360, 360f, 360h, 360i, and 360j of this title are sufficient to provide reasonable assurance of the safety and effectiveness of the device and (II) cannot be classified as a class II device because insufficient information exists for the establishment of a performance standard to provide reasonable assurance of its safety and effectiveness, and''.

Subsec. (e). Pub. L. 101–629, § 5(b), designated existing provisions as par. (1), redesignated cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (f). Pub. L. 101–629, § 5(c)(3), inserted ''and reclassification'' before ''of'' in heading.

Subsec. (f)(2)(A). Pub. L. 101–629, § 5(c)(1), substituted ''The Secretary may initiate the reclassification of a device classified into class III under paragraph (1) of this subsection or the manufacturer'' for ''The manufacturer''.

Subsec. (f)(2)(B)(i). Pub. L. 101–629, § 18(a), substituted ''the Secretary may for good cause shown'' for ''the Secretary shall''.

Subsec. (f)(3). Pub. L. 101–629, § 4(a), added par. (3).

Subsec. (i). Pub. L. 101–629, § 12(a), added subsec. (i).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–52, title VII, § 707(c), Aug. 18, 2017, 131 Stat. 1062, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date that is 60 days after the date of enactment of this Act [Aug. 18, 2017].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–295, § 1(a), May 28, 1976, 90 Stat. 539, provided that: ''This Act [enacting sections 360c to 360k, 379, and 379a of this title and section 3512 of Title 42, The Public Health and Welfare, and amending sections 321, 331, 334, 351, 352, 358, 360, 374, 379e, and 381 of this title and section 55 of Title 15, Commerce and Trade] may be cited as the 'Medical Device Amendments of 1976'.''

REGULATIONS

Pub. L. 101–629, § 12(b), Nov. 28, 1990, 104 Stat. 4524, provided that: ''Within 12 months of the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Health and Human Services shall issue regulations establishing the requirements of the summaries under section 513(i)(3) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360c(i)(3)], as added by the amendment made by subsection (a).''

DEVICES RECLASSIFIED PRIOR TO JULY 9, 2012

Pub. L. 112–144, title VI, § 608(a)(3), July 9, 2012, 126 Stat. 1056, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and sections 360d and 360g of this title] shall have no effect on a regulation promulgated with respect to the classification of a device under section 513(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360c(e)] prior to the date of enactment of this Act [July 9, 2012].

''(B) APPLICABILITY OF OTHER PROVISIONS.—In the case of a device reclassified under section 513(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360c(e)] by regulation prior to the date of enactment of this Act [July 9, 2012], section 517(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360g(a)(1)) shall apply to such regulation promulgated under section 513(e) of such Act with respect to such device in the same manner such section 517(a)(1) applies to an administrative order issued with respect to a device reclassified after the date of enactment of this Act.''

DAILY WEAR SOFT OR DAILY WEAR NONHYDROPHILIC PLASTIC CONTACT LENSES

Pub. L. 101–629, § 4(b)(3), Nov. 28, 1990, 104 Stat. 4517, provided that:

''(A) Notwithstanding section 520(*l*)(5) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360j(*l*)(5)], the Secretary of Health and Human Services shall not retain any daily wear soft or daily wear nonhydrophilic plastic contact lens in class III under such Act [this chapter] unless the Secretary finds that it meets the criteria set forth in section 513(a)(1)(C) of such Act [21 U.S.C. 360c(a)(1)(C)]. The finding and the grounds for the finding shall be published in the Federal Register. For any such lens, the Secretary shall make the determination respecting reclassification required in section 520(*l*)(5)(B) of such Act within 24 months of the date of the enactment of this paragraph [Nov. 28, 1990].

''(B) The Secretary of Health and Human Services may by notice published in the Federal Register extend the two-year period prescribed by subparagraph (A) for a lens for an additional period not to exceed one year.

''(C)(i) Before classifying a lens in class II pursuant to subparagraph (A), the Secretary of Health and Human Services shall pursuant to section 513(a)(1)(B) of such Act assure that appropriate regulatory safeguards are in effect which provide reasonable assurance of the safety and effectiveness of such lens, including clinical and preclinical data if deemed necessary by the Secretary.

''(ii) Prior to classifying a lens in class I pursuant to subparagraph (A), the Secretary shall assure that appropriate regulatory safeguards are in effect which provide reasonable assurance of the safety and effectiveness of such lens, including clinical and preclinical data if deemed necessary by the Secretary.

