this section and of section 502 (1), (1) drugs which are to be stored, processed, labeled, or repackaged at establishments other than those where manufactured, on condition that such drugs comply with all such requirements upon removal from such establishments; (2) drugs which conform to applicable standards of identity, strength, quality, and purity prescribed by these regulations and are intended for use in manufacturing other drugs; and (3) drugs which are intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and efficacy of drugs.*

*(e) No drug which is subject to section 507 shall be deemed to be subject to any provision of section 505. Compliance of any drug subject to section 502 (1) or 507 with sections 501 (b) and 502 (g) shall be determined by the application of the standards of strength, quality, and purity, the tests and methods of assay, and the requirements of packaging and labeling, respectively, prescribed by regulations promulgated under section 507.*

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(f) Any interested person may file with the Administrator a petition proposing the issuance, amendment, or repeal of any regulation contemplated by this section. The petition shall set forth the proposal in general terms and shall state reasonable grounds therefor. The Administrator shall give public notice of the proposal and an opportunity for all interested persons to present their views thereon, orally or in writing, and as soon as practicable thereafter shall make public his action upon such proposal. At any time prior to the thirtieth day after such action is made public any interested person may file objections to such action, specifying with particularity the changes desired, stating reasonable grounds therefor, and requesting a public hearing upon such objections. The Administrator shall thereupon, after due notice, hold such public hearing. As soon as practicable after completion of the hearing, the Administrator shall by order make public his action on such objections. The Administrator shall base his order only on substantial evidence of record at the hearing and shall set forth as part of the order detailed findings of fact on which the order is based. The order shall be subject to the provisions of section 701 (f) and (g).

FEDERAL SECURITY AGENCY,  
Washington, May 15, 1945.

HON. SAM RAYBURN,  
Speaker of the House of Representatives,  
Washington, D. C.

DEAR MR. SPEAKER: A situation is arising which in our judgment requires prompt legislative action to protect persons stricken with diseases which will be treated with penicillin.

This new drug has been used with spectacular success in a long list of serious diseases, a number of which are of high mortality. It is efficacious for all the diseases for which the sulfonamides have been successfully used, and for a number of others, but it does not cause toxic reactions such as follow, in a considerable percentage of cases, the administration of the sulfonamides. With many of these diseases penicillin effects a higher percentage of cures than do the sulfonamides.

The wide variety of conditions for which penicillin is effective, the dramatic promptness of its cures, and its freedom from toxicity when it is properly purified, give it an importance not approached by any other drug.

The commercial production of penicillin began in this country in the summer of 1943. The output is still increasing, although it has now reached quantities which are sufficient for all military needs and for reasonable civilian demands.

In September 1943 the War Production Board, with the concurrence of the military authorities, devised a plan of control under which the Food and Drug Administration assayed samples from each batch of penicillin before it was released for use. This plan precluded the distribution to the armed forces of penicillin of unsatisfactory potency or contaminated with toxic impurities.

With the relaxation of wartime controls that has already occurred with respect to penicillin intended for civilian use, and with the complete removal of such controls at the termination of the war, this scheme of pretesting the product before distribution can no longer be maintained without the enactment of specific legislation.

Penicillin is produced by a biological process and is subject to the vagaries inherent in all such processes. Only a limited number of skilled manufacturers are now producing penicillin. Even they have occasional unexplainable mishaps in the manufacturing process which result in lack of the required potency or in contamination with pyrogens.

The drug has so far been administered only by injection with a hypodermic needle. Much experimental work is being done to develop it in forms for oral and other methods of administration. The production of chemical derivatives of penicillin is also the subject of considerable investigation.

The development of new preparations and dosage forms adds to the complexities inherent in the basic problem.

Penicillin is administered in cases of extreme illness. Sometimes the physician must wait as much as 12 hours before its effects become manifest in the patient. If the product administered is lacking in the expected potency, the patient may pass beyond human aid before the fault of the drug is recognized by the physician. A drug which has the required potency but is contaminated with toxic impurities may delay recovery if it does not cause a fatal ending.

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The methods available to the Food and Drug Administration for checking interstate shipments of drug products generally would not be effective for the control of penicillin and its products. It would be beyond the powers of the Administration to guarantee public safety if its control is limited to the collection and examination of samples taken from interstate shipments. Unless the testing of penicillin and its products before they are marketed can be continued, the consequences to public health will be serious.

