Subsec. (g)(3). Pub. L. 112–144, §1132(a)(3), substituted ''for a drug shall include, with respect to each goal included in the strategy, an assessment of the extent to which the approved strategy, including each element of the strategy, is meeting the goal or whether 1 or more such goals or such elements should be modified.'' for ''for a drug shall include—'' and struck out subpars. (A) to (C) which related to assessment of elements to assure safe use, postapproval studies, and postapproval clinical trials.

Subsec. (g)(4). Pub. L. 112–144, §1132(a)(4), amended par. (4) generally. Prior to amendment, text read as follows: ''A modification (whether an enhancement or a reduction) to the approved risk evaluation and mitigation strategy for a drug may include the addition or modification of any element under subsection (d) or the addition, modification, or removal of any element under subsection (e) or (f), such as—

''(A) modifying the timetable for assessments of the strategy as provided in subsection (d)(3), including to eliminate assessments; or

''(B) adding, modifying, or removing an element to assure safe use under subsection (f).''

Subsec. (h). Pub. L. 112–144, §1132(b)(1), inserted ''and modifications'' after ''review of assessments'' in heading.

Subsec. (h)(1). Pub. L. 112–144, §1132(b)(2), inserted ''and proposed modification to'' after ''under subsection (a) and each assessment of'' and '', and, if necessary, promptly initiate discussions with the responsible person about such proposed strategy, assessment, or modification'' after ''subsection (g)''.

Subsec. (h)(2). Pub. L. 112–144, §1132(b)(3), (4), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: ''The Secretary, in consultation with the offices described in subsection (c)(2), shall initiate discussions with the responsible person for purposes of this subsection to determine a strategy not later than 60 days after any such assessment is submitted or, in the case of an assessment submitted under subsection (g)(2)(D), not later than 30 days after such assessment is submitted.''

Subsec. (h)(2)(A). Pub. L. 112–144, §1132(b)(5)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) related to Secretary's description of any required risk evaluation and mitigation strategy for a drug as part of the action letter on the application or in an order.

Subsec. (h)(2)(C). Pub. L. 112–144, §1132(b)(5)(B), amended subpar. (C) generally. Prior to amendment, text read as follows: ''Any action letter described in subparagraph (A)(i) or order described in subparagraph (A)(ii) shall be made publicly available.''

Subsec. (h)(3), (4). Pub. L. 112–144, §1132(b)(4), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (h)(4)(A)(i). Pub. L. 112–144, §1132(b)(6)(A), substituted ''The responsible'' for ''Not earlier than 15 days, and not later than 35 days, after discussions under paragraph (2) have begun, the responsible'' and inserted '', after the sponsor is required to make a submission under subsection (a)(2) or (g),'' before ''request in writing''.

Subsec. (h)(4)(I). Pub. L. 112–144, §1132(b)(6)(B), substituted ''if the Secretary has complied with the timing requirements of scheduling review by the Drug Safety Oversight Board, providing a written recommendation, and issuing an action letter under subparagraphs (B), (F), and (G), respectively.'' for ''if the Secretary—'' and struck out cls. (i) and (ii) which read as follows:

''(i) has initiated the discussions described under paragraph (2) not less than 60 days before such action deadline; and

''(ii) has complied with the timing requirements of scheduling review by the Drug Safety Oversight Board, providing a written recommendation, and issuing an action letter under subparagraphs (B), (F), and (G), respectively.''

Subsec. (h)(5). Pub. L. 112–144, §1132(b)(4), (7), redesignated par. (6) as (5) and substituted ''subparagraph (B) or (C)'' for ''any of subparagraphs (B) through (D)'' in subpar. (A) and ''paragraph (3) or (4)'' for ''paragraph (4) or (5)'' in subpar. (C). Former par. (5) redesignated (4).

Subsec. (h)(6), (7). Pub. L. 112–144, §1132(b)(4), redesignated pars. (7) and (8) as (6) and (7), respectively. Former par. (6) redesignated (5).

Subsec. (h)(8), (9). Pub. L. 112–144, §1132(b)(4), (8), redesignated par. (9) as (8) and substituted ''paragraphs (6) and (7).'' for ''paragraphs (7) and (8)''. Former par. (8) redesignated (7).

EFFECTIVE DATE

Section effective 180 days after Sept. 27, 2007, see section 909 of Pub. L. 110–85, set out as an Effective Date of 2007 Amendment note under section 331 of this title.

GUIDANCE

Pub. L. 112–144, title XI, §1132(c), July 9, 2012, 126 Stat. 1122, provided that: ''Not later than 1 year after the date of enactment of this Act [July 9, 2012], the Secretary of Health and Human Services shall issue guidance that, for purposes of section 505–1(h)(2)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355–1(h)(2)(A)), describes the types of modifications to approved risk evaluation and mitigation strategies that shall be considered to be minor modifications of such strategies.''

§ 355a. Pediatric studies of drugs

(a) Definitions

As used in this section, the term ''pediatric studies'' or ''studies'' means at least one clinical investigation (that, at the Secretary's discretion, may include pharmacokinetic studies) in pediatric age groups (including neonates in appropriate cases) in which a drug is anticipated to be used, and, at the discretion of the Secretary, may include preclinical studies.

