approved application'' and '', the issuance of the certification,'' after ''approval of the approved application''.

1997—Subsec. (a). Pub. L. 105–115, § 125(b)(2)(J), struck out '', issue another certification under section 357 of this title,'' before ''or issue another license'' in closing provisions, inserted ''or'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''issues a certification under section 357 of this title, or''.

Subsec. (b). Pub. L. 105–115, § 125(b)(2)(K), in introductory provisions, struck out '', if a certification is issued under section 357 of this title for such a drug,'' after ''rare disease or condition'', '', of the issuance of the certification under section 357 of this title,'' after ''application approval'', '', issue another certification under section 357 of this title,'' after ''application under section 355 of this title'', and '', of such certification,'' after ''approved application''.

Subsec. (b)(1). Pub. L. 105–115, § 125(b)(2)(K), struck out '', of the certification,'' after ''holder of the approved application''.

Subsec. (b)(2). Pub. L. 105–115, § 125(b)(2)(K), struck out '', issuance of other certifications,'' after ''approval of other applications''.

1993—Subsec. (b). Pub. L. 103–80 struck out extraneous comma before ''or issue a license under section 262'' in introductory provisions and substituted ''the'' for ''The'' at beginning of par. (1).

1985—Pub. L. 99–91, § 2(3), struck out ''unpatented'' before ''drugs'' in section catchline.

Subsec. (a). Pub. L. 99–91, §§ 2(1), 3(a)(3)(A)–(D), struck out ''or'' at end of par. (1), added par. (2), redesignated former par. (2) as (3), struck out ''and for which a United States Letter of Patent may not be issued'' after ''rare disease or condition'', inserted in first sentence '', issue another certification under section 357 of this title,'' after ''section 355 of this title'' the second time it appeared, inserted '', of such certification,'' after ''holder of such approved application'', and inserted '', the issuance of the certification,'' after ''approval of the approved application''.

Subsec. (b). Pub. L. 99–91, §§ 2(2), 3(a)(3)(E)–(K), struck out ''and if a United States Letter of Patent may not be issued for the drug'' after ''such a drug'', substituted '', if a certification is issued under section 357 of this title for such a drug, or if a license'' for ''or a license'', inserted '', of the issuance of the certification under section 357 of this title,'' after ''application approval'', struck out '', if the drug is a biological product,'' before ''issue a license'', inserted '', issue another certification under section 357 of this title,'' after ''section 355 of this title'', inserted '', of such certification,'' after ''holder of such approved application'', inserted '', of such certification,'' after ''application'' in par. (1), and inserted '', issuance of other certifications,'' after ''other applications'' in par. (2).

1984—Subsecs. (a), (b). Pub. L. 98–417 substituted ''section 355'' for ''section 355(b)'' wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–91 effective Aug. 15, 1985, see section 8(b) of Pub. L. 99–91, set out as a note under section 360aa of this title.

CONSTRUCTION

Pub. L. 115–52, title VI, § 607(b), Aug. 18, 2017, 131 Stat. 1050, provided that: ''Nothing in the amendments made by subsection (a) [amending this section] shall affect any determination under sections 526 and 527 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb, 360cc) made prior to the date of enactment of the FDA Reauthorization Act of 2017 [Aug. 18, 2017].''

§ 360dd. Open protocols for investigations of drugs for rare diseases or conditions

If a drug is designated under section 360bb of this title as a drug for a rare disease or condition and if notice of a claimed exemption under section 355(i) of this title or regulations issued thereunder is filed for such drug, the Secretary shall encourage the sponsor of such drug to design protocols for clinical investigations of the drug which may be conducted under the exemption to permit the addition to the investigations of persons with the disease or condition who need the drug to treat the disease or condition and who cannot be satisfactorily treated by available alternative drugs.

(June 25, 1938, ch. 675, § 528, as added Pub. L. 97–414, § 2(a), Jan. 4, 1983, 96 Stat. 2051.)