''(D) Notwithstanding section 520(*l*)(5) of such Act, if the Secretary of Health and Human Services has not made the finding and published the finding required by subparagraph (A) within 36 months of the date of the enactment of this subparagraph [Nov. 28, 1990], the Secretary shall issue an order placing the lens in class II.

''(E) Any person adversely affected by a final regulation under this paragraph revising the classification of a lens may challenge the revision of the classification of such lens only by filing a petition under section 513(e) for a classification change.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 360c–1. Reporting

The Secretary of Health and Human Services shall annually post on the Internet Web site of the Food and Drug Administration—

(1) the number and type of class I and class II devices reclassified as class II or class III in the previous calendar year under section 360c(e)(1) of this title;

(2) the number and type of class II and class III devices reclassified as class I or class II in the previous calendar year under such section 360c(e)(1) of this title; and

(3) the number and type of devices reclassified in the previous calendar year under section 360e of this title.

(Pub. L. 112–144, title VI, § 608(c), July 9, 2012, 126 Stat. 1059.)

Editorial Notes

CODIFICATION

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

§ 360d. Performance standards

(a) Reasonable assurance of safe and effective performance; periodic evaluation

(1) The special controls required by section 360c(a)(1)(B) of this title shall include performance standards for a class II device if the Secretary determines that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the device. A class III device may also be considered a class II device for purposes of establishing a standard for the device under subsection (b) if the device has been reclassified as a class II device under an administrative order under section 360c(e) of this title (or a regulation promulgated under such section prior to July 9, 2012) but such order (or regulation) provides that the reclassification is not to take effect until the effective date of such a standard for the device.

(2) A performance standard established under subsection (b) for a device—

(A) shall include provisions to provide reasonable assurance of its safe and effective performance;

(B) shall, where necessary to provide reasonable assurance of its safe and effective performance, include—

(i) provisions respecting the construction, components, ingredients, and properties of the device and its compatibility with power systems and connections to such systems,

(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the device or, if it is determined that no other more practicable means are available to the Secretary to assure the conformity of the device to the standard, provisions for the testing (on a sample basis or, if necessary, on an individual basis) by the Secretary or by another person at the direction of the Secretary,

(iii) provisions for the measurement of the performance characteristics of the device,

(iv) provisions requiring that the results of each or of certain of the tests of the device required to be made under clause (ii) show that the device is in conformity with the portions of the standard for which the test or tests were required, and

(v) a provision requiring that the sale and distribution of the device be restricted but only to the extent that the sale and distribution of a device may be restricted under a regulation under section 360j(e) of this title; and

(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper installation, maintenance, operation, and use of the device.

(3) The Secretary shall provide for periodic evaluation of performance standards established under subsection (b) to determine if such standards should be changed to reflect new medical, scientific, or other technological data.

(4) In carrying out his duties under this subsection and subsection (b), the Secretary shall, to the maximum extent practicable—

(A) use personnel, facilities, and other technical support available in other Federal agencies,

(B) consult with other Federal agencies concerned with standard-setting and other nationally or internationally recognized standard-setting entities, and

(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, or consumer organizations who in his judgment can make a significant contribution.

(b) Establishment of a standard

(1)(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a device.

(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a device shall—

(i) set forth a finding with supporting justification that the performance standard is appropriate and necessary to provide reasonable assurance of the safety and effectiveness of the device,

(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate,

(iii) invite interested persons to submit to the Secretary, within 30 days of the publication of the notice, requests for changes in the classification of the device pursuant to section 360c(e) of this title based on new information relevant to the classification, and

(iv) invite interested persons to submit an existing performance standard for the device, including a draft or proposed performance standard, for consideration by the Secretary.

(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to provide reasonable assurance of the safety and effectiveness of a device.

(D) The Secretary shall provide for a comment period of not less than 60 days.

(2) If, after publication of a notice in accordance with paragraph (1), the Secretary receives a request for a change in the classification of the device, the Secretary shall, within 60 days of the publication of the notice, after consultation with the appropriate panel under section 360c of this title, either deny the request or give notice of an intent to initiate such change under section 360c(e) of this title.

(3)(A) After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a performance standard and after consideration of such comments and any report from an advisory committee under paragraph (5), the Secretary shall (i) promulgate a regulation establishing a performance standard and publish in the Federal