

(2) not later than 5 years after December 13, 2016, issue draft guidance for industry as described in paragraph (1); and

(3) not later than 18 months after the close of the public comment period for the draft guidance described in paragraph (2), issue revised draft guidance or final guidance.

(f) Rule of construction

(1) In general

Subject to paragraph (2), nothing in this section prohibits the Secretary from using real world evidence for purposes not specified in this section, provided the Secretary determines that sufficient basis exists for any such nonspecified use.

(2) Standards of evidence and Secretary's authority

This section shall not be construed to alter—

- (A) the standards of evidence under—
 - (i) subsection (c) or (d) of section 355 of this title, including the substantial evidence standard in such subsection (d); or
 - (ii) section 262(a) of title 42; or

(B) the Secretary's authority to require postapproval studies or clinical trials, or the standards of evidence under which studies or trials are evaluated.

(June 25, 1938, ch. 675, §505F, as added Pub. L. 114-255, div. A, title III, §3022, Dec. 13, 2016, 130 Stat. 1096; amended Pub. L. 115-52, title IX, §901(c), (d), Aug. 18, 2017, 131 Stat. 1076.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115-52, §901(c), substituted “traditional” for “randomized”.

Subsec. (d). Pub. L. 115-52, §901(d), substituted “3 years” for “2 years”.

§ 356. Expedited approval of drugs for serious or life-threatening diseases or conditions

(a) Designation of a drug as a breakthrough therapy

(1) In general

The Secretary shall, at the request of the sponsor of a drug, expedite the development and review of such drug if the drug is intended, alone or in combination with 1 or more other drugs, to treat a serious or life-threatening disease or condition and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over existing therapies on 1 or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. (In this section, such a drug is referred to as a “breakthrough therapy”.)

(2) Request for designation

The sponsor of a drug may request the Secretary to designate the drug as a breakthrough therapy. A request for the designation may be made concurrently with, or at any time after, the submission of an application for the investigation of the drug under section 355(i) of this title or section 351(a)(3) of the Public Health Service Act [42 U.S.C. 262(a)(3)].

(3) Designation

(A) In general

Not later than 60 calendar days after the receipt of a request under paragraph (2), the

Secretary shall determine whether the drug that is the subject of the request meets the criteria described in paragraph (1). If the Secretary finds that the drug meets the criteria, the Secretary shall designate the drug as a breakthrough therapy and shall take such actions as are appropriate to expedite the development and review of the application for approval of such drug.

(B) Actions

The actions to expedite the development and review of an application under subparagraph (A) may include, as appropriate—

- (i) holding meetings with the sponsor and the review team throughout the development of the drug;
- (ii) providing timely advice to, and interactive communication with, the sponsor regarding the development of the drug to ensure that the development program to gather the nonclinical and clinical data necessary for approval is as efficient as practicable;
- (iii) involving senior managers and experienced review staff, as appropriate, in a collaborative, cross-disciplinary review;
- (iv) assigning a cross-disciplinary project lead for the Food and Drug Administration review team to facilitate an efficient review of the development program and to serve as a scientific liaison between the review team and the sponsor; and
- (v) taking steps to ensure that the design of the clinical trials is as efficient as practicable, when scientifically appropriate, such as by minimizing the number of patients exposed to a potentially less efficacious treatment.

(b) Designation of drug as fast track product

(1) In general

The Secretary shall, at the request of the sponsor of a new drug, facilitate the development and expedite the review of such drug if it is intended, whether alone or in combination with one or more other drugs, for the treatment of a serious or life-threatening disease or condition, and it demonstrates the potential to address unmet medical needs for such a disease or condition, or if the Secretary designates the drug as a qualified infectious disease product under section 355f(d) of this title. (In this section, such a drug is referred to as a “fast track product”.)

(2) Request for designation

The sponsor of a new drug may request the Secretary to designate the drug as a fast track product. A request for the designation may be made concurrently with, or at any time after, submission of an application for the investigation of the drug under section 355(i) of this title or section 351(a)(3) of the Public Health Service Act [42 U.S.C. 262(a)(3)].

