Editorial Notes

PRIOR PROVISIONS

A prior section 360a, act June 25, 1938, ch. 675, § 511, as added July 15, 1965, Pub. L. 89–74, § 3(b), 79 Stat. 227; amended Oct. 24, 1968, Pub. L. 90–639, § 2(a), 82 Stat. 1361, regulated the manufacture, compounding, and processing of depressant and stimulant drugs and their sale, delivery, disposal, possession, and recordkeeping activities connected therewith, prior to repeal by Pub. L. 91–513, title II, §§ 701(a), 704, Oct. 27, 1970, 84 Stat. 1281, 1284, effective on the first day of the seventh calendar month that began after Oct. 26, 1970.

§ 360a–1. Clinical trials

(a) Review and revision of guidance documents

(1) In general

The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall review and, as appropriate, revise not fewer than 3 guidance documents per year, which shall include—

(A) reviewing the guidance documents of the Food and Drug Administration for the conduct of clinical trials with respect to antibacterial and antifungal drugs; and

(B) as appropriate, revising such guidance documents to reflect developments in scientific and medical information and technology and to ensure clarity regarding the procedures and requirements for approval of antibacterial and antifungal drugs under chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.).

(2) Issues for review

At a minimum, the review under paragraph (1) shall address the appropriate animal models of infection, in vitro techniques, valid microbiological surrogate markers, the use of noninferiority versus superiority trials, trial enrollment, data requirements, and appropriate delta values for noninferiority trials.

(3) Rule of construction

Except to the extent to which the Secretary makes revisions under paragraph (1)(B), nothing in this section shall be construed to repeal or otherwise effect the guidance documents of the Food and Drug Administration.

(b) Recommendations for investigations

(1) Request

The sponsor of a drug intended to be designated as a qualified infectious disease product may request that the Secretary provide written recommendations for nonclinical and clinical investigations which the Secretary believes may be necessary to be conducted with the drug before such drug may be approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in treating, detecting, preventing, or identifying a qualifying pathogen, as defined in section 505E of such Act [21 U.S.C. 355f].

(2) Recommendations

If the Secretary has reason to believe that a drug for which a request is made under this subsection is a qualified infectious disease product, the Secretary shall provide the person making the request written recommendations for the nonclinical and clinical investigations which the Secretary believes, on the basis of information available to the Secretary at the time of the request, would be necessary for approval under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) of such drug for the use described in paragraph (1).

(c) Qualified infectious disease product

For purposes of this section, the term ''qualified infectious disease product'' has the meaning given such term in section 505E(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355f(g)], as added by section 801 of this Act.

(Pub. L. 112–144, title VIII, § 804, July 9, 2012, 126 Stat. 1080.)

Editorial Notes

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(1)(B), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to this chapter. Chapter V of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see section 301 of this title and Tables.

This Act, referred to in subsec. (c), is Pub. L. 112–144, July 9, 2012, 126 Stat. 993, known as the Food and Drug Administration Safety and Innovation Act. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Food and Drug Administration Safety and Innovation Act, and not as part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter.

§ 360a–2. Susceptibility test interpretive criteria for microorganisms

(a) Purpose; identification of criteria

(1) Purpose

The purpose of this section is to clarify the Secretary's authority to—

(A) efficiently update susceptibility test interpretive criteria for antimicrobial drugs when necessary for public health, due to, among other things, the constant evolution of microorganisms that leads to the development of resistance to drugs that have been effective in decreasing morbidity and mortality for patients, which warrants unique management of antimicrobial drugs that is inappropriate for most other drugs in order to delay or prevent the development of further resistance to existing therapies;

(B) provide for public notice of the availability of recognized interpretive criteria and interpretive criteria standards; and

(C) clear under section 360(k) of this title, classify under section 360c(f)(2) of this title, or approve under section 360e of this title, antimicrobial susceptibility testing devices utilizing updated, recognized susceptibility test interpretive criteria to characterize the in vitro susceptibility of particular bacteria, fungi, or other microorganisms, as applicable, to antimicrobial drugs.

