

110TH CONGRESS  
1ST SESSION

# H. R. 1956

To amend the Public Health Service Act to provide for the approval of similar biological products, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2007

Mr. INSLEE (for himself, Mr. GENE GREEN of Texas, and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Public Health Service Act to provide for the approval of similar biological products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient Protection and  
5 Innovative Biologic Medicines Act of 2007”.

6 **SEC. 2. APPROVAL OF SIMILAR BIOLOGICAL PRODUCTS.**

7 (a) IN GENERAL.—Section 351 of the Public Health  
8 Service Act (42 U.S.C. 262) is amended—

1           (1) in subsection (j), by striking “under sub-  
2           section (a)” and inserting “under subsection (a) or  
3           (k)”;

4           (2) by adding at the end the following:

5           “(k) SIMILAR BIOLOGICAL PRODUCTS.—

6           “(1) APPLICATION.—

7           “(A) SUBMISSION.—Any person may sub-  
8           mit an application under this subsection for ap-  
9           proval of a biologics license for a biological  
10          product (in this section referred to as the ‘simi-  
11          lar biological product’) that is claimed to be  
12          similar to a qualified biological product (in this  
13          subsection referred to as the ‘reference prod-  
14          uct’).

15          “(B) DEFINITION.—In this subsection, the  
16          term ‘qualified biological product’ means a bio-  
17          logical product that is a biotechnology-derived  
18          therapeutic biological product licensed under  
19          subsection (a) or a biotechnology-derived thera-  
20          peutic protein product subject to an approved  
21          application that was submitted under section  
22          505(b)(1) of the Federal Food, Drug, and Cos-  
23          metic Act.

24          “(2) REVIEW AND APPROVAL OF SIMILAR BIO-  
25          LOGICAL PRODUCT APPLICATIONS.—

1           “(A) REVIEW.—An application submitted  
2 under this subsection for a similar biological  
3 product shall be reviewed—

4                   “(i) by the division that was respon-  
5 sible for review and approval of the ref-  
6 erence product; and

7                   “(ii) in accordance with the proce-  
8 dures for review of biologics license appli-  
9 cations established by the Secretary pursu-  
10 ant to subsection (a)(2)(A).

11           “(B) APPROVAL.—The Secretary shall ap-  
12 prove the application submitted under para-  
13 graph (1) only if—

14                   “(i) the applicant demonstrates that  
15 the similar biological product conforms to  
16 the applicable final product-class specific  
17 guidance and, on the basis of the data sub-  
18 mitted in conformance with such guidance,  
19 the Secretary concludes the product is  
20 safe, pure, and potent;

21                   “(ii) the facility in which the similar  
22 biological product is manufactured, proc-  
23 essed, packed, or held meets standards de-  
24 signed to assure that the biological product  
25 continues to be safe, pure, and potent; and

1           “(iii) the applicant (or other appro-  
2           priate person) consents to the inspection of  
3           the facility that is the subject of the appli-  
4           cation, in accordance with subsection (e).

5           “(C) CONDITIONS OF APPROVAL.—The  
6           Secretary may approve an application submitted  
7           under paragraph (1) for a similar biological  
8           product—

9                   “(i) only for indications for which the  
10                  reference product is approved; and

11                   “(ii) only if, with respect to each such  
12                  indication, the application conforms to the  
13                  applicable final product-class specific guid-  
14                  ance, and on the basis of non-clinical and  
15                  clinical data submitted regarding such in-  
16                  dication, the Secretary concludes the prod-  
17                  uct is safe, pure, and potent.

18           “(D) THERAPEUTIC EQUIVALENCE.—The  
19           Secretary shall not designate a similar biologi-  
20           cal product as therapeutically equivalent to the  
21           reference product.

22           “(3) TIME FRAMES FOR APPLICATION AND AU-  
23           THORIZATION.—

1           “(A) SUBMISSION OF APPLICATIONS.—No  
2 application for a similar biological product may  
3 be submitted under this subsection unless—

4                   “(i) the Secretary has published under  
5 paragraph (5) final product-class specific  
6 guidance applicable to the reference prod-  
7 uct; and

8                   “(ii) not less than 12 years have  
9 elapsed from the date on which the ref-  
10 erence product was approved or licensed.