§ 360ee. Grants and contracts for development of drugs for rare diseases and conditions

(a) Authority of Secretary

The Secretary may make grants to and enter into contracts with public and private entities and individuals to assist in (1) defraying the costs of developing drugs for rare diseases or conditions, including qualified testing expenses, (2) defraying the costs of developing medical devices for rare diseases or conditions, and (3) defraying the costs of developing medical foods for rare diseases or conditions.

(b) Definitions

For purposes of subsection (a):

(1) The term ''qualified testing'' means—

(A) human clinical testing—

(i) which is carried out under an exemption for a drug for a rare disease or condition under section 355(i) of this title (or regulations issued under such section); and

(ii) which occurs before the date on which an application with respect to such drug is submitted under section 355(b) of this title or under section 262 of title 42;

(B) preclinical testing involving a drug for a rare disease or condition which occurs after the date such drug is designated under section 360bb of this title and before the date on which an application with respect to such drug is submitted under section 355(b) of this title or under section 262 of title 42; and

(C) prospectively planned and designed observational studies and other analyses conducted to assist in the understanding of the natural history of a rare disease or condition and in the development of a therapy, including studies and analyses to—

(i) develop or validate a drug development tool related to a rare disease or condition; or

(ii) understand the full spectrum of the disease manifestations, including describing genotypic and phenotypic variability and identifying and defining distinct subpopulations affected by a rare disease or condition.

(2) The term ''rare disease or condition'' means (1) in the case of a drug, any disease or condition which (A) affects less than 200,000 persons in the United States, or (B) affects more than 200,000 in the United States and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or

condition will be recovered from sales in the United States of such drug, (2) in the case of a medical device, any disease or condition that occurs so infrequently in the United States that there is no reasonable expectation that a medical device for such disease or condition will be developed without assistance under subsection (a), and (3) in the case of a medical food, any disease or condition that occurs so infrequently in the United States that there is no reasonable expectation that a medical food for such disease or condition will be developed without assistance under subsection (a). Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date the request for designation of the drug under section 360bb of this title is made.

(3) The term ''medical food'' means a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(c) Authorization of appropriations

For grants and contracts under subsection (a), there is authorized to be appropriated $30,000,000 for each of fiscal years 2018 through 2022.

(Pub. L. 97–414, § 5, Jan. 4, 1983, 96 Stat. 2056; Pub. L. 98–551, § 4(b), Oct. 30, 1984, 98 Stat. 2817; Pub. L. 99–91, § 5, Aug. 15, 1985, 99 Stat. 391; Pub. L. 100–290, § 3(a)–(c), Apr. 18, 1988, 102 Stat. 90, 91; Pub. L. 105–115, title I, § 125(b)(2)(N), Nov. 21, 1997, 111 Stat. 2326; Pub. L. 107–281, § 3, Nov. 6, 2002, 116 Stat. 1993; Pub. L. 110–85, title XI, § 1112(b), Sept. 27, 2007, 121 Stat. 976; Pub. L. 112–144, title IX, § 906, July 9, 2012, 126 Stat. 1092; Pub. L. 114–255, div. A, title III, § 3015, Dec. 13, 2016, 130 Stat. 1094; Pub. L. 115–52, title VI, § 603, Aug. 18, 2017, 131 Stat. 1048.)

CODIFICATION

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

AMENDMENTS

2017—Subsec. (c). Pub. L. 115–52 substituted ''2018 through 2022'' for ''2013 through 2017''.

2016—Subsec. (a)(1). Pub. L. 114–255, § 3015(1), added par. (1) and struck out former par. (1) which read as follows: ''defraying the costs of qualified testing expenses incurred in connection with the development of drugs for rare diseases and conditions,''.

Subsec. (b)(1)(C). Pub. L. 114–255, § 3015(2), added subpar. (C).

2012—Subsec. (b)(1)(A)(ii). Pub. L. 112–144, § 906(a), struck out ''after the date such drug is designated under section 360bb of this title and'' after ''which occurs''.

Subsec. (c). Pub. L. 112–144, § 906(b), amended subsec. (c) generally. Prior to amendment, text read as follows: ''For grants and contracts under subsection (a), there is authorized to be appropriated $30,000,000 for each of fiscal years 2008 through 2012.''