(2) Identification of criteria

The Secretary shall identify appropriate susceptibility test interpretive criteria with respect to antimicrobial drugs—

(A) if such criteria are available on the date of approval of the drug under section 355 of this title or licensure of the drug under section 262 of title 42 (as applicable), upon such approval or licensure; or

(B) if such criteria are unavailable on such date, on the date on which such criteria are available for such drug.

(3) Bases for initial identification

The Secretary shall identify appropriate susceptibility test interpretive criteria under paragraph (2), based on the Secretary's review of, to the extent available and relevant—

(A) preclinical and clinical data, including pharmacokinetic, pharmacodynamic, and epidemiological data;

(B) the relationship of susceptibility test interpretive criteria to morbidity and mortality associated with the disease or condition for which such drug is used; and

(C) such other evidence and information as the Secretary considers appropriate.

(b) Susceptibility test Interpretive Criteria Website

(1) In general

Not later than 1 year after December 13, 2016, the Secretary shall establish, and maintain thereafter, on the website of the Food and Drug Administration, a dedicated website that contains a list of any appropriate new or updated susceptibility test interpretive criteria standards and interpretive criteria in accordance with paragraph (2) (referred to in this section as the ''Interpretive Criteria Website'').

(2) Listing of susceptibility test interpretive criteria standards and interpretive criteria

(A) In general

The list described in paragraph (1) shall consist of any new or updated susceptibility test interpretive criteria standards that are—

(i) established by a nationally or internationally recognized standard development organization that—

(I) establishes and maintains procedures to address potential conflicts of interest and ensure transparent decision-making;

(II) holds open meetings to ensure that there is an opportunity for public input by interested parties, and establishes and maintains processes to ensure that such input is considered in decision-making; and

(III) permits its standards to be made publicly available, through the National Library of Medicine or another similar source acceptable to the Secretary; and

(ii) recognized in whole, or in part, by the Secretary under subsection (c).

(B) Other list

The Interpretive Criteria Website shall, in addition to the list described in subparagraph (A), include a list of interpretive criteria, if any, that the Secretary has determined to be appropriate with respect to legally marketed antimicrobial drugs, where—

(i) the Secretary does not recognize, in whole or in part, an interpretive criteria standard described under subparagraph (A) otherwise applicable to such a drug;

(ii) the Secretary withdraws under subsection (c)(1)(A) recognition of a standard, in whole or in part, otherwise applicable to such a drug;

(iii) the Secretary approves an application under section 355 of this title or section 262 of title 42, as applicable, with respect to marketing of such a drug for which there are no relevant interpretive criteria included in a standard recognized by the Secretary under subsection (c); or

(iv) because the characteristics of such a drug differ from other drugs with the same active ingredient, the interpretive criteria with respect to such drug—

(I) differ from otherwise applicable interpretive criteria included in a standard listed under subparagraph (A) or interpretive criteria otherwise listed under this subparagraph; and

(II) are determined by the Secretary to be appropriate for the drug.

(C) Required statements

The Interpretive Criteria Website shall include statements conveying—

(i) that the website provides information about the in vitro susceptibility of bacteria, fungi, or other microorganisms, as applicable to a certain drug (or drugs);

(ii) that—

(I) the safety and efficacy of such drugs in treating clinical infections due to such bacteria, fungi, or other microorganisms, as applicable, may or may not have been established in adequate and well-controlled clinical trials in order for the susceptibility information described in clause (i) to be included on the website; and

(II) the clinical significance of such susceptibility information in such instances is unknown;

(iii) that the approved product labeling for specific drugs provides the uses for which the Secretary has approved the product; and

(iv) any other information that the Secretary determines appropriate to adequately convey the meaning of the data supporting the recognition or listing of susceptibility test interpretive criteria standards or susceptibility test interpretive criteria included on the website.

(3) Notice

Not later than the date on which the Interpretive Criteria Website is established, the Secretary shall publish a notice of that establishment in the Federal Register.

(4) Inapplicability of misbranding provision

The inclusion in the approved labeling of an antimicrobial drug of a reference or hyperlink to the Interpretive Criteria Website, in and of itself, shall not cause the drug to be misbranded in violation of section 352 of this title.

(5) Trade secrets and confidential information

Nothing in this section shall be construed as authorizing the Secretary to disclose any information that is a trade secret or confidential information subject to section 552(b)(4) of title 5.