(b) Market exclusivity for new drugs

(1) In general

Except as provided in paragraph (2), if, prior to approval of an application that is submitted under section 355(b)(1) of this title, the Secretary determines that information relating to the use of a new drug in the pediatric population may produce health benefits in that population, the Secretary makes a written request for pediatric studies (which shall include a timeframe for completing such studies), the applicant agrees to the request, such studies are completed using appropriate formulations for each age group for which the study is requested within any such timeframe, and the reports thereof are submitted and accepted in accordance with subsection (d)(3)—

(A)(i)(I) the period referred to in subsection (c)(3)(E)(ii) of section 355 of this title, and in subsection (j)(5)(F)(ii) of such section, is deemed to be five years and six months rather than five years, and the references in subsections (c)(3)(E)(ii) and (j)(5)(F)(ii) of such section to four years, to forty-eight months, and to seven and one-half years are deemed to be four and one-half years, fifty-four months, and eight years, respectively; or

(II) the period referred to in clauses (iii) and (iv) of subsection (c)(3)(E) of such section, and in clauses (iii) and (iv) of subsection (j)(5)(F) of such section, is deemed to be three years and six months rather than three years; and

(ii) if the drug is designated under section 360bb of this title for a rare disease or condition, the period referred to in section 360cc(a) of this title is deemed to be seven years and six months rather than seven years; and

(B)(i) if the drug is the subject of—

(I) a listed patent for which a certification has been submitted under subsection (b)(2)(A)(ii) or (j)(2)(A)(vii)(II) of section 355 of this title and for which pediatric studies were submitted prior to the expiration of the patent (including any patent extensions); or

(II) a listed patent for which a certification has been submitted under subsections (b)(2)(A)(iii) or (j)(2)(A)(vii)(III) of section 355 of this title,

the period during which an application may not be approved under section 355(c)(3) of this title or section 355(j)(5)(B) of this title shall be extended by a period of six months after the date the patent expires (including any patent extensions); or

(ii) if the drug is the subject of a listed patent for which a certification has been submitted under subsection (b)(2)(A)(iv) or (j)(2)(A)(vii)(IV) of section 355 of this title, and in the patent infringement litigation resulting from the certification the court determines that the patent is valid and would be infringed, the period during which an application may not be approved under section 355(c)(3) of this title or section 355(j)(5)(B) of this title shall be extended by a period of six months after the date the patent expires (including any patent extensions).

(2) Exception

The Secretary shall not extend the period referred to in paragraph (1)(A) or (1)(B) if the determination made under subsection (d)(3) is made later than 9 months prior to the expiration of such period.

(c) Market exclusivity for already-marketed drugs

(1) In general

Except as provided in paragraph (2), if the Secretary determines that information relating to the use of an approved drug in the pediatric population may produce health benefits in that population and makes a written request to the holder of an approved application under section 355(b)(1) of this title for pediatric studies (which shall include a timeframe for completing such studies), the holder agrees to the request, such studies are completed using appropriate formulations for each age group for which the study is requested within any such timeframe, and the reports thereof are submitted and accepted in accordance with subsection (d)(3)—

(A)(i)(I) the period referred to in subsection (c)(3)(E)(ii) of section 355 of this title, and in subsection (j)(5)(F)(ii) of such section, is deemed to be five years and six months rather than five years, and the references in subsections (c)(3)(E)(ii) and (j)(5)(F)(ii) of such section to four years, to forty-eight months, and to seven and one-half years are deemed to be four and one-half years, fifty-four months, and eight years, respectively; or

(II) the period referred to in clauses (iii) and (iv) of subsection (c)(3)(D) of such section, and in clauses (iii) and (iv) of subsection (j)(5)(F) of such section, is deemed to be three years and six months rather than three years; and

(ii) if the drug is designated under section 360bb of this title for a rare disease or condition, the period referred to in section 360cc(a) of this title is deemed to be seven years and six months rather than seven years; and

(B)(i) if the drug is the subject of—

(I) a listed patent for which a certification has been submitted under subsection (b)(2)(A)(ii) or (j)(2)(A)(vii)(II) of section 355 of this title and for which pediatric studies were submitted prior to the expiration of the patent (including any patent extensions); or

(II) a listed patent for which a certification has been submitted under subsection (b)(2)(A)(iii) or (j)(2)(A)(vii)(III) of section 355 of this title,

the period during which an application may not be approved under section 355(c)(3) of this title or section 355(j)(5)(B)(ii) of this title shall be extended by a period of six months after the date the patent expires (including any patent extensions); or

(ii) if the drug is the subject of a listed patent for which a certification has been submitted under subsection (b)(2)(A)(iv) or (j)(2)(A)(vii)(IV) of section 355 of this title, and in the patent infringement litigation resulting from the certification the court determines that the patent is valid and would be infringed, the period during which an application may not be approved under section 355(c)(3) of this title or section 355(j)(5)(B) of this title shall be extended by a period of six months after the date the patent expires (including any patent extensions).

(2) Exception

The Secretary shall not extend the period referred to in paragraph (1)(A) or (1)(B) if the determination made under subsection (d)(3) is made later than 9 months prior to the expiration of such period.

(d) Conduct of pediatric studies

(1) Request for studies

(A) In general

The Secretary may, after consultation with the sponsor of an application for an investigational new drug under section 355(i) of this title, the sponsor of an application for a new drug under section 355(b)(1) of this title, or the holder of an approved application for a drug under section 355(b)(1) of this title, issue to the sponsor or holder a written request for the conduct of pediatric studies for such drug. In issuing such request, the Secretary shall take into account adequate representation of children of ethnic and racial minorities. Such request to conduct pediatric studies shall be in writing and shall

include a timeframe for such studies and a request to the sponsor or holder to propose pediatric labeling resulting from such studies. If a request under this subparagraph does not request studies in neonates, such request shall include a statement describing the rationale for not requesting studies in neonates.

(B) Single written request

A single written request—

(i) may relate to more than one use of a drug; and

(ii) may include uses that are both approved and unapproved.

(2) Written request for pediatric studies

(A) Request and response

(i) In general

If the Secretary makes a written request for pediatric studies (including neonates, as appropriate) under subsection (b) or (c), the applicant or holder, not later than 180 days after receiving the written request, shall respond to the Secretary as to the intention of the applicant or holder to act on the request by—

(I) indicating when the pediatric studies will be initiated, if the applicant or holder agrees to the request; or

(II) indicating that the applicant or holder does not agree to the request and stating the reasons for declining the request.

(ii) Disagree with request

If, on or after September 27, 2007, the applicant or holder does not agree to the request on the grounds that it is not possible to develop the appropriate pediatric formulation, the applicant or holder shall submit to the Secretary the reasons such pediatric formulation cannot be developed.

