

# Calendar No. 389

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2516

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs and medical devices, to establish user-fee programs for generic drugs and biosimilars, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 7, 2012

Mr. HARKIN, from the Committee on Health, Education, Labor, and Pensions, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs and medical devices, to establish user-fee programs for generic drugs and biosimilars, 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 “Food and Drug Ad-  
5       ministration Safety and Innovation Act”.

1 **SEC. 2. TABLE OF CONTENTS; REFERENCES IN ACT.**

- 2 (a) TABLE OF CONTENTS.—The table of contents of  
 3 this Act is as follows:

- Sec. 1. Short title.  
 Sec. 2. Table of contents; references in Act.

TITLE I—FEES RELATING TO DRUGS

- Sec. 101. Short title; finding.  
 Sec. 102. Definitions.  
 Sec. 103. Authority to assess and use drug fees.  
 Sec. 104. Reauthorization; reporting requirements.  
 Sec. 105. Sunset dates.  
 Sec. 106. Effective date.  
 Sec. 107. Savings clause.

TITLE II—FEES RELATING TO DEVICES

- Sec. 201. Short title; findings.  
 Sec. 202. Definitions.  
 Sec. 203. Authority to assess and use device fees.  
 Sec. 204. Reauthorization; reporting requirements.  
 Sec. 205. Savings clause.  
 Sec. 206. Effective date.  
 Sec. 207. Sunset dates.  
 Sec. 208. Streamlined hiring authority to support activities related to the process for the review of device applications.

TITLE III—FEES RELATING TO GENERIC DRUGS

- Sec. 301. Short title.  
 Sec. 302. Authority to assess and use human generic drug fees.  
 Sec. 303. Reauthorization; reporting requirements.  
 Sec. 304. Sunset dates.  
 Sec. 305. Effective date.  
 Sec. 306. Amendment with respect to misbranding.  
 Sec. 307. Streamlined hiring authority of the Food and Drug Administration to support activities related to human generic drugs.

TITLE IV—FEES RELATING TO BIOSIMILAR BIOLOGICAL PRODUCTS

- Sec. 401. Short title; finding.  
 Sec. 402. Fees relating to biosimilar biological products.  
 Sec. 403. Reauthorization; reporting requirements.  
 Sec. 404. Sunset dates.  
 Sec. 405. Effective date.  
 Sec. 406. Savings clause.  
 Sec. 407. Conforming amendment.

TITLE V—PEDIATRIC DRUGS AND DEVICES

- Sec. 501. Permanence.  
 Sec. 502. Written requests.

- Sec. 503. Communication with Pediatric Review Committee.
- Sec. 504. Access to data.
- Sec. 505. Ensuring the completion of pediatric studies.
- Sec. 506. Pediatric study plans.
- Sec. 507. Reauthorizations.
- Sec. 508. Report.
- Sec. 509. Technical amendments.
- Sec. 510. Relationship Between Pediatric Labeling and New Clinical Investigation Exclusivity.

#### TITLE VI—MEDICAL DEVICE REGULATORY IMPROVEMENTS

- Sec. 601. Reclassification procedures.
- Sec. 602. Condition of approval studies.
- Sec. 603. Postmarket surveillance.
- Sec. 604. Sentinel.
- Sec. 605. Recalls.
- Sec. 606. Clinical holds on investigational device exemptions.
- Sec. 607. Unique device identifier.
- Sec. 608. Clarification of least burdensome standard.
- Sec. 609. Custom devices.
- Sec. 610. Agency documentation and review of certain decisions regarding devices.
- Sec. 611. Good guidance practices relating to devices.
- Sec. 612. Modification of de novo application process.
- Sec. 613. Humanitarian device exemptions.
- Sec. 614. Reauthorization of third-party review and inspections.
- Sec. 615. 510(k) device modifications.

#### TITLE VII—DRUG SUPPLY CHAIN

- Sec. 701. Registration of domestic drug establishments.
- Sec. 702. Registration of foreign establishments.
- Sec. 703. Identification of drug excipient information with product listing.
- Sec. 704. Electronic system for registration and listing.
- Sec. 705. Risk-based inspection frequency.
- Sec. 706. Records for inspection.
- Sec. 707. Failure to allow foreign inspection.
- Sec. 708. Exchange of information.
- Sec. 709. Enhancing the safety and quality of the drug supply.
- Sec. 710. Accreditation of third-party auditors for drug establishments.
- Sec. 711. Standards for admission of imported drugs.
- Sec. 712. Notification.
- Sec. 713. Protection against intentional adulteration.
- Sec. 714. Enhanced criminal penalty for counterfeiting drugs.
- Sec. 715. Extraterritorial jurisdiction.
- Sec. 716. Compliance with international agreements.

#### TITLE VIII—GENERATING ANTIBIOTIC INCENTIVES NOW

- Sec. 801. Extension of exclusivity period for drugs.
- Sec. 802. Priority review.
- Sec. 803. Fast track product.
- Sec. 804. GAO study.
- Sec. 805. Clinical trials.
- Sec. 806. Regulatory certainty and predictability.

## TITLE IX—DRUG APPROVAL AND PATIENT ACCESS

- Sec. 901. Enhancement of accelerated patient access to new medical treatments.
- Sec. 902. Breakthrough therapies.
- Sec. 903. Consultation with external experts on rare diseases, targeted therapies, and genetic targeting of treatments.
- Sec. 904. Accessibility of information on prescription drug container labels by visually-impaired and blind consumers.
- Sec. 905. Risk-benefit framework.
- Sec. 906. Independent study on medical innovation inducement model.

## TITLE X—DRUG SHORTAGES

- Sec. 1001. Drug shortages.

## TITLE XI—OTHER PROVISIONS

## Subtitle A—Reauthorizations

- Sec. 1101. Reauthorization of provision relating to exclusivity of certain drugs containing single enantiomers.
- Sec. 1102. Reauthorization of the Critical Path Public-Private Partnerships.

## Subtitle B—Medical Gas Product Regulation

- Sec. 1111. Regulation of medical gas products.
- Sec. 1112. Regulations.
- Sec. 1113. Applicability.

## Subtitle C—Miscellaneous Provisions

- Sec. 1121. Advisory committee conflicts of interest.
- Sec. 1122. Guidance document regarding product promotion using the Internet.
- Sec. 1123. Electronic submission of applications.
- Sec. 1124. Combating prescription drug abuse.
- Sec. 1125. Tanning bed labeling.
- Sec. 1126. Optimizing global clinical trials.
- Sec. 1127. Advancing regulatory science to promote public health innovation.
- Sec. 1128. Information technology.
- Sec. 1129. Reporting requirements.
- Sec. 1130. Strategic integrated management plan.
- Sec. 1131. Drug development and bioequivalence testing.

1           (b) REFERENCES IN ACT.—Except as otherwise spec-  
 2 ified, amendments made by this Act to a section or other  
 3 provision of law are amendments to such section or other  
 4 provision of the Federal Food, Drug, and Cosmetic Act  
 5 (21 U.S.C. 301 et seq.).



1 (A) in the matter preceding paragraph (1),  
2 by striking “fiscal year 2008” and inserting  
3 “fiscal year 2013”;

4 (B) in paragraph (1), in clauses (i) and (ii)  
5 of subparagraph (A), by striking “subsection  
6 (c)(5)” each place such term appears and in-  
7 serting “subsection (c)(4)”;

8 (C) in the matter following clause (ii) in  
9 paragraph (2)(A)—

10 (i) by striking “subsection (c)(5)” and  
11 inserting “subsection (c)(4)”;

12 (ii) by striking “payable on or before  
13 October 1 of each year” and inserting  
14 “due on the later of the first business day  
15 on or after October 1 of each fiscal year or  
16 the first business day after the enactment  
17 of an appropriations Act providing for the  
18 collection and obligation of fees for such  
19 fiscal year under this section”;

20 (D) in paragraph (3)—

21 (i) in subparagraph (A)—

22 (I) by striking “subsection  
23 (c)(5)” and inserting “subsection  
24 (c)(4)”;

1 (II) by striking “payable on or  
2 before October 1 of each year.” and  
3 inserting “due on the later of the first  
4 business day on or after October 1 of  
5 each fiscal year or the first business  
6 day after the enactment of an appro-  
7 priations Act providing for the collec-  
8 tion and obligation of fees for such  
9 fiscal year under this section.”; and

10 (ii) by amending subparagraph (B) to  
11 read as follows:

12 “(B) EXCEPTION.—A prescription drug  
13 product shall not be assessed a fee under sub-  
14 paragraph (A) if such product is—

15 “(i) identified on the list compiled  
16 under section 505(j)(7) with a potency de-  
17 scribed in terms of per 100 mL;

18 “(ii) the same product as another  
19 product that—

20 “(I) was approved under an ap-  
21 plication filed under section 505(b) or  
22 505(j); and

23 “(II) is not in the list of discon-  
24 tinued products compiled under sec-  
25 tion 505(j)(7);

1           “(iii) the same product as another  
2 product that was approved under an abbrevi-  
3 ated application filed under section 507  
4 (as in effect on the day before the date of  
5 enactment of the Food and Drug Adminis-  
6 tration Modernization Act of 1997); or

7           “(iv) the same product as another  
8 product that was approved under an abbrevi-  
9 ated new drug application pursuant to  
10 regulations in effect prior to the implemen-  
11 tation of the Drug Price Competition and  
12 Patent Term Restoration Act of 1984.”;

13 (2) in subsection (b)—

14 (A) in paragraph (1)—

15 (i) in the matter preceding subpara-  
16 graph (A), by striking “fiscal years 2008  
17 through 2012” and inserting “fiscal years  
18 2013 through 2017”;

19 (ii) in subparagraph (A), by striking  
20 “\$392,783,000; and” and inserting  
21 “\$693,099,000;”; and

22 (iii) by striking subparagraph (B) and  
23 inserting the following:



1           “(B) the dollar amount equal to the infla-  
2           tion adjustment for fiscal year 2013 (as deter-  
3           mined under paragraph (3)(A)); and

4           “(C) the dollar amount equal to the work-  
5           load adjustment for fiscal year 2013 (as deter-  
6           mined under paragraph (3)(B)).”; and

7           (B) by striking paragraphs (3) and (4) and  
8           inserting the following:

9           “(3) FISCAL YEAR 2013 INFLATION AND WORK-  
10          LOAD ADJUSTMENTS.—For purposes of paragraph  
11          (1), the dollar amount of the inflation and workload  
12          adjustments for fiscal year 2013 shall be determined  
13          as follows:

14           “(A) INFLATION ADJUSTMENT.—The infla-  
15           tion adjustment for fiscal year 2013 shall be  
16           the sum of—

17                   “(i) \$652,709,000 multiplied by the  
18                   result of an inflation adjustment calcula-  
19                   tion determined using the methodology de-  
20                   scribed in subsection (c)(1)(B); and

21                   “(ii) \$652,709,000 multiplied by the  
22                   result of an inflation adjustment calcula-  
23                   tion determined using the methodology de-  
24                   scribed in subsection (c)(1)(C).

1           “(B) WORKLOAD ADJUSTMENT.—Subject  
2 to subparagraph (C), the workload adjustment  
3 for fiscal 2013 shall be—

4           “(i) \$652,709,000 plus the amount of  
5 the inflation adjustment calculated under  
6 subparagraph (A); multiplied by

7           “(ii) the amount (if any) by which a  
8 percentage workload adjustment for fiscal  
9 year 2013, as determined using the meth-  
10 odology described in subsection (c)(2)(A),  
11 would exceed the percentage workload ad-  
12 justment (as so determined) for fiscal year  
13 2012, if both such adjustment percentages  
14 were calculated using the 5-year base pe-  
15 riod consisting of fiscal years 2003  
16 through 2007.

17           “(C) LIMITATION.—Under no cir-  
18 cumstances shall the adjustment under sub-  
19 paragraph (B) result in fee revenues for fiscal  
20 year 2013 that are less than the sum of the  
21 amount under paragraph (1)(A) and the  
22 amount under paragraph (1)(B).”;

23           (3) by striking subsection (c) and inserting the  
24 following:

25           “(c) ADJUSTMENTS.—

1           “(1) INFLATION ADJUSTMENT.—For fiscal year  
2           2014 and subsequent fiscal years, the revenues es-  
3           tablished in subsection (b) shall be adjusted by the  
4           Secretary by notice, published in the Federal Reg-  
5           ister, for a fiscal year by the amount equal to the  
6           sum of—

7                   “(A) one;

8                   “(B) the average annual percent change in  
9           the cost, per full-time equivalent position of the  
10          Food and Drug Administration, of all personnel  
11          compensation and benefits paid with respect to  
12          such positions for the first 3 years of the pre-  
13          ceding 4 fiscal years, multiplied by the propor-  
14          tion of personnel compensation and benefits  
15          costs to total costs of the process for the review  
16          of human drug applications (as defined in sec-  
17          tion 735(6)) for the first 3 years of the pre-  
18          ceding 4 fiscal years; and

19                  “(C) the average annual percent change  
20          that occurred in the Consumer Price Index for  
21          urban consumers (Washington-Baltimore, DC-  
22          MD-VA-WV; Not Seasonally Adjusted; All  
23          items; Annual Index) for the first 3 years of the  
24          preceding 4 years of available data, multiplied  
25          by the proportion of all costs other than per-

1           sonnel compensation and benefits costs to total  
2           costs of the process for the review of human  
3           drug applications (as defined in section 735(6))  
4           for the first 3 years of the preceding 4 fiscal  
5           years.

6           The adjustment made each fiscal year under this  
7           paragraph shall be added on a compounded basis to  
8           the sum of all adjustments made each fiscal year  
9           after fiscal year 2013 under this paragraph.

10           “(2) WORKLOAD ADJUSTMENT.—For fiscal  
11           year 2014 and subsequent fiscal years, after the fee  
12           revenues established in subsection (b) are adjusted  
13           for a fiscal year for inflation in accordance with  
14           paragraph (1), the fee revenues shall be adjusted  
15           further for such fiscal year to reflect changes in the  
16           workload of the Secretary for the process for the re-  
17           view of human drug applications. With respect to  
18           such adjustment:

19           “(A) The adjustment shall be determined  
20           by the Secretary based on a weighted average  
21           of the change in the total number of human  
22           drug applications (adjusted for changes in re-  
23           view activities, as described in the notice that  
24           the Secretary is required to publish in the Fed-  
25           eral Register under this subparagraph), efficacy

1 supplements, and manufacturing supplements  
2 submitted to the Secretary, and the change in  
3 the total number of active commercial investiga-  
4 tional new drug applications (adjusted for  
5 changes in review activities, as so described)  
6 during the most recent 12-month period for  
7 which data on such submissions is available.  
8 The Secretary shall publish in the Federal Reg-  
9 ister the fee revenues and fees resulting from  
10 the adjustment and the supporting methodolo-  
11 gies.

12 “(B) Under no circumstances shall the ad-  
13 justment result in fee revenues for a fiscal year  
14 that are less than the sum of the amount under  
15 subsection (b)(1)(A) and the amount under  
16 subsection (b)(1)(B), as adjusted for inflation  
17 under paragraph (1).

18 “(C) The Secretary shall contract with an  
19 independent accounting or consulting firm to  
20 periodically review the adequacy of the adjust-  
21 ment and publish the results of those reviews.  
22 The first review shall be conducted and pub-  
23 lished by the end of fiscal year 2013 (to exam-  
24 ine the performance of the adjustment since fis-  
25 cal year 2009), and the second review shall be

1           conducted and published by the end of fiscal  
2           year 2015 (to examine the continued perform-  
3           ance of the adjustment). The reports shall  
4           evaluate whether the adjustment reasonably  
5           represents actual changes in workload volume  
6           and complexity and present options to dis-  
7           continue, retain, or modify any elements of the  
8           adjustment. The reports shall be published for  
9           public comment. After review of the reports and  
10          receipt of public comments, the Secretary shall,  
11          if warranted, adopt appropriate changes to the  
12          methodology. If the Secretary adopts changes to  
13          the methodology based on the first report, the  
14          changes shall be effective for the first fiscal  
15          year for which fees are set after the Secretary  
16          adopts such changes and each subsequent fiscal  
17          year.

18          “(3) FINAL YEAR ADJUSTMENT.—For fiscal  
19          year 2017, the Secretary may, in addition to adjust-  
20          ments under this paragraph and paragraphs (1) and  
21          (2), further increase the fee revenues and fees estab-  
22          lished in subsection (b) if such an adjustment is nec-  
23          essary to provide for not more than 3 months of op-  
24          erating reserves of carryover user fees for the proc-  
25          ess for the review of human drug applications for

1 the first 3 months of fiscal year 2018. If such an  
2 adjustment is necessary, the rationale for the  
3 amount of the increase shall be contained in the an-  
4 nual notice establishing fee revenues and fees for fis-  
5 cal year 2017. If the Secretary has carryover bal-  
6 ances for such process in excess of 3 months of such  
7 operating reserves, the adjustment under this para-  
8 graph shall not be made.

9 “(4) ANNUAL FEE SETTING.—The Secretary  
10 shall, not later than 60 days before the start of each  
11 fiscal year that begins after September 30, 2012, es-  
12 tablish, for the next fiscal year, application, product,  
13 and establishment fees under subsection (a), based  
14 on the revenue amounts established under subsection  
15 (b) and the adjustments provided under this sub-  
16 section.