(c) Recognition of susceptibility test interpretive criteria

(1) Evaluation and publication

(A) In general

Beginning on the date of the establishment of the Interpretive Criteria Website, and at least every 6 months thereafter, the Secretary shall—

(i) evaluate any appropriate new or updated susceptibility test interpretive criteria standards established by a nationally or internationally recognized standard development organization described in subsection (b)(2)(A)(i); and

(ii) publish on the public website of the Food and Drug Administration a notice—

(I) withdrawing recognition of any different susceptibility test interpretive criteria standard, in whole or in part;

(II) recognizing the new or updated standards;

(III) recognizing one or more parts of the new or updated interpretive criteria specified in such a standard and declining to recognize the remainder of such standard; and

(IV) making any necessary updates to the lists under subsection (b)(2).

(B) Upon approval of a drug

Upon the approval of an initial or supplemental application for an antimicrobial drug under section 355 of this title or section 262 of title 42, as applicable, where such approval is based on susceptibility test interpretive criteria which differ from those contained in a standard recognized, or from those otherwise listed, by the Secretary pursuant to this subsection, or for which there are no relevant interpretive criteria standards recognized, or interpretive criteria otherwise listed, by the Secretary pursuant to this subsection, the Secretary shall update the lists under subparagraphs (A) and (B) of subsection (b)(2) to include the susceptibility test interpretive criteria upon which such approval was based.

(2) Bases for updating interpretive criteria standards

In evaluating new or updated susceptibility test interpretive criteria standards under paragraph (1)(A), the Secretary may consider—

(A) the Secretary's determination that such a standard is not applicable to a particular drug because the characteristics of the drug differ from other drugs with the same active ingredient;

(B) information provided by interested third parties, including public comment on the annual compilation of notices published under paragraph (3);

(C) any bases used to identify susceptibility test interpretive criteria under subsection (a)(2); and

(D) such other information or factors as the Secretary determines appropriate.

(3) Annual compilation of notices

Each year, the Secretary shall compile the notices published under paragraph (1)(A) and publish such compilation in the Federal Register and provide for public comment. If the Secretary receives comments, the Secretary shall review such comments and, if the Secretary determines appropriate, update pursuant to this subsection susceptibility test interpretive criteria standards or criteria—

(A) recognized by the Secretary under this subsection; or

(B) otherwise listed on the Interpretive Criteria Website under subsection (b)(2).

(4) Relation to section 360d(c) of this title

Any susceptibility test interpretive standard recognized under this subsection or any criteria otherwise listed under subsection (b)(2)(B) shall be deemed to be recognized as a standard by the Secretary under section 360d(c)(1) of this title.

(5) Voluntary use of interpretive criteria

Nothing in this section prohibits a person from seeking approval or clearance of a drug or device, or changes to the drug or the device, on the basis of susceptibility test interpretive criteria which differ from those contained in a standard recognized, or from those otherwise listed, by the Secretary pursuant to subsection (b)(2).

(d) Antimicrobial drug labeling

(1) Drugs marketed prior to establishment of Interpretive Criteria Website

(A) In general

With respect to an antimicrobial drug lawfully introduced or delivered for introduction into interstate commerce for commercial distribution before the establishment of the Interpretive Criteria Website, a holder of an approved application under section 355 of this title or section 262 of title 42, as applicable, for each such drug, not later than 1 year after establishment of the Interpretive Criteria Website described in subsection (b)(1), shall remove susceptibility test interpretive criteria, if any, and related information from the approved drug labeling and replace it with a reference to the Interpretive Criteria Website.

(B) Labeling changes

The labeling changes required by this section shall be considered a minor change under section 314.70 of title 21, Code of Federal Regulations (or any successor regulations) that may be implemented through documentation in the next applicable annual report.

(2) Drugs marketed subsequent to establishment of Interpretive Criteria Website

With respect to antimicrobial drugs approved on or after the date of the establishment of the Interpretive Criteria Website described in subsection (b)(1), the labeling for such a drug shall include, in lieu of suscepti-

bility test interpretive criteria and related information, a reference to such Website.