(3) Designation

Within 60 calendar days after the receipt of a request under paragraph (2), the Secretary shall determine whether the drug that is the subject of the request meets the criteria described in paragraph (1). If the Secretary finds

that the drug meets the criteria, the Secretary shall designate the drug as a fast track product and shall take such actions as are appropriate to expedite the development and review of the application for approval of such product.

(c) Accelerated approval of a drug for a serious or life-threatening disease or condition, including a fast track product

(1) In general

(A) Accelerated approval

The Secretary may approve an application for approval of a product for a serious or life-threatening disease or condition, including a fast track product, under section 355(c) of this title or section 351(a) of the Public Health Service Act [42 U.S.C. 262(a)] upon a determination that the product has an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit, taking into account the severity, rarity, or prevalence of the condition and the availability or lack of alternative treatments. The approval described in the preceding sentence is referred to in this section as “accelerated approval”.

(B) Evidence

The evidence to support that an endpoint is reasonably likely to predict clinical benefit under subparagraph (A) may include epidemiological, pathophysiological, therapeutic, pharmacologic, or other evidence developed using biomarkers, for example, or other scientific methods or tools.

(2) Limitation

Approval of a product under this subsection may be subject to 1 or both of the following requirements:

(A) That the sponsor conduct appropriate postapproval studies to verify and describe the predicted effect on irreversible morbidity or mortality or other clinical benefit.

(B) That the sponsor submit copies of all promotional materials related to the product during the preapproval review period and, following approval and for such period thereafter as the Secretary determines to be appropriate, at least 30 days prior to dissemination of the materials.

(3) Expedited withdrawal of approval

The Secretary may withdraw approval of a product approved under accelerated approval using expedited procedures (as prescribed by the Secretary in regulations which shall include an opportunity for an informal hearing) if—

(A) the sponsor fails to conduct any required postapproval study of the drug with due diligence;

(B) a study required to verify and describe the predicted effect on irreversible morbidity or mortality or other clinical benefit of the product fails to verify and describe such effect or benefit;

(C) other evidence demonstrates that the product is not safe or effective under the conditions of use; or

(D) the sponsor disseminates false or misleading promotional materials with respect to the product.

(d) Review of incomplete applications for approval of a fast track product

(1) In general

If the Secretary determines, after preliminary evaluation of clinical data submitted by the sponsor, that a fast track product may be effective, the Secretary shall evaluate for filing, and may commence review of portions of, an application for the approval of the product before the sponsor submits a complete application. The Secretary shall commence such review only if the applicant—

(A) provides a schedule for submission of information necessary to make the application complete; and

(B) pays any fee that may be required under section 379h of this title.

(2) Exception

Any time period for review of human drug applications that has been agreed to by the Secretary and that has been set forth in goals identified in letters of the Secretary (relating to the use of fees collected under section 379h of this title to expedite the drug development process and the review of human drug applications) shall not apply to an application submitted under paragraph (1) until the date on which the application is complete.

(e) Construction

(1) Purpose

The amendments made by the Food and Drug Administration Safety and Innovation Act and the 21st Century Cures Act to this section are intended to encourage the Secretary to utilize innovative and flexible approaches to the assessment of products under accelerated approval for treatments for patients with serious or life-threatening diseases or conditions and unmet medical needs.

(2) Construction

Nothing in this section shall be construed to alter the standards of evidence under subsection (c) or (d) of section 355 of this title (including the substantial evidence standard in section 355(d) of this title) or under section 351(a) of the Public Health Service Act [42 U.S.C. 262(a)]. Such sections and standards of evidence apply to the review and approval of products under this section, including whether a product is safe and effective. Nothing in this section alters the ability of the Secretary to rely on evidence that does not come from adequate and well-controlled investigations for the purpose of determining whether an endpoint is reasonably likely to predict clinical benefit as described in subsection (b)(1)(B).

(f) Awareness efforts

The Secretary shall—

(1) develop and disseminate to physicians, patient organizations, pharmaceutical and biotechnology companies, and other appro-

priate persons a description of the provisions of this section applicable to breakthrough therapies, accelerated approval, and and¹ fast track products; and

(2) establish a program to encourage the development of surrogate and clinical endpoints, including biomarkers, and other scientific methods and tools that can assist the Secretary in determining whether the evidence submitted in an application is reasonably likely to predict clinical benefit for serious or life-threatening conditions for which significant unmet medical needs exist.