17 “(5) LIMIT.—The total amount of fees charged,  
18 as adjusted under this subsection, for a fiscal year  
19 may not exceed the total costs for such fiscal year  
20 for the resources allocated for the process for the re-  
21 view of human drug applications.”; and

22 (4) in subsection (g)—

23 (A) in paragraph (1), by striking “Fees  
24 authorized” and inserting “Subject to para-  
25 graph (2)(C), fees authorized”;

1 (B) in paragraph (2)—

2 (i) in subparagraph (A)—

3 (I) in clause (i), by striking  
4 “shall be retained” and inserting  
5 “subject to subparagraph (C), shall be  
6 collected and available”; and

7 (II) in clause (ii), by striking  
8 “shall only be collected and available”  
9 and inserting “shall be available”; and

10 (ii) by adding at the end the following  
11 new subparagraph:

12 “(C) PROVISION FOR EARLY PAYMENTS.—  
13 Payment of fees authorized under this section  
14 for a fiscal year, prior to the due date for such  
15 fees, may be accepted by the Secretary in ac-  
16 cordance with authority provided in advance in  
17 a prior year appropriations Act.”;

18 (C) in paragraph (3), by striking “fiscal  
19 years 2008 through 2012” and inserting “fiscal  
20 years 2013 through 2017”; and

21 (D) in paragraph (4)—

22 (i) by striking “fiscal years 2008  
23 through 2010” and inserting “fiscal years  
24 2013 through 2015”;



1 (ii) by striking “fiscal year 2011” and  
2 inserting “fiscal year 2016”;

3 (iii) by striking “fiscal years 2008  
4 though 2011” and inserting “fiscal years  
5 2013 through 2016”; and

6 (iv) by striking “fiscal year 2012”  
7 and inserting “fiscal year 2017”.

8 **SEC. 104. REAUTHORIZATION; REPORTING REQUIREMENTS.**

9 Section 736B (21 U.S.C. 379h–2) is amended—

10 (1) by amending subsection (a) to read as fol-  
11 lows:

12 “(a) PERFORMANCE REPORT.—Beginning with fiscal  
13 year 2013, not later than 120 days after the end of each  
14 fiscal year for which fees are collected under this part,  
15 the Secretary shall prepare and submit to the Committee  
16 on Energy and Commerce of the House of Representatives  
17 and the Committee on Health, Education, Labor, and  
18 Pensions of the Senate a report concerning the progress  
19 of the Food and Drug Administration in achieving the  
20 goals identified in the letters described in section 101(b)  
21 of the Prescription Drug User Fee Amendments of 2012  
22 during such fiscal year and the future plans of the Food  
23 and Drug Administration for meeting the goals. The re-  
24 port under this subsection for a fiscal year shall include  
25 information on all previous cohorts for which the Sec-

1 retary has not given a complete response on all human  
2 drug applications and supplements in the cohort.”;

3 (2) in subsection (b), by striking “2008” and  
4 inserting “2013”; and

5 (3) in subsection (d), by striking “2012” each  
6 place it appears and inserting “2017”.

7 **SEC. 105. SUNSET DATES.**

8 (a) AUTHORIZATION.—Sections 735 and 736 of the  
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g;  
10 379h) shall cease to be effective October 1, 2017.

11 (b) REPORTING REQUIREMENTS.—Section 736B of  
12 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
13 379h–2) shall cease to be effective January 31, 2018.

14 (c) PREVIOUS SUNSET PROVISION.—The Prescrip-  
15 tion Drug User Fee Amendments of 2007 is amended by  
16 striking section 106.

17 **SEC. 106. EFFECTIVE DATE.**

18 The amendments made by this title shall take effect  
19 on October 1, 2012, or the date of the enactment of this  
20 Act, whichever is later, except that fees under part 2 of  
21 subchapter C of chapter VII of the Federal Food, Drug,  
22 and Cosmetic Act shall be assessed for all human drug  
23 applications received on or after October 1, 2012, regard-  
24 less of the date of the enactment of this Act.

1 **SEC. 107. SAVINGS CLAUSE.**

2       Notwithstanding the amendments made by this title,  
3 part 2 of subchapter C of chapter VII of the Federal Food,  
4 Drug, and Cosmetic Act, as in effect on the day before  
5 the date of the enactment of this title, shall continue to  
6 be in effect with respect to human drug applications and  
7 supplements (as defined in such part as of such day) that  
8 on or after October 1, 2007, but before October 1, 2012,  
9 were accepted by the Food and Drug Administration for  
10 filing with respect to assessing and collecting any fee re-  
11 quired by such part for a fiscal year prior to fiscal year  
12 2012.

13       **TITLE II—FEES RELATING TO**  
14                                   **DEVICES**

15 **SEC. 201. SHORT TITLE; FINDINGS.**

16       (a) **SHORT TITLE.**—This title may be cited as the  
17 “Medical Device User Fee Amendments of 2012”.

18       (b) **FINDINGS.**—The Congress finds that the fees au-  
19 thorized under the amendments made by this title will be  
20 dedicated toward expediting the process for the review of  
21 device applications and for assuring the safety and effec-  
22 tiveness of devices, as set forth in the goals identified for  
23 purposes of part 3 of subchapter C of chapter VII of the  
24 Federal Food, Drug, and Cosmetic Act in the letters from  
25 the Secretary of Health and Human Services to the Chair-  
26 man of the Committee on Health, Education, Labor, and

1 Pensions of the Senate and the Chairman of the Com-  
2 mittee on Energy and Commerce of the House of Rep-  
3 resentatives, as set forth in the Congressional Record.

4 **SEC. 202. DEFINITIONS.**

5 Section 737 (21 U.S.C. 379i) is amended—

6 (1) in paragraph (9), by striking “incurred”  
7 after “expenses”;

8 (2) in paragraph (10), by striking “October  
9 2001” and inserting “October 2011”; and

10 (3) in paragraph (13), by striking “is required  
11 to register” and all that follows through the end of  
12 paragraph (13) and inserting the following: “is reg-  
13 istered (or is required to register) with the Secretary  
14 under section 510 because such establishment is en-  
15 gaged in the manufacture, preparation, propagation,  
16 compounding, or processing of a device.”.

17 **SEC. 203. AUTHORITY TO ASSESS AND USE DEVICE FEES.**

18 (a) TYPES OF FEES.—Section 738(a) (21 U.S.C.  
19 379j(a)) is amended—

20 (1) in paragraph (1), by striking “fiscal year  
21 2008” and inserting “fiscal year 2013”;

22 (2) in paragraph (2)(A)—

23 (A) in the matter preceding clause (i)—

- 1 (i) by striking “subsections (d) and  
2 (e)” and inserting “subsections (d), (e),  
3 and (f)”;
- 4 (ii) by striking “October 1, 2002” and  
5 inserting “October 1, 2012”; and
- 6 (iii) by striking “subsection (c)(1)”  
7 and inserting “subsection (c)”; and
- 8 (B) in clause (viii), by striking “1.84” and  
9 inserting “2”; and
- 10 (3) in paragraph (3)—
- 11 (A) in subparagraph (A)—
- 12 (i) by inserting “and subsection (f)”  
13 after “subparagraph (B)”; and
- 14 (ii) by striking “2008” and inserting  
15 “2013”; and
- 16 (B) in subparagraph (C), by striking “ini-  
17 tial registration” and all that follows through  
18 “section 510.” and inserting “later of—
- 19 “(i) the initial or annual registration  
20 (as applicable) of the establishment under  
21 section 510; or
- 22 “(ii) the first business day after the  
23 date of enactment of an appropriations Act  
24 providing for the collection and obligation  
25 of fees for such year under this section.”.

1 (b) FEE AMOUNTS.—Section 738(b) (21 U.S.C.  
 2 379j(b)) is amended to read as follows:

3 “(b) FEE AMOUNTS.—

4 “(1) IN GENERAL.—Subject to subsections (c),  
 5 (d), (e), (f), and (i), for each of fiscal years 2013  
 6 through 2017, fees under subsection (a) shall be de-  
 7 rived from the base fee amounts specified in para-  
 8 graph (2), to generate the total revenue amounts  
 9 specified in paragraph (3).

10 “(2) BASE FEE AMOUNTS.—For purposes of  
 11 paragraph (1), the base fee amounts specified in this  
 12 paragraph are as follows:

“Fee Type	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017
Premarket Application .....	\$248,000	\$252,960	\$258,019	\$263,180	\$268,443
Establishment Registration .....	\$2,575	\$3,200	\$3,750	\$3,872	\$3,872

13 “(3) TOTAL REVENUE AMOUNTS.—For pur-  
 14 poses of paragraph (1), the total revenue amounts  
 15 specified in this paragraph are as follows:

16 “(A) \$97,722,301 for fiscal year 2013.

17 “(B) \$112,580,497 for fiscal year 2014.

18 “(C) \$125,767,107 for fiscal year 2015.

19 “(D) \$129,339,949 for fiscal year 2016.

20 “(E) \$130,184,348 for fiscal year 2017.”.

21 (c) ANNUAL FEE SETTING; ADJUSTMENTS.—Section  
 22 738(c) (21 U.S.C. 379j(c)) is amended—

1 (1) in the subsection heading, by inserting “;  
2 ADJUSTMENTS” after “SETTING”;

3 (2) by striking paragraphs (1) and (2);

4 (3) by redesignating paragraphs (3) and (4) as  
5 paragraphs (4) and (5), respectively; and

6 (4) by inserting before paragraph (4), as so re-  
7 designated, the following:

8 “(1) IN GENERAL.—The Secretary shall, 60  
9 days before the start of each fiscal year after Sep-  
10 tember 30, 2012, establish fees under subsection (a),  
11 based on amounts specified under subsection (b) and  
12 the adjustments provided under this subsection, and  
13 publish such fees, and the rationale for any adjust-  
14 ments to such fees, in the Federal Register.

15 “(2) INFLATION ADJUSTMENTS.—

16 “(A) ADJUSTMENT TO TOTAL REVENUE  
17 AMOUNTS.—For fiscal year 2014 and each sub-  
18 sequent fiscal year, the Secretary shall adjust  
19 the total revenue amount specified in subsection  
20 (b)(3) for such fiscal year by multiplying such  
21 amount by the applicable inflation adjustment  
22 under subparagraph (B) for such year.

23 “(B) APPLICABLE INFLATION ADJUST-  
24 MENT TO TOTAL REVENUE AMOUNTS.—The ap-

1 applicable inflation adjustment for a fiscal year  
2 is—

3 “(i) for fiscal year 2014, the base in-  
4 flation adjustment under subparagraph (C)  
5 for such fiscal year; and

6 “(ii) for fiscal year 2015 and each  
7 subsequent fiscal year, the product of—

8 “(I) the base inflation adjust-  
9 ment under subparagraph (C) for  
10 such fiscal year; and

11 “(II) the product of the base in-  
12 flation adjustment under subpara-  
13 graph (C) for each of the fiscal years  
14 preceding such fiscal year, beginning  
15 with fiscal year 2014.

16 “(C) BASE INFLATION ADJUSTMENT TO  
17 TOTAL REVENUE AMOUNTS.—

18 “(i) IN GENERAL.—Subject to further  
19 adjustment under clause (ii), the base in-  
20 flation adjustment for a fiscal year is the  
21 sum of one plus—

22 “(I) the average annual percent  
23 change in the cost, per full-time equiv-  
24 alent position of the Food and Drug  
25 Administration, of all personnel com-



1                   pensation and benefits paid with re-  
 2                   spect to such positions for the first 3  
 3                   years of the preceding 4 fiscal years,  
 4                   multiplied by 0.60; and

5                   “(II) the average annual percent  
 6                   change that occurred in the Consumer  
 7                   Price Index for urban consumers  
 8                   (Washington-Baltimore, DC–MD–VA–  
 9                   WV; Not Seasonally Adjusted; All  
 10                  items; Annual Index) for the first 3  
 11                  years of the preceding 4 years of  
 12                  available data multiplied by 0.40.

13                  “(ii) LIMITATIONS.—For purposes of  
 14                  subparagraph (B), if the base inflation ad-  
 15                  justment for a fiscal year under clause  
 16                  (i)—

17                         “(I) is less than 1, such adjust-  
 18                         ment shall be considered to be equal  
 19                         to 1; or

20                         “(II) is greater than 1.04, such  
 21                         adjustment shall be considered to be  
 22                         equal to 1.04.

23                  “(D) ADJUSTMENT TO BASE FEE  
 24                  AMOUNTS.—For each of fiscal years 2014  
 25                  through 2017, the base fee amounts specified in

1 subsection (b)(2) shall be adjusted as needed,  
 2 on a uniform proportionate basis, to generate  
 3 the total revenue amounts under subsection  
 4 (b)(3), as adjusted for inflation under subpara-  
 5 graph (A).

6 “(3) VOLUME-BASED ADJUSTMENTS TO ESTAB-  
 7 LISHMENT REGISTRATION BASE FEES.—For each of  
 8 fiscal years 2014 through 2017, after the base fee  
 9 amounts specified in subsection (b)(2) are adjusted  
 10 under paragraph (2)(D), the base establishment reg-  
 11 istration fee amounts specified in such subsection  
 12 shall be further adjusted, as the Secretary estimates  
 13 is necessary in order for total fee collections for such  
 14 fiscal year to generate the total revenue amounts, as  
 15 adjusted under paragraph (2).”.

16 (d) FEE WAIVER OR REDUCTION.—Section 738 (21  
 17 U.S.C. 379j) is amended by—

18 (1) redesignating subsections (f) through (k) as  
 19 subsections (g) through (l), respectively; and

20 (2) by inserting after subsection (e) the fol-  
 21 lowing new subsection:

22 “(f) FEE WAIVER OR REDUCTION.—

23 “(1) IN GENERAL.—The Secretary may, at the  
 24 Secretary’s sole discretion, grant a waiver or reduc-  
 25 tion of fees under subsection (a)(2) or (a)(3) if the

1 Secretary finds that such waiver or reduction is in  
2 the interest of public health.

3 “(2) LIMITATION.—The sum of all fee waivers  
4 or reductions granted by the Secretary in any fiscal  
5 year under paragraph (1) shall not exceed 2 percent  
6 of the total fee revenue amounts established for such  
7 year under subsection (c).

8 “(3) DURATION.—The authority provided by  
9 this subsection terminates October 1, 2017.”.

10 (e) CONDITIONS.—Section 738(h)(1)(A) (21 U.S.C.  
11 379j(h)(1)(A)), as redesignated by subsection (d)(1), is  
12 amended by striking “\$205,720,000” and inserting  
13 “\$280,587,000”.

14 (f) CREDITING AND AVAILABILITY OF FEES.—Sec-  
15 tion 738(i) (21 U.S.C. 379j(i)), as redesignated by sub-  
16 section (d)(1), is amended—

17 (1) in paragraph (1), by striking “Fees author-  
18 ized” and inserting “Subject to paragraph (2)(C),  
19 fees authorized”;

20 (2) in paragraph (2)—

21 (A) in subparagraph (A)—

22 (i) in clause (i), by striking “shall be  
23 retained” and inserting “subject to sub-  
24 paragraph (C), shall be collected and avail-  
25 able”; and

1 (ii) in clause (ii)—

2 (I) by striking “collected and”  
3 after “shall only be”; and

4 (II) by striking “fiscal year  
5 2002” and inserting “fiscal year  
6 2009”; and

7 (B) by adding at the end, the following:

8 “(C) PROVISION FOR EARLY PAYMENTS.—

9 Payment of fees authorized under this section  
10 for a fiscal year, prior to the due date for such  
11 fees, may be accepted by the Secretary in ac-  
12 cordance with authority provided in advance in  
13 a prior year appropriations Act.”;

14 (3) by amending paragraph (3) to read as fol-  
15 lows:

16 “(3) AUTHORIZATIONS OF APPROPRIATIONS.—

17 For each of the fiscal years 2013 through 2017,  
18 there is authorized to be appropriated for fees under  
19 this section an amount equal to the total revenue  
20 amount specified under subsection (b)(3) for the fis-  
21 cal year, as adjusted under subsection (c) and, for  
22 fiscal year 2017 only, as further adjusted under  
23 paragraph (4).”; and

24 (4) in paragraph (4)—

1 (A) by striking “fiscal years 2008, 2009,  
2 and 2010” and inserting “fiscal years 2013,  
3 2014, and 2015”;

4 (B) by striking “fiscal year 2011” and in-  
5 serting “fiscal year 2016”;

6 (C) by striking “June 30, 2011” and in-  
7 serting “June 30, 2016”;

8 (D) by striking “the amount of fees speci-  
9 fied in aggregate in” and inserting “the cumu-  
10 lative amount appropriated pursuant to”;

11 (E) by striking “aggregate amount in” be-  
12 fore “excess shall be credited”; and

13 (F) by striking “fiscal year 2012” and in-  
14 serting “fiscal year 2017”.

15 (g) CONFORMING AMENDMENT.—Section  
16 515(c)(4)(A) (21 U.S.C. 360e(c)(4)(A)) is amended by  
17 striking “738(g)” and inserting “738(h)”.

18 **SEC. 204. REAUTHORIZATION; REPORTING REQUIREMENTS.**

19 (a) REAUTHORIZATION.—Section 738A(b) (21  
20 U.S.C. 379j–1(b)) is amended—

21 (1) in paragraph (1), by striking “2012” and  
22 inserting “2017”; and

23 (2) in paragraph (5), by striking “2012” and  
24 inserting “2017”.

1 (b) REPORTS.—Section 738A(a) (21 U.S.C. 379j–  
2 1(a)) is amended—

3 (1) by striking “2008 through 2012” each place  
4 it appears and inserting “2013 through 2017”; and

5 (2) by striking “section 201(c) of the Food and  
6 Drug Administration Amendments Act of 2007” and  
7 inserting “section 201(b) of the Medical Device User  
8 Fee Amendments of 2012”.