11           “(B) EFFECTIVE DATE OF APPROVAL.—  
12 Subject to subparagraph (C), approval of an  
13 application submitted under paragraph (1) shall  
14 not be made effective until at least 14 years  
15 have elapsed from the date on which the ref-  
16 erence product was approved or licensed.

17           “(C) SIGNIFICANT CLINICAL BENEFIT.—  
18 Approval of an application submitted under  
19 paragraph (1) shall not be made effective until  
20 at least 15 years have elapsed from the date on  
21 which the reference product was approved or li-  
22 censed if—

23                   “(i) during the 12-year period fol-  
24 lowing the approval or licensing of the ref-  
25 erence product, the Secretary approves a

1 supplement to the new drug or biologics li-  
2 cense application for the reference product  
3 that seeks approval to market the ref-  
4 erence product for a new indication; and

5 “(ii) in the opinion of the Secretary,  
6 the new indication provides a significant  
7 clinical benefit in comparison with existing  
8 therapies.

9 “(D) EXCLUSIVE APPROVAL PATHWAY.—

10 The Secretary may not approve, under any  
11 other provision of law, a product that is claimed  
12 to be similar to or the same as a reference  
13 product.

14 “(4) REQUESTS FOR ISSUANCE OF PRODUCT-  
15 CLASS SPECIFIC GUIDANCE.—

16 “(A) IN GENERAL.—Any person may sub-  
17 mit a request to the Secretary for the issuance  
18 of product-class specific guidance applicable to  
19 a qualified biological product and its class.

20 “(B) PRIORITY.—The Secretary—

21 “(i) in prioritizing among requests  
22 under this paragraph for guidance, shall  
23 consider likely market entry dates of simi-  
24 lar biological products and the amount of  
25 time that will be needed to prepare the re-

1 requested product-class specific guidance;  
2 and

3 “(ii) may summarily reject frivolous  
4 or unsupported requests.

5 “(C) ISSUANCE OF GUIDANCE.—In re-  
6 sponse to a request under this paragraph, the  
7 Secretary shall—

8 “(i) publish in the Federal Register a  
9 concept paper setting forth the specific  
10 questions to be addressed in product-class  
11 specific guidance and invite comments on  
12 the concept paper from any interested per-  
13 sons;

14 “(ii) accept comments on the concept  
15 paper for not less than 4 months;

16 “(iii) consider the public comments on  
17 the concept paper;

18 “(iv) publish in the Federal Register  
19 proposed product-class specific guidance  
20 and invite comments on the proposed guid-  
21 ance from any interested persons;

22 “(v) accept comments on the proposed  
23 guidance for not less than 6 months;

1           “(vi) obtain the advice of the Similar  
2           Biological Products Advisory Committee  
3           with respect to the proposed guidance; and

4           “(vii) except as provided in subpara-  
5           graph (D), not later than 24 months after  
6           receipt of the initial request, publish in the  
7           Federal Register final product-class spe-  
8           cific guidance or a determination that,  
9           given the current state of scientific and  
10          technical knowledge, it is not possible to  
11          issue product-class specific guidance set-  
12          ting forth data that will ensure the safety,  
13          purity, and potency of similar biological  
14          products to be covered by the guidance.

15          “(D) CONSOLIDATION OF REQUESTS.—The  
16          Secretary may consolidate requests submitted  
17          under this paragraph that refer to closely re-  
18          lated products or product classes. If the Sec-  
19          retary chooses to consolidate such requests, the  
20          Secretary shall publish final product-class spe-  
21          cific guidance or a determination described in  
22          subparagraph (C)(vii) not later than 30 months  
23          after receipt of the first request for guidance  
24          for any product in the class.

25          “(5) PRODUCT-CLASS SPECIFIC GUIDANCE.—



1           “(A) IN GENERAL.—Guidance published  
2 under paragraph (4) shall describe the data and  
3 information that will be required in an applica-  
4 tion submitted under paragraph (1).