There is enclosed a suggested amendment to the Federal Food, Drug, and Cosmetic Act of 1938 providing for the pre-testing and certification of penicillin and its products. A precedent for this suggestion is found in section 506 of the act enacted as an amendment in 1941 providing for the certification of insulin. This provision has worked satisfactorily to the Government, the industry, and the public. It safeguards the potency and purity of insulin preparations, which are needed by the million and a half of our people who suffer from diabetes. The diseases for which penicillin is effective may be suffered by everyone. The need for control of penicillin is correspondingly greater than that for insulin.

It is recognized that control measures of this character are essential only in such special cases as insulin and penicillin products. Because of the newness of penicillin and the possibility of developments in manufacturing technology and otherwise that may obviate the need for special control the suggested amendment provides for the termination of certification requirements with respect to any penicillin product whenever the facts warrant. Other specific provisions of the proposed amendment are covered in the enclosed sectional analysis.

The proposed amendment has been prepared in collaboration with representatives of the American Drug Manufacturers Association, the American Pharmaceutical Manufacturers Association, and the Proprietary Association of America. It has the approval of these organizations, whose membership includes all of the present manufacturers of penicillin, as well as most of the firms who are likely to become interested in the manufacture of penicillin or derivatives or preparations of penicillin. It also has the approval of the board of trustees of the United States Pharmacopoeial Convention and the Surgeon General of the Public Health Service.

While they have not participated in the formulation of the amendment, representatives of the American Pharmaceutical Association have endorsed the purposes of the proposed legislation. Likewise, the council on pharmacy and chemistry of the American Medical Association has endorsed the purposes of the proposed legislation. The council is the body within the association which is specially charged with the consideration of drug products and methods of their control.

The Bureau of the Budget advises that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

WATSON B. MILLER,  
Acting Administrator.

FEDERAL SECURITY AGENCY,  
Washington, May 25, 1945.

Hon. CLARENCE F. LEA,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in response to your request for our comment upon H. R. 3206, a bill to amend the Federal Food, Drug, and Cosmetic Act of June 25, 1938, as amended, by providing for the certification of batches of drugs composed wholly or partly of any kind of penicillin or any derivative thereof, and for other purposes.

This bill is substantially identical with a draft of proposed legislation submitted by this Agency to the Speaker of the House of Representatives. Our letter of transmittal, dated May 15, 1945, sets forth the considerations which moved us to recommend the legislation. As I assume that the letter and the accompanying explanatory statement are available to your committee, I will not repeat the material therein contained. For the reasons set out in that letter, the Federal Security Agency urges your favorable consideration of the bill.

My attention has been called to two slight typographical errors in the printed bill. The paragraph to be added to section 502 of the Federal Food, Drug, and Cosmetic Act would follow the present subsection (k). The figure at the beginning of line 9 of page 1 of the bill should be changed to the letter (l); and to correspond with the present scheme of the act, the letters "(A)" and "(B)" on lines 2 and 3 of page 2 of the bill should be changed to "(1)" and "(2)", respectively.

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To be consistent with the present terminology of the act, moreover, the word "repackaged" in line 2 of page 4 should be "repacked."

I am advised by the Bureau of the Budget that there is no objection to the transmission of this report to your committee.

Sincerely yours,

WATSON B. MILLER,  
*Acting Administrator.*

FEDERAL SECURITY AGENCY,  
UNITED STATES PUBLIC HEALTH SERVICE,  
Washington, February 19, 1945.

Dr. P. B. DUNBAR,  
*Commissioner, Food and Drug Administration,  
Federal Security Agency, Washington, D. C.*

DEAR DR. DUNBAR: This will acknowledge your letter of February 8, 1945, in which you mention that legislation is planned to enable your organization to more adequately control the quality of penicillin than is now permitted by existing law.

It is my belief that, because of the uncertainties involved in the manufacture of penicillin and the subsequent variable stability of the product, control tests of each lot by a control laboratory representing the interests of the public are essential.

It is recalled that a few years ago you found it necessary to ask for legislation of a similar character in order to control the quality of insulin. The situation confronting you now with respect to penicillin is similar.