9 **SEC. 205. SAVINGS CLAUSE.**

10 Notwithstanding the amendments made by this title,  
11 part 3 of subchapter C of chapter VII of the Federal Food,  
12 Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in  
13 effect on the day before the date of the enactment of this  
14 title, shall continue to be in effect with respect to submis-  
15 sions described in section 738(a)(2)(A) of the Federal  
16 Food, Drug, and Cosmetic Act (as in effect as of such  
17 day) that on or after October 1, 2007, but before October  
18 1, 2012, were accepted by the Food and Drug Administra-  
19 tion for filing with respect to assessing and collecting any  
20 fee required by such part for a fiscal year prior to fiscal  
21 year 2013.

22 **SEC. 206. EFFECTIVE DATE.**

23 The amendments made by this title shall take effect  
24 on October 1, 2012, or the date of the enactment of this  
25 Act, whichever is later, except that fees under part 3 of

1 subchapter C of chapter VII of the Federal Food, Drug,  
2 and Cosmetic Act shall be assessed for submissions de-  
3 scribed in section 738(a)(2)(A) of the Federal Food,  
4 Drug, and Cosmetic Act received on or after October 1,  
5 2012, regardless of the date of the enactment of this Act.

6 **SEC. 207. SUNSET DATES.**

7 (a) AUTHORIZATIONS.—Sections 737 and 738 (21  
8 U.S.C. 739i; 739j) shall cease to be effective October 1,  
9 2017.

10 (b) REPORTING REQUIREMENTS.—Section 738A (21  
11 U.S.C. 739j–1) shall cease to be effective January 31,  
12 2018.

13 (c) PREVIOUS SUNSET PROVISION.—The Food and  
14 Drug Administration Amendments Act of 2007 is amend-  
15 ed by striking section 217.

16 **SEC. 208. STREAMLINED HIRING AUTHORITY TO SUPPORT**  
17 **ACTIVITIES RELATED TO THE PROCESS FOR**  
18 **THE REVIEW OF DEVICE APPLICATIONS.**

19 Subchapter A of chapter VII (21 U.S.C. 371 et seq.)  
20 is amended by inserting after section 713 the following  
21 new section:

22 **“SEC. 714. STREAMLINED HIRING AUTHORITY.**

23 “(a) IN GENERAL.—In addition to any other per-  
24 sonnel authorities under other provisions of law, the Sec-  
25 retary may, without regard to the provisions of title 5,

1 United States Code, governing appointments in the com-  
2 petitive service, appoint employees to positions in the Food  
3 and Drug Administration to perform, administer, or sup-  
4 port activities described in subsection (b), if the Secretary  
5 determines that such appointments are needed to achieve  
6 the objectives specified in subsection (c).

7 “(b) ACTIVITIES DESCRIBED.—The activities de-  
8 scribed in this subsection are activities under this Act re-  
9 lated to the process for the review of device applications  
10 (as defined in section 737(8)).

11 “(c) OBJECTIVES SPECIFIED.—The objectives speci-  
12 fied in this subsection are with respect to the activities  
13 under subsection (b), the goals referred to in section  
14 738A(a)(1).

15 “(d) INTERNAL CONTROLS.—The Secretary shall in-  
16 stitute appropriate internal controls for appointments  
17 under this section.

18 “(e) SUNSET.—The authority to appoint employees  
19 under this section shall terminate on the date that is three  
20 years after the date of enactment of this section.”.

## 21 **TITLE III—FEES RELATING TO** 22 **GENERIC DRUGS**

### 23 **SEC. 301. SHORT TITLE.**

24 (a) SHORT TITLE.—This title may be cited as the  
25 “Generic Drug User Fee Amendments of 2012”.



1 (b) FINDING.—The Congress finds that the fees au-  
 2 thorized by the amendments made in this title will be dedi-  
 3 cated to human generic drug activities, as set forth in the  
 4 goals identified for purposes of part 7 of subchapter C  
 5 of chapter VII of the Federal Food, Drug, and Cosmetic  
 6 Act, in the letters from the Secretary of Health and  
 7 Human Services to the Chairman of the Committee on  
 8 Health, Education, Labor, and Pensions of the Senate and  
 9 the Chairman of the Committee on Energy and Commerce  
 10 of the House of Representatives, as set forth in the Con-  
 11 gressional Record.

12 **SEC. 302. AUTHORITY TO ASSESS AND USE HUMAN GE-**  
 13 **NERIC DRUG FEES.**

14 Subchapter C of chapter VII (21 U.S.C. 379f et seq.)  
 15 is amended by adding at the end the following:

16 **“PART 7—FEES RELATING TO GENERIC DRUGS**  
 17 **“SEC. 744A. DEFINITIONS.**

18 “For purposes of this part:

19 “(1) The term ‘abbreviated new drug applica-  
 20 tion’—

21 “(A) means an application submitted  
 22 under section 505(j), an abbreviated application  
 23 submitted under section 507 (as in effect on the  
 24 day before the date of enactment of the Food  
 25 and Drug Administration Modernization Act of

1 1997), or an abbreviated new drug application  
2 submitted pursuant to regulations in effect  
3 prior to the implementation of the Drug Price  
4 Competition and Patent Term Restoration Act  
5 of 1984; and

6 “(B) does not include an application for a  
7 positron emission tomography drug.

8 “(2) The term ‘active pharmaceutical ingre-  
9 dient’ means—

10 “(A) a substance, or a mixture when the  
11 substance is unstable or cannot be transported  
12 on its own, intended—

13 “(i) to be used as a component of a  
14 drug; and

15 “(ii) to furnish pharmacological activ-  
16 ity or other direct effect in the diagnosis,  
17 cure, mitigation, treatment, or prevention  
18 of disease, or to affect the structure or any  
19 function of the human body; or

20 “(B) a substance intended for final crys-  
21 tallization, purification, or salt formation, or  
22 any combination of those activities, to become a  
23 substance or mixture described in subparagraph  
24 (A).

1           “(3) The term ‘adjustment factor’ means a fac-  
2           tor applicable to a fiscal year that is the Consumer  
3           Price Index for all urban consumers (all items;  
4           United States city average) for October of the pre-  
5           ceding fiscal year divided by such Index for October  
6           2011.

7           “(4) The term ‘affiliate’ means a business enti-  
8           ty that has a relationship with a second business en-  
9           tity if, directly or indirectly—

10                   “(A) one business entity controls, or has  
11                   the power to control, the other business entity;  
12                   or

13                   “(B) a third party controls, or has power  
14                   to control, both of the business entities.

15           “(5)(A) The term ‘facility’—

16                   “(i) means a business or other entity—

17                           “(I) under one management, either di-  
18                           rect or indirect; and

19                           “(II) at one geographic location or ad-  
20                           dress engaged in manufacturing or proc-  
21                           essing an active pharmaceutical ingredient  
22                           or a finished dosage form; and

23                   “(ii) does not include a business or other  
24                   entity whose only manufacturing or processing

1 activities are one or more of the following: re-  
2 packaging, relabeling, or testing.

3 “(B) For purposes of subparagraph (A), sepa-  
4 rate buildings within close proximity are considered  
5 to be at one geographic location or address if the ac-  
6 tivities in them are—

7 “(i) closely related to the same business  
8 enterprise;

9 “(ii) under the supervision of the same  
10 local management; and

11 “(iii) capable of being inspected by the  
12 Food and Drug Administration during a single  
13 inspection.

14 “(C) If a business or other entity would meet  
15 the definition of a facility under this paragraph but  
16 for being under multiple management, the business  
17 or other entity is deemed to constitute multiple fa-  
18 cilities, one per management entity, for purposes of  
19 this paragraph.

20 “(6) The term ‘finished dosage form’ means—

21 “(A) a drug product in the form in which  
22 it will be administered to a patient, such as a  
23 tablet, capsule, solution, or topical application;

24 “(B) a drug product in a form in which re-  
25 constitution is necessary prior to administration

1 to a patient, such as oral suspensions or  
2 lyophilized powders; or

3 “(C) any combination of an active pharma-  
4 ceutical ingredient with another component of a  
5 drug product for purposes of production of a  
6 drug product described in subparagraph (A) or  
7 (B).

8 “(7) The term ‘generic drug submission’ means  
9 an abbreviated new drug application, an amendment  
10 to an abbreviated new drug application, or a prior  
11 approval supplement to an abbreviated new drug ap-  
12 plication.

13 “(8) The term ‘human generic drug activities’  
14 means the following activities of the Secretary asso-  
15 ciated with generic drugs and inspection of facilities  
16 associated with generic drugs:

17 “(A) The activities necessary for the re-  
18 view of generic drug submissions, including re-  
19 view of drug master files referenced in such  
20 submissions.

21 “(B) The issuance of—

22 “(i) approval letters which approve  
23 abbreviated new drug applications or sup-  
24 plements to such applications; or

1           “(ii) complete response letters which  
2           set forth in detail the specific deficiencies  
3           in such applications and, where appro-  
4           priate, the actions necessary to place such  
5           applications in condition for approval.

6           “(C) The issuance of letters related to  
7           Type II active pharmaceutical drug master files  
8           which—

9           “(i) set forth in detail the specific de-  
10          ficiencies in such submissions, and where  
11          appropriate, the actions necessary to re-  
12          solve those deficiencies; or

13          “(ii) document that no deficiencies  
14          need to be addressed.

15          “(D) Inspections related to generic drugs.

16          “(E) Monitoring of research conducted in  
17          connection with the review of generic drug sub-  
18          missions and drug master files.

19          “(F) Postmarket safety activities with re-  
20          spect to drugs approved under abbreviated new  
21          drug applications or supplements, including the  
22          following activities:

23                 “(i) Collecting, developing, and re-  
24                 viewing safety information on approved  
25                 drugs, including adverse event reports.

1                   “(ii) Developing and using improved  
2                   adverse-event data-collection systems, in-  
3                   cluding information technology systems.

4                   “(iii) Developing and using improved  
5                   analytical tools to assess potential safety  
6                   problems, including access to external data  
7                   bases.

8                   “(iv) Implementing and enforcing sec-  
9                   tion 505(o) (relating to postapproval stud-  
10                  ies and clinical trials and labeling changes)  
11                  and section 505(p) (relating to risk evalua-  
12                  tion and mitigation strategies) insofar as  
13                  those activities relate to abbreviated new  
14                  drug applications.

15                  “(v) Carrying out section 505(k)(5)  
16                  (relating to adverse-event reports and  
17                  postmarket safety activities).

18                  “(G) Regulatory science activities related  
19                  to generic drugs.

20                  “(9) The term ‘positron emission tomography  
21                  drug’ has the meaning given to the term ‘com-  
22                  pounded positron emission tomography drug’ in sec-  
23                  tion 201(ii), except that paragraph (1)(B) of such  
24                  section shall not apply.

1           “(10) The term ‘prior approval supplement’  
2 means a request to the Secretary to approve a  
3 change in the drug substance, drug product, produc-  
4 tion process, quality controls, equipment, or facilities  
5 covered by an approved abbreviated new drug appli-  
6 cation when that change has a substantial potential  
7 to have an adverse effect on the identity, strength,  
8 quality, purity, or potency of the drug product as  
9 these factors may relate to the safety or effective-  
10 ness of the drug product.

11           “(11) The term ‘resources allocated for human  
12 generic drug activities’ means the expenses for—

13           “(A) officers and employees of the Food  
14 and Drug Administration, contractors of the  
15 Food and Drug Administration, advisory com-  
16 mittees, and costs related to such officers and  
17 employees and to contracts with such contrac-  
18 tors;

19           “(B) management of information, and the  
20 acquisition, maintenance, and repair of com-  
21 puter resources;

22           “(C) leasing, maintenance, renovation, and  
23 repair of facilities and acquisition, maintenance,  
24 and repair of fixtures, furniture, scientific



1 equipment, and other necessary materials and  
2 supplies; and

3 “(D) collecting fees under subsection (a)  
4 and accounting for resources allocated for the  
5 review of abbreviated new drug applications and  
6 supplements and inspection related to generic  
7 drugs.

8 “(12) The term ‘Type II active pharmaceutical  
9 ingredient drug master file’ means a submission of  
10 information to the Secretary by a person that in-  
11 tends to authorize the Food and Drug Administra-  
12 tion to reference the information to support approval  
13 of a generic drug submission without the submitter  
14 having to disclose the information to the generic  
15 drug submission applicant.

16 **“SEC. 744B. AUTHORITY TO ASSESS AND USE HUMAN GE-  
17 NERIC DRUG FEES.**

18 “(a) TYPES OF FEES.—Beginning in fiscal year  
19 2013, the Secretary shall assess and collect fees in accord-  
20 ance with this section as follows:

21 “(1) ONE-TIME BACKLOG FEE FOR ABBRE-  
22 VIATED NEW DRUG APPLICATIONS PENDING ON OC-  
23 TOBER 1, 2012.—

24 “(A) IN GENERAL.—Each person that  
25 owns an abbreviated new drug application that

1 is pending on October 1, 2012, and that has  
2 not received a tentative approval prior to that  
3 date, shall be subject to a fee for each such ap-  
4 plication, as calculated under subparagraph  
5 (B).

6 “(B) METHOD OF FEE AMOUNT CALCULA-  
7 TION.—The amount of each one-time backlog  
8 fee shall be calculated by dividing \$50,000,000  
9 by the total number of abbreviated new drug  
10 applications pending on October 1, 2012, that  
11 have not received a tentative approval as of that  
12 date.

13 “(C) NOTICE.—Not later than October 31,  
14 2012, the Secretary shall publish in the Federal  
15 Register a notice announcing the amount of the  
16 fee required by subparagraph (A).

17 “(D) FEE DUE DATE.—The fee required  
18 by subparagraph (A) shall be due no later than  
19 30 calendar days after the date of the publica-  
20 tion of the notice specified in subparagraph (C).

21 “(2) DRUG MASTER FILE FEE.—

22 “(A) IN GENERAL.—Each person that  
23 owns a Type II active pharmaceutical ingre-  
24 dient drug master file that is referenced on or  
25 after October 1, 2012, in a generic drug sub-

1 mission by any initial letter of authorization  
2 shall be subject to a drug master file fee.

3 “(B) ONE-TIME PAYMENT.—If a person  
4 has paid a drug master file fee for a Type II  
5 active pharmaceutical ingredient drug master  
6 file, the person shall not be required to pay a  
7 subsequent drug master file fee when that Type  
8 II active pharmaceutical ingredient drug master  
9 file is subsequently referenced in generic drug  
10 submissions.

11 “(C) NOTICE.—

12 “(i) FISCAL YEAR 2013.—Not later  
13 than October 31, 2012, the Secretary shall  
14 publish in the Federal Register a notice  
15 announcing the amount of the drug master  
16 file fee for fiscal year 2013.

17 “(ii) FISCAL YEAR 2014 THROUGH  
18 2017.—Not later than 60 days before the  
19 start of each of fiscal years 2014 through  
20 2017, the Secretary shall publish in the  
21 Federal Register the amount of the drug  
22 master file fee established by this para-  
23 graph for such fiscal year.

24 “(D) AVAILABILITY FOR REFERENCE.—

1           “(i) IN GENERAL.—Subject to sub-  
2           section (g)(2)(C), for a generic drug sub-  
3           mission to reference a Type II active phar-  
4           maceutical ingredient drug master file, the  
5           drug master file must be deemed available  
6           for reference by the Secretary.

7           “(ii) CONDITIONS.—A drug master  
8           file shall be deemed available for reference  
9           by the Secretary if—

10                   “(I) the person that owns a Type  
11                   II active pharmaceutical ingredient  
12                   drug master file has paid the fee re-  
13                   quired under subparagraph (A) within  
14                   20 calendar days after the applicable  
15                   due date under subparagraph (E);  
16                   and

17                   “(II) the drug master file has not  
18                   failed an initial completeness assess-  
19                   ment by the Secretary, in accordance  
20                   with criteria to be published by the  
21                   Secretary.

22           “(iii) LIST.—The Secretary shall  
23           make publicly available on the Internet  
24           Web site of the Food and Drug Adminis-  
25           tration a list of the drug master file num-

1           bers that correspond to drug master files  
2           that have successfully undergone an initial  
3           completeness assessment, in accordance  
4           with criteria to be published by the Sec-  
5           retary, and are available for reference.

6           “(E) FEE DUE DATE.—

7                   “(i) IN GENERAL.—Subject to clause  
8                   (ii), a drug master file fee shall be due no  
9                   later than the date on which the first ge-  
10                  neric drug submission is submitted that  
11                  references the associated Type II active  
12                  pharmaceutical ingredient drug master file.

13                  “(ii) LIMITATION.—No fee shall be  
14                  due under subparagraph (A) for a fiscal  
15                  year until the later of—

16                           “(I) 30 calendar days after publi-  
17                           cation of the notice provided for in  
18                           clause (i) or (ii) of subparagraph (C),  
19                           as applicable; or

20                           “(II) 30 calendar days after the  
21                           date of enactment of an appropria-  
22                           tions Act providing for the collection  
23                           and obligation of fees under this sec-  
24                           tion.

1           “(3) ABBREVIATED NEW DRUG APPLICATION  
2           AND PRIOR APPROVAL SUPPLEMENT FILING FEE.—

3           “(A) IN GENERAL.—Each applicant that  
4           submits, on or after October 1, 2012, an abbrevi-  
5           ated new drug application or a prior approval  
6           supplement to an abbreviated new drug applica-  
7           tion shall be subject to a fee for each such sub-  
8           mission in the amount established under sub-  
9           section (d).