2007—Subsec. (c). Pub. L. 110–85 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For grants and contracts under subsection (a) of this section, there are authorized to be appropriated such sums as already have been appropriated for fiscal year 2002, and $25,000,000 for each of the fiscal years 2003 through 2006.''

2002—Subsec. (c). Pub. L. 107–281 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For grants and contracts under subsection (a) of this section there are authorized to be appropriated $10,000,000 for fiscal year 1988, $12,000,000 for fiscal year 1989, $14,000,000 for fiscal year 1990.''

1997—Subsec. (b)(1)(A)(ii), (B). Pub. L. 105–115 struck out ''or 357'' after ''355(b)''.

1988—Subsec. (a). Pub. L. 100–290, § 3(a)(1), (b)(1), inserted ''(1)'' after ''assist in'' and added pars. (2) and (3).

Subsec. (b)(2). Pub. L. 100–290, § 3(a)(2), (b)(2), inserted ''(1) in the case of a drug,'' after ''means'', added cls. (2) and (3), and substituted ''under section 360bb of this title'' for ''under this subsection'' in last sentence.

Subsec. (b)(3). Pub. L. 100–290, § 3(b)(3), added par. (3).

Subsec. (c). Pub. L. 100–290, § 3(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For grants and contracts under subsection (a) of this section there are authorized to be appropriated $4,000,000 for fiscal year 1986, $4,000,000 for fiscal year 1987, and $4,000,000 for fiscal year 1988.''

1985—Subsec. (a). Pub. L. 99–91, § 5(a)(1), struck out ''clinical'' before ''testing''.

Subsec. (b)(1). Pub. L. 99–91, § 5(a)(2), substituted provisions defining ''qualified testing'' for provisions defining ''qualified clinical testing''.

Subsec. (c). Pub. L. 99–91, § 5(b), substituted provisions authorizing appropriations for fiscal years 1986 to 1988, for provisions authorizing appropriations for fiscal years 1983 and the two succeeding fiscal years.

1984—Subsec. (b)(2). Pub. L. 98–551 substituted ''which (A) affects less than 200,000 persons in the United States, or (B) affects more than 200,000 in the United States and for which'' for ''which occurs so infrequently in the United States that''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–91 effective Oct. 1, 1985, see section 8(a) of Pub. L. 99–91, set out as a note under section 360aa of this title.

FINDINGS AND PURPOSES

Pub. L. 107–281, § 2, Nov. 6, 2002, 116 Stat. 1992, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Rare diseases and disorders are those which affect small patient populations, typically populations smaller than 200,000 individuals in the United States. Such diseases and conditions include Huntington's disease, amyotrophic lateral sclerosis (Lou Gehrig's disease), Tourette syndrome, Crohn's disease, cystic fibrosis, cystinosis, and Duchenne muscular dystrophy.

''(2) For many years, the 25,000,000 Americans suffering from the over 6,000 rare diseases and disorders were denied access to effective medicines because prescription drug manufacturers could rarely make a profit from marketing drugs for such small groups of patients. The prescription drug industry did not adequately fund research into such treatments. Despite the urgent health need for these medicines, they came to be known as 'orphan drugs' because no companies would commercialize them.

''(3) During the 1970s, an organization called the National Organization for Rare Disorders (NORD) was founded to provide services and to lobby on behalf of patients with rare diseases and disorders. NORD was instrumental in pressing Congress for legislation to encourage the development of orphan drugs.

''(4) The Orphan Drug Act [see Short Title of 1983 Amendments note set out under section 301 of this title] created financial incentives for the research and production of such orphan drugs. New Federal programs at the National Institutes of Health and the Food and Drug Administration encouraged clinical research and commercial product development for

products that target rare diseases. An Orphan Products Board was established to promote the development of drugs and devices for rare diseases or disorders.

''(5) Before 1983, some 38 orphan drugs had been developed. Since the enactment of the Orphan Drug Act [Jan. 4, 1983], more than 220 new orphan drugs have been approved and marketed in the United States and more than 800 additional drugs are in the research pipeline.