(B) Adverse event reports

An applicant or holder that, on or after September 27, 2007, agrees to the request for such studies shall provide the Secretary, at the same time as the submission of the reports of such studies, with all postmarket adverse event reports regarding the drug that is the subject of such studies and are available prior to submission of such reports.

(3) Meeting the studies requirement

Not later than 180 days after the submission of the reports of the studies, the Secretary shall accept or reject such reports and so notify the sponsor or holder. The Secretary's only responsibility in accepting or rejecting the reports shall be to determine, within the 180-day period, whether the studies fairly respond to the written request, have been conducted in accordance with commonly accepted scientific principles and protocols, and have been reported in accordance with the requirements of the Secretary for filing.

(4) Effect of subsection

Nothing in this subsection alters or amends section 331(j) of this title or section 552 of title 5 or section 1905 of title 18.

(5) Consultation

With respect to a drug that is a qualified countermeasure (as defined in section 247d–6a of title 42), a security countermeasure (as defined in section 247d–6b of title 42), or a qualified pandemic or epidemic product (as defined in section 247d–6d of title 42), the Secretary shall solicit input from the Assistant Secretary for Preparedness and Response regarding the need for and, from the Director of the Biomedical Advanced Research and Development Authority regarding the conduct of, pediatric studies under this section.

(e) Notice of determinations on studies requirement

(1) In general

The Secretary shall publish a notice of any determination, made on or after September 27, 2007, that the requirements of subsection (d) have been met and that submissions and approvals under subsection (b)(2) or (j) of section 355 of this title for a drug will be subject to the provisions of this section. Such notice shall be published not later than 30 days after the date of the Secretary's determination regarding market exclusivity and shall include a copy of the written request made under subsection (b) or (c).

(2) Identification of certain drugs

The Secretary shall publish a notice identifying any drug for which, on or after September 27, 2007, a pediatric formulation was developed, studied, and found to be safe and effective in the pediatric population (or specified subpopulation) if the pediatric formulation for such drug is not introduced onto the market within one year after the date that the Secretary publishes the notice described in paragraph (1). Such notice identifying such drug shall be published not later than 30 days after the date of the expiration of such one year period.

(f) Internal review of written requests and pediatric studies

(1) Internal review

The Secretary shall utilize the internal review committee established under section 355d of this title to review all written requests issued on or after September 27, 2007, in accordance with paragraph (2).

(2) Review of written requests

The committee referred to in paragraph (1) shall review all written requests issued pursuant to this section prior to being issued.

(3) Review of pediatric studies

The committee referred to in paragraph (1) may review studies conducted pursuant to this section to make a recommendation to the Secretary whether to accept or reject such reports under subsection (d)(3).

(4) Activity by committee

The committee referred to in paragraph (1) may operate using appropriate members of such committee and need not convene all members of the committee.

(5) Documentation of committee action

For each drug, the committee referred to in paragraph (1) shall document, for each activ-

ity described in paragraph (2) or (3), which members of the committee participated in such activity.

(6) Tracking pediatric studies and labeling changes

The Secretary, in consultation with the committee referred to in paragraph (1), shall track and make available to the public, in an easily accessible manner, including through posting on the Web site of the Food and Drug Administration—

(A) the number of studies conducted under this section and under section 284m of title 42;

(B) the specific drugs and drug uses, including labeled and off-labeled indications, studied under such sections;

(C) the types of studies conducted under such sections, including trial design, the number of pediatric patients studied, and the number of centers and countries involved;

(D) the number of pediatric formulations developed and the number of pediatric formulations not developed and the reasons such formulations were not developed;

(E) the labeling changes made as a result of studies conducted under such sections;

(F) an annual summary of labeling changes made as a result of studies conducted under such sections for distribution pursuant to subsection (k)(2); and

(G) information regarding reports submitted on or after September 27, 2007.

(g) Limitations

Notwithstanding subsection (c)(2), a drug to which the six-month period under subsection (b) or (c) has already been applied—

(1) may receive an additional six-month period under subsection (c)(1)(A)(i)(II) for a supplemental application if all other requirements under this section are satisfied, except that such drug may not receive any additional such period under subsection (c)(1)(B); and

(2) may not receive any additional such period under subsection (c)(1)(A)(ii).

(h) Relationship to pediatric research requirements

Exclusivity under this section shall only be granted for the completion of a study or studies that are the subject of a written request and for which reports are submitted and accepted in accordance with subsection (d)(3). Written requests under this section may consist of a study or studies required under section 355c of this title.

(i) Labeling changes

(1) Priority status for pediatric applications and supplements

Any application or supplement to an application under section 355 of this title proposing a labeling change as a result of any pediatric study conducted pursuant to this section—

(A) shall be considered to be a priority application or supplement; and

(B) shall be subject to the performance goals established by the Commissioner for priority drugs.

(2) Dispute resolution

(A) Request for labeling change and failure to agree

If, on or after September 27, 2007, the Commissioner determines that the sponsor and the Commissioner have been unable to reach agreement on appropriate changes to the labeling for the drug that is the subject of the application, not later than 180 days after the date of submission of the application—

(i) the Commissioner shall request that the sponsor of the application make any labeling change that the Commissioner determines to be appropriate; and

(ii) if the sponsor of the application does not agree within 30 days after the Commissioner's request to make a labeling change requested by the Commissioner, the Commissioner shall refer the matter to the Pediatric Advisory Committee.

(B) Action by the Pediatric Advisory Committee

Not later than 90 days after receiving a referral under subparagraph (A)(ii), the Pediatric Advisory Committee shall—

(i) review the pediatric study reports; and

(ii) make a recommendation to the Commissioner concerning appropriate labeling changes, if any.

(C) Consideration of recommendations

The Commissioner shall consider the recommendations of the Pediatric Advisory Committee and, if appropriate, not later than 30 days after receiving the recommendation, make a request to the sponsor of the application to make any labeling change that the Commissioner determines to be appropriate.