10           “(B) NOTICE.—

11           “(i) FISCAL YEAR 2013.—Not later  
12           than October 31, 2012, the Secretary shall  
13           publish in the Federal Register a notice  
14           announcing the amount of the fees under  
15           subparagraph (A) for fiscal year 2013.

16           “(ii) FISCAL YEARS 2014 THROUGH  
17           2017.—Not later than 60 days before the  
18           start of each of fiscal years 2014 through  
19           2017, the Secretary shall publish in the  
20           Federal Register the amount of the fees  
21           under subparagraph (A) for such fiscal  
22           year.

23           “(C) FEE DUE DATE.—

24           “(i) IN GENERAL.—Except as pro-  
25           vided in clause (ii), the fees required by

1           subparagraphs (A) and (F) shall be due no  
2           later than the date of submission of the  
3           abbreviated new drug application or prior  
4           approval supplement for which such fee ap-  
5           plies.

6           “(ii) SPECIAL RULE FOR 2013.—For  
7           fiscal year 2013, such fees shall be due on  
8           the later of—

9                   “(I) the date on which the fee is  
10                   due under clause (i);

11                   “(II) 30 calendar days after pub-  
12                   lication of the notice referred to in  
13                   subparagraph (B)(i); or

14                   “(III) if an appropriations Act is  
15                   not enacted providing for the collec-  
16                   tion and obligation of fees under this  
17                   section by the date of submission of  
18                   the application or prior approval sup-  
19                   plement for which the fees under sub-  
20                   paragraphs (A) and (F) apply, 30 cal-  
21                   endar days after the date that such an  
22                   appropriations Act is enacted.

23           “(D) REFUND OF FEE IF ABBREVIATED  
24           NEW DRUG APPLICATION IS NOT CONSIDERED  
25           TO HAVE BEEN RECEIVED.—The Secretary

1 shall refund 75 percent of the fee paid under  
2 subparagraph (A) for any abbreviated new drug  
3 application or prior approval supplement to an  
4 abbreviated new drug application that the Sec-  
5 retary considers not to have been received with-  
6 in the meaning of section 505(j)(5)(A) for a  
7 cause other than failure to pay fees.

8 “(E) FEE FOR AN APPLICATION THE SEC-  
9 RETARY CONSIDERS NOT TO HAVE BEEN RE-  
10 CEIVED, OR THAT HAS BEEN WITHDRAWN.—An  
11 abbreviated new drug application or prior ap-  
12 proval supplement that was submitted on or  
13 after October 1, 2012, and that the Secretary  
14 considers not to have been received, or that has  
15 been withdrawn, shall, upon resubmission of the  
16 application or a subsequent new submission fol-  
17 lowing the applicant’s withdrawal of the appli-  
18 cation, be subject to a full fee under subpara-  
19 graph (A).

20 “(F) ADDITIONAL FEE FOR ACTIVE PHAR-  
21 MACEUTICAL INGREDIENT INFORMATION NOT  
22 INCLUDED BY REFERENCE TO TYPE II ACTIVE  
23 PHARMACEUTICAL INGREDIENT DRUG MASTER  
24 FILE.—An applicant that submits a generic  
25 drug submission on or after October 1, 2012,



1 shall pay a fee, in the amount determined under  
2 subsection (d)(3), in addition to the fee re-  
3 quired under subparagraph (A), if—

4 “(i) such submission contains infor-  
5 mation concerning the manufacture of an  
6 active pharmaceutical ingredient at a facil-  
7 ity by means other than reference by a let-  
8 ter of authorization to a Type II active  
9 pharmaceutical drug master file; and

10 “(ii) a fee in the amount equal to the  
11 drug master file fee established in para-  
12 graph (2) has not been previously paid  
13 with respect to such information.

14 “(4) GENERIC DRUG FACILITY FEE AND ACTIVE  
15 PHARMACEUTICAL INGREDIENT FACILITY FEE.—

16 “(A) IN GENERAL.—Facilities identified,  
17 or intended to be identified, in at least one ge-  
18 neric drug submission that is pending or ap-  
19 proved to produce a finished dosage form of a  
20 human generic drug or an active pharma-  
21 ceutical ingredient contained in a human ge-  
22 neric drug shall be subject to fees as follows:

23 “(i) GENERIC DRUG FACILITY.—Each  
24 person that owns a facility which is identi-  
25 fied or intended to be identified in at least

1 one generic drug submission that is pend-  
2 ing or approved to produce one or more  
3 finished dosage forms of a human generic  
4 drug shall be assessed an annual fee for  
5 each such facility.

6 “(ii) ACTIVE PHARMACEUTICAL IN-  
7 GREDIENT FACILITY.—Each person that  
8 owns a facility which produces, or which is  
9 pending review to produce, one or more ac-  
10 tive pharmaceutical ingredients identified,  
11 or intended to be identified, in at least one  
12 generic drug submission that is pending or  
13 approved or in a Type II active pharma-  
14 ceutical ingredient drug master file ref-  
15 erenced in such a generic drug submission,  
16 shall be assessed an annual fee for each  
17 such facility.

18 “(iii) FACILITIES PRODUCING BOTH  
19 ACTIVE PHARMACEUTICAL INGREDIENTS  
20 AND FINISHED DOSAGE FORMS.—Each  
21 person that owns a facility identified, or  
22 intended to be identified, in at least one  
23 generic drug submission that is pending or  
24 approved to produce both one or more fin-  
25 ished dosage forms subject to clause (i)

1 and one or more active pharmaceutical in-  
2 gredients subject to clause (ii) shall be  
3 subject to fees under both such clauses for  
4 that facility.

5 “(B) AMOUNT.—The amount of fees estab-  
6 lished under subparagraph (A) shall be estab-  
7 lished under subsection (d).

8 “(C) NOTICE.—

9 “(i) FISCAL YEAR 2013.—For fiscal  
10 year 2013, the Secretary shall publish in  
11 the Federal Register a notice announcing  
12 the amount of the fees provided for in sub-  
13 paragraph (A) within the timeframe speci-  
14 fied in subsection (d)(1)(B).

15 “(ii) FISCAL YEARS 2014 THROUGH  
16 2017.—Within the timeframe specified in  
17 subsection (d)(2), the Secretary shall pub-  
18 lish in the Federal Register the amount of  
19 the fees under subparagraph (A) for such  
20 fiscal year.

21 “(D) FEE DUE DATE.—

22 “(i) FISCAL YEAR 2013.—For fiscal  
23 year 2013, the fees under subparagraph  
24 (A) shall be due on the later of—

1           “(I) not later than 45 days after  
2           the publication of the notice under  
3           subparagraph (B); or

4           “(II) if an appropriations Act is  
5           not enacted providing for the collec-  
6           tion and obligation of fees under this  
7           section by the date of the publication  
8           of such notice, 30 days after the date  
9           that such an appropriations Act is en-  
10          acted.

11          “(ii) FISCAL YEARS 2014 THROUGH  
12          2017.—For each of fiscal years 2014  
13          through 2017, the fees under subpara-  
14          graph (A) for such fiscal year shall be due  
15          on the later of—

16                 “(I) the first business day on or  
17                 after October 1 of each such year; or

18                 “(II) the first business day after  
19                 the enactment of an appropriations  
20                 Act providing for the collection and  
21                 obligation of fees under this section  
22                 for such year.

23                 “(5) DATE OF SUBMISSION.—For purposes of  
24                 this Act, a generic drug submission or Type II phar-

1       maceutical master file is deemed to be ‘submitted’ to  
2       the Food and Drug Administration—

3               “(A) if it is submitted via a Food and  
4       Drug Administration electronic gateway, on the  
5       day when transmission to that electronic gate-  
6       way is completed, except that a submission or  
7       master file that arrives on a weekend, Federal  
8       holiday, or day when the Food and Drug Ad-  
9       ministration office that will review that submis-  
10      sion is not otherwise open for business shall be  
11      deemed to be submitted on the next day when  
12      that office is open for business; or

13              “(B) if it is submitted in physical media  
14      form, on the day it arrives at the appropriate  
15      designated document room of the Food and  
16      Drug Administration.

17      “(b) FEE REVENUE AMOUNTS.—

18              “(1) IN GENERAL.—

19              “(A) FISCAL YEAR 2013.—For fiscal year  
20      2013, fees under subsection (a) except as pro-  
21      vided in subsection (o) (relating to waivers)  
22      shall be established to generate a total esti-  
23      mated revenue amount under such subsection of  
24      \$299,000,000. Of that amount—

1           “(i) \$50,000,000 shall be generated  
2           by the one-time backlog fee for generic  
3           drug applications pending on October 1,  
4           2012, established in subsection (a)(1); and

5           “(ii) \$249,000,000 shall be generated  
6           by the fees under paragraphs (2) through  
7           (4) of subsection (a).

8           “(B) FISCAL YEARS 2014 THROUGH 2017.—  
9           For each of the fiscal years 2014 through 2017,  
10          fees under paragraphs (2) through (4) of sub-  
11          section (a) shall be established to generate a  
12          total estimated revenue amount under such sub-  
13          section that is equal to \$299,000,000, as ad-  
14          justed pursuant to subsection (c).

15          “(2) TYPES OF FEES.—In establishing fees  
16          under paragraph (1) to generate the revenue  
17          amounts specified in paragraph (1)(A)(ii) for fiscal  
18          year 2013 and paragraph (1)(B) for each of fiscal  
19          years 2014 through 2017, such fees shall be derived  
20          from the fees under paragraphs (2) through (4) of  
21          subsection (a) as follows:

22                 “(A) 6 percent shall be derived from fees  
23                 under subsection (a)(2) (relating to drug mas-  
24                 ter files).

1           “(B) 24 percent shall be derived from fees  
2           under subsection (a)(3) (relating to abbreviated  
3           new drug applications and supplements). The  
4           amount of a fee for a prior approval supplement  
5           shall be half the amount of the fee for an ab-  
6           breviated new drug application.

7           “(C) 56 percent shall be derived from fees  
8           under subsection (a)(4)(A)(i) (relating to ge-  
9           neric drug facilities). The amount of the fee for  
10          a facility located outside the United States and  
11          its territories and possessions shall be not less  
12          than \$15,000 and not more than \$30,000 high-  
13          er than the amount of the fee for a facility lo-  
14          cated in the United States and its territories  
15          and possessions, as determined by the Secretary  
16          on the basis of data concerning the difference  
17          in cost between inspections of facilities located  
18          in the United States, including its territories  
19          and possessions, and those located outside of  
20          the United States and its territories and posses-  
21          sions.

22          “(D) 14 percent shall be derived from fees  
23          under subsection (a)(4)(A)(ii) (relating to active  
24          pharmaceutical ingredient facilities). The  
25          amount of the fee for a facility located outside

1 the United States and its territories and posses-  
2 sions shall be not less than \$15,000 and not  
3 more than \$30,000 higher than the amount of  
4 the fee for a facility located in the United  
5 States, including its territories and possessions,  
6 as determined by the Secretary on the basis of  
7 data concerning the difference in cost between  
8 inspections of facilities located in the United  
9 States and its territories and possessions and  
10 those located outside of the United States and  
11 its territories and possessions.

12 “(c) ADJUSTMENTS.—

13 “(1) INFLATION ADJUSTMENT.—For fiscal year  
14 2014 and subsequent fiscal years, the revenues es-  
15 tablished in subsection (b) shall be adjusted by the  
16 Secretary by notice, published in the Federal Reg-  
17 ister, for a fiscal year, by an amount equal to the  
18 sum of—

19 “(A) one;

20 “(B) the average annual percent change in  
21 the cost, per full-time equivalent position of the  
22 Food and Drug Administration, of all personnel  
23 compensation and benefits paid with respect to  
24 such positions for the first 3 years of the pre-  
25 ceding 4 fiscal years multiplied by the propor-



1           tion of personnel compensation and benefits  
2           costs to total costs of human generic drug ac-  
3           tivities for the first 3 years of the preceding 4  
4           fiscal years; and

5           “(C) the average annual percent change  
6           that occurred in the Consumer Price Index for  
7           urban consumers (Washington-Baltimore, DC-  
8           MD-VA-WV; Not Seasonally Adjusted; All  
9           items; Annual Index) for the first 3 years of the  
10          preceding 4 years of available data multiplied  
11          by the proportion of all costs other than per-  
12          sonnel compensation and benefits costs to total  
13          costs of human generic drug activities for the  
14          first 3 years of the preceding 4 fiscal years.

15          The adjustment made each fiscal year under this  
16          subsection shall be added on a compounded basis to  
17          the sum of all adjustments made each fiscal year  
18          after fiscal year 2013 under this subsection.

19          “(2) FINAL YEAR ADJUSTMENT.—For fiscal  
20          year 2017, the Secretary may, in addition to adjust-  
21          ments under paragraph (1), further increase the fee  
22          revenues and fees established in subsection (b) if  
23          such an adjustment is necessary to provide for not  
24          more than 3 months of operating reserves of carry-  
25          over user fees for human generic drug activities for

1 the first 3 months of fiscal year 2018. Such fees  
2 may only be used in fiscal year 2018. If such an ad-  
3 justment is necessary, the rationale for the amount  
4 of the increase shall be contained in the annual no-  
5 tice establishing fee revenues and fees for fiscal year  
6 2017. If the Secretary has carryover balances for  
7 such activities in excess of 3 months of such oper-  
8 ating reserves, the adjustment under this subpara-  
9 graph shall not be made.

10 “(d) ANNUAL FEE SETTING.—

11 “(1) FISCAL YEAR 2013.—For fiscal year  
12 2013—

13 “(A) the Secretary shall establish, by Octo-  
14 ber 31, 2012, the one-time generic drug backlog  
15 fee for generic drug applications pending on Oc-  
16 tober 1, 2012, the drug master file fee, the ab-  
17 breviated new drug application fee, and the  
18 prior approval supplement fee under subsection  
19 (a), based on the revenue amounts established  
20 under subsection (b); and

21 “(B) the Secretary shall establish, not  
22 later than 45 days after the date to comply  
23 with the requirement for identification of facili-  
24 ties in subsection (f)(2), the generic drug facil-  
25 ity fee and active pharmaceutical ingredient fa-

1           cility fee under subsection (a) based on the rev-  
2           enue amounts established under subsection (b).

3           “(2) FISCAL YEARS 2014 THROUGH 2017.—Not  
4           more than 60 days before the first day of each of  
5           fiscal years 2014 through 2017, the Secretary shall  
6           establish the drug master file fee, the abbreviated  
7           new drug application fee, the prior approval supple-  
8           ment fee, the generic drug facility fee, and the active  
9           pharmaceutical ingredient facility fee under sub-  
10          section (a) for such fiscal year, based on the revenue  
11          amounts established under subsection (b) and the  
12          adjustments provided under subsection (c).

13          “(3) FEE FOR ACTIVE PHARMACEUTICAL IN-  
14          GREDIENT INFORMATION NOT INCLUDED BY REF-  
15          ERENCE TO TYPE II ACTIVE PHARMACEUTICAL IN-  
16          GREDIENT DRUG MASTER FILE.—In establishing the  
17          fees under paragraphs (1) and (2), the amount of  
18          the fee under subsection (a)(3)(F) shall be deter-  
19          mined by multiplying—

20                 “(A) the sum of—

21                         “(i) the total number of such active  
22                         pharmaceutical ingredients in such submis-  
23                         sion; and

24                         “(ii) for each such ingredient that is  
25                         manufactured at more than one such facil-

1                   ity, the total number of such additional fa-  
2                   cilities; and

3                   “(B) the amount equal to the drug master  
4                   file fee established in subsection (a)(2) for such  
5                   submission.

6                   “(e) LIMIT.—The total amount of fees charged, as  
7                   adjusted under subsection (c), for a fiscal year may not  
8                   exceed the total costs for such fiscal year for the resources  
9                   allocated for human generic drug activities.

10                  “(f) IDENTIFICATION OF FACILITIES.—

11                   “(1) PUBLICATION OF NOTICE; DEADLINE FOR  
12                   COMPLIANCE.—Not later than October 1, 2012, the  
13                   Secretary shall publish in the Federal Register a no-  
14                   tice requiring each person that owns a facility de-  
15                   scribed in subsection (a)(4)(A), or a site or organi-  
16                   zation required to be identified by paragraph (4), to  
17                   submit to the Secretary information on the identity  
18                   of each such facility, site, or organization. The no-  
19                   tice required by this paragraph shall specify the type  
20                   of information to be submitted and the means and  
21                   format for submission of such information.

22                   “(2) REQUIRED SUBMISSION OF FACILITY  
23                   IDENTIFICATION.—Each person that owns a facility  
24                   described in subsection (a)(4)(A) or a site or organi-  
25                   zation required to be identified by paragraph (4)

1 shall submit to the Secretary the information re-  
2 quired under this subsection each year. Such infor-  
3 mation shall—

4 “(A) for fiscal year 2013, be submitted not  
5 later than 60 days after the publication of the  
6 notice under paragraph (1); and

7 “(B) for each subsequent fiscal year, be  
8 submitted, updated, or reconfirmed on or before  
9 June 1 of the previous year.

10 “(3) CONTENTS OF NOTICE.—At a minimum,  
11 the submission required by paragraph (2) shall in-  
12 clude for each such facility—

13 “(A) identification of a facility identified or  
14 intended to be identified in an approved or  
15 pending generic drug submission;

16 “(B) whether the facility manufactures ac-  
17 tive pharmaceutical ingredients or finished dos-  
18 age forms, or both;

19 “(C) whether or not the facility is located  
20 within the United States and its territories and  
21 possessions;

22 “(D) whether the facility manufactures  
23 positron emission tomography drugs solely, or  
24 in addition to other drugs; and

1           “(E) whether the facility manufactures  
2 drugs that are not generic drugs.