(e) Special condition for marketing of antimicrobial susceptibility testing devices

(1) In general

Notwithstanding sections 351, 352, 355, 360, 360c, and 360e of this title, if the conditions specified in paragraph (2) are met (in addition to other applicable provisions under this subchapter) with respect to an antimicrobial susceptibility testing device described in subsection (f)(1), the Secretary may authorize the marketing of such device for a use described in such subsection.

(2) Conditions applicable to antimicrobial susceptibility testing devices

The conditions specified in this paragraph are the following:

(A) The device is used to make a determination of susceptibility using susceptibility test interpretive criteria that are—

(i) included in a standard recognized by the Secretary under subsection (c); or

(ii) otherwise listed on the Interpretive Criteria Website under subsection (b)(2).

(B) The labeling of such device includes statements conveying—

(i) that the device provides information about the in vitro susceptibility of bacteria, fungi, or other microorganisms, as applicable to antimicrobial drugs;

(ii) that—

(I) the safety and efficacy of such drugs in treating clinical infections due to such bacteria, fungi, or other microorganisms, as applicable, may or may not have been established in adequate and well-controlled clinical trials in order for the device to report the susceptibility of such bacteria, fungi, or other microorganisms, as applicable, to such drugs; and

(II) the clinical significance of such susceptibility information in those instances is unknown;

(iii) that the approved labeling for drugs tested using such a device provides the uses for which the Secretary has approved such drugs; and

(iv) any other information the Secretary determines appropriate to adequately convey the meaning of the data supporting the recognition or listing of susceptibility test interpretive criteria standards or susceptibility test interpretive criteria described in subparagraph (A).

(C) The antimicrobial susceptibility testing device meets all other requirements to be cleared under section 360(k) of this title, classified under section 360c(f)(2) of this title, or approved under section 360e of this title.

(f) Definitions

In this section:

(1) The term ''antimicrobial susceptibility testing device'' means a device that utilizes susceptibility test interpretive criteria to determine and report the in vitro susceptibility of certain microorganisms to a drug (or drugs).

(2) The term ''qualified infectious disease product'' means a qualified infectious disease product designated under section 355f(d) of this title.

(3) The term ''susceptibility test interpretive criteria'' means—

(A) one or more specific numerical values which characterize the susceptibility of bacteria or other microorganisms to the drug tested; and

(B) related categorizations of such susceptibility, including categorization of the drug as susceptible, intermediate, resistant, or such other term as the Secretary determines appropriate.

(4)(A) The term ''antimicrobial drug'' means, subject to subparagraph (B), a systemic antibacterial or antifungal drug that—

(i) is intended for human use in the treatment of a disease or condition caused by a bacterium or fungus;

(ii) may include a qualified infectious disease product designated under section 355f(d) of this title; and

(iii) is subject to section 353(b)(1) of this title.

(B) If provided by the Secretary through regulations, such term may include—

(i) drugs other than systemic antibacterial and antifungal drugs; and

(ii) biological products (as such term is defined in section 262 of title 42) to the extent such products exhibit antimicrobial activity.

(5) The term ''interpretive criteria standard'' means a compilation of susceptibility test interpretive criteria developed by a standard development organization that meets the criteria set forth in subsection (b)(2)(A)(i).

(g) Rule of construction

Nothing in this section shall be construed to—

(1) alter the standards of evidence under subsection (c) or (d) of section 355 of this title (including the substantial evidence standard under section 355(d) of this title) or under section 262 of title 42 (as applicable); or

(2) with respect to clearing devices under section 360(k) of this title, classifying devices under section 360c(f)(2) of this title, or approving devices under section 360e of this title—

(A) apply with respect to any drug, device, or biological product, in any context other than an antimicrobial drug and an antimicrobial susceptibility testing device that uses susceptibility test interpretive criteria to characterize and report the susceptibility of certain bacteria, fungi, or other microorganisms, as applicable, to such drug to reflect patient morbidity and mortality in accordance with this section; or

(B) unless specifically stated, have any effect on authorities provided under other sections of this chapter, including any regulations issued under such sections.

(June 25, 1938, ch. 675, §511A, as added Pub. L. 114–255, div. A, title III, §3044(a), Dec. 13, 2016, 130 Stat. 1114.)