(D) Misbranding

If the sponsor of the application, within 30 days after receiving a request under subparagraph (C), does not agree to make a labeling change requested by the Commissioner, the Commissioner may deem the drug that is the subject of the application to be misbranded.

(E) No effect on authority

Nothing in this subsection limits the authority of the United States to bring an enforcement action under this chapter when a drug lacks appropriate pediatric labeling. Neither course of action (the Pediatric Advisory Committee process or an enforcement action referred to in the preceding sentence) shall preclude, delay, or serve as the basis to stay the other course of action.

(j) Other labeling changes

If, on or after September 27, 2007, the Secretary determines that a pediatric study conducted under this section does or does not demonstrate that the drug that is the subject of the study is safe and effective, including whether such study results are inconclusive, in pediatric populations or subpopulations, the Secretary shall order the labeling of such product to include information about the results of the study

and a statement of the Secretary's determination.

(k) Dissemination of pediatric information

(1) In general

Not later than 210 days after the date of submission of a report on a pediatric study under this section, the Secretary shall make available to the public the medical, statistical, and clinical pharmacology reviews of pediatric studies conducted under subsection (b) or (c).

(2) Dissemination of information regarding labeling changes

Beginning on September 27, 2007, the Secretary shall include as a requirement of a written request that the sponsors of the studies that result in labeling changes that are reflected in the annual summary developed pursuant to subsection (f)(6)(F) distribute, at least annually (or more frequently if the Secretary determines that it would be beneficial to the public health), such information to physicians and other health care providers.

(3) Effect of subsection

Nothing in this subsection alters or amends section 331(j) of this title or section 552 of title 5 or section 1905 of title 18.

(*l*) Adverse event reporting

(1) Reporting in first 18-month period

Beginning on September 27, 2007, during the 18-month period beginning on the date a labeling change is approved pursuant to subsection (i), the Secretary shall ensure that all adverse event reports that have been received for such drug (regardless of when such report was received) are referred to the Office of Pediatric Therapeutics established under section 393a of this title. In considering the reports, the Director of such Office shall provide for the review of the reports by the Pediatric Advisory Committee, including obtaining any recommendations of such Committee regarding whether the Secretary should take action under this chapter in response to such reports.

(2) Reporting in subsequent periods

Following the 18-month period described in paragraph (1), the Secretary shall, as appropriate, refer to the Office of Pediatric Therapeutics all pediatric adverse event reports for a drug for which a pediatric study was conducted under this section. In considering such reports, the Director of such Office may provide for the review of such reports by the Pediatric Advisory Committee, including obtaining any recommendation of such Committee regarding whether the Secretary should take action in response to such reports.

(3) Preservation of authority

Nothing in this subsection shall prohibit the Office of Pediatric Therapeutics from providing for the review of adverse event reports by the Pediatric Advisory Committee prior to the 18-month period referred to in paragraph (1), if such review is necessary to ensure safe use of a drug in a pediatric population.

(4) Effect

The requirements of this subsection shall supplement, not supplant, other review of such adverse event reports by the Secretary.

(m) Clarification of interaction of market exclusivity under this section and market exclusivity awarded to an applicant for approval of a drug under section 355(j) of this title

If a 180-day period under section 355(j)(5)(B)(iv) of this title overlaps with a 6-month exclusivity period under this section, so that the applicant for approval of a drug under section 355(j) of this title entitled to the 180-day period under that section loses a portion of the 180-day period to which the applicant is entitled for the drug, the 180-day period shall be extended from—

(1) the date on which the 180-day period would have expired by the number of days of the overlap, if the 180-day period would, but for the application of this subsection, expire after the 6-month exclusivity period; or

(2) the date on which the 6-month exclusivity period expires, by the number of days of the overlap if the 180-day period would, but for the application of this subsection, expire during the six-month exclusivity period.

(n) Referral if pediatric studies not submitted

(1) In general

Beginning on September 27, 2007, if pediatric studies of a drug have not been submitted by the date specified in the written request issued or if the applicant or holder does not agree to the request under subsection (d) and if the Secretary, through the committee established under section 355d of this title, determines that there is a continuing need for information relating to the use of the drug in the pediatric population (including neonates, as appropriate), the Secretary shall carry out the following:

(A) For a drug for which a listed patent has not expired, or for which a period of exclusivity eligible for extension under subsection (b)(1) or (c)(1) of this section or under subsection (m)(2) or (m)(3) of section 262 of title 42 has not ended, make a determination regarding whether an assessment shall be required to be submitted under section 355c(b) of this title.

(B) For a drug that has no unexpired listed patents and for which no unexpired periods of exclusivity eligible for extension under subsection (b)(1) or (c)(1) of this section or under subsection (m)(2) or (m)(3) of section 262 of title 42 apply, the Secretary shall refer the drug for inclusion on the list established under section 284m of title 42 for the conduct of studies.

(C) For a drug that is a qualified countermeasure (as defined in section 247d–6a of title 42), a security countermeasure (as defined in section 247d–6b of title 42), or a qualified pandemic or epidemic product (as defined in section 247d–6d of title 42), in addition to any action with respect to such drug under subparagraph (A) or (B), the Secretary shall notify the Assistant Secretary for Preparedness and Response and the Director of the Biomedical Advanced Research and Development Authority of all pediatric studies in the written request issued by the Commissioner of Food and Drugs.

(2) Public notice

The Secretary shall give the public notice of a decision under paragraph (1)(A) not to re-

quire an assessment under section 355c of this title and the basis for such decision.

(3) Effect of subsection

Nothing in this subsection alters or amends section 331(j) of this title or section 552 of title 5 or section 1905 of title 18.