(g) Regenerative advanced therapy

(1) In general

The Secretary, at the request of the sponsor of a drug, shall facilitate an efficient development program for, and expedite review of, such drug if the drug qualifies as a regenerative advanced therapy under the criteria described in paragraph (2).

(2) Criteria

A drug is eligible for designation as a regenerative advanced therapy under this subsection if—

(A) the drug is a regenerative medicine therapy (as defined in paragraph (8));

(B) the drug is intended to treat, modify, reverse, or cure a serious or life-threatening disease or condition; and

(C) preliminary clinical evidence indicates that the drug has the potential to address unmet medical needs for such a disease or condition.

(3) Request for designation

The sponsor of a drug may request the Secretary to designate the drug as a regenerative advanced therapy concurrently with, or at any time after, submission of an application for the investigation of the drug under section 355(i) of this title or section 351(a)(3) of the Public Health Service Act [42 U.S.C. 262(a)(3)].

(4) Designation

Not later than 60 calendar days after the receipt of a request under paragraph (3), the Secretary shall determine whether the drug that is the subject of the request meets the criteria described in paragraph (2). If the Secretary determines that the drug meets the criteria, the Secretary shall designate the drug as a regenerative advanced therapy and shall take such actions as are appropriate under paragraph (1). If the Secretary determines that a drug does not meet the criteria for such designation, the Secretary shall include with the determination a written description of the rationale for such determination.

(5) Actions

The sponsor of a regenerative advanced therapy shall be eligible for the actions to expedite development and review of such therapy under subsection (a)(3)(B), including early interactions to discuss any potential surrogate or intermediate endpoint to be used to support the accelerated approval of an application for the product under subsection (c).

(6) Access to expedited approval pathways

An application for a regenerative advanced therapy under section 355(b)(1) of this title or section 351(a) of the Public Health Service Act [42 U.S.C. 262(a)] may be—

(A) eligible for priority review, as described in the Manual of Policies and Procedures of the Food and Drug Administration and goals identified in the letters described in section 101(b) of the Prescription Drug User Fee Amendments of 2012; and

(B) eligible for accelerated approval under subsection (c), as agreed upon pursuant to subsection (a)(3)(B), through, as appropriate—

(i) surrogate or intermediate endpoints reasonably likely to predict long-term clinical benefit; or

(ii) reliance upon data obtained from a meaningful number of sites, including through expansion to additional sites, as appropriate.

(7) Postapproval requirements

The sponsor of a regenerative advanced therapy that is granted accelerated approval and is subject to the postapproval requirements under subsection (c) may, as appropriate, fulfill such requirements, as the Secretary may require, through—

(A) the submission of clinical evidence, clinical studies, patient registries, or other sources of real world evidence, such as electronic health records;

(B) the collection of larger confirmatory data sets, as agreed upon pursuant to subsection (a)(3)(B); or

(C) postapproval monitoring of all patients treated with such therapy prior to approval of the therapy.

(8) Definition

For purposes of this section, the term “regenerative medicine therapy” includes cell therapy, therapeutic tissue engineering products, human cell and tissue products, and combination products using any such therapies or products, except for those regulated solely under section 361 of the Public Health Service Act [42 U.S.C. 264] and part 1271 of title 21, Code of Federal Regulations.

(h) Limited population pathway for antibacterial and antifungal drugs

(1) In general

The Secretary may approve an antibacterial or antifungal drug, alone or in combination with one or more other drugs, as a limited population drug pursuant to this subsection only if—

(A) the drug is intended to treat a serious or life-threatening infection in a limited population of patients with unmet needs;

(B) the standards for approval under section 355(c) and (d) of this title, or the standards for licensure under section 351 of the Public Health Service Act [42 U.S.C. 262], as applicable, are met; and

(C) the Secretary receives a written request from the sponsor to approve the drug as a limited population drug pursuant to this subsection.

¹ So in original.