3           “(4) CERTAIN SITES AND ORGANIZATIONS.—

4           “(A) IN GENERAL.—Any person that owns  
5 or operates a site or organization described in  
6 subparagraph (B) shall submit to the Secretary  
7 information concerning the ownership, name,  
8 and address of the site or organization.

9           “(B) SITES AND ORGANIZATIONS.—A site  
10 or organization is described in this subpara-  
11 graph if it is identified in a generic drug sub-  
12 mission and is—

13                   “(i) a site in which a bioanalytical  
14 study is conducted;

15                   “(ii) a clinical research organization;

16                   “(iii) a contract analytical testing site;

17                   or

18                   “(iv) a contract repackager site.

19           “(C) NOTICE.—The Secretary may, by no-  
20 tice published in the Federal Register, specify  
21 the means and format for submission of the in-  
22 formation under subparagraph (A) and may  
23 specify, as necessary for purposes of this sec-  
24 tion, any additional information to be sub-  
25 mitted.

1           “(D) INSPECTION AUTHORITY.—The Sec-  
2           retary’s inspection authority under section  
3           704(a)(1) shall extend to all such sites and or-  
4           ganizations.

5           “(g) EFFECT OF FAILURE TO PAY FEES.—

6           “(1) GENERIC DRUG BACKLOG FEE.—Failure  
7           to pay the fee under subsection (a)(1) shall result in  
8           the Secretary placing the person that owns the ab-  
9           breviated new drug application subject to that fee on  
10          an arrears list, such that no new abbreviated new  
11          drug applications or supplement submitted on or  
12          after October 1, 2012, from that person, or any af-  
13          filiate of that person, will be received within the  
14          meaning of section 505(j)(5)(A) until such out-  
15          standing fee is paid.

16          “(2) DRUG MASTER FILE FEE.—

17                 “(A) Failure to pay the fee under sub-  
18                 section (a)(2) within 20 calendar days after the  
19                 applicable due date under subparagraph (E) of  
20                 such subsection (as described in subsection  
21                 (a)(2)(D)(ii)(I)) shall result in the Type II ac-  
22                 tive pharmaceutical ingredient drug master file  
23                 not being deemed available for reference.

24                 “(B)(i) Any generic drug submission sub-  
25                 mitted on or after October 1, 2012, that ref-

1           erences, by a letter of authorization, a Type II  
2           active pharmaceutical ingredient drug master  
3           file that has not been deemed available for ref-  
4           erence shall not be received within the meaning  
5           of section 505(j)(5)(A) unless the condition  
6           specified in clause (ii) is met.

7           “(ii) The condition specified in this clause  
8           is that the fee established under subsection  
9           (a)(2) has been paid within 20 calendar days of  
10          the Secretary providing the notification to the  
11          sponsor of the abbreviated new drug application  
12          or supplement of the failure of the owner of the  
13          Type II active pharmaceutical ingredient drug  
14          master file to pay the drug master file fee as  
15          specified in subparagraph (C).

16          “(C)(i) If an abbreviated new drug applica-  
17          tion or supplement to an abbreviated new drug  
18          application references a Type II active pharma-  
19          ceutical ingredient drug master file for which a  
20          fee under subsection (a)(2)(A) has not been  
21          paid by the applicable date under subsection  
22          (a)(2)(E), the Secretary shall notify the sponsor  
23          of the abbreviated new drug application or sup-  
24          plement of the failure of the owner of the Type



1           II active pharmaceutical ingredient drug master  
2           file to pay the applicable fee.

3           “(ii) If such fee is not paid within 20 cal-  
4           endar days of the Secretary providing the noti-  
5           fication, the abbreviated new drug application  
6           or supplement to an abbreviated new drug ap-  
7           plication shall not be received within the mean-  
8           ing of 505(j)(5)(A).

9           “(3) ABBREVIATED NEW DRUG APPLICATION  
10          FEE AND PRIOR APPROVAL SUPPLEMENT FEE.—  
11          Failure to pay a fee under subparagraph (A) or (F)  
12          of subsection (a)(3) within 20 calendar days of the  
13          applicable due date under subparagraph (C) of such  
14          subsection shall result in the abbreviated new drug  
15          application or the prior approval supplement to an  
16          abbreviated new drug application not being received  
17          within the meaning of section 505(j)(5)(A) until  
18          such outstanding fee is paid.

19          “(4) GENERIC DRUG FACILITY FEE AND ACTIVE  
20          PHARMACEUTICAL INGREDIENT FACILITY FEE.—

21                 “(A) IN GENERAL.—Failure to pay the fee  
22                 under subsection (a)(4) within 20 calendar days  
23                 of the due date as specified in subparagraph  
24                 (D) of such subsection shall result in the fol-  
25                 lowing:

1           “(i) The Secretary shall place the fa-  
2           cility on a publicly available arrears list,  
3           such that no new abbreviated new drug ap-  
4           plication or supplement submitted on or  
5           after October 1, 2012, from the person  
6           that is responsible for paying such fee, or  
7           any affiliate of that person, will be received  
8           within the meaning of section 505(j)(5)(A).

9           “(ii) Any new generic drug submission  
10          submitted on or after October 1, 2012,  
11          that references such a facility shall not be  
12          received, within the meaning of section  
13          505(j)(5)(A) if the outstanding facility fee  
14          is not paid within 20 calendar days of the  
15          Secretary providing the notification to the  
16          sponsor of the failure of the owner of the  
17          facility to pay the facility fee under sub-  
18          section (a)(4)(C).

19          “(iii) All drugs or active pharma-  
20          ceutical ingredients manufactured in such  
21          a facility or containing an ingredient man-  
22          ufactured in such a facility shall be deemed  
23          misbranded under section 502(aa).

24          “(B) APPLICATION OF PENALTIES.—The  
25          penalties under this paragraph shall apply until

1 the fee established by subsection (a)(4) is paid  
2 or the facility is removed from all generic drug  
3 submissions that refer to the facility.

4 “(C) NONRECEIVAL FOR NONPAYMENT.—

5 “(i) NOTICE.—If an abbreviated new  
6 drug application or supplement to an ab-  
7 breviated new drug application submitted  
8 on or after October 1, 2012, references a  
9 facility for which a facility fee has not been  
10 paid by the applicable date under sub-  
11 section (a)(4)(C), the Secretary shall notify  
12 the sponsor of the generic drug submission  
13 of the failure of the owner of the facility  
14 to pay the facility fee.

15 “(ii) NONRECEIVAL.—If the facility  
16 fee is not paid within 20 calendar days of  
17 the Secretary providing the notification  
18 under clause (i), the abbreviated new drug  
19 application or supplement to an abbre-  
20 viated new drug application shall not be re-  
21 ceived within the meaning of section  
22 505(j)(5)(A).

23 “(h) LIMITATIONS.—

24 “(1) IN GENERAL.—Fees under subsection (a)  
25 shall be refunded for a fiscal year beginning after

1 fiscal year 2012, unless appropriations for salaries  
2 and expenses of the Food and Drug Administration  
3 for such fiscal year (excluding the amount of fees  
4 appropriated for such fiscal year) are equal to or  
5 greater than the amount of appropriations for the  
6 salaries and expenses of the Food and Drug Admin-  
7 istration for the fiscal year 2009 (excluding the  
8 amount of fees appropriated for such fiscal year)  
9 multiplied by the adjustment factor (as defined in  
10 section 744A) applicable to the fiscal year involved.

11 “(2) AUTHORITY.—If the Secretary does not  
12 assess fees under subsection (a) during any portion  
13 of a fiscal year and if at a later date in such fiscal  
14 year the Secretary may assess such fees, the Sec-  
15 retary may assess and collect such fees, without any  
16 modification in the rate, for Type II active pharma-  
17 ceutical ingredient drug master files, abbreviated  
18 new drug applications and prior approval supple-  
19 ments, and generic drug facilities and active phar-  
20 maceutical ingredient facilities at any time in such  
21 fiscal year notwithstanding the provisions of sub-  
22 section (a) relating to the date fees are to be paid.

23 “(i) CREDITING AND AVAILABILITY OF FEES.—

24 “(1) IN GENERAL.—Fees authorized under sub-  
25 section (a) shall be collected and available for obliga-

1       tion only to the extent and in the amount provided  
2       in advance in appropriations Acts, subject to para-  
3       graph (2). Such fees are authorized to remain avail-  
4       able until expended. Such sums as may be necessary  
5       may be transferred from the Food and Drug Admin-  
6       istration salaries and expenses appropriation account  
7       without fiscal year limitation to such appropriation  
8       account for salaries and expenses with such fiscal  
9       year limitation. The sums transferred shall be avail-  
10      able solely for human generic drug activities.

11           “(2)   COLLECTIONS    AND    APPROPRIATION  
12      ACTS.—

13           “(A)   IN GENERAL.—The fees authorized  
14      by this section—

15           “(i) subject to subparagraphs (C) and  
16           (D), shall be collected and available in each  
17           fiscal year in an amount not to exceed the  
18           amount specified in appropriation Acts, or  
19           otherwise made available for obligation for  
20           such fiscal year; and

21           “(ii) shall be available for a fiscal year  
22           beginning after fiscal year 2012 to defray  
23           the costs of human generic drug activities  
24           (including such costs for an additional  
25           number of full-time equivalent positions in

1 the Department of Health and Human  
2 Services to be engaged in such activities),  
3 only if the Secretary allocates for such  
4 purpose an amount for such fiscal year  
5 (excluding amounts from fees collected  
6 under this section) no less than  
7 \$97,000,000 multiplied by the adjustment  
8 factor, as defined in section 744A(3), ap-  
9 plicable to the fiscal year involved.

10 “(B) COMPLIANCE.—The Secretary shall  
11 be considered to have met the requirements of  
12 subparagraph (A)(ii) in any fiscal year if the  
13 costs funded by appropriations and allocated for  
14 human generic activities are not more than 10  
15 percent below the level specified in such sub-  
16 paragraph.

17 “(C) FEE COLLECTION DURING FIRST  
18 PROGRAM YEAR.—Until the date of enactment  
19 of an Act making appropriations through Sep-  
20 tember 30, 2013 for the salaries and expenses  
21 account of the Food and Drug Administration,  
22 fees authorized by this section for fiscal year  
23 2013, may be collected and shall be credited to  
24 such account and remain available until ex-  
25 pended.

1           “(D) PROVISION FOR EARLY PAYMENTS IN  
2           SUBSEQUENT YEARS.—Payment of fees author-  
3           ized under this section for a fiscal year (after  
4           fiscal year 2013), prior to the due date for such  
5           fees, may be accepted by the Secretary in ac-  
6           cordance with authority provided in advance in  
7           a prior year appropriations Act.

8           “(3) AUTHORIZATION OF APPROPRIATIONS.—  
9           For each of the fiscal years 2013 through 2017,  
10          there is authorized to be appropriated for fees under  
11          this section an amount equivalent to the total rev-  
12          enue amount determined under subsection (b) for  
13          the fiscal year, as adjusted under subsection (c), if  
14          applicable, or as otherwise affected under paragraph  
15          (2) of this subsection.

16          “(j) COLLECTION OF UNPAID FEES.—In any case  
17          where the Secretary does not receive payment of a fee as-  
18          sessed under subsection (a) within 30 calendar days after  
19          it is due, such fee shall be treated as a claim of the United  
20          States Government subject to subchapter II of chapter 37  
21          of title 31, United States Code.

22          “(k) CONSTRUCTION.—This section may not be con-  
23          strued to require that the number of full-time equivalent  
24          positions in the Department of Health and Human Serv-  
25          ices, for officers, employees, and advisory committees not

1 engaged in human generic drug activities, be reduced to  
2 offset the number of officers, employees, and advisory  
3 committees so engaged.

4 “(l) POSITRON EMISSION TOMOGRAPHY DRUGS.—

5 “(1) EXEMPTION FROM FEES.—Submission of  
6 an application for a positron emission tomography  
7 drug or active pharmaceutical ingredient for a  
8 positron emission tomography drug shall not require  
9 the payment of any fee under this section. Facilities  
10 that solely produce positron emission tomography  
11 drugs shall not be required to pay a facility fee as  
12 established in subsection (a)(4).

13 “(2) IDENTIFICATION REQUIREMENT.—Facili-  
14 ties that produce positron emission tomography  
15 drugs or active pharmaceutical ingredients of such  
16 drugs are required to be identified pursuant to sub-  
17 section (f).

18 “(m) DISPUTES CONCERNING FEES.—To qualify for  
19 the return of a fee claimed to have been paid in error  
20 under this section, a person shall submit to the Secretary  
21 a written request justifying such return within 180 cal-  
22 endar days after such fee was paid.

23 “(n) SUBSTANTIALLY COMPLETE APPLICATIONS.—  
24 An abbreviated new drug application that is not consid-  
25 ered to be received within the meaning of section



1 505(j)(5)(A) because of failure to pay an applicable fee  
2 under this provision within the time period specified in  
3 subsection (g) shall be deemed not to have been ‘substan-  
4 tially complete’ on the date of its submission within the  
5 meaning of section 505(j)(5)(B)(iv)(II)(cc). An abbrevi-  
6 ated new drug application that is not substantially com-  
7 plete on the date of its submission solely because of failure  
8 to pay an applicable fee under the preceding sentence shall  
9 be deemed substantially complete and received within the  
10 meaning of section 505(j)(5)(A) as of the date such appli-  
11 cable fee is received.”.

12 **SEC. 303. REAUTHORIZATION; REPORTING REQUIREMENTS.**

13 Part 7 of subchapter C of chapter VII, as added by  
14 section 302 of this Act, is amended by inserting after sec-  
15 tion 744B the following:

16 **“SEC. 744C. REAUTHORIZATION; REPORTING REQUIRE-**  
17 **MENTS.**

18 “(a) PERFORMANCE REPORT.—Beginning with fiscal  
19 year 2013, not later than 120 days after the end of each  
20 fiscal year for which fees are collected under this part,  
21 the Secretary shall prepare and submit to the Committee  
22 on Energy and Commerce of the House of Representatives  
23 and the Committee on Health, Education, Labor, and  
24 Pensions of the Senate a report concerning the progress  
25 of the Food and Drug Administration in achieving the

1 goals identified in the letters described in section 301(b)  
2 of the Generic Drug User Fee Amendments of 2012 dur-  
3 ing such fiscal year and the future plans of the Food and  
4 Drug Administration for meeting the goals.

5 “(b) FISCAL REPORT.—Beginning with fiscal year  
6 2013, not later than 120 days after the end of each fiscal  
7 year for which fees are collected under this part, the Sec-  
8 retary shall prepare and submit to the Committee on En-  
9 ergy and Commerce of the House of Representatives and  
10 the Committee on Health, Education, Labor, and Pen-  
11 sions of the Senate a report on the implementation of the  
12 authority for such fees during such fiscal year and the  
13 use, by the Food and Drug Administration, of the fees  
14 collected for such fiscal year.

15 “(c) PUBLIC AVAILABILITY.—The Secretary shall  
16 make the reports required under subsections (a) and (b)  
17 available to the public on the Internet Web site of the  
18 Food and Drug Administration.

19 “(d) REAUTHORIZATION.—

20 “(1) CONSULTATION.—In developing rec-  
21 ommendations to present to the Congress with re-  
22 spect to the goals, and plans for meeting the goals,  
23 for human generic drug activities for the first 5 fis-  
24 cal years after fiscal year 2017, and for the reau-

1       thorization of this part for such fiscal years, the Sec-  
2       retary shall consult with—

3               “(A) the Committee on Energy and Com-  
4               merce of the House of Representatives;

5               “(B) the Committee on Health, Education,  
6               Labor, and Pensions of the Senate;

7               “(C) scientific and academic experts;

8               “(D) health care professionals;

9               “(E) representatives of patient and con-  
10              sumer advocacy groups; and

11              “(F) the generic drug industry.

12              “(2) PRIOR PUBLIC INPUT.—Prior to beginning  
13              negotiations with the generic drug industry on the  
14              reauthorization of this part, the Secretary shall—

15              “(A) publish a notice in the Federal Reg-  
16              ister requesting public input on the reauthoriza-  
17              tion;

18              “(B) hold a public meeting at which the  
19              public may present its views on the reauthoriza-  
20              tion, including specific suggestions for changes  
21              to the goals referred to in subsection (a);

22              “(C) provide a period of 30 days after the  
23              public meeting to obtain written comments from  
24              the public suggesting changes to this part; and

1           “(D) publish the comments on the Food  
2           and Drug Administration’s Internet Web site.

3           “(3) PERIODIC CONSULTATION.—Not less fre-  
4           quently than once every month during negotiations  
5           with the generic drug industry, the Secretary shall  
6           hold discussions with representatives of patient and  
7           consumer advocacy groups to continue discussions of  
8           their views on the reauthorization and their sugges-  
9           tions for changes to this part as expressed under  
10          paragraph (2).

11          “(4) PUBLIC REVIEW OF RECOMMENDA-  
12          TIONS.—After negotiations with the generic drug in-  
13          dustry, the Secretary shall—

14               “(A) present the recommendations devel-  
15               oped under paragraph (1) to the congressional  
16               committees specified in such paragraph;

17               “(B) publish such recommendations in the  
18               Federal Register;

19               “(C) provide for a period of 30 days for  
20               the public to provide written comments on such  
21               recommendations;

22               “(D) hold a meeting at which the public  
23               may present its views on such recommenda-  
24               tions; and

1           “(E) after consideration of such public  
2 views and comments, revise such recommenda-  
3 tions as necessary.