Since the present Food, Drug, and Cosmetic Act does not give authority for the certification of penicillin necessary for the protection of the public it is essential that an appropriate amendment be sought. In the seeking of such additional authority this office will be glad to lend any needed assistance.

Very sincerely yours,

THOMAS PARRAN, *Surgeon General.*

AMERICAN MEDICAL ASSOCIATION,  
COUNCIL ON PHARMACY AND CHEMISTRY,  
Chicago, April 25, 1945.

Dr. ROBERT P. HERWICK,  
*Chief, Drug Division, Food and Drug Administration,  
Federal Security Agency, Washington, D. C.*

DEAR DR. HERWICK: I have examined the proposed amendment of the Federal Food, Drug, and Cosmetic Act of June 25, 1938, which will provide for the certification of batches of drugs composed wholly or partly of any kind of penicillin or any derivative thereof. It is my opinion that this bill supports the principles reviewed by the council on pharmacy and chemistry of the American Medical Association when it endorsed the purposes of the proposed legislation. It would seem to me to be in the interest of the medical profession to have provided such an amendment whereby the members of the profession will be assured of continually potent and effective penicillin or derivatives thereof.

Yours sincerely,

AUSTIN SMITH, M. D., *Secretary.*

AMERICAN MEDICAL ASSOCIATION,  
COUNCIL ON PHARMACY AND CHEMISTRY,  
Chicago, March 1, 1945.

Dr. ROBERT P. HERWICK,  
*Chief, Drug Division, Food and Drug Administration,  
Federal Security Agency, Washington 25, D. C.*

DEAR DR. HERWICK: This is in reply to your letter of February 8 concerning the proposed penicillin amendment to the Federal Food, Drug, and Cosmetic Act.

The council members have given consideration to the proposed amendment and the replies received unequivocally indicate approval of a plan which will provide continued pretesting of penicillin before it enters interstate commerce.

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You may be interested in some of the comments which have been offered by the members:

"Approve. With a drug having the public health and therapeutic potentialities of penicillin, certification by the Food and Drug Administration should be continued even after the end of the war."

"Approve amendment and urge council support its passage."

"I believe this is a most timely amendment and should be a part of the Federal Drug and Cosmetic Act."

"I think adoption of the penicillin amendment to the Federal Food, Drug, and Cosmetic Act is most desirable from the standpoint of safeguarding the efficacy and safety of this important curative agent."

"It would appear to be a wise and necessary provision."

"The proposed amendment seems to me a wise step."

"An official, independent control is essential for the safety of the public. It appears logical to continue this control by the agency which is now handling it effectively."

Another member has brought up the following point in which you may be especially interested:

"I do not believe it to be in the public interest for the manufacturer to pay a fee for the examination of penicillin by the United States Government."

Yours sincerely,

AUSTIN SMITH, M. D.,  
*Secretary, Council on Pharmacy and Chemistry.*

NEW YORK, N. Y., April 17, 1945.

Dr. PAUL B. DUNBAR,  
*Food and Drug Administration, Federal Security Agency,  
Washington, D. C.*

DEAR DR. DUNBAR: The board of trustees of the United States Pharmacopoeial Convention have made a careful study of the proposed legislation under the authority of which the Food and Drug Administration will be empowered to standardize, pretest, and certify all penicillin and penicillin-containing preparations before they are placed upon the market, and is pleased to record its approval thereof.

The tangible and intangible factors involved in penicillin's standardization are sufficiently distinctive to remove penicillin and its preparations from the drug categories with respect to which pharmacopoeial standardization has been eminently satisfactory.

Basic considerations of public welfare must always control in matters such as this, and the board of trustees is fully convinced that in the light of all the facts the safety of the public demands the legislative and administrative controls which are contemplated.

Very truly yours,

ROBERT L. SWAIN,  
*Chairman, Board of Trustees, United States Pharmacopoeia.*

AMERICAN DRUG MANUFACTURERS ASSOCIATION,  
*Washington 5, D. C., May 18, 1945.*

The Honorable CLARENCE F. LEA,  
*Chairman, Interstate and Foreign Commerce Committee,  
House of Representatives, Washington, D. C.*

DEAR SIR: This letter is written in reference to H. R. 3266, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for certification of batches of drugs composed wholly or partly of any kind of penicillin or any derivative thereof, and for other purposes.

Representatives of the American Drug Manufacturers Association collaborated with the officials of the Food and Drug Administration, Federal Security Agency, in preparation of this bill.