(2) Benefit-risk consideration

The Secretary's determination of safety and effectiveness of an antibacterial or antifungal drug shall reflect the benefit-risk profile of such drug in the intended limited population, taking into account the severity, rarity, or prevalence of the infection the drug is intended to treat and the availability or lack of alternative treatment in such limited population. Such drug may be approved under this subsection notwithstanding a lack of evidence to fully establish a favorable benefit-risk profile in a population that is broader than the intended limited population.

(3) Additional requirements

A drug approved under this subsection shall be subject to the following requirements, in addition to any other applicable requirements of this chapter:

(A) Labeling

To indicate that the safety and effectiveness of a drug approved under this subsection has been demonstrated only with respect to a limited population—

(i) all labeling and advertising of an antibacterial or antifungal drug approved under this subsection shall contain the statement "Limited Population" in a prominent manner and adjacent to, and not more prominent than—

(I) the proprietary name of such drug, if any; or

(II) if there is no proprietary name, the established name of the drug, if any, as defined in section 353(e)(3) of this title, or, in the case of a drug that is a biological product, the proper name, as defined by regulation; and

(ii) the prescribing information for the drug required by section 201.57 of title 21, Code of Federal Regulations (or any successor regulation) shall also include the following statement: "This drug is indicated for use in a limited and specific population of patients."

(B) Promotional material

The sponsor of an antibacterial or antifungal drug subject to this subsection shall submit to the Secretary copies of all promotional materials related to such drug at least 30 calendar days prior to dissemination of the materials.

(4) Other programs

A sponsor of a drug that seeks approval of a drug under this subsection may also seek designation or approval, as applicable, of such drug under other applicable sections or subsections of this chapter or the Public Health Service Act [42 U.S.C. 201 et seq.].

(5) Guidance

Not later than 18 months after December 13, 2016, the Secretary shall issue draft guidance describing criteria, processes, and other general considerations for demonstrating the safety and effectiveness of limited population antibacterial and antifungal drugs. The Secretary shall publish final guidance within 18

months of the close of the public comment period on such draft guidance. The Secretary may approve antibacterial and antifungal drugs under this subsection prior to issuing guidance under this paragraph.

(6) Advice

The Secretary shall provide prompt advice to the sponsor of a drug for which the sponsor seeks approval under this subsection to enable the sponsor to plan a development program to obtain the necessary data for such approval, and to conduct any additional studies that would be required to gain approval of such drug for use in a broader population.

(7) Termination of limitations

If, after approval of a drug under this subsection, the Secretary approves a broader indication for such drug under section 355(b) of this title or section 351(a) of the Public Health Service Act [42 U.S.C. 262(a)], the Secretary may remove any postmarketing conditions, including requirements with respect to labeling and review of promotional materials under paragraph (3), applicable to the approval of the drug under this subsection.

(8) Rules of construction

Nothing in this subsection shall be construed to alter the authority of the Secretary to approve drugs pursuant to this chapter or section 351 of the Public Health Service Act [42 U.S.C. 262], including the standards of evidence and applicable conditions for approval under such chapter or Act, the standards of approval of a drug under such chapter or Act, or to alter the authority of the Secretary to monitor drugs pursuant to such chapter or Act.

(9) Reporting and accountability**(A) Biennial reporting**

The Secretary shall report to Congress not less often than once every 2 years on the number of requests for approval, and the number of approvals, of an antibacterial or antifungal drug under this subsection.

(B) GAO report

Not later than December 2021, the Comptroller General of the United States shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report on the coordination of activities required under section 319E of the Public Health Service Act [42 U.S.C. 247d-5]. Such report shall include a review of such activities, and the extent to which the use of the pathway established under this subsection has streamlined premarket approval for antibacterial or antifungal drugs for limited populations, if such pathway has functioned as intended, if such pathway has helped provide for safe and effective treatment for patients, if such premarket approval would be appropriate for other categories of drugs, and if the authorities under this subsection have affected antibacterial or antifungal resistance.

(June 25, 1938, ch. 675, §506, as added Pub. L. 105-115, title I, §112(a), Nov. 21, 1997, 111 Stat. 2309; amended Pub. L. 112-144, title VIII, §803, title IX, §§901(b), 902(a), July 9, 2012, 126 Stat. 1079, 1083, 1086; Pub. L. 114-255, div. A, title III, §§3033(a), (c), 3042, Dec. 13, 2016, 130 Stat. 1101, 1103, 1112.)