4           “(5) TRANSMITTAL OF RECOMMENDATIONS.—  
5 Not later than January 15, 2017, the Secretary  
6 shall transmit to the Congress the revised rec-  
7 ommendations under paragraph (4), a summary of  
8 the views and comments received under such para-  
9 graph, and any changes made to the recommenda-  
10 tions in response to such views and comments.

11           “(6) MINUTES OF NEGOTIATION MEETINGS.—

12           “(A) PUBLIC AVAILABILITY.—Before pre-  
13 senting the recommendations developed under  
14 paragraphs (1) through (5) to the Congress, the  
15 Secretary shall make publicly available, on the  
16 Internet Web site of the Food and Drug Ad-  
17 ministration, minutes of all negotiation meet-  
18 ings conducted under this subsection between  
19 the Food and Drug Administration and the ge-  
20 neric drug industry.

21           “(B) CONTENT.—The minutes described  
22 under subparagraph (A) shall summarize any  
23 substantive proposal made by any party to the  
24 negotiations as well as significant controversies

1           or differences of opinion during the negotiations  
2           and their resolution.”.

3 **SEC. 304. SUNSET DATES.**

4           (a) AUTHORIZATION.—The amendments made by  
5 section 302 cease to be effective October 1, 2017.

6           (b) REPORTING REQUIREMENTS.—The amendments  
7 made by section 303 cease to be effective January 31,  
8 2018.

9 **SEC. 305. EFFECTIVE DATE.**

10          The amendments made by this title shall take effect  
11 on October 1, 2012, or the date of the enactment of this  
12 title, whichever is later, except that fees under section 302  
13 shall be assessed for all human generic drug submissions  
14 and Type II active pharmaceutical drug master files re-  
15 ceived on or after October 1, 2012, regardless of the date  
16 of enactment of this title.

17 **SEC. 306. AMENDMENT WITH RESPECT TO MISBRANDING.**

18          Section 502 (21 U.S.C. 352) is amended by adding  
19 at the end the following:

20           “(aa) If it is a drug, or an active pharmaceutical in-  
21 gredient, and it was manufactured, prepared, propagated,  
22 compounded, or processed in a facility for which fees have  
23 not been paid as required by section 744A(a)(4) or for  
24 which identifying information required by section 744B(f)  
25 has not been submitted, or it contains an active pharma-

1 ceutical ingredient that was manufactured, prepared,  
2 propagated, compounded, or processed in such a facility.”.

3 **SEC. 307. STREAMLINED HIRING AUTHORITY OF THE FOOD**  
4 **AND DRUG ADMINISTRATION TO SUPPORT**  
5 **ACTIVITIES RELATED TO HUMAN GENERIC**  
6 **DRUGS.**

7 Section 714 of the Federal Food, Drug, and Cosmetic  
8 Act, as added by section 208, is amended—

9 (1) in subsection (b)—

10 (A) by striking “are activities” and insert-  
11 ing “are—  
12 “(1) activities”;

13 (B) by striking the period at the end and  
14 inserting “; and”; and

15 (C) by adding at the end the following:

16 “(2) activities under this Act related to human  
17 generic drug activities (as defined in section  
18 744A).”; and

19 (2) by amending subsection (c) to read as fol-  
20 lows:

21 “(c) OBJECTIVES SPECIFIED.—The objectives speci-  
22 fied in this subsection are—

23 “(1) with respect to the activities under sub-  
24 section (b)(1), the goals referred to in section  
25 738A(a)(1); and

1           “(2) with respect to the activities under sub-  
2           section (b)(2), the performance goals with respect to  
3           section 744A (regarding assessment and use of  
4           human generic drug fees), as set forth in the letters  
5           described in section 301(b) of the Generic Drug  
6           User Fee Amendments of 2012.”.

7   **TITLE IV—FEES RELATING TO**  
8           **BIOSIMILAR            BIOLOGICAL**  
9           **PRODUCTS**

10 **SEC. 401. SHORT TITLE; FINDING.**

11           (a) **SHORT TITLE.**—This title may be cited as the  
12           “Biosimilar User Fee Act of 2012”.

13           (b) **FINDING.**—The Congress finds that the fees au-  
14           thorized by the amendments made in this title will be dedi-  
15           cated to expediting the process for the review of biosimilar  
16           biological product applications, including postmarket safe-  
17           ty activities, as set forth in the goals identified for pur-  
18           poses of part 8 of subchapter C of chapter VII of the Fed-  
19           eral Food, Drug, and Cosmetic Act, in the letters from  
20           the Secretary of Health and Human Services to the Chair-  
21           man of the Committee on Health, Education, Labor, and  
22           Pensions of the Senate and the Chairman of the Com-  
23           mittee on Energy and Commerce of the House of Rep-  
24           resentatives, as set forth in the Congressional Record.



1 **SEC. 402. FEES RELATING TO BIOSIMILAR BIOLOGICAL**  
2 **PRODUCTS.**

3 Subchapter C of chapter VII (21 U.S.C. 379f et seq.)  
4 is amended by inserting after part 7, as added by title  
5 III of this Act, the following:

6 **“PART 8—FEES RELATING TO BIOSIMILAR**  
7 **BIOLOGICAL PRODUCTS**

8 **“SEC. 744G. DEFINITIONS.**

9 “For purposes of this part:

10 “(1) The term ‘adjustment factor’ applicable to  
11 a fiscal year that is the Consumer Price Index for  
12 all urban consumers (Washington-Baltimore, DC–  
13 MD–VA–WV; Not Seasonally Adjusted; All items) of  
14 the preceding fiscal year divided by such Index for  
15 September 2011.

16 “(2) The term ‘affiliate’ means a business enti-  
17 ty that has a relationship with a second business en-  
18 tity if, directly or indirectly—

19 “(A) one business entity controls, or has  
20 the power to control, the other business entity;  
21 or

22 “(B) a third party controls, or has power  
23 to control, both of the business entities.

24 “(3) The term ‘biosimilar biological product’  
25 means a product for which a biosimilar biological  
26 product application has been approved.

1           “(4)(A) Subject to subparagraph (B), the term  
2           ‘biosimilar biological product application’ means an  
3           application for licensure of a biological product  
4           under section 351(k) of the Public Health Service  
5           Act.

6           “(B) Such term does not include—

7                   “(i) a supplement to such an application;

8                   “(ii) an application filed under section  
9                   351(k) of the Public Health Service Act that  
10                   cites as the reference product a bovine blood  
11                   product for topical application licensed before  
12                   September 1, 1992, or a large volume paren-  
13                   teral drug product approved before such date;

14                   “(iii) an application filed under section  
15                   351(k) of the Public Health Service Act with  
16                   respect to—

17                           “(I) whole blood or a blood component  
18                           for transfusion;

19                           “(II) an allergenic extract product;

20                           “(III) an in vitro diagnostic biological  
21                           product; or

22                           “(IV) a biological product for further  
23                           manufacturing use only; or

24                   “(iv) an application for licensure under  
25                   section 351(k) of the Public Health Service Act

1           that is submitted by a State or Federal Govern-  
2           ment entity for a product that is not distributed  
3           commercially.

4           “(5) The term ‘biosimilar biological product de-  
5           velopment meeting’ means any meeting, other than  
6           a biosimilar initial advisory meeting, regarding the  
7           content of a development program, including a pro-  
8           posed design for, or data from, a study intended to  
9           support a biosimilar biological product application.

10          “(6) The term ‘biosimilar biological product de-  
11          velopment program’ means the program under this  
12          part for expediting the process for the review of sub-  
13          missions in connection with biosimilar biological  
14          product development.

15          “(7)(A) The term ‘biosimilar biological product  
16          establishment’ means a foreign or domestic place of  
17          business—

18                 “(i) that is at one general physical location  
19                 consisting of one or more buildings, all of which  
20                 are within five miles of each other; and

21                 “(ii) at which one or more biosimilar bio-  
22                 logical products are manufactured in final dos-  
23                 age form.

24          “(B) For purposes of subparagraph (A)(ii), the  
25          term ‘manufactured’ does not include packaging.

1           “(8) The term ‘biosimilar initial advisory meet-  
2           ing’—

3                   “(A) means a meeting, if requested, that is  
4           limited to—

5                           “(i) a general discussion regarding  
6                           whether licensure under section 351(k) of  
7                           the Public Health Service Act may be fea-  
8                           sible for a particular product; and

9                           “(ii) if so, general advice on the ex-  
10                          pected content of the development pro-  
11                          gram; and

12                   “(B) does not include any meeting that in-  
13           volves substantive review of summary data or  
14           full study reports.

15           “(9) The term ‘costs of resources allocated for  
16           the process for the review of biosimilar biological  
17           product applications’ means the expenses in connec-  
18           tion with the process for the review of biosimilar bio-  
19           logical product applications for—

20                   “(A) officers and employees of the Food  
21                   and Drug Administration, contractors of the  
22                   Food and Drug Administration, advisory com-  
23                   mittees, and costs related to such officers em-  
24                   ployees and committees and to contracts with  
25                   such contractors;

1           “(B) management of information, and the  
2           acquisition, maintenance, and repair of com-  
3           puter resources;

4           “(C) leasing, maintenance, renovation, and  
5           repair of facilities and acquisition, maintenance,  
6           and repair of fixtures, furniture, scientific  
7           equipment, and other necessary materials and  
8           supplies; and

9           “(D) collecting fees under section 744H  
10          and accounting for resources allocated for the  
11          review of submissions in connection with bio-  
12          similar biological product development, bio-  
13          similar biological product applications, and sup-  
14          plements.

15          “(10) The term ‘final dosage form’ means, with  
16          respect to a biosimilar biological product, a finished  
17          dosage form which is approved for administration to  
18          a patient without substantial further manufacturing  
19          (such as lyophilized products before reconstitution).

20          “(11) The term ‘financial hold’—

21                 “(A) means an order issued by the Sec-  
22                 retary to prohibit the sponsor of a clinical in-  
23                 vestigation from continuing the investigation if  
24                 the Secretary determines that the investigation  
25                 is intended to support a biosimilar biological

1 product application and the sponsor has failed  
2 to pay any fee for the product required under  
3 subparagraph (A), (B), or (D) of section  
4 744H(a)(1); and

5 “(B) does not mean that any of the bases  
6 for a ‘clinical hold’ under section 505(i)(3) have  
7 been determined by the Secretary to exist con-  
8 cerning the investigation.

9 “(12) The term ‘person’ includes an affiliate of  
10 such person.

11 “(13) The term ‘process for the review of bio-  
12 similar biological product applications’ means the  
13 following activities of the Secretary with respect to  
14 the review of submissions in connection with bio-  
15 similar biological product development, biosimilar bi-  
16 ological product applications, and supplements:

17 “(A) The activities necessary for the re-  
18 view of submissions in connection with bio-  
19 similar biological product development, bio-  
20 similar biological product applications, and sup-  
21 plements.

22 “(B) Actions related to submissions in con-  
23 nection with biosimilar biological product devel-  
24 opment, the issuance of action letters which ap-  
25 prove biosimilar biological product applications

1 or which set forth in detail the specific defi-  
2 ciencies in such applications, and where appro-  
3 priate, the actions necessary to place such ap-  
4 plications in condition for approval.

5 “(C) The inspection of biosimilar biological  
6 product establishments and other facilities un-  
7 dertaken as part of the Secretary’s review of  
8 pending biosimilar biological product applica-  
9 tions and supplements.

10 “(D) Activities necessary for the release of  
11 lots of biosimilar biological products under sec-  
12 tion 351(k) of the Public Health Service Act.

13 “(E) Monitoring of research conducted in  
14 connection with the review of biosimilar biologi-  
15 cal product applications.

16 “(F) Postmarket safety activities with re-  
17 spect to biologics approved under biosimilar bio-  
18 logical product applications or supplements, in-  
19 cluding the following activities:

20 “(i) Collecting, developing, and re-  
21 viewing safety information on biosimilar bi-  
22 ological products, including adverse-event  
23 reports.

1           “(ii) Developing and using improved  
2           adverse-event data-collection systems, in-  
3           cluding information technology systems.

4           “(iii) Developing and using improved  
5           analytical tools to assess potential safety  
6           problems, including access to external data  
7           bases.

8           “(iv) Implementing and enforcing sec-  
9           tion 505(o) (relating to postapproval stud-  
10          ies and clinical trials and labeling changes)  
11          and section 505(p) (relating to risk evalua-  
12          tion and mitigation strategies).

13          “(v) Carrying out section 505(k)(5)  
14          (relating to adverse-event reports and  
15          postmarket safety activities).

16          “(14) The term ‘supplement’ means a request  
17          to the Secretary to approve a change in a biosimilar  
18          biological product application which has been ap-  
19          proved, including a supplement requesting that the  
20          Secretary determine that the biosimilar biological  
21          product meets the standards for interchangeability  
22          described in section 351(k)(4) of the Public Health  
23          Service Act.



1 **“SEC. 744H. AUTHORITY TO ASSESS AND USE BIOSIMILAR**  
2 **BIOLOGICAL PRODUCT FEES.**

3 “(a) TYPES OF FEES.—Beginning in fiscal year  
4 2013, the Secretary shall assess and collect fees in accord-  
5 ance with this section as follows:

6 “(1) BIOSIMILAR DEVELOPMENT PROGRAM  
7 FEES.—

8 “(A) INITIAL BIOSIMILAR BIOLOGICAL  
9 PRODUCT DEVELOPMENT FEE.—

10 “(i) IN GENERAL.—Each person that  
11 submits to the Secretary a meeting request  
12 described under clause (ii) or a clinical  
13 protocol for an investigational new drug  
14 protocol described under clause (iii) shall  
15 pay for the product named in the meeting  
16 request or the investigational new drug ap-  
17 plication the initial biosimilar biological  
18 product development fee established under  
19 subsection (b)(1)(A).

20 “(ii) MEETING REQUEST.—The meet-  
21 ing request described in this clause is a re-  
22 quest for a biosimilar biological product  
23 development meeting for a product.

24 “(iii) CLINICAL PROTOCOL FOR IND.—  
25 A clinical protocol for an investigational  
26 new drug protocol described in this clause

1 is a clinical protocol consistent with the  
2 provisions of section 505(i), including any  
3 regulations promulgated under section  
4 505(i), (referred to in this section as ‘in-  
5 vestigational new drug application’) de-  
6 scribing an investigation that the Secretary  
7 determines is intended to support a bio-  
8 similar biological product application for a  
9 product.

10 “(iv) DUE DATE.—The initial bio-  
11 similar biological product development fee  
12 shall be due by the earlier of the following:

13 “(I) Not later than 5 days after  
14 the Secretary grants a request for a  
15 biosimilar biological product develop-  
16 ment meeting.

17 “(II) The date of submission of  
18 an investigational new drug applica-  
19 tion describing an investigation that  
20 the Secretary determines is intended  
21 to support a biosimilar biological  
22 product application.

23 “(v) TRANSITION RULE.—Each per-  
24 son that has submitted an investigational  
25 new drug application prior to the date of

1 enactment of the Biosimilars User Fee Act  
2 of 2012 shall pay the initial biosimilar bio-  
3 logical product development fee by the ear-  
4 lier of the following:

5 “(I) Not later than 60 days after  
6 the date of the enactment of the  
7 Biosimilars User Fee Act of 2012, if  
8 the Secretary determines that the in-  
9 vestigational new drug application de-  
10 scribes an investigation that is in-  
11 tended to support a biosimilar biologi-  
12 cal product application.

13 “(II) Not later than 5 days after  
14 the Secretary grants a request for a  
15 biosimilar biological product develop-  
16 ment meeting.

17 “(B) ANNUAL BIOSIMILAR BIOLOGICAL  
18 PRODUCT DEVELOPMENT FEE.—

19 “(i) IN GENERAL.—A person that  
20 pays an initial biosimilar biological product  
21 development fee for a product shall pay for  
22 such product, beginning in the fiscal year  
23 following the fiscal year in which the initial  
24 biosimilar biological product development  
25 fee was paid, an annual fee established

1 under subsection (b)(1)(B) for biosimilar  
2 biological product development (referred to  
3 in this section as ‘annual biosimilar bio-  
4 logical product development fee’).

5 “(ii) DUE DATE.—The annual bio-  
6 similar biological product development pro-  
7 gram fee for each fiscal year will be due on  
8 the later of—

9 “(I) the first business day on or  
10 after October 1 of each such year; or

11 “(II) the first business day after  
12 the enactment of an appropriations  
13 Act providing for the collection and  
14 obligation of fees for such year under  
15 this section.

16 “(iii) EXCEPTION.—The annual bio-  
17 similar development program fee for each  
18 fiscal year will be due on the date specified  
19 in clause (ii), unless the person has—

20 “(I) submitted a marketing appli-  
21 cation for the biological product that  
22 was accepted for filing; or

23 “(II) discontinued participation  
24 in the biosimilar biological product de-

1                    development program for the product  
2                    under subparagraph (C).

3                    “(C) DISCONTINUATION OF FEE OBLIGA-  
4                    TION.—A person may discontinue participation  
5                    in the biosimilar biological product development  
6                    program for a product effective October 1 of a  
7                    fiscal year by, not later than August 1 of the  
8                    preceding fiscal year—

9                    “(i) if no investigational new drug ap-  
10                    plication concerning the product has been  
11                    submitted, submitting to the Secretary a  
12                    written declaration that the person has no  
13                    present intention of further developing the  
14                    product as a biosimilar biological product;  
15                    or

16                    “(ii) if an investigational new drug  
17                    application concerning the product has  
18                    been submitted, by withdrawing the inves-  
19                    tigational new drug application in accord-  
20                    ance with part 312 of title 21, Code of  
21                    Federal Regulations (or any successor reg-  
22                    ulations).