''(6) Despite the tremendous success of the Orphan Drug Act, rare diseases and disorders deserve greater emphasis in the national biomedical research enterprise.

''(7) The Food and Drug Administration supports small clinical trials through Orphan Products Research Grants. Such grants embody successful partnerships of government and industry, and have led to the development of at least 23 drugs and four medical devices for rare diseases and disorders. Yet the appropriations in fiscal year 2001 for such grants were less than in fiscal year 1995.

''(b) PURPOSES.—The purpose of this Act [see Short Title of 2002 Amendments note set out under section 301 of this title] is to increase the national investment in the development of diagnostics and treatments for patients with rare diseases and disorders.''

§ 360ff. Priority review to encourage treatments for rare pediatric diseases

(a) Definitions

In this section:

(1) Priority review

The term ''priority review'', with respect to a human drug application as defined in section 379g(1) of this title, means review and action by the Secretary on such application not later than 6 months after receipt by the Secretary of such application, as described in the Manual of Policies and Procedures of the Food and Drug Administration and goals identified in the letters described in section 101(b) of the Prescription Drug User Fee Amendments of 2012.

(2) Priority review voucher

The term ''priority review voucher'' means a voucher issued by the Secretary to the sponsor of a rare pediatric disease product application that entitles the holder of such voucher to priority review of a single human drug application submitted under section 355(b)(1) of this title or section 351(a) of the Public Health Service Act [42 U.S.C. 262(a)] after the date of approval of the rare pediatric disease product application.

(3) Rare pediatric disease

The term ''rare pediatric disease'' means a disease that meets each of the following criteria:

(A) The disease is a serious or life-threatening disease in which the serious or life-threatening manifestations primarily affect individuals aged from birth to 18 years, including age groups often called neonates, infants, children, and adolescents.

(B) The disease is a rare disease or condition, within the meaning of section 360bb of this title.

(4) Rare pediatric disease product application

The term ''rare pediatric disease product application'' means a human drug application, as defined in section 379g(1) of this title, that—

(A) is for a drug or biological product—

(i) that is for the prevention or treatment of a rare pediatric disease; and

(ii) that contains no active ingredient (including any ester or salt of the active ingredient) that has been previously approved in any other application under section 355(b)(1), 355(b)(2), or 355(j) of this title or section 351(a) or 351(k) of the Public Health Service Act [42 U.S.C. 262(a), 262(k)];

(B) is submitted under section 355(b)(1) of this title or section 351(a) of the Public Health Service Act [42 U.S.C. 262(a)];

(C) the Secretary deems eligible for priority review;

(D) that[1] relies on clinical data derived from studies examining a pediatric population and dosages of the drug intended for that population;

(E) that[1] does not seek approval for an adult indication in the original rare pediatric disease product application; and

(F) is approved after September 30, 2016.

(b) Priority review voucher

(1) In general

The Secretary shall award a priority review voucher to the sponsor of a rare pediatric disease product application upon approval by the Secretary of such rare pediatric disease product application.

(2) Transferability

(A) In general

The sponsor of a rare pediatric disease product application that receives a priority review voucher under this section may transfer (including by sale) the entitlement to such voucher. There is no limit on the number of times a priority review voucher may be transferred before such voucher is used.

(B) Notification of transfer

Each person to whom a voucher is transferred shall notify the Secretary of such change in ownership of the voucher not later than 30 days after such transfer.

(3) Limitation

A sponsor of a rare pediatric disease product application may not receive a priority review voucher under this section if the rare pediatric disease product application was submitted to the Secretary prior to the date that is 90 days after July 9, 2012.

(4) Notification

(A) Sponsor of a rare pediatric disease product

(i) In general

Beginning on the date that is 90 days after September 30, 2016, the sponsor of a rare pediatric disease product application that intends to request a priority review voucher under this section shall notify the Secretary of such intent upon submission of the rare pediatric disease product appli-

[1] So in original. The word ''that'' probably should not appear.