The urgency of this proposed legislation is rather unusual. It is felt desirable by all parties concerned for the time being and yet at the same time the requirement for certification is fully expected to be a temporary matter. For this reason, the American Drug Manufacturers Association joins with the Federal Security Agency in urging the earliest enactment of this bill.

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The American Drug Manufacturers Association's collaboration and support of this measure is predicated on three principles:

1. The assurance from the Food and Drug Administration that pretesting and certification of penicillin is not a method of drug control to be generally extended. The letter of transmittal, we believe, emphasized this point.

2. Certification of penicillin is not expected to be a permanent procedure. It is offered as an extra measure of protection for a limited period of time due to uncertainties which have appeared to exist in the assay of penicillin and the possibility that there may be initial uncertainties attendant upon the assay of new penicillin preparations, particularly in the case of companies who have not previously worked with penicillin. Penicillin is a chemical produced by a fermentation process. It is to be expected that within a reasonable period of time tests and assays for this drug will become sufficiently satisfactory to warrant regulations terminating certification requirements as is contemplated in section 507 (c).

3. The Food and Drug Administration plans to arrange for the running of tests and assays to provide the most rapid certification and thus assist in making this critical drug available to the public with the least delay.

We believe that the letter of transmittal from the Federal Security Agency covers all of these points and they are repeated here merely to single them out as a background for this particular bill.

We trust that there is a general understanding that the certification provided for in this bill will serve as a temporary double security. All manufacturers of this drug regularly have subjected each lot of penicillin to all of the tests and assays, which will be used by the Food and Drug Administration, prior to release to commercial channels.

In closing may we again be permitted to urge the earliest enactment of this amendment for the afore-stated reasons.

Very truly yours,

AMERICAN DRUG MANUFACTURERS ASSOCIATION,  
L. D. HARROP, General Counsel.

NEW YORK, N. Y., May 18, 1945.

Re H. R. 3266.

HON. CLARENCE F. LEA,

Chairman, House Committee on Interstate and Foreign Commerce,  
House Office Building, Washington, D. C.

DEAR MR. LEA: I understand that this bill enacts the penicillin amendment of the Federal Food, Drug, and Cosmetic Act, recommended by the Federal Security Agency. As counsel for the American Pharmaceutical Manufacturers' Association I participated in the drafting of this amendment by Dr. P. B. Dunbar and Mr. C. W. Crawford and their able associates in the Food and Drug Administration, and therefore I approve it, in purpose, policy, and form. This is the most important amendment of the afore-said act which has yet been proposed. Its prompt enactment is strongly indicated, in the public interest and for the protection of public health. And therefore the pharmaceutical manufacturing industry, represented by this association, urges that Congress act accordingly. We see no need for any committee hearing, because the questions presented by this amendment have been previously settled to the satisfaction of all concerned.

Sincerely yours,

CHARLES WESLEY DUNN.

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ROGERS, HOGE & HILLS,  
New York, May 19, 1945.

Re H. R. 3266, to amend the Federal Food, Drug, and Cosmetic Act by providing for the certification of batches of drugs composed wholly or partly of penicillin.

Hon. CLARENCE F. LEA,  
House of Representatives,  
Washington, D. C.

DEAR CONGRESSMAN LEA: I write as general counsel of the Proprietary Association of America, the membership of which is composed of the manufacturers of proprietary packaged medicines. It is sometimes estimated that the membership represents about 80 percent in volume of such manufacturing. Some of the members are already interested in the manufacture of penicillin. Many of the members are likely to become interested in the manufacture of it or of derivatives of it or of preparations containing it as an ingredient.

On behalf of the association, and by its authority, I desire to express approval of the above-captioned bill. The approval is more than passive. It is based on the affirmative belief that legislation as proposed in the bill is appropriate and advisable in the best interests of the public and the industry. As for the form of the bill, we were afforded ample opportunity for full discussion and collaboration in the preparation of it, and as introduced it has our approval.

Let me say one other thing in connection with this: That the working out of this matter and the preparation of this amendment have graphically illustrated and attested the candor and fairness which have become characteristic of the Food and Drug Administration's dealings with the public and the affected industries, for which both public and industry may be grateful indeed.

Sincerely yours,

JAMES F. HOGE.

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