(*o*) Prompt approval of drugs under section 355(j) when pediatric information is added to labeling

(1) General rule

A drug for which an application has been submitted or approved under section 355(j) of this title shall not be considered ineligible for approval under that section or misbranded under section 352 of this title on the basis that the labeling of the drug omits a pediatric indication or any other aspect of labeling pertaining to pediatric use when the omitted indication or other aspect is protected by patent or by exclusivity under clause (iii) or (iv) of section 355(j)(5)(F) of this title.

(2) Labeling

Notwithstanding clauses (iii) and (iv) of section 355(j)(5)(F) of this title, the Secretary may require that the labeling of a drug approved under section 355(j) of this title that omits a pediatric indication or other aspect of labeling as described in paragraph (1) include—

(A) a statement that, because of marketing exclusivity for a manufacturer—

(i) the drug is not labeled for pediatric use; or

(ii) in the case of a drug for which there is an additional pediatric use not referred to in paragraph (1), the drug is not labeled for the pediatric use under paragraph (1); and

(B) a statement of any appropriate pediatric contraindications, warnings, precautions, or other information that the Secretary considers necessary to assure safe use.

(3) Preservation of pediatric exclusivity and other provisions

This subsection does not affect—

(A) the availability or scope of exclusivity under this section;

(B) the availability or scope of exclusivity under section 355 of this title for pediatric formulations;

(C) the question of the eligibility for approval of any application under section 355(j) of this title that omits any other conditions of approval entitled to exclusivity under clause (iii) or (iv) of section 355(j)(5)(F) of this title; or

(D) except as expressly provided in paragraphs (1) and (2), the operation of section 355 of this title.

(p) Institute of Medicine study

Not later than 3 years after September 27, 2007, the Secretary shall enter into a contract with the Institute of Medicine to conduct a study and report to Congress regarding the written requests made and the studies conducted pursuant to this section. The Institute of Medicine may devise an appropriate mechanism to review a representative sample of requests made and studies conducted pursuant to this section in order to conduct such study. Such study shall—

(1) review such representative written requests issued by the Secretary since 1997 under subsections (b) and (c);

(2) review and assess such representative pediatric studies conducted under subsections (b) and (c) since 1997 and labeling changes made as a result of such studies;

(3) review the use of extrapolation for pediatric subpopulations, the use of alternative endpoints for pediatric populations, neonatal assessment tools, and ethical issues in pediatric clinical trials;

(4) review and assess the number and importance of biological products for children that are being tested as a result of the amendments made by the Biologics Price Competition and Innovation Act of 2009 and the importance for children, health care providers, parents, and others of labeling changes made as a result of such testing;

(5) review and assess the number, importance, and prioritization of any biological products that are not being tested for pediatric use; and

(6) offer recommendations for ensuring pediatric testing of biological products, including consideration of any incentives, such as those provided under this section or section 262(m) of title 42.

(June 25, 1938, ch. 675, § 505A, as added Pub. L. 105–115, title I, § 111, Nov. 21, 1997, 111 Stat. 2305; amended Pub. L. 107–109, §§ 2, 4, 5(b)(2), 7–11(a), 18(a), 19, Jan. 4, 2002, 115 Stat. 1408, 1411, 1413–1415, 1423, 1424; Pub. L. 108–155, §§ 2(b)(2), 3(a), (b)(1), Dec. 3, 2003, 117 Stat. 1941; Pub. L. 108–173, title XI, § 1104, Dec. 8, 2003, 117 Stat. 2461; Pub. L. 110–85, title V, § 502(a)(1), Sept. 27, 2007, 121 Stat. 876; Pub. L. 111–148, title VII, § 7002(g)(2)(B), Mar. 23, 2010, 124 Stat. 820; Pub. L. 112–144, title V, §§ 501(a), 502(a)(1), (b), 509(a), July 9, 2012, 126 Stat. 1039, 1040, 1047; Pub. L. 113–5, title III, § 307(a), Mar. 13, 2013, 127 Stat. 191.)

REFERENCES IN TEXT

The Biologics Price Competition and Innovation Act of 2009, referred to in subsec. (p)(4), is subtitle A (§§ 7001–7003) of title VII of Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 804, which amended sections 355, 355a, 355c, and 379g of this title, section 2201 of Title 28, Judiciary and Judicial Procedure, section 271 of Title 35, Patents, and sections 262 and 284m of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under section 262 of Title 42. For complete classification of subtitle A to the Code, see Short Title of 2010 Amendment note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2013—Subsec. (d)(5). Pub. L. 113–5, § 307(a)(1), added par. (5).

Subsec. (n)(1)(C). Pub. L. 113–5, § 307(a)(2), added subpar. (C).

2012—Subsec. (d)(1)(A). Pub. L. 112–144, § 502(b), inserted at end ''If a request under this subparagraph does not request studies in neonates, such request shall include a statement describing the rationale for not requesting studies in neonates.''

Subsec. (h). Pub. L. 112–144, § 502(a)(1), amended subsec. (h) generally. Prior to amendment, text read as follows: ''Notwithstanding any other provision of law, if

any pediatric study is required by a provision of law (including a regulation) other than this section and such study meets the completeness, timeliness, and other requirements of this section, such study shall be deemed to satisfy the requirement for market exclusivity pursuant to this section.''

Subsec. (k)(2). Pub. L. 112–144, § 509(a)(1), substituted ''subsection (f)(6)(F)'' for ''subsection (f)(3)(F)''.

Subsec. (*l*)(1). Pub. L. 112–144, § 509(a)(2)(A), substituted ''first 18-month period'' for ''year one'' in heading and ''18-month'' for ''one-year'' in text.

Subsec. (*l*)(2). Pub. L. 112–144, § 509(a)(2)(B), substituted ''periods'' for ''years'' in heading and ''18-month period'' for ''one-year period'' in text.

Subsec. (*l*)(3), (4). Pub. L. 112–144, § 509(a)(2)(C), (D), added par. (3) and redesignated former par. (3) as (4).

Subsec. (n). Pub. L. 112–144, § 509(a)(3)(A), substituted ''submitted'' for ''completed'' in heading.

