

“(C) considerations on data collection methods to help increase recruitment of clinical trial participants and the level of participation of such participants, reduce burden on clinical trial participants, and optimize data quality;

“(D) recommendations for the use of electronic methods to obtain informed consent from clinical trial participants, taking into consideration applicable Federal law, including subpart B of part 50 of title 21, Code of Federal Regulations (or successor regulations), and, as appropriate, State law;

“(E) best practices for communication between sponsors and the Secretary on the development of data collection methods;

“(F) the appropriate format to submit such data to the Secretary;

“(G) a description of the manner in which the Secretary may assess or evaluate data collected through digital health technologies to support the development of the drug or device;

“(H) recommendations regarding the data and information needed to demonstrate that a digital health technology is fit-for-purpose for a clinical trial, and a description of how the Secretary will evaluate such data and information; and

“(I) recommendations for increasing access to, and the use of, digital health technologies in clinical trials to facilitate the inclusion of diverse and underrepresented populations, as appropriate, including considerations for access to, and the use of, digital health technologies in clinical trials by people with disabilities and pediatric populations.

“(b) SEAMLESS AND CONCURRENT CLINICAL TRIALS.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue or revise draft guidance on the use of seamless, concurrent, and other innovative clinical trial designs to support the expedited development and review of applications for drugs, as appropriate. Not later than 18 months after the public comment period on such draft guidance ends, the Secretary shall issue a revised draft guidance or final guidance.

“(2) CONTENT.—The guidance described in paragraph (1) shall include—

“(A) recommendations on the use of expansion cohorts and other seamless clinical trial designs to assess different aspects of product candidates in one continuous trial, including how such clinical trial designs can be used as part of meeting the substantial evidence standard under section 505(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(d));

“(B) recommendations on the use of clinical trial designs that involve the concurrent conduct of different or multiple clinical trial phases, and the concurrent conduct of preclinical testing, to expedite the development of new drugs and facilitate the timely collection of data;

“(C) recommendations for how to streamline trial logistics and facilitate the efficient collection and analysis of clinical trial data, including any planned interim analyses and how such analyses could be used to streamline the product development and review processes;

“(D) considerations to assist sponsors in ensuring the rights, safety, and welfare of clinical trial participants, maintaining compliance with good clinical practice regulations, minimizing risks to clinical trial data integrity, and ensuring the reliability of clinical trial results;

“(E) recommendations for communication between sponsors and the Food and Drug Administration on the development of seamless, concurrent, or other adaptive clinical trial designs, including review of, and feedback on, clinical trial protocols; and

“(F) a description of the manner in which the Secretary will assess or evaluate data collected through seamless, concurrent, or other adaptive clinical trial designs to support the development of drugs.

“(c) INTERNATIONAL HARMONIZATION.—The Secretary shall, as appropriate, work with foreign regulators pursuant to memoranda of understanding or other arrangements governing the exchange of information to facilitate international harmonization of the regulation and use of decentralized clinical trials, digital technology in clinical trials, and seamless, concurrent, and other adaptive or innovative clinical trial designs.”

§ 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 main-

tain 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 susceptibility 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,