5           “(B) REQUIRED ELEMENTS.—At a min-  
6 imum, guidance published under paragraph (4)  
7 shall require—

8                   “(i) data demonstrating the consist-  
9 ency and robustness of the manufacturing  
10 process for an active ingredient of the  
11 similar biological product and the finished  
12 formulation of the similar biological prod-  
13 uct;

14                   “(ii) data demonstrating the stability,  
15 compatibility (such as with excipients), and  
16 biological and physicochemical integrity of  
17 the active ingredient of the similar biologi-  
18 cal product;

19                   “(iii) data from physical, chemical,  
20 and biological assays fully characterizing  
21 the similar biological product, in compari-  
22 son with the reference product, at both the  
23 active ingredient and finished product lev-  
24 els;

1           “(iv) data from comparative nonclin-  
2           ical studies demonstrating that the similar  
3           biological product and the reference prod-  
4           uct have similar profiles in terms of phar-  
5           macokinetics, pharmacodynamics, toxicity,  
6           immunogenicity, and other relevant fac-  
7           tors;

8           “(v) data from comparative clinical  
9           trials demonstrating that the similar bio-  
10          logical product and the reference product  
11          have similar profiles in terms of safety, pu-  
12          rity, and potency, including pharmaco-  
13          kinetic studies, pharmacodynamic studies,  
14          and trials of sufficient size and duration to  
15          demonstrate that the products are similar  
16          in their safety (in terms of nature, serious-  
17          ness, and frequency of adverse reactions),  
18          purity, and potency profiles; and

19          “(vi) a plan for postmarketing safety  
20          monitoring (in addition to ordinary  
21          pharmacovigilance), including with respect  
22          to clinical trials; antibody testing and, as  
23          appropriate, other tests to investigate  
24          immunogenicity; patient registries; and  
25          other surveillance measures to monitor the

1                   clinical safety and risk-benefit balance of  
2                   the similar biological product.

3                   “(6) REVISIONS TO GUIDANCE.—If a new con-  
4                   dition of use is approved for a reference product  
5                   after the latest publication of the final product-class  
6                   specific guidance applicable to such product, the  
7                   Secretary shall promptly update and republish the  
8                   guidance in accordance with paragraphs (4) and (5)  
9                   (irrespective of whether a request for such revision  
10                  has been received under paragraph (4)(A)) to ad-  
11                  dress the data and information that will be required  
12                  in an application under this subsection for approval  
13                  of the new condition of use. The requirements of  
14                  paragraph (2)(C) shall apply if the new condition of  
15                  use is a new indication.

16                  “(7) SIMILAR BIOLOGICAL PRODUCTS ADVISORY  
17                  COMMITTEE.—

18                         “(A) ESTABLISHMENT.—The Secretary  
19                         shall establish a Similar Biological Products  
20                         Advisory Committee (in this paragraph referred  
21                         to as the ‘Committee’).

22                         “(B) DUTIES.—The Committee shall—

23                                 “(i) provide expert scientific advice  
24                                 and recommendations to the Secretary re-

1           garding the development and approval of  
2           similar biological products; and

3           “(ii) in formulating such advice and  
4           recommendations, provide interested per-  
5           sons with a reasonable opportunity to  
6           make written and oral presentations.

7           “(C) MEMBERSHIP.—

8           “(i) QUALIFICATIONS.—The Secretary  
9           shall appoint to serve on the Committee in-  
10          dividuals with expertise on therapeutic bio-  
11          logical products, including manufacturing,  
12          safety, effectiveness, and other relevant  
13          matters. The Secretary shall ensure that  
14          the Committee consists of members with  
15          adequately diversified expertise and prac-  
16          tical experience in such fields as clinical  
17          medicine, biological and physical sciences,  
18          pharmacoepidemiology and postmarket  
19          safety surveillance, and related professions.

20          “(ii) NOMINATIONS.—In appointing  
21          members of the Committee, the Secretary  
22          shall provide an opportunity for scientific,  
23          industry, and consumer organizations and  
24          the public to nominate such members.