REFERENCES IN TEXT

The Food and Drug Administration Safety and Innovation Act, referred to in subsec. (e)(1), is Pub. L. 112-144. For the amendments made to this section by the Act, see 2012 Amendment notes below.

The 21st Century Cures Act, referred to in subsec. (e)(1), is Pub. L. 114-255. For the amendments made to this section by the Act, see 2016 Amendment notes below.

Section 101(b) of the Prescription Drug User Fee Amendments of 2012, referred to in subsec. (g)(6)(A), is section 101(b) of Pub. L. 112-144, which is set out as a note under section 379g of this title.

The Public Health Service Act, referred to in subsec. (h)(4), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 356, act June 25, 1938, ch. 675, §506, as added Dec. 22, 1941, ch. 613, §3, 55 Stat. 851; amended Pub. L. 102-300, §6(b)(2), June 16, 1992, 106 Stat. 240; Pub. L. 103-80, §3(o), Aug. 13, 1993, 107 Stat. 777, related to certification of drugs containing insulin, prior to repeal by Pub. L. 105-115, title I, §125(a)(1), Nov. 21, 1997, 111 Stat. 2325.

AMENDMENTS

2016—Subsec. (e). Pub. L. 114-255, §3033(a)(1), transferred subsec. (e) to appear before subsec. (f).

Subsec. (e)(1). Pub. L. 114-255, §3033(c), inserted “and the 21st Century Cures Act” after “Food and Drug Administration Safety and Innovation Act”.

Subsec. (g). Pub. L. 114-255, §3033(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 114-255, §3042, added subsec. (h).

2012—Pub. L. 112-144, §901(b), amended section generally. Prior to amendment, section consisted of subsections. (a) to (d) relating to designation of drugs as fast track products, approval of applications for fast track products, review of incomplete applications for approval of fast track products, and awareness efforts, respectively.

Subsec. (a). Pub. L. 112-144, §902(a)(3), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (a)(1). Pub. L. 112-144, §803, amended subsec. (a)(1), as amended by Pub. L. 112-144, §901(b), by inserting “, or if the Secretary designates the drug as a qualified infectious disease product under section 355f(d) of this title” after “such a disease or condition”.

Subsecs. (b) to (d). Pub. L. 112-144, §902(a)(1), redesignated subsections. (a) to (c) as (b) to (d), respectively. Former subsec. (d) relating to awareness efforts redesignated (f).

Subsec. (f). Pub. L. 112-144, §902(a)(2), which directed the redesignation of subsec. (d) as (f), was executed by redesignating the subsec. (d) relating to awareness efforts as (f), to reflect the probable intent of Congress and the subsequent amendment by Pub. L. 114-255, §3033(a)(1), which transferred subsec. (e) to appear before subsec. (f) “relating to awareness efforts”.

Subsec. (f)(1). Pub. L. 112-144, §902(a)(4), substituted “applicable to breakthrough therapies, accelerated approval, and” for “applicable to accelerated approval”.

EFFECTIVE DATE

Section effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105-115,

set out as an Effective Date of 1997 Amendment note under section 321 of this title.

CONSTRUCTION OF 2016 AMENDMENTS

Pub. L. 114-255, div. A, title III, §3033(b), Dec. 13, 2016, 130 Stat. 1103, provided that: “Nothing in this section [amending this section] and the amendments made by this section shall be construed to alter the authority of the Secretary of Health and Human Services—

“(1) to approve drugs pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and section 351 of the Public Health Service Act (42 U.S.C. 262) as authorized prior to the date of enactment of the 21st Century Cures Act [Dec. 13, 2016], including the standards of evidence, and applicable conditions, for approval under such Acts; or

“(2) to alter the authority of the Secretary to require postapproval studies pursuant to such Acts, as authorized prior to the date of enactment of the 21st Century Cures Act.”