23                    “(D) REACTIVATION FEE.—

24                    “(i) IN GENERAL.—A person that has  
25                    discontinued participation in the biosimilar

1 biological product development program for  
2 a product under subparagraph (C) shall  
3 pay a fee (referred to in this section as ‘re-  
4 activation fee’) by the earlier of the fol-  
5 lowing:

6 “(I) Not later than 5 days after  
7 the Secretary grants a request for a  
8 biosimilar biological product develop-  
9 ment meeting for the product (after  
10 the date on which such participation  
11 was discontinued).

12 “(II) Upon the date of submis-  
13 sion (after the date on which such  
14 participation was discontinued) of an  
15 investigational new drug application  
16 describing an investigation that the  
17 Secretary determines is intended to  
18 support a biosimilar biological product  
19 application for that product.

20 “(ii) APPLICATION OF ANNUAL  
21 FEE.—A person that pays a reactivation  
22 fee for a product shall pay for such prod-  
23 uct, beginning in the next fiscal year, the  
24 annual biosimilar biological product devel-  
25 opment fee under subparagraph (B).

1                   “(E) EFFECT OF FAILURE TO PAY BIO-  
2                   SIMILAR DEVELOPMENT PROGRAM FEES.—

3                   “(i) NO BIOSIMILAR BIOLOGICAL  
4                   PRODUCT DEVELOPMENT MEETINGS.—If a  
5                   person has failed to pay an initial or an-  
6                   nual biosimilar biological product develop-  
7                   ment fee as required under subparagraph  
8                   (A) or (B), or a reactivation fee as re-  
9                   quired under subparagraph (D), the Sec-  
10                  retary shall not provide a biosimilar bio-  
11                  logical product development meeting relat-  
12                  ing to the product for which fees are owed.

13                  “(ii) NO RECEIPT OF INVESTIGA-  
14                  TIONAL NEW DRUG APPLICATIONS.—Ex-  
15                  cept in extraordinary circumstances, the  
16                  Secretary shall not consider an investiga-  
17                  tional new drug application to have been  
18                  received under section 505(i)(2) if—

19                         “(I) the Secretary determines  
20                         that the investigation is intended to  
21                         support a biosimilar biological product  
22                         application; and

23                         “(II) the sponsor has failed to  
24                         pay an initial or annual biosimilar bio-  
25                         logical product development fee for

1 the product as required under sub-  
2 paragraph (A) or (B), or a reactiva-  
3 tion fee as required under subpara-  
4 graph (D).

5 “(iii) FINANCIAL HOLD.—Notwith-  
6 standing section 505(i)(2), except in ex-  
7 traordinary circumstances, the Secretary  
8 shall prohibit the sponsor of a clinical in-  
9 vestigation from continuing the investiga-  
10 tion if—

11 “(I) the Secretary determines  
12 that the investigation is intended to  
13 support a biosimilar biological product  
14 application; and

15 “(II) the sponsor has failed to  
16 pay an initial or annual biosimilar bio-  
17 logical product development fee for  
18 the product as required under sub-  
19 paragraph (A) or (B), or a reactiva-  
20 tion fee for the product as required  
21 under subparagraph (D).

22 “(iv) NO ACCEPTANCE OF BIOSIMILAR  
23 BIOLOGICAL PRODUCT APPLICATIONS OR  
24 SUPPLEMENTS.—If a person has failed to  
25 pay an initial or annual biosimilar biologi-



1 cal product development fee as required  
2 under subparagraph (A) or (B), or a reac-  
3 tivation fee as required under subpara-  
4 graph (D), any biosimilar biological prod-  
5 uct application or supplement submitted by  
6 that person shall be considered incomplete  
7 and shall not be accepted for filing by the  
8 Secretary until all such fees owed by such  
9 person have been paid.

10 “(F) LIMITS REGARDING BIOSIMILAR DE-  
11 VELOPMENT PROGRAM FEES.—

12 “(i) NO REFUNDS.—The Secretary  
13 shall not refund any initial or annual bio-  
14 similar biological product development fee  
15 paid under subparagraph (A) or (B), or  
16 any reactivation fee paid under subpara-  
17 graph (D).

18 “(ii) NO WAIVERS, EXEMPTIONS, OR  
19 REDUCTIONS.—The Secretary shall not  
20 grant a waiver, exemption, or reduction of  
21 any initial or annual biosimilar biological  
22 product development fee due or payable  
23 under subparagraph (A) or (B), or any re-  
24 activation fee due or payable under sub-  
25 paragraph (D).

1           “(2) BIOSIMILAR BIOLOGICAL PRODUCT APPLI-  
2           CATION AND SUPPLEMENT FEE.—

3           “(A) IN GENERAL.—Each person that sub-  
4           mits, on or after October 1, 2012, a biosimilar  
5           biological product application or a supplement  
6           shall be subject to the following fees:

7           “(i) A fee for a biosimilar biological  
8           product application that is equal to—

9           “(I) the amount of the fee estab-  
10           lished under subsection (b)(1)(D) for  
11           a biosimilar biological product applica-  
12           tion; minus

13           “(II) the cumulative amount of  
14           fees paid, if any, under subparagraphs  
15           (A), (B), and (D) of paragraph (1)  
16           for the product that is the subject of  
17           the application.

18           “(ii) A fee for a biosimilar biological  
19           product application for which clinical data  
20           (other than comparative bioavailability  
21           studies) with respect to safety or effective-  
22           ness are not required, that is equal to—

23           “(I) half of the amount of the fee  
24           established under subsection (b)(1)(D)

1 for a biosimilar biological product ap-  
2 plication; minus

3 “(II) the cumulative amount of  
4 fees paid, if any, under subparagraphs  
5 (A), (B), and (D) of paragraph (1)  
6 for that product.

7 “(iii) A fee for a supplement for which  
8 clinical data (other than comparative bio-  
9 availability studies) with respect to safety  
10 or effectiveness are required, that is equal  
11 to half of the amount of the fee established  
12 under subsection (b)(1)(D) for a biosimilar  
13 biological product application.

14 “(B) REDUCTION IN FEES.—Notwith-  
15 standing section 404 of the Biosimilars User  
16 Fee Act of 2012, any person who pays a fee  
17 under subparagraph (A), (B), or (D) of para-  
18 graph (1) for a product before October 1, 2017,  
19 but submits a biosimilar biological product ap-  
20 plication for that product after such date, shall  
21 be entitled to the reduction of any biosimilar bi-  
22 ological product application fees that may be  
23 assessed at the time when such biosimilar bio-  
24 logical product application is submitted, by the  
25 cumulative amount of fees paid under subpara-

1 graphs (A), (B), and (D) of paragraph (1) for  
2 that product.

3 “(C) PAYMENT DUE DATE.—Any fee re-  
4 quired by subparagraph (A) shall be due upon  
5 submission of the application or supplement for  
6 which such fee applies.

7 “(D) EXCEPTION FOR PREVIOUSLY FILED  
8 APPLICATION OR SUPPLEMENT.—If a biosimilar  
9 biological product application or supplement  
10 was submitted by a person that paid the fee for  
11 such application or supplement, was accepted  
12 for filing, and was not approved or was with-  
13 drawn (without a waiver), the submission of a  
14 biosimilar biological product application or a  
15 supplement for the same product by the same  
16 person (or the person’s licensee, assignee, or  
17 successor) shall not be subject to a fee under  
18 subparagraph (A).

19 “(E) REFUND OF APPLICATION FEE IF AP-  
20 PPLICATION REFUSED FOR FILING OR WITH-  
21 DRAWN BEFORE FILING.—The Secretary shall  
22 refund 75 percent of the fee paid under this  
23 paragraph for any application or supplement  
24 which is refused for filing or withdrawn without  
25 a waiver before filing.

1           “(F) FEES FOR APPLICATIONS PRE-  
2           VIOUSLY REFUSED FOR FILING OR WITHDRAWN  
3           BEFORE FILING.—A biosimilar biological prod-  
4           uct application or supplement that was sub-  
5           mitted but was refused for filing, or was with-  
6           drawn before being accepted or refused for fil-  
7           ing, shall be subject to the full fee under sub-  
8           paragraph (A) upon being resubmitted or filed  
9           over protest, unless the fee is waived under sub-  
10          section (c).

11          “(3) BIOSIMILAR BIOLOGICAL PRODUCT ESTAB-  
12          LISHMENT FEE.—

13                 “(A) IN GENERAL.—Except as provided in  
14                 subparagraph (E), each person that is named  
15                 as the applicant in a biosimilar biological prod-  
16                 uct application shall be assessed an annual fee  
17                 established under subsection (b)(1)(E) for each  
18                 biosimilar biological product establishment that  
19                 is listed in the approved biosimilar biological  
20                 product application as an establishment that  
21                 manufactures the biosimilar biological product  
22                 named in such application.

23                 “(B) ASSESSMENT IN FISCAL YEARS.—The  
24                 establishment fee shall be assessed in each fis-  
25                 cal year for which the biosimilar biological prod-

1           uct named in the application is assessed a fee  
2           under paragraph (4) unless the biosimilar bio-  
3           logical product establishment listed in the appli-  
4           cation does not engage in the manufacture of  
5           the biosimilar biological product during such  
6           fiscal year.

7           “(C) DUE DATE.—The establishment fee  
8           for a fiscal year shall be due on the later of—

9                   “(i) the first business day on or after  
10                  October 1 of such fiscal year; or

11                  “(ii) the first business day after the  
12                  enactment of an appropriations Act pro-  
13                  viding for the collection and obligation of  
14                  fees for such fiscal year under this section.

15           “(D) APPLICATION TO ESTABLISHMENT.—

16                  “(i) Each biosimilar biological product  
17                  establishment shall be assessed only one  
18                  fee per biosimilar biological product estab-  
19                  lishment, notwithstanding the number of  
20                  biosimilar biological products manufac-  
21                  tured at the establishment, subject to  
22                  clause (ii).

23                  “(ii) In the event an establishment is  
24                  listed in a biosimilar biological product ap-  
25                  plication by more than one applicant, the

1 establishment fee for the fiscal year shall  
2 be divided equally and assessed among the  
3 applicants whose biosimilar biological prod-  
4 ucts are manufactured by the establish-  
5 ment during the fiscal year and assessed  
6 biosimilar biological product fees under  
7 paragraph (4).

8 “(E) EXCEPTION FOR NEW PRODUCTS.—

9 If, during the fiscal year, an applicant initiates  
10 or causes to be initiated the manufacture of a  
11 biosimilar biological product at an establish-  
12 ment listed in its biosimilar biological product  
13 application—

14 “(i) that did not manufacture the bio-  
15 similar biological product in the previous  
16 fiscal year; and

17 “(ii) for which the full biosimilar bio-  
18 logical product establishment fee has been  
19 assessed in the fiscal year at a time before  
20 manufacture of the biosimilar biological  
21 product was begun,

22 the applicant shall not be assessed a share of  
23 the biosimilar biological product establishment  
24 fee for the fiscal year in which the manufacture  
25 of the product began.

1 “(4) BIOSIMILAR BIOLOGICAL PRODUCT FEE.—

2 “(A) IN GENERAL.—Each person who is  
3 named as the applicant in a biosimilar biological  
4 product application shall pay for each such  
5 biosimilar biological product the annual fee es-  
6 tablished under subsection (b)(1)(F).

7 “(B) DUE DATE.—The biosimilar biologi-  
8 cal product fee for a fiscal year shall be due on  
9 the later of—

10 “(i) the first business day on or after  
11 October 1 of each such year; or

12 “(ii) the first business day after the  
13 enactment of an appropriations Act pro-  
14 viding for the collection and obligation of  
15 fees for such year under this section.

16 “(C) ONE FEE PER PRODUCT PER YEAR.—  
17 The biosimilar biological product fee shall be  
18 paid only once for each product for each fiscal  
19 year.

20 “(b) FEE SETTING AND AMOUNTS.—

21 “(1) IN GENERAL.—Subject to paragraph (2),  
22 the Secretary shall, 60 days before the start of each  
23 fiscal year that begins after September 30, 2012, es-  
24 tablish, for the next fiscal year, the fees under sub-



1 section (a). Except as provided in subsection (c),  
2 such fees shall be in the following amounts:

3 “(A) INITIAL BIOSIMILAR BIOLOGICAL  
4 PRODUCT DEVELOPMENT FEE.—The initial bio-  
5 similar biological product development fee under  
6 subsection (a)(1)(A) for a fiscal year shall be  
7 equal to 10 percent of the amount established  
8 under section 736(c)(4) for a human drug ap-  
9 plication described in section 736(a)(1)(A)(i)  
10 for that fiscal year.

11 “(B) ANNUAL BIOSIMILAR BIOLOGICAL  
12 PRODUCT DEVELOPMENT FEE.—The annual  
13 biosimilar biological product development fee  
14 under subsection (a)(1)(B) for a fiscal year  
15 shall be equal to 10 percent of the amount es-  
16 tablished under section 736(c)(4) for a human  
17 drug application described in section  
18 736(a)(1)(A)(i) for that fiscal year.

19 “(C) REACTIVATION FEE.—The reactiva-  
20 tion fee under subsection (a)(1)(D) for a fiscal  
21 year shall be equal to 20 percent of the amount  
22 of the fee established under section 736(c)(4)  
23 for a human drug application described in sec-  
24 tion 736(a)(1)(A)(i) for that fiscal year.

1           “(D) BIOSIMILAR BIOLOGICAL PRODUCT  
2           APPLICATION FEE.—The biosimilar biological  
3           product application fee under subsection (a)(2)  
4           for a fiscal year shall be equal to the amount  
5           established under section 736(c)(4) for a  
6           human drug application described in section  
7           736(a)(1)(A)(i) for that fiscal year.

8           “(E) BIOSIMILAR BIOLOGICAL PRODUCT  
9           ESTABLISHMENT FEE.—The biosimilar biological  
10          product establishment fee under subsection  
11          (a)(3) for a fiscal year shall be equal to the  
12          amount established under section 736(c)(4) for  
13          a prescription drug establishment for that fiscal  
14          year.

15          “(F) BIOSIMILAR BIOLOGICAL PRODUCT  
16          FEE.—The biosimilar biological product fee  
17          under subsection (a)(4) for a fiscal year shall be  
18          equal to the amount established under section  
19          736(c)(4) for a prescription drug product for  
20          that fiscal year.

21          “(2) LIMIT.—The total amount of fees charged  
22          for a fiscal year under this section may not exceed  
23          the total amount for such fiscal year of the costs of  
24          resources allocated for the process for the review of  
25          biosimilar biological product applications.

1       “(c) APPLICATION FEE WAIVER FOR SMALL BUSI-  
2   NESS.—

3               “(1) WAIVER OF APPLICATION FEE.—The Sec-  
4   retary shall grant to a person who is named in a bio-  
5   similar biological product application a waiver from  
6   the application fee assessed to that person under  
7   subsection (a)(2)(A) for the first biosimilar biologi-  
8   cal product application that a small business or its  
9   affiliate submits to the Secretary for review. After a  
10   small business or its affiliate is granted such a waiv-  
11   er, the small business or its affiliate shall pay—

12               “(A) application fees for all subsequent  
13   biosimilar biological product applications sub-  
14   mitted to the Secretary for review in the same  
15   manner as an entity that is not a small busi-  
16   ness; and

17               “(B) all supplement fees for all supple-  
18   ments to biosimilar biological product applica-  
19   tions submitted to the Secretary for review in  
20   the same manner as an entity that is not a  
21   small business.

22               “(2) CONSIDERATIONS.—In determining wheth-  
23   er to grant a waiver of a fee under paragraph (1),  
24   the Secretary shall consider only the circumstances

1 and assets of the applicant involved and any affiliate  
2 of the applicant.

3 “(3) SMALL BUSINESS DEFINED.—In this sub-  
4 section, the term ‘small business’ means an entity  
5 that has fewer than 500 employees, including em-  
6 ployees of affiliates, and does not have a drug prod-  
7 uct that has been approved under a human drug ap-  
8 plication (as defined in section 735) or a biosimilar  
9 biological product application (as defined in section  
10 744G(4)) and introduced or delivered for introduc-  
11 tion into interstate commerce.

12 “(d) EFFECT OF FAILURE TO PAY FEES.—A bio-  
13 similar biological product application or supplement sub-  
14 mitted by a person subject to fees under subsection (a)  
15 shall be considered incomplete and shall not be accepted  
16 for filing by the Secretary until all fees owed by such per-  
17 son have been paid.

18 “(e) CREDITING AND AVAILABILITY OF FEES.—

19 “(1) IN GENERAL.—Subject to paragraph (2),  
20 fees authorized under subsection (a) shall be col-  
21 lected and available for obligation only to the extent  
22 and in the amount provided in advance in appropria-  
23 tions Acts. Such fees are authorized to remain avail-  
24 able until expended. Such sums as may be necessary  
25 may be transferred from the Food and Drug Admin-

1       istration salaries and expenses appropriation account  
2       without fiscal year limitation to such appropriation  
3       account for salaries and expenses with such fiscal  
4       year limitation. The sums transferred shall be avail-  
5       able solely for the process for the review of bio-  
6       similar biological product applications.