1           “(iii) NONVOTING MEMBERS.—The  
2           Committee shall include, as nonvoting  
3           members, representatives of patient organi-  
4           zations, manufacturers of innovative bio-  
5           logical products, and manufacturers of  
6           similar biological products.

7           “(iv) SUPPLEMENTAL MEMBER-  
8           SHIP.—For the purpose of developing  
9           product-class specific guidance under para-  
10          graphs (4) and (5), the Secretary may sup-  
11          plement the membership of the Committee,  
12          or arrange for advice from another advi-  
13          sory committee, in order to obtain the ad-  
14          vice of individuals with special expertise re-  
15          lating to any product under review.

16          “(l) PROPER NAME.—For purposes of this section:

17                 “(1) BIOTECHNOLOGY-DERIVED THERAPEUTIC  
18                 PROTEINS.—

19                         “(A) IN GENERAL.—Subject to subpara-  
20                         graph (D), the term ‘proper name’, with respect  
21                         to a biotechnology-derived therapeutic protein,  
22                         means—

23                                 “(i) the name adopted for such pro-  
24                                 tein by the United States Adopted Names

1 Council if such name is a unique USAN;  
2 or

3 “(ii) if the biotechnology-derived  
4 therapeutic protein lacks a unique USAN,  
5 an official name designated pursuant to  
6 subparagraph (C).

7 “(B) UNIQUE USAN.—The term ‘unique  
8 USAN’, with respect to a biotechnology-derived  
9 therapeutic protein, means a name adopted for  
10 such protein by the United States Adopted  
11 Names Council that has not been adopted for  
12 any protein manufactured by a different person.

13 “(C) DESIGNATION.—The Secretary shall  
14 designate an official name for any bio-  
15 technology-derived therapeutic protein that  
16 lacks a unique USAN. Any official name des-  
17 ignated under this subparagraph shall be the  
18 only official name of that protein used in any  
19 official compendium published after such name  
20 has been designated. In no event, however, shall  
21 the Secretary designate an official name so as  
22 to infringe a valid trademark. Any designation  
23 under this subparagraph shall be made by rule  
24 in accordance with section 553 of title 5,  
25 United States Code.

1           “(D) EXCEPTION.—The term ‘proper  
2 name’, with respect to a biotechnology-derived  
3 therapeutic protein that was licensed by the  
4 Secretary prior to the effective date of the Pa-  
5 tient Protection and Innovative Biologic Medi-  
6 cines Act of 2007, means the name adopted for  
7 such protein by the United States Adopted  
8 Names Council, irrespective of whether such  
9 name is a unique USAN.

10           “(2) OTHER BIOLOGICAL PRODUCTS.—The  
11 term ‘proper name’, with respect to a biological  
12 product that is not a biotechnology-derived thera-  
13 peutic protein, means—

14           “(A) the official name designated by the  
15 Secretary for such biological product pursuant  
16 to section 508 of the Federal Food, Drug, and  
17 Cosmetic Act;

18           “(B) if there is no such official name and  
19 such biological product is an article recognized  
20 in an official compendium, the official title  
21 thereof in such compendium; or

22           “(C) if neither subparagraph (A) nor sub-  
23 paragraph (B) applies, the common or usual  
24 name, if any, of such biological product.”.

1 (b) CONFIDENTIALITY.—Subsection (j) of section  
2 351 of the Public Health Service Act (42 U.S.C. 262),  
3 as amended by subsection (a)(1), is further amended by  
4 adding at the end the following: “The Secretary shall  
5 maintain the confidentiality of information submitted  
6 under this section for a biological product to the same ex-  
7 tent and in the same manner as the Secretary maintains  
8 the confidentiality of information submitted under section  
9 505 of the Federal Food, Drug, and Cosmetic Act for a  
10 drug.”.