Pub. L. 114-255, div. A, title III, §3043, Dec. 13, 2016, 130 Stat. 1114, provided that: “Nothing in this subtitle [subtitle E (§§3041-3044) of title III of div. A of Pub. L. 114-255, enacting section 360a-2 of this title, amending this section, sections 352 and 360d of this title, and section 247d-5 of Title 42, The Public Health and Welfare, repealing section 247d-5a of Title 42, and enacting provisions set out as notes under section 360a-2 of this title and section 247d-5 of Title 42], or an amendment made by this subtitle, shall be construed to restrict the prescribing of antimicrobial drugs or other products, including drugs approved under subsection (h) of section 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356(h)) (as added by section 3042), by health care professionals, or to limit the practice of health care.”

REPORT ON REGENERATIVE ADVANCED THERAPIES

Pub. L. 114-255, div. A, title III, §3035, Dec. 13, 2016, 130 Stat. 1103, provided that:

“(a) REPORT TO CONGRESS.—Before March 1 of each calendar year, the Secretary of Health and Human Services shall, with respect to the previous calendar year, submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on—

“(1) the number and type of applications for approval of regenerative advanced therapies filed, approved or licensed as applicable, withdrawn, or denied; and

“(2) how many of such applications or therapies, as applicable, were granted accelerated approval or priority review.

“(b) REGENERATIVE ADVANCED THERAPY.—In this section, the term ‘regenerative advanced therapy’ has the meaning given such term in section 506(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 356(g)], as added by section 3033 of this Act.”

FINDINGS AND SENSE OF CONGRESS ON ENHANCEMENT OF ACCELERATED PATIENT ACCESS TO NEW MEDICAL TREATMENTS

Pub. L. 112-144, title IX, §901(a), July 9, 2012, 126 Stat. 1082, as amended by Pub. L. 114-255, div. A, title III, §3101(b)(1), Dec. 13, 2016, 130 Stat. 1156, provided that:

“(1) FINDINGS.—Congress finds as follows:

“(A) The Food and Drug Administration (referred to in this section as the ‘FDA’) serves a critical role in helping to assure that new medicines are safe and effective. Regulatory innovation is 1 element of the Nation’s strategy to address serious or life-threatening diseases or conditions by promoting investment in and development of innovative treatments for unmet medical needs.

“(B) During the 2 decades following the establishment of the accelerated approval mechanism, advances in medical sciences, including genomics, molecular biology, and bioinformatics, have provided an

unprecedented understanding of the underlying biological mechanism and pathogenesis of disease. A new generation of modern, targeted medicines is under development to treat serious and life-threatening diseases, some applying drug development strategies based on biomarkers or pharmacogenomics, predictive toxicology, clinical trial enrichment techniques, and novel clinical trial designs, such as adaptive clinical trials.

“(C) As a result of these remarkable scientific and medical advances, the FDA should be encouraged to implement more broadly effective processes for the expedited development and review of innovative new medicines intended to address unmet medical needs for serious or life-threatening diseases or conditions, including those for rare diseases or conditions, using a broad range of surrogate or clinical endpoints and modern scientific tools earlier in the drug development cycle when appropriate. This may result in fewer, smaller, or shorter clinical trials for the intended patient population or targeted subpopulation without compromising or altering the high standards of the FDA for the approval of drugs.

“(D) Patients benefit from expedited access to safe and effective innovative therapies to treat unmet medical needs for serious or life-threatening diseases or conditions.

“(E) For these reasons, the statutory authority in effect on the day before the date of enactment of this Act [July 9, 2012] governing expedited approval of drugs for serious or life-threatening diseases or conditions should be amended in order to enhance the authority of the FDA to consider appropriate scientific data, methods, and tools, and to expedite development and access to novel treatments for patients with a broad range of serious or life-threatening diseases or conditions.

“(2) SENSE OF CONGRESS.—It is the sense of Congress that the Food and Drug Administration should apply the accelerated approval and fast track provisions set forth in section 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356), as amended by this section, to help expedite the development and availability to patients of treatments for serious or life-threatening diseases or conditions while maintaining safety and effectiveness standards for such treatments.”