Subsec. (n)(1). Pub. L. 112–144, § 509(a)(3)(B)(i), substituted ''have not been submitted by the date specified in the written request issued or if the applicant or holder does not agree to the request'' for ''have not been completed'' in introductory provisions.

Subsec. (n)(1)(A). Pub. L. 112–144, § 509(a)(3)(B)(ii), inserted '', or for which a period of exclusivity eligible for extension under subsection (b)(1) or (c)(1) of this section or under subsection (m)(2) or (m)(3) of section 262 of title 42 has not ended'' after ''expired'' and struck out at end ''Prior to making such a determination, the Secretary may not take more than 30 days to certify whether the Foundation for the National Institutes of Health has sufficient funding at the time of such certification to initiate and fund all of the studies in the written request in their entirety within the timeframes specified within the written request. Only if the Secretary makes such certification in the affirmative, the Secretary shall refer all pediatric studies in the written request to the Foundation for the National Institutes of Health for the conduct of such studies, and such Foundation shall fund such studies. If no certification has been made at the end of the 30-day period, or if the Secretary certifies that funds are not sufficient to initiate and fund all the studies in their entirety, the Secretary shall consider whether assessments shall be required under section 355c(b) of this title for such drug.''

Subsec. (n)(1)(B). Pub. L. 112–144, § 509(a)(3)(B)(iii), substituted ''no unexpired listed patents and for which no unexpired periods of exclusivity eligible for extension under subsection (b)(1) or (c)(1) of this section or under subsection (m)(2) or (m)(3) of section 262 of title 42 apply,'' for ''no listed patents or has 1 or more listed patents that have expired,''.

Subsec. (*o*)(2)(B). Pub. L. 112–144, § 509(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a statement of any appropriate pediatric contraindications, warnings, or precautions that the Secretary considers necessary.''

Subsec. (q). Pub. L. 112–144, § 501(a), struck out subsec. (q). Text read as follows: ''A drug may not receive any 6-month period under subsection (b) or (c) unless—

''(1) on or before October 1, 2012, the Secretary makes a written request for pediatric studies of the drug;

''(2) on or before October 1, 2012, an application for the drug is accepted for filing under section 355(b) of this title; and

''(3) all requirements of this section are met.''

2010—Subsec. (p)(4) to (6). Pub. L. 111–148 added pars. (4) to (6) and struck out former pars. (4) and (5) which read as follows:

''(4) review and assess the pediatric studies of biological products as required under subsections (a) and (b) of section 355c of this title; and

''(5) make recommendations regarding appropriate incentives for encouraging pediatric studies of biologics.''

2007—Pub. L. 110–85 amended section generally. Prior to amendment, text consisted of subsecs. (a) to (n) relating to pediatric studies of drugs, including market exclusivity, conduct of pediatric studies, delay of effective date for certain applications, notice of determinations on studies requirement, limitations, research requirements, labeling supplements, dissemination of information, prompt approval of drugs, report to Congress not later than Jan. 1, 2001, and sunset provisions.

2003—Subsec. (b)(1)(A)(i). Pub. L. 108–173, § 1104(1), substituted ''(j)(5)(F)(ii)'' for ''(j)(5)(D)(ii)'' in two places.

Subsec. (b)(1)(A)(ii). Pub. L. 108–173, § 1104(2), substituted ''(j)(5)(F)'' for ''(j)(5)(D)''.

Subsec. (b)(2). Pub. L. 108–155, § 3(a), substituted ''355(j)(5)(B)'' for ''355(j)(4)(B)'' in two places.

Subsec. (c)(1)(A)(i). Pub. L. 108–173, § 1104(1), substituted ''(j)(5)(F)(ii)'' for ''(j)(5)(D)(ii)'' in two places.

Subsec. (c)(1)(A)(ii). Pub. L. 108–173, § 1104(2), substituted ''(j)(5)(F)'' for ''(j)(5)(D)''.

Subsec. (c)(2). Pub. L. 108–155, § 3(a), substituted ''355(j)(5)(B)'' for ''355(j)(4)(B)'' in two places.

Subsec. (e). Pub. L. 108–173, § 1104(3), substituted ''355(j)(5)(F)'' for ''355(j)(5)(D)''.

Subsec. (h). Pub. L. 108–155, § 2(b)(2), substituted ''pediatric research requirements'' for ''regulations'' in heading and ''by a provision of law (including a regulation) other than this section'' for ''pursuant to regulations promulgated by the Secretary'' in text.

Subsec. (i)(2). Pub. L. 108–155, § 3(b)(1), struck out ''Advisory Subcommittee of the Anti-Infective Drugs'' before ''Advisory Committee'' wherever appearing.

Subsec. (*l*). Pub. L. 108–173, § 1104(3), substituted ''355(j)(5)(F)'' for ''355(j)(5)(D)'' wherever appearing.

2002—Subsec. (a). Pub. L. 107–109, § 19(2), (3), redesignated subsec. (g) as (a). Former subsec. (a) redesignated (b).

Subsec. (a)(1)(A). Pub. L. 107–109, § 19(1)(A), (B), substituted ''(j)(5)(D)(ii)'' for ''(j)(4)(D)(ii)'' in two places in cl. (i) and ''(j)(5)(D)'' for ''(j)(4)(D)'' in cl. (ii).

Subsec. (b). Pub. L. 107–109, § 19(2), (3), redesignated subsec. (a) as (b).

Pub. L. 107–109, § 2(1), struck out heading and text of subsec. (b). Text read as follows: ''Not later than 180 days after November 21, 1997, the Secretary, after consultation with experts in pediatric research shall develop, prioritize, and publish an initial list of approved drugs for which additional pediatric information may produce health benefits in the pediatric population. The Secretary shall annually update the list.''

Subsec. (c). Pub. L. 107–109, § 2(2), in introductory provisions, inserted ''determines that information relating to the use of an approved drug in the pediatric population may produce health benefits in that population and'' after ''the Secretary'' and struck out ''concerning a drug identified in the list described in subsection (b) of this section'' after ''such studies)''.