Statutory Notes and Related Subsidiaries

CONSTRUCTION

Nothing in this section to be construed to restrict the prescribing of antimicrobial drugs or other products, including drugs approved under section 356(h) of this title, by health care professionals, or to limit the practice of health care, see section 3043 of Pub. L. 114–255, set out as a Construction of 2016 Amendments note under section 356 of this title.

REQUESTS FOR UPDATES TO INTERPRETIVE CRITERIA WEBSITE

Pub. L. 114–255, div. A, title III, §3044(d), Dec. 13, 2016, 130 Stat. 1121, provided that: ''Chapter 35 of title 44, United States Code, shall not apply to the collection of information from interested parties regarding updating the lists established under section 511A(b) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360a–2(b)] and posted on the Interpretive Criteria Website established under section 511A(c) [probably means section 511A(b)] of such Act.''

§ 360b. New animal drugs

(a) Unsafe new animal drugs and animal feed containing such drugs; conditions of safety; exemption of drugs for research; import tolerances

(1) A new animal drug shall, with respect to any particular use or intended use of such drug, be deemed unsafe for purposes of section 351(a)(5) of this title and section 342(a)(2)(C)(ii) of this title unless—

(A) there is in effect an approval of an application filed pursuant to subsection (b) with respect to such use or intended use of such drug, and such drug, its labeling, and such use conform to such approved application;

(B) there is in effect a conditional approval of an application filed pursuant to section 360ccc of this title with respect to such use or intended use of such drug, and such drug, its labeling, and such use conform to such conditionally approved application;

(C) there is in effect an index listing pursuant to section 360ccc–1 of this title with respect to such use or intended use of such drug in a minor species, and such drug, its labeling, and such use conform to such index listing; or

(D) there is in effect an authorization pursuant to section 360bbb–3 of this title with respect to such use or intended use of such drug, and such drug, its labeling, and such use conform to any conditions of such authorization.

A new animal drug shall also be deemed unsafe for such purposes in the event of removal from the establishment of a manufacturer, packer, or distributor of such drug for use in the manufacture of animal feed in any State unless at the time of such removal such manufacturer, packer, or distributor has an unrevoked written statement from the consignee of such drug, or notice from the Secretary, to the effect that, with respect to the use of such drug in animal feed, such consignee (i) holds a license issued under subsection (m) and has in its possession current approved labeling for such drug in animal feed; or (ii) will, if the consignee is not a user of the drug, ship such drug only to a holder of a license issued under subsection (m).

(2) An animal feed bearing or containing a new animal drug shall, with respect to any particular use or intended use of such animal feed be deemed unsafe for purposes of section 351(a)(6) of this title unless—

(A) there is in effect—

(i) an approval of an application filed pursuant to subsection (b) with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such approved application;

(ii) a conditional approval of an application filed pursuant to section 360ccc of this title with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such conditionally approved application; or

(iii) an index listing pursuant to section 360ccc–1 of this title with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such index listing; and

(B) such animal feed is manufactured at a site for which there is in effect a license issued pursuant to subsection (m)(1) to manufacture such animal feed.

(3) A new animal drug or an animal feed bearing or containing a new animal drug shall not be deemed unsafe for the purposes of section 351(a)(5) or (6) of this title if such article is for investigational use and conforms to the terms of an exemption in effect with respect thereto under subsection (j).

(4)(A) Except as provided in subparagraph (B), if an approval of an application filed under subsection (b) is in effect with respect to a particular use or intended use of a new animal drug, the drug shall not be deemed unsafe for the purposes of paragraph (1) and shall be exempt from the requirements of section 352(f) of this title with respect to a different use or intended use of the drug, other than a use in or on animal feed, if such use or intended use—

(i) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

(ii) is in compliance with regulations promulgated by the Secretary that establish the conditions for such different use or intended use.

The regulations promulgated by the Secretary under clause (ii) may prohibit particular uses of an animal drug and shall not permit such different use of an animal drug if the labeling of another animal drug that contains the same active ingredient and which is in the same dosage form and concentration provides for such different use.

(B) If the Secretary finds that there is a reasonable probability that a use of an animal drug authorized under subparagraph (A) may present a risk to the public health, the Secretary may—

(i) establish a safe level for a residue of an animal drug when it is used for such different use authorized by subparagraph (A); and

(ii) require the development of a practical, analytical method for the detection of residues of such drug above the safe level established under clause (i).