

device for the use described in paragraph (1) with due diligence;

(5) in the case of an investigational drug or investigational device described in paragraph (3)(A), the provision of the investigational drug or investigational device will not interfere with the enrollment of patients in ongoing clinical investigations under section 355(i) or 360j(g) of this title;

(6) in the case of serious diseases, there is sufficient evidence of safety and effectiveness to support the use described in paragraph (1); and

(7) in the case of immediately life-threatening diseases, the available scientific evidence, taken as a whole, provides a reasonable basis to conclude that the investigational drug or investigational device may be effective for its intended use and would not expose patients to an unreasonable and significant risk of illness or injury.

A protocol submitted under this subsection shall be subject to the provisions of section 355(i) or 360j(g) of this title, including regulations promulgated under section 355(i) or 360j(g) of this title. The Secretary may inform national, State, and local medical associations and societies, voluntary health associations, and other appropriate persons about the availability of an investigational drug or investigational device under expanded access protocols submitted under this subsection. The information provided by the Secretary, in accordance with the preceding sentence, shall be the same type of information that is required by section 282(i)(3) of title 42.

#### (d) Termination

The Secretary may, at any time, with respect to a sponsor, physician, manufacturer, or distributor described in this section, terminate expanded access provided under this section for an investigational drug or investigational device if the requirements under this section are no longer met.

#### (e) Definitions

In this section, the terms “investigational drug”, “investigational device”, “treatment investigational new drug application”, and “treatment investigational device exemption” shall have the meanings given the terms in regulations prescribed by the Secretary.

(June 25, 1938, ch. 675, §561, as added Pub. L. 105-115, title IV, §402, Nov. 21, 1997, 111 Stat. 2365; amended Pub. L. 109-482, title I, §102(f)(2), Jan. 15, 2007, 120 Stat. 3685.)

#### AMENDMENTS

2007—Subsec. (c). Pub. L. 109-482 substituted “section 282(i)(3)” for “section 282(j)(3)” in concluding provisions.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 109-482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109-482, set out as a note under section 281 of Title 42, The Public Health and Welfare.

#### 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.

#### § 360bbb-1. Dispute resolution

If, regarding an obligation concerning drugs or devices under this Act or section 351 of the Public Health Service Act [42 U.S.C. 262], there is a scientific controversy between the Secretary and a person who is a sponsor, applicant, or manufacturer and no specific provision of the Act involved, including a regulation promulgated under such Act, provides a right of review of the matter in controversy, the Secretary shall, by regulation, establish a procedure under which such sponsor, applicant, or manufacturer may request a review of such controversy, including a review by an appropriate scientific advisory panel described in section 355(n) of this title or an advisory committee described in section 360e(g)(2)(B) of this title. Any such review shall take place in a timely manner. The Secretary shall promulgate such regulations within 1 year after November 21, 1997.

(June 25, 1938, ch. 675, §562, as added Pub. L. 105-115, title IV, §404, Nov. 21, 1997, 111 Stat. 2368.)

#### REFERENCES IN TEXT

This Act, referred to in text, is the Federal Food, Drug, and Cosmetic Act, act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 301 of this title and Tables.

#### 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.

#### § 360bbb-2. Classification of products

##### (a) Request

A person who submits an application or submission (including a petition, notification, and any other similar form of request) under this chapter for a product, may submit a request to the Secretary respecting the classification of the product as a drug, biological product, device, or a combination product subject to section 353(g) of this title or respecting the component of the Food and Drug Administration that will regulate the product. In submitting the request, the person shall recommend a classification for the product, or a component to regulate the product, as appropriate.

##### (b) Statement

Not later than 60 days after the receipt of the request described in subsection (a) of this section, the Secretary shall determine the classification of the product under subsection (a) of this section, or the component of the Food and Drug Administration that will regulate the product, and shall provide to the person a written statement that identifies such classification or such component, and the reasons for such determination. The Secretary may not modify such statement except with the written consent of the person, or for public health reasons based on scientific evidence.

##### (c) Inaction of Secretary

If the Secretary does not provide the statement within the 60-day period described in sub-

section (b) of this section, the recommendation made by the person under subsection (a) of this section shall be considered to be a final determination by the Secretary of such classification of the product, or the component of the Food and Drug Administration that will regulate the product, as applicable, and may not be modified by the Secretary except with the written consent of the person, or for public health reasons based on scientific evidence.

(June 25, 1938, ch. 675, §563, as added Pub. L. 105-115, title IV, §416, Nov. 21, 1997, 111 Stat. 2378.)

#### 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.

### § 360bbb-3. Authorization for medical products for use in emergencies

#### (a) In general

##### (1) Emergency uses

Notwithstanding sections 355, 360(k), and 360e of this title and section 262 of title 42, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b) of this section, of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an “emergency use”).

##### (2) Approval status of product

An authorization under paragraph (1) may authorize an emergency use of a product that—

(A) is not approved, licensed, or cleared for commercial distribution under a provision of law referred to in such paragraph (referred to in this section as an “unapproved product”); or

(B) is approved, licensed, or cleared under such a provision, but which use is not under such provision an approved, licensed, or cleared use of the product (referred to in this section as an “unapproved use of an approved product”).

##### (3) Relation to other uses

An emergency use authorized under paragraph (1) for a product is in addition to any other use that is authorized for the product under a provision of law referred to in such paragraph.

##### (4) Definitions

For purposes of this section:

(A) The term “biological product” has the meaning given such term in section 262 of title 42.

(B) The term “emergency use” has the meaning indicated for such term in paragraph (1).

(C) The term “product” means a drug, device, or biological product.

(D) The term “unapproved product” has the meaning indicated for such term in paragraph (2)(A).

(E) The term “unapproved use of an approved product” has the meaning indicated for such term in paragraph (2)(B).

#### (b) Declaration of emergency

##### (1) In general

The Secretary may declare an emergency justifying the authorization under this subsection for a product on the basis of—

(A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

(B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or

(C) a determination by the Secretary of a public health emergency under section 247d of title 42 that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.

##### (2) Termination of declaration

###### (A) In general

A declaration under this subsection shall terminate upon the earlier of—

(i) a determination by the Secretary, in consultation as appropriate with the Secretary of Homeland Security or the Secretary of Defense, that the circumstances described in paragraph (1) have ceased to exist; or

(ii) the expiration of the one-year period beginning on the date on which the declaration is made.

###### (B) Renewal

Notwithstanding subparagraph (A), the Secretary may renew a declaration under this subsection, and this paragraph shall apply to any such renewal.

###### (C) Disposition of product

If an authorization under this section with respect to an unapproved product ceases to be effective as a result of a termination under subparagraph (A) of this paragraph, the Secretary shall consult with the manufacturer of such product with respect to the appropriate disposition of the product.

##### (3) Advance notice of termination

The Secretary shall provide advance notice that a declaration under this subsection will be terminated. The period of advance notice shall be a period reasonably determined to provide—

(A) in the case of an unapproved product, a sufficient period for disposition of the product, including the return of such product (except such quantities of product as are necessary to provide for continued use con-