

**Statutory Notes and Related Subsidiaries****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.

**§ 360cc. Protection for drugs for rare diseases or conditions****(a) Exclusive approval, certification, or license**

Except as provided in subsection (b), if the Secretary—

- (1) approves an application filed pursuant to section 355 of this title, or
- (2) issues a license under section 262 of title 42

for a drug designated under section 360bb of this title for a rare disease or condition, the Secretary may not approve another application under section 355 of this title or issue another license under section 262 of title 42 for the same drug for the same disease or condition for a person who is not the holder of such approved application or of such license until the expiration of seven years from the date of the approval of the approved application or the issuance of the license. Section 355(c)(2)<sup>1</sup> of this title does not apply to the refusal to approve an application under the preceding sentence.

**(b) Exceptions**

During the 7-year period described in subsection (a) for an approved application under section 355 of this title or license under section 262 of title 42, the Secretary may approve an application or issue a license for a drug that is otherwise the same, as determined by the Secretary, as the already approved drug for the same rare disease or condition if—

(1) the Secretary finds, after providing the holder of exclusive approval or licensure notice and opportunity for the submission of views, that during such period the holder of the exclusive approval or licensure cannot ensure the availability of sufficient quantities of the drug to meet the needs of persons with the disease or condition for which the drug was designated; or

(2) the holder provides the Secretary in writing the consent of such holder for the approval of other applications or the issuance of other licenses before the expiration of such seven-year period.

**(c) Condition of clinical superiority****(1) In general**

If a sponsor of a drug that is designated under section 360bb of this title and is otherwise the same, as determined by the Secretary, as an already approved or licensed drug is seeking exclusive approval or exclusive licensure described in subsection (a) for the same rare disease or condition as the already approved drug, the Secretary shall require such sponsor, as a condition of such exclusive approval or licensure, to demonstrate that such drug is clinically superior to any already approved or licensed drug that is the same drug.

<sup>1</sup> See References in Text note below.

**(2) Definition**

For purposes of paragraph (1), the term “clinically superior” with respect to a drug means that the drug provides a significant therapeutic advantage over and above an already approved or licensed drug in terms of greater efficacy, greater safety, or by providing a major contribution to patient care.

**(3) Applicability**

This subsection applies to any drug designated under section 360bb of this title for which an application was approved under section 355 of this title or licensed under section 262 of title 42 after August 18, 2017, regardless of the date on which such drug was designated under section 360bb of this title.

**(d) Regulations**

The Secretary may promulgate regulations for the implementation of subsection (c). Beginning on August 18, 2017, until such time as the Secretary promulgates regulations in accordance with this subsection, the Secretary may apply any definitions set forth in regulations that were promulgated prior to such date, to the extent such definitions are not inconsistent with the terms of this section, as amended by such Act.

**(e) Demonstration of clinical superiority standard**

To assist sponsors in demonstrating clinical superiority as described in subsection (c), the Secretary—

(1) upon the designation of any drug under section 360bb of this title, shall notify the sponsor of such drug in writing of the basis for the designation, including, as applicable, any plausible hypothesis offered by the sponsor and relied upon by the Secretary that the drug is clinically superior to a previously approved drug; and

(2) upon granting exclusive approval or licensure under subsection (a) on the basis of a demonstration of clinical superiority as described in subsection (c), shall publish a summary of the clinical superiority findings.

(June 25, 1938, ch. 675, § 527, as added Pub. L. 97-414, § 2(a), Jan. 4, 1983, 96 Stat. 2050; amended Pub. L. 98-417, title I, § 102(b)(6), Sept. 24, 1984, 98 Stat. 1593; Pub. L. 99-91, §§ 2, 3(a)(3), Aug. 15, 1985, 99 Stat. 387, 388; Pub. L. 103-80, § 3(v), Aug. 13, 1993, 107 Stat. 778; Pub. L. 105-115, title I, § 125(b)(2)(J), (K), Nov. 21, 1997, 111 Stat. 2326; Pub. L. 107-281, § 4, Nov. 6, 2002, 116 Stat. 1993; Pub. L. 115-52, title VI, § 607(a), Aug. 18, 2017, 131 Stat. 1049; Pub. L. 116-260, div. BB, title III, § 323, Dec. 27, 2020, 134 Stat. 2933.)

**Editorial Notes****REFERENCES IN TEXT**

Section 355(c)(2) of this title, referred to in subsec. (a), was redesignated as section 355(c)(1)(B) of this title by Pub. L. 98-417, title I, § 102(a)(2), Sept. 24, 1984, 98 Stat. 1592.

This section, as amended by such Act, referred to in subsec. (d), means this section as amended by the FDA Reauthorization Act of 2017, Pub. L. 115-52.

**AMENDMENTS**

2020—Subsec. (c)(3). Pub. L. 116-260 added par. (3).

2017—Subsec. (a). Pub. L. 115–52, §607(a)(1), substituted “the same drug for the same disease or condition” for “such drug for such disease or condition” in concluding provisions.

Subsec. (b). Pub. L. 115–52, §607(a)(2)(A), in introductory provisions, substituted “During the 7-year period described in subsection (a) for an approved application under section 355 of this title or license under section 262 of title 42, the Secretary may approve an application or issue a license for a drug that is otherwise the same, as determined by the Secretary, as the already approved drug for the same rare disease or condition if, for “If an application filed pursuant to section 355 of this title is approved for a drug designated under section 360bb of this title for a rare disease or condition or if a license is issued under section 262 of title 42 for such a drug, the Secretary may, during the seven-year period beginning on the date of the application approval or of the issuance of the license, approve another application under section 355 of this title or issue a license under section 262 of title 42, for such drug for such disease or condition for a person who is not the holder of such approved application or of such license if”.

Subsec. (b)(1). Pub. L. 115–52, §607(a)(2)(B), substituted “of exclusive approval or licensure notice and opportunity for the submission of views, that during such period the holder of the exclusive approval or licensure cannot ensure” for “notice and opportunity for the submission of views, that in such period the holder of the approved application or of the license cannot assure”.

Subsec. (b)(2). Pub. L. 115–52, §607(a)(2)(C), substituted “the holder provides” for “such holder provides”.

Subsecs. (c) to (e). Pub. L. 115–52, §607(a)(3), added subsecs. (c) to (e).

2002—Subsec. (a). Pub. L. 107–281, in concluding provisions, struck out “, of such certification,” after “such 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.

#### Statutory Notes and Related Subsidiaries

##### 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, (3) defraying the costs of developing medical foods for rare diseases or conditions, and (4) developing regulatory science pertaining to the chemistry, manufacturing, and controls of individualized medical products to treat individuals with 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 condi-