Subsec. (c)(1)(A). Pub. L. 107–109, § 19(1)(A), (B), substituted ''(j)(5)(D)(ii)'' for ''(j)(4)(D)(ii)'' in two places in cl. (i) and ''(j)(5)(D)'' for ''(j)(4)(D)'' in cl. (ii).

Subsec. (d)(1). Pub. L. 107–109, § 19(4), substituted ''subsection (b) or (c)'' for ''subsection (a) or (c)'' in introductory provisions.

Subsec. (d)(2). Pub. L. 107–109, §§ 18(a), 19(4), substituted ''subsection (b) or (c)'' for ''subsection (a) or (c)'' and inserted ''In reaching an agreement regarding written protocols, the Secretary shall take into account adequate representation of children of ethnic and racial minorities.'' after first sentence.

Subsec. (d)(3). Pub. L. 107–109, § 19(4), substituted ''subsection (b) or (c)'' for ''subsection (a) or (c)''.

Subsec. (d)(4). Pub. L. 107–109, § 4, added par. (4).

Subsec. (e). Pub. L. 107–109, § 19(1)(C), (4), substituted ''section 355(j)(5)(D)'' for ''section 355(j)(4)(D)'' and ''subsection (b) or (c)'' for ''subsection (a) or (c)''.

Subsec. (g). Pub. L. 107–109, § 19(2), (3), (5), redesignated subsec. (h) as (g) and substituted ''subsection (b) or (c)'' for ''subsection (a) or (b)'' in introductory provisions. Former subsec. (g) redesignated (a).

Pub. L. 107–109, § 7, inserted ''(including neonates in appropriate cases)'' after ''pediatric age groups''.

Subsec. (h). Pub. L. 107–109, § 19(2), (3), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107–109, § 19(2), (3), redesignated subsec. (*l*) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 107–109, §19(2), (3), redesignated subsec. (m) as (j). Former subsec. (j) redesignated (n).

Pub. L. 107–109, §8, added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: ''A drug may not receive any six-month period under subsection (a) or (c) of this section unless the application for the drug under section 355(b)(1) of this title is submitted on or before January 1, 2002. After January 1, 2002, a drug shall receive a six-month period under subsection (c) of this section if—

''(1) the drug was in commercial distribution as of November 21, 1997;

''(2) the drug was included by the Secretary on the list under subsection (b) of this section as of January 1, 2002;

''(3) the Secretary determines that there is a continuing need for information relating to the use of the drug in the pediatric population and that the drug may provide health benefits in that population; and

''(4) all requirements of this section are met.''

Subsec. (k). Pub. L. 107–109, §19(2), (3), redesignated subsec. (n) as (k). Former subsec. (k) redesignated (m).

Subsec. (*l*). Pub. L. 107–109, §19(2), (3), redesignated subsec. (*o*) as (*l*). Former subsec. (*l*) redesignated (i).

Pub. L. 107–109, §5(b)(2), added subsec. (*l*).

Subsec. (m). Pub. L. 107–109, §19(2), (3), redesignated subsec. (k) as (m). Former subsec. (m) redesignated (j).

Pub. L. 107–109, §9, added subsec. (m).

Subsec. (n). Pub. L. 107–109, §19(4), which directed substitution of ''subsection (b) or (c)'' for ''subsection (a) or (c)'' in subsec. (m), was executed by making the substitution in introductory provisions of subsec. (n), to reflect the probable intent of Congress.

Pub. L. 107–109, §19(2), (3), redesignated subsec. (j) as (n). Former subsec. (n) redesignated (k).

Pub. L. 107–109, §10, added subsec. (n).

Subsec. (*o*). Pub. L. 107–109, §19(2), (3), redesignated subsec. (*o*) as (*l*).

Pub. L. 107–109, §11(a), added subsec. (*o*).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–144, title V, §509(g), July 9, 2012, 126 Stat. 1050, provided that:

''(1) APPLICATION.—Notwithstanding any provision of section 505A and 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a, 355c) stating that a provision applies beginning on the date of the enactment of the Best Pharmaceuticals for Children Act of 2007 [Sept. 27, 2007] or the date of the enactment of the Pediatric Research Equity Act of 2007 [Sept. 27, 2007], any amendment made by this Act to such a provision applies beginning on the date of the enactment of this Act [July 9, 2012].

''(2) TRANSITIONAL RULE FOR ADVERSE EVENT REPORTING.—With respect to a drug for which a labeling change described under section 505A(*l*)(1) or 505B(i)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(*l*)(1); 355c(i)(1)) is approved or made, respectively, during the one-year period that ends on the day before the date of enactment of this Act [July 9, 2012], the Secretary [of Health and Human Services] shall apply section 505A(*l*) and section 505B(i), as applicable, to such drug, as such sections were in effect on such day.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–85, title V, §502(a)(2), Sept. 27, 2007, 121 Stat. 885, provided that:

''(A) IN GENERAL.—The amendment made by this subsection [amending this section] shall apply to written requests under section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) issued on or after the date of the enactment of this Act [Sept. 27, 2007].

''(B) CERTAIN WRITTEN REQUESTS.—A written request issued under section 505A of the Federal Food, Drug, and Cosmetic Act, as in effect on the day before the date of the enactment of this Act, which has been accepted and for which no determination under subsection (d)(2) of such section has been made before such date of enactment, shall be subject to such section 505A, except that such written requests shall be subject to subsections (d)(2)(A)(ii), (e)(1) and (2), (f), (i)(2)(A), (j), (k)(1), (*l*)(1), and (n) of section 505A of the Federal Food, Drug, and Cosmetic Act, as in effect on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–155 effective Dec. 3, 2003, except as otherwise provided, see section 4 of Pub. L. 108–155, set out as an Effective Date note under section 355c of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–109, §11(b), Jan. 4, 2002, 115 Stat. 1416, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of enactment of this Act [Jan. 4, 2002], including with respect to applications under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)) that are approved or pending on that date.''