11 **SEC. 3. AMENDMENTS TO FEDERAL FOOD, DRUG, AND COS-**  
12 **METIC ACT.**

13 (a) LABELING.—Section 502 of the Federal Food,  
14 Drug, and Cosmetic Act (21 U.S.C. 352) is amended by  
15 adding at the end the following:

16 “(y) If it is a biotechnology-derived therapeutic pro-  
17 tein, it was licensed under section 351 of the Public  
18 Health Service Act prior to the effective date of the Pa-  
19 tient Protection and Innovative Biologic Medicines Act of  
20 2007, it lacks a unique USAN, and its labeling fails to  
21 bear (i) its proper name (as defined in section 351(l) of  
22 the Public Health Service Act); (ii) its brand name or  
23 phrasing, approved by the Secretary, that adequately dis-  
24 tinguishes it from other approved biotechnology-derived  
25 therapeutic proteins with the same proper name; and (iii)



1 the following warning: ‘Any change in **【insert the proper**  
2 name of the product**】**, including a change in manufac-  
3 turer, should be made cautiously and only if authorized  
4 by and supervised by the prescribing health care profes-  
5 sional.’. The requirement in the preceding sentence re-  
6 garding the inclusion of a warning applies beginning on  
7 the date that is 180 days after the date of the enactment  
8 of the Patient Protection and Innovative Biologic Medi-  
9 cines Act of 2007.

10 “(z) If it is a biotechnology-derived therapeutic pro-  
11 tein not subject to paragraph (y), and its labeling fails  
12 to include (i) its proper name (as defined in section 351(l)  
13 of the Public Health Service Act); and (ii) the following  
14 warning: ‘This product shall not be dispensed in substi-  
15 tution for another biological product that was prescribed  
16 to be dispensed, unless such substitution was expressly au-  
17 thorized by and is supervised by the prescribing health  
18 care professional.’. In the case of such a protein that is  
19 a similar biological product licensed under section 351(k)  
20 of the Public Health Service Act, the warning required by  
21 the preceding sentence shall read as follows: ‘This product  
22 shall not be dispensed in substitution for another biologi-  
23 cal product that was prescribed to be dispensed including  
24 **【insert the proprietary name and proper name of the ref-**  
25 **erence product】**.’”.

1 (b) DISPENSING.—Section 503(b) of the Federal  
2 Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)) is  
3 amended by adding at the end the following:

4 “(6) A drug that is subject to paragraph (1) and is  
5 a biotechnology-derived therapeutic protein licensed under  
6 section 351 of the Public Health Service Act shall not be  
7 dispensed unless the prescription specifies the drug’s pro-  
8 prietary name or, if the drug lacks a proprietary name,  
9 the drug’s proper name (as defined in section 351(l) of  
10 such Act). The act of dispensing a drug contrary to the  
11 preceding sentence shall be deemed to be an act which re-  
12 sults in the drug being misbranded while held for sale.”.

13 **SEC. 4. REPORTS TO CONGRESS.**

14 (a) EXTENSION OF APPROVAL PATHWAY TO OTHER  
15 PRODUCTS.—Not later than 2 years after the date of the  
16 enactment of this Act, and every 2 years thereafter, the  
17 Secretary of Health and Human Services shall submit a  
18 report to the Congress making recommendations on  
19 whether it is feasible, in the current state of scientific and  
20 technical knowledge, to approve applications under sub-  
21 section 351(k) of the Public Health Service Act, as added  
22 by section 2 of this Act, for biological products that are  
23 claimed to be similar to vaccines, blood or plasma products  
24 or their derivatives, gene therapy, cell processing, natu-  
25 rally derived therapeutic proteins, or other biological prod-

1 ucts that do not contain biotechnology-derived therapeutic  
2 proteins as their active ingredients.

3 (b) THERAPEUTIC EQUIVALENCE DETERMINA-  
4 TIONS.—Not later than 2 years after the date of the enact-  
5 ment of this Act, and every 2 years thereafter, the Sec-  
6 retary of Health and Human Services shall submit a re-  
7 port to the Congress making recommendations on—

8 (1) whether it is feasible, in the current state  
9 of scientific and technical knowledge, to make thera-  
10 peutic equivalence determinations for similar biologi-  
11 cal products approved under section 351(k) of the  
12 Public Health Service Act, as added by section 2 of  
13 this Act; and

14 (2) if so, the statutory criteria that should gov-  
15 ern such determinations.

○