GUIDANCE; AMENDED REGULATIONS

Pub. L. 112-144, title IX, §901(c), July 9, 2012, 126 Stat. 1085, provided that:

“(1) DRAFT GUIDANCE.—Not later than 1 year after the date of enactment of this Act [July 9, 2012], the Secretary of Health and Human Services (referred to in this section as the ‘Secretary’) shall issue draft guidance to implement the amendments made by this section [amending this section]. In developing such guidance, the Secretary shall specifically consider issues arising under the accelerated approval and fast track processes under section 506 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 356], as amended by subsection (b), for drugs designated for a rare disease or condition under section 526 of such Act (21 U.S.C. 360bb) and shall also consider any unique issues associated with very rare diseases.

“(2) FINAL GUIDANCE.—Not later than 1 year after the issuance of draft guidance under paragraph (1), and after an opportunity for public comment, the Secretary shall—

“(A) issue final guidance; and

“(B) amend the regulations governing accelerated approval in parts 314 and 601 of title 21, Code of Federal Regulations, as necessary to conform such regulations with the amendment made by subsection (b).

“(3) CONSIDERATION.—In developing the guidance under paragraphs (1) and (2)(A) and the amendments under paragraph (2)(B), the Secretary shall consider how to incorporate novel approaches to the review of surrogate endpoints based on pathophysiologic and pharmacologic evidence in such guidance, especially in instances where the low prevalence of a disease renders

the existence or collection of other types of data unlikely or impractical.

“(4) CONFORMING CHANGES.—The Secretary shall issue, as necessary, conforming amendments to the applicable regulations under title 21, Code of Federal Regulations, governing accelerated approval.

“(5) NO EFFECT OF INACTION ON REQUESTS.—The issuance (or nonissuance) of guidance or conforming regulations implementing the amendment made by subsection (b) shall not preclude the review of, or action on, a request for designation or an application for approval submitted pursuant to section 506 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 356], as amended by subsection (b).”

Pub. L. 112-144, title IX, §902(b), July 9, 2012, 126 Stat. 1087, provided that:

“(1) IN GENERAL.—

“(A) GUIDANCE.—Not later than 18 months after the date of enactment of this Act [July 9, 2012], the Secretary of Health and Human Services (referred to in this section as the ‘Secretary’) shall issue draft guidance on implementing the requirements with respect to breakthrough therapies, as set forth in section 506(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356(a)), as amended by this section. The Secretary shall issue final guidance not later than 1 year after the close of the comment period for the draft guidance.

“(B) AMENDED REGULATIONS.—

“(i) IN GENERAL.—If the Secretary determines that it is necessary to amend the regulations under title 21, Code of Federal Regulations in order to implement the amendments made by this section to section 506(a) of the Federal Food, Drug, and Cosmetic Act, the Secretary shall amend such regulations not later than 2 years after the date of enactment of this Act.

“(ii) PROCEDURE.—In amending regulations under clause (i), the Secretary shall—

“(I) issue a notice of proposed rulemaking that includes the proposed regulation;

“(II) provide a period of not less than 60 days for comments on the proposed regulation; and

“(III) publish the final regulation not less than 30 days before the effective date of the regulation.

“(iii) RESTRICTIONS.—Notwithstanding any other provision of law, the Secretary shall promulgate regulations implementing the amendments made by this section only as described in clause (ii).

“(2) REQUIREMENTS.—Guidance issued under this section shall—

“(A) specify the process and criteria by which the Secretary makes a designation under section 506(a)(3) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 356(a)(3)]; and

“(B) specify the actions the Secretary shall take to expedite the development and review of a breakthrough therapy pursuant to such designation under such section 506(a)(3), including updating good review management practices to reflect breakthrough therapies.”

Pub. L. 105-115, title I, §112(b), Nov. 21, 1997, 111 Stat. 2310, provided that: “Within 1 year after the date of enactment of this Act [Nov. 21, 1997], the Secretary of Health and Human Services shall issue guidance for fast track products (as defined in [former] section 506(a)(1) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 356(a)(1)]) that describes the policies and procedures that pertain to section 506 of such Act.”

§ 356-1. Accelerated approval of priority countermeasures

(a) In general

The Secretary of Health and Human Services may designate a priority countermeasure as a fast-track product pursuant to section 356 of this title or as a device granted review priority pursuant to section 360e(d)(5)¹ of this title. Such

¹ See References in Text note below.