7               “(2)   COLLECTIONS   AND   APPROPRIATION  
8       ACTS.—

9               “(A)   IN GENERAL.—Subject to subpara-  
10       graphs (C) and (D), the fees authorized by this  
11       section shall be collected and available in each  
12       fiscal year in an amount not to exceed the  
13       amount specified in appropriation Acts, or oth-  
14       erwise made available for obligation for such  
15       fiscal year.

16               “(B)   USE OF FEES AND LIMITATION.—  
17       The fees authorized by this section shall be  
18       available for a fiscal year beginning after fiscal  
19       year 2012 to defray the costs of the process for  
20       the review of biosimilar biological product appli-  
21       cations (including such costs for an additional  
22       number of full-time equivalent positions in the  
23       Department of Health and Human Services to  
24       be engaged in such process), only if the Sec-  
25       retary allocates for such purpose an amount for

1 such fiscal year (excluding amounts from fees  
2 collected under this section) no less than  
3 \$20,000,000, multiplied by the adjustment fac-  
4 tor applicable to the fiscal year involved.

5 “(C) FEE COLLECTION DURING FIRST  
6 PROGRAM YEAR.—Until the date of enactment  
7 of an Act making appropriations through Sep-  
8 tember 30, 2013, for the salaries and expenses  
9 account of the Food and Drug Administration,  
10 fees authorized by this section for fiscal year  
11 2013 may be collected and shall be credited to  
12 such account and remain available until ex-  
13 pended.

14 “(D) PROVISION FOR EARLY PAYMENTS IN  
15 SUBSEQUENT YEARS.—Payment of fees author-  
16 ized under this section for a fiscal year (after  
17 fiscal year 2013), prior to the due date for such  
18 fees, may be accepted by the Secretary in ac-  
19 cordance with authority provided in advance in  
20 a prior year appropriations Act.

21 “(3) AUTHORIZATION OF APPROPRIATIONS.—  
22 For each of fiscal years 2013 through 2017, there  
23 is authorized to be appropriated for fees under this  
24 section an amount equivalent to the total amount of  
25 fees assessed for such fiscal year under this section.

1       “(f) COLLECTION OF UNPAID FEES.—In any case  
2 where the Secretary does not receive payment of a fee as-  
3 sessed under subsection (a) within 30 days after it is due,  
4 such fee shall be treated as a claim of the United States  
5 Government subject to subchapter II of chapter 37 of title  
6 31, United States Code.

7       “(g) WRITTEN REQUESTS FOR WAIVERS AND RE-  
8 FUNDS.—To qualify for consideration for a waiver under  
9 subsection (c), or for a refund of any fee collected in ac-  
10 cordance with subsection (a)(2)(A), a person shall submit  
11 to the Secretary a written request for such waiver or re-  
12 fund not later than 180 days after such fee is due.

13       “(h) CONSTRUCTION.—This section may not be con-  
14 strued to require that the number of full-time equivalent  
15 positions in the Department of Health and Human Serv-  
16 ices, for officers, employers, and advisory committees not  
17 engaged in the process of the review of biosimilar biologi-  
18 cal product applications, be reduced to offset the number  
19 of officers, employees, and advisory committees so en-  
20 gaged.”.

21 **SEC. 403. REAUTHORIZATION; REPORTING REQUIREMENTS.**

22       Part 8 of subchapter C of chapter VII, as added by  
23 section 402, is further amended by inserting after section  
24 744H the following:

1 **“SEC. 744I. REAUTHORIZATION; REPORTING REQUIRE-**  
2 **MENTS.**

3       “(a) **PERFORMANCE REPORT.**—Beginning with fiscal  
4 year 2013, not later than 120 days after the end of each  
5 fiscal year for which fees are collected under this part,  
6 the Secretary shall prepare and submit to the Committee  
7 on Energy and Commerce of the House of Representatives  
8 and the Committee on Health, Education, Labor, and  
9 Pensions of the Senate a report concerning the progress  
10 of the Food and Drug Administration in achieving the  
11 goals identified in the letters described in section 401(b)  
12 of the Biosimilar User Fee Act of 2012 during such fiscal  
13 year and the future plans of the Food and Drug Adminis-  
14 tration for meeting such goals. The report for a fiscal year  
15 shall include information on all previous cohorts for which  
16 the Secretary has not given a complete response on all  
17 biosimilar biological product applications and supplements  
18 in the cohort.

19       “(b) **FISCAL REPORT.**—Not later than 120 days after  
20 the end of fiscal year 2013 and each subsequent fiscal year  
21 for which fees are collected under this part, the Secretary  
22 shall prepare and submit to the Committee on Energy and  
23 Commerce of the House of Representatives and the Com-  
24 mittee on Health, Education, Labor, and Pensions of the  
25 Senate a report on the implementation of the authority  
26 for such fees during such fiscal year and the use, by the



1 Food and Drug Administration, of the fees collected for  
2 such fiscal year.

3 “(c) PUBLIC AVAILABILITY.—The Secretary shall  
4 make the reports required under subsections (a) and (b)  
5 available to the public on the Internet Web site of the  
6 Food and Drug Administration.

7 “(d) STUDY.—

8 “(1) IN GENERAL.—The Secretary shall con-  
9 tract with an independent accounting or consulting  
10 firm to study the workload volume and full costs as-  
11 sociated with the process for the review of biosimilar  
12 biological product applications.

13 “(2) INTERIM RESULTS.—Not later than June  
14 1, 2015, the Secretary shall publish, for public com-  
15 ment, interim results of the study described under  
16 paragraph (1).

17 “(3) FINAL RESULTS.—Not later than Sep-  
18 tember 30, 2016, the Secretary shall publish, for  
19 public comment, the final results of the study de-  
20 scribed under paragraph (1).

21 “(e) REAUTHORIZATION.—

22 “(1) CONSULTATION.—In developing rec-  
23 ommendations to present to the Congress with re-  
24 spect to the goals described in subsection (a), and  
25 plans for meeting the goals, for the process for the

1 review of biosimilar biological product applications  
2 for the first 5 fiscal years after fiscal year 2017, and  
3 for the reauthorization of this part for such fiscal  
4 years, the Secretary shall consult with—

5 “(A) the Committee on Energy and Com-  
6 merce of the House of Representatives;

7 “(B) the Committee on Health, Education,  
8 Labor, and Pensions of the Senate;

9 “(C) scientific and academic experts;

10 “(D) health care professionals;

11 “(E) representatives of patient and con-  
12 sumer advocacy groups; and

13 “(F) the regulated industry.

14 “(2) PUBLIC REVIEW OF RECOMMENDA-  
15 TIONS.—After negotiations with the regulated indus-  
16 try, the Secretary shall—

17 “(A) present the recommendations devel-  
18 oped under paragraph (1) to the congressional  
19 committees specified in such paragraph;

20 “(B) publish such recommendations in the  
21 Federal Register;

22 “(C) provide for a period of 30 days for  
23 the public to provide written comments on such  
24 recommendations;

1           “(D) hold a meeting at which the public  
2           may present its views on such recommenda-  
3           tions; and

4           “(E) after consideration of such public  
5           views and comments, revise such recommenda-  
6           tions as necessary.

7           “(3) TRANSMITTAL OF RECOMMENDATIONS.—  
8           Not later than January 15, 2017, the Secretary  
9           shall transmit to the Congress the revised rec-  
10          ommendations under paragraph (2), a summary of  
11          the views and comments received under such para-  
12          graph, and any changes made to the recommenda-  
13          tions in response to such views and comments.”.

14 **SEC. 404. SUNSET DATES.**

15          (a) AUTHORIZATION.—The amendment made by sec-  
16          tion 402 shall cease to be effective October 1, 2017.

17          (b) REPORTING REQUIREMENTS.—The amendment  
18          made by section 403 shall cease to be effective January  
19          31, 2018.

20 **SEC. 405. EFFECTIVE DATE.**

21          (a) IN GENERAL.—Except as provided under sub-  
22          section (b), the amendments made by this title shall take  
23          effect on the later of—

24                  (1) October 1, 2012; or

25                  (2) the date of the enactment of this title.

1 (b) EXCEPTION.—Fees under part 8 of subchapter  
2 C of chapter VII of the Federal Food, Drug, and Cosmetic  
3 Act, as added by this title, shall be assessed for all bio-  
4 similar biological product applications received on or after  
5 October 1, 2012, regardless of the date of the enactment  
6 of this title.

7 **SEC. 406. SAVINGS CLAUSE.**

8 Notwithstanding the amendments made by this title,  
9 part 2 of subchapter C of chapter VII of the Federal Food,  
10 Drug, and Cosmetic Act, as in effect on the day before  
11 the date of the enactment of this title, shall continue to  
12 be in effect with respect to human drug applications and  
13 supplements (as defined in such part as of such day) that  
14 were accepted by the Food and Drug Administration for  
15 filing on or after October 1, 2007, but before October 1,  
16 2012, with respect to assessing and collecting any fee re-  
17 quired by such part for a fiscal year prior to fiscal year  
18 2013.

19 **SEC. 407. CONFORMING AMENDMENT.**

20 Section 735(1)(B) (21 U.S.C. 379g(1)(B)) is amend-  
21 ed by striking “or (k)”.

1       **TITLE V—PEDIATRIC DRUGS**  
2                                   **AND DEVICES**

3   **SEC. 501. PERMANENCE.**

4       (a) PEDIATRIC STUDIES OF DRUGS.—Subsection (q)  
5 of section 505A (21 U.S.C. 355a) is amended—

6           (1) in the subsection heading, by striking  
7       “SUNSET” and inserting “PERMANENCE”;

8           (2) in paragraph (1), by striking “on or before  
9       October 1, 2012,”; and

10          (3) in paragraph (2), by striking “on or before  
11       October 1, 2012,”.

12       (b) RESEARCH INTO PEDIATRIC USES FOR DRUGS  
13 AND BIOLOGICAL PRODUCTS.—Section 505B (21 U.S.C.  
14 355c) is amended—

15           (1) by striking subsection (m); and

16           (2) by redesignating subsection (n) as sub-  
17       section (m).

18   **SEC. 502. WRITTEN REQUESTS.**

19       (a) FEDERAL FOOD, DRUG, AND COSMETIC ACT.—  
20 Subsection (h) of section 505A (21 U.S.C. 355a) is  
21 amended to read as follows:

22       “(h) RELATIONSHIP TO PEDIATRIC RESEARCH RE-  
23 QUIREMENTS.—Exclusivity under this section shall only be  
24 granted for the completion of a study or studies that are  
25 the subject of a written request and for which reports are

1 submitted and accepted in accordance with subsection  
2 (d)(3). Written requests under this section may consist of  
3 a study or studies required under section 505B.”

4 (b) PUBLIC HEALTH SERVICE ACT.—Section  
5 351(m)(1) of the Public Health Service Act (42 U.S.C.  
6 262(m)(1)) is amended by striking “(f), (i), (j), (k), (l),  
7 (p), and (q)” and inserting “(f), (h), (i), (j), (k), (l), (n),  
8 and (p)”.

9 **SEC. 503. COMMUNICATION WITH PEDIATRIC REVIEW COM-**  
10 **MITTEE.**

11 Not later than 1 year after the date of enactment  
12 of this Act, the Secretary of Health and Human Services  
13 (referred to in this title as the “Secretary”) shall issue  
14 internal standard operating procedures that provide for  
15 the review by the internal review committee established  
16 under section 505C of the Federal Food, Drug, and Cos-  
17 metic Act (21 U.S.C. 355d) of any significant modifica-  
18 tions to initial pediatric study plans, agreed initial pedi-  
19 atric study plans, and written requests under sections  
20 505A and 505B of the Federal Food, Drug, and Cosmetic  
21 Act (21 U.S.C. 355e). Such internal standard operating  
22 procedures shall be made publicly available on the Internet  
23 website of the Food and Drug Administration.

1 **SEC. 504. ACCESS TO DATA.**

2 Not later than 3 years after the date of enactment  
3 of this Act, the Secretary shall make available to the pub-  
4 lic, including through posting on the Internet website of  
5 the Food and Drug Administration, the medical, statis-  
6 tical, and clinical pharmacology reviews of, and cor-  
7 responding written requests issued to an applicant, spon-  
8 sor, or holder for, pediatric studies submitted between  
9 January 4, 2002 and September 27, 2007 under sub-  
10 section (b) or (c) of section 505A of the Federal Food,  
11 Drug, and Cosmetic Act (21 U.S.C. 355a) for which 6  
12 months of market exclusivity was granted and that re-  
13 sulted in a labeling change. The Secretary shall make pub-  
14 lic the information described in the preceding sentence in  
15 a manner consistent with how the Secretary releases infor-  
16 mation under section 505A(k) of the Federal Food, Drug,  
17 and Cosmetic Act (21 U.S.C. 355a(k)).

18 **SEC. 505. ENSURING THE COMPLETION OF PEDIATRIC**  
19 **STUDIES.**

20 (a) EXTENSION OF DEADLINE FOR DEFERRED  
21 STUDIES.—Section 505B (21 U.S.C. 355c) is amended—

22 (1) in subsection (a)(3)—

23 (A) by redesignating subparagraph (B) as  
24 subparagraph (C);

25 (B) by inserting after subparagraph (A)  
26 the following:

1 “(B) DEFERRAL EXTENSION.—

2 “(i) IN GENERAL.—On the initiative  
3 of the Secretary or at the request of the  
4 applicant, the Secretary may grant an ex-  
5 tension of a deferral approved under sub-  
6 paragraph (A) for submission of some or  
7 all assessments required under paragraph  
8 (1) if—

9 “(I) the Secretary determines  
10 that the conditions described in sub-  
11 clause (II) or (III) of subparagraph  
12 (A)(i) continue to be met; and

13 “(II) the applicant submits a new  
14 timeline under subparagraph  
15 (A)(ii)(IV) and any significant up-  
16 dates to the information required  
17 under subparagraph (A)(ii).

18 “(ii) TIMING AND INFORMATION.—If  
19 the deferral extension under this subpara-  
20 graph is requested by the applicant, the  
21 applicant shall submit the deferral exten-  
22 sion request containing the information de-  
23 scribed in this subparagraph not less than  
24 90 days prior to the date that the deferral  
25 would expire. The Secretary shall respond



1 to such request not later than 45 days  
2 after the receipt of such letter. If the Sec-  
3 retary grants such an extension, the speci-  
4 fied date shall be the extended date. The  
5 sponsor of the required assessment under  
6 paragraph (1) shall not be issued a letter  
7 described in subsection (d) unless the spec-  
8 ified or extended date of submission for  
9 such required studies has passed or if the  
10 request for an extension is pending. For a  
11 deferral that has expired prior to the date  
12 of enactment of the Food and Drug Ad-  
13 ministration Safety and Innovation Act or  
14 that will expire prior to 270 days after the  
15 date of enactment of such Act, a deferral  
16 extension shall be requested by an appli-  
17 cant not later than 180 days after the date  
18 of enactment of such Act. The Secretary  
19 shall respond to any such request as soon  
20 as practicable, but not later than 1 year  
21 after the date of enactment of such Act.  
22 Nothing in this clause shall prevent the  
23 Secretary from updating the status of a  
24 study or studies publicly if components of

1 such study or studies are late or delayed.”;

2 and

3 (C) in subparagraph (C), as so redesign-

4 nated—

5 (i) in clause (i), by adding at the end

6 the following:

7 “(III) Projected completion date

8 for pediatric studies.

9 “(IV) The reason or reasons why

10 a deferral or deferral extension con-

11 tinues to be necessary.”; and

12 (ii) in clause (ii)—

13 (I) by inserting “, as well as the

14 date of each deferral or deferral ex-

15 tension, as applicable,” after “clause

16 (i)”;

17 (II) by inserting “not later than

18 90 days after submission to the Sec-

19 retary or with the next routine quar-

20 terly update” after “Administration”;

21 and

22 (2) in subsection (f)—

23 (A) in the subsection heading, by inserting

24 “DEFERRAL EXTENSIONS,” after “DEFER-

25 RALS,”;

1 (B) in paragraph (1), by inserting “, deferral  
2 extension,” after “deferral”; and

3 (C) in paragraph (4)—

4 (i) in the paragraph heading, by in-  
5 serting “DEFERRAL EXTENSIONS,” after  
6 “DEFERRALS,”; and

7 (ii) by inserting “, deferral exten-  
8 sions,” after “deferrals”.

9 (b) TRACKING OF EXTENSIONS; ANNUAL INFORMA-  
10 TION.—Section 505B(f)(6)(D) (21 U.S.C. 355c(f)(6)(D))  
11 is amended to read as follows:

12 “(D) aggregated on an annual basis—

13 “(i) the total number of deferrals and  
14 deferral extensions requested and granted  
15 under this section and, if granted, the rea-  
16 sons for each such deferral or deferral ex-  
17 tension;

18 “(ii) the timeline for completion of the  
19 assessments; and

20 “(iii) the number of assessments com-  
21 pleted and pending;”.

22 (c) ACTION ON FAILURE TO COMPLETE STUDIES.—

23 (1) ISSUANCE OF LETTER.—Subsection (d) of  
24 section 505B (21 U.S.C. 355c) is amended to read  
25 as follows:

1       “(d) SUBMISSION OF ASSESSMENTS.—If a person  
2 fails to submit a required assessment described in sub-  
3 section (a)(2), fails to meet the applicable requirements  
4 in subsection (a)(3), or fails to submit a request for ap-  
5 proval of a pediatric formulation described in subsection  
6 (a) or (b), in accordance with applicable provisions of sub-  
7 sections (a) and (b), the following shall apply:

8               “(1) Beginning 270 days after the date of en-  
9 actment of the Food and Drug Administration Safe-  
10 ty and Innovation Act, the Secretary shall issue a  
11 non-compliance letter to such person informