Section 360aaa-1, act June 25, 1938, ch. 675, §552, as added Pub. L. 105–115, title IV, §401(a), Nov. 21, 1997, 111 Stat. 2358, related to information authorized to be disseminated under section 360aaa.

Section 360aaa-2, act June 25, 1938, ch. 675, §553, as added Pub. L. 105–115, title IV, §401(a), Nov. 21, 1997, 111 Stat. 2359, related to establishment of list of articles and publications disseminated and list of providers that received articles and reference publications.

Section 360aaa-3, act June 25, 1938, ch. 675, §554, as added Pub. L. 105–115, title IV, §401(a), Nov. 21, 1997, 111 Stat. 2359, related to requirement regarding submission of supplemental application for new use and an exemption from that requirement.


**Effective and Termination Dates**

Pub. L. 105–115, title IV, §401(d), Nov. 21, 1997, 111 Stat. 2364, provided that: “The amendments made by this section [enacting this part and amending section 331 of this title] shall take effect 1 year after the date of enactment of this Act [Nov. 21, 1997], or upon the Secretary’s issuance of final regulations pursuant to subsection (c) [section 401(c) of Pub. L. 105–115 set out below] [Such regulations were issued effective Nov. 20, 1998. See 63 F.R. 64556.], whichever is sooner.”

Pub. L. 105–115, title IV, §401(e), Nov. 21, 1997, 111 Stat. 2364, provided that: “The amendments made by this section [enacting this part and amending section 331 of this title] cease to be effective September 30, 2006, or 7 years after the date on which the Secretary promulgates the regulations described in subsection (c) [section 401(c) of Pub. L. 105–115 set out below] [Such regulations were issued effective Nov. 20, 1998. See 63 F.R. 64556.], whichever is later.”

**Regulations**

Pub. L. 105–115, title IV, §401(c), Nov. 21, 1997, 111 Stat. 2364, provided that: “Not later than 1 year after the date of enactment of this Act [Nov. 21, 1997], the Secretary of Health and Human Services shall promulgate regulations to implement the amendments made by this section [enacting this part and amending section 331 of this title].”

**Part E—General Provisions Relating to Drugs and Devices**

§360bbb. Expanded access to unapproved therapies and diagnostics

(a) Emergency situations

The Secretary may, under appropriate conditions determined by the Secretary, authorize the shipment of investigational drugs or investigational devices for the diagnosis, monitoring, or treatment of a serious disease or condition in emergency situations.

(b) Individual patient access to investigational products intended for serious diseases

Any person, acting through a physician licensed in accordance with State law, may request from a manufacturer or distributor, and any manufacturer or distributor may, after complying with the provisions of this subsection, provide to such physician an investigational drug or investigational device for the diagnosis, monitoring, or treatment of a serious disease or condition if—

1. the licensed physician determines that the person has no comparable or satisfactory alternative therapy available to diagnose, monitor, or treat the disease or condition involved, and that the probable risk to the person from the investigational drug or investigational device is not greater than the probable risk from the disease or condition;

2. the Secretary determines that there is sufficient evidence of safety and effectiveness to support the use of the investigational drug or investigational device in the case described in paragraph (1);

3. the Secretary determines that provision of the investigational drug or investigational device will not interfere with the initiation, conduct, or completion of clinical investigations to support marketing approval; and

4. the sponsor, or clinical investigator, of the investigational drug or investigational device submits to the Secretary a clinical protocol consistent with the provisions of section 355(d) or 360(g) of this title, including any regulations promulgated under section 355(d) or 360(g) of this title, describing the use of the investigational drug or investigational device in a single patient or a small group of patients.

(c) Treatment investigational new drug applications and treatment investigational device exemptions

Upon submission by a sponsor or a physician of a protocol intended to provide widespread access to an investigational drug or investigational device for eligible patients (referred to in this subsection as an “expanded access protocol”), the Secretary shall permit such investigational drug or investigational device to be made available for expanded access under a treatment investigational new drug application or treatment investigational device exemption if the Secretary determines that—

1. the treatment investigational new drug application or treatment investigational device exemption, the investigational drug or investigational device is intended for use in the diagnosis, monitoring, or treatment of a serious or immediately life-threatening disease or condition;

2. there is no comparable or satisfactory alternative therapy available to diagnose, monitor, or treat that stage of disease or condition in the population of patients to which the investigational drug or investigational device is intended to be administered;

3. the investigational drug or investigational device is under investigation in a controlled clinical trial for the use described in paragraph (1) under an investigational drug application in effect under section 355(i) of this title or investigational device exemption in effect under section 360(g) of this title; or

4. all clinical trials necessary for approval of that use of the investigational drug or investigational device have been completed.

The sponsor of the controlled clinical trials is actively pursuing marketing approval of the investigational drug or investigational device.
device for the use described in paragraph (1) with due diligence;

(5) in the case of an investigational drug or investigational device described in paragraph (3)(A), the provision of the investigational drug or investigational device will not interfere with the enrollment of patients in ongoing clinical investigations under section 355(i) or 360(g) of this title;

(6) in the case of serious diseases, there is sufficient evidence of safety and effectiveness to support the use described in paragraph (1); and

(7) in the case of immediately life-threatening diseases, the available scientific evidence, taken as a whole, provides a reasonable basis to conclude that the investigational drug or investigational device may be effective for its intended use and would not expose patients to an unreasonable and significant risk of illness or injury.

A protocol submitted under this subsection shall be subject to the provisions of section 355(i) or 360(g) of this title, including regulations promulgated under section 355(i) or 360(g) of this title. The Secretary may inform national, State, and local medical associations and societies, voluntary health associations, and other appropriate persons about the availability of an investigational drug or investigational device under expanded access protocols submitted under this subsection. The information provided by the Secretary, in accordance with the preceding sentence, shall be the same type of information that is required by section 232(1)(3) of title 42.

(d) Termination

The Secretary may, at any time, with respect to a sponsor, physician, manufacturer, or distributor described in this section, terminate expanded access provided under this section for an investigational drug or investigational device if the requirements under this section are no longer met.

(e) Definitions

In this section, the terms “investigational drug”, “investigational device”, “treatment investigational new drug application”, and “treatment investigational device exemption” shall have the meanings given the terms in regulations prescribed by the Secretary.

(Amendment by Pub. L. 109–482 applicable only with respect to amounts appropriated for fiscal year 2007 or subsequent fiscal years, see section 109 of Pub. L. 109–482, set out as a note under section 281 of Title 42, The Public Health and Welfare.)

§ 360bbb–2. Classification of products

(a) Request

A person who submits an application or submission (including a petition, notification, and any other similar form of request) under this chapter for a product, may submit a request to the Secretary respecting the classification of the product as a drug, biological product, device, or a combination product subject to section 353(g) of this title or respecting the component of the Food and Drug Administration that will regulate the product. In submitting the request, the person shall recommend a classification for the product, or a component to regulate the product, as appropriate.

(b) Statement

Not later than 60 days after the receipt of the request described in subsection (a) of this section, the Secretary shall determine the classification of the product under subsection (a) of this section, or the component of the Food and Drug Administration that will regulate the product, and shall provide to the person a written statement that identifies such classification or such component, and the reasons for such determination. The Secretary may not modify such statement except with the written consent of the person, or for public health reasons based on scientific evidence.

(c) Inaction of Secretary

If the Secretary does not provide the statement within the 60-day period described in sub-