CONSTRUCTION OF 2007 AMENDMENTS ON PEDIATRIC STUDIES

Pub. L. 110–85, title IX, §901(e), Sept. 27, 2007, 121 Stat. 942, provided that: ''This title [enacting sections 353c, 355–1, 355e, 360a, and 360bbb–6 of this title, amending sections 331, 333, 334, 352, 355, and 381 of this title and section 262 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 331, 352, and 355 of this title] and the amendments made by this title may not be construed as affecting the authority of the Secretary of Health and Human Services to request pediatric studies under section 505A of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355a] or to require such studies under section 505B of such Act [21 U.S.C. 355c].''

COMMUNICATION WITH PEDIATRIC REVIEW COMMITTEE

Pub. L. 112–144, title V, §503, July 9, 2012, 126 Stat. 1040, provided that: ''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 title [see Tables for classification] as the 'Secretary') shall issue internal standard operating procedures that provide for the review by the internal review committee established under section 505C of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355d) of any significant modifications to initial pediatric study plans, agreed initial pediatric study plans, and written requests under sections 505A and 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a, 355c). Such internal standard operating procedures shall be made publicly available on the Internet Web site of the Food and Drug Administration.''

ACCESS TO DATA

Pub. L. 112–144, title V, §504, July 9, 2012, 126 Stat. 1040, provided that: ''Not later than 3 years after the date of enactment of this Act [July 9, 2012], the Secretary [of Health and Human Services] shall make available to the public, including through posting on the Internet Web site of the Food and Drug Administration, the medical, statistical, and clinical pharmacology reviews of, and corresponding written requests issued to an applicant, sponsor, or holder for, pediatric studies submitted between January 4, 2002, and September 27, 2007, under subsection (b) or (c) of section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) for which 6 months of market exclusivity was granted and that resulted in a labeling change. The Secretary shall make public the information described in the preceding sentence in a manner consistent with how the Secretary releases information under section 505A(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(k)).''

REPORT ON PEDIATRIC EXCLUSIVITY PROGRAM

Pub. L. 107–109, §16, Jan. 4, 2002, 115 Stat. 1421, as amended by Pub. L. 108–155, §3(b)(4), Dec. 3, 2003, 117

Stat. 1942, required the Comptroller General, not later than Oct. 1, 2006, and in consultation with the Secretary of Health and Human Services, to submit to Congress a report on specified issues concerning the effectiveness of the pediatric exclusivity program.

STUDY BY GENERAL ACCOUNTING OFFICE

Pub. L. 107–109, § 18(b), Jan. 4, 2002, 115 Stat. 1423, required the Comptroller General, not later than Jan. 10, 2003, to conduct a study relating to the representation of children of ethnic and racial minorities in studies under section 355a of this title and to submit a report to Congress describing the findings of the study.

§ 355b. Adverse-event reporting

(a) Toll-free number in labeling

Not later than one year after January 4, 2002, the Secretary of Health and Human Services shall promulgate a final rule requiring that the labeling of each drug for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355] (regardless of the date on which approved) include the toll-free number maintained by the Secretary for the purpose of receiving reports of adverse events regarding drugs and a statement that such number is to be used for reporting purposes only, not to receive medical advice. With respect to the final rule:

(1) The rule shall provide for the implementation of such labeling requirement in a manner that the Secretary considers to be most likely to reach the broadest consumer audience.

(2) In promulgating the rule, the Secretary shall seek to minimize the cost of the rule on the pharmacy profession.

(3) The rule shall take effect not later than 60 days after the date on which the rule is promulgated.

(b) Drugs with pediatric market exclusivity

(1) In general

During the one year beginning on the date on which a drug receives a period of market exclusivity under 505A[1] of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355a], any report of an adverse event regarding the drug that the Secretary of Health and Human Services receives shall be referred to the Office of Pediatric Therapeutics established under section 393a of this title. In considering the report, the Director of such Office shall provide for the review of the report by the Pediatric Advisory Committee, including obtaining any recommendations of such subcommittee[2] regarding whether the Secretary should take action under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] in response to the report.

(2) Rule of construction

Paragraph (1) may not be construed as restricting the authority of the Secretary of Health and Human Services to continue carrying out the activities described in such paragraph regarding a drug after the one-year period described in such paragraph regarding the drug has expired.

[1] So in original. Probably should be preceded by ''section''.

[2] So in original. Probably should be ''Committee''.

(Pub. L. 107–109, § 17, Jan. 4, 2002, 115 Stat. 1422; Pub. L. 108–155, § 3(b)(5), Dec. 3, 2003, 117 Stat. 1942.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is 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.

CODIFICATION

Section was enacted as part of the Best Pharmaceuticals for Children Act, and not as part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–155 struck out ''Advisory Subcommittee of the Anti-Infective Drugs'' before ''Advisory Committee''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–155 effective Dec. 3, 2003, except as otherwise provided, see section 4 of Pub. L. 108–155, set out as an Effective Date note under section 355c of this title.

§ 355c. Research into pediatric uses for drugs and biological products

(a) New drugs and biological products

(1) In general

A person that submits, on or after September 27, 2007, an application (or supplement to an application) for a drug—

(A) under section 355 of this title for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration, or

(B) under section 262 of title 42 for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration,

shall submit with the application the assessments described in paragraph (2).

(2) Assessments

(A) In general

The assessments referred to in paragraph (1) shall contain data, gathered using appropriate formulations for each age group for which the assessment is required, that are adequate—

(i) to assess the safety and effectiveness of the drug or the biological product for the claimed indications in all relevant pediatric subpopulations; and

(ii) to support dosing and administration for each pediatric subpopulation for which the drug or the biological product is safe and effective.

(B) Similar course of disease or similar effect of drug or biological product

####### (i) In general

If the course of the disease and the effects of the drug are sufficiently similar in adults and pediatric patients, the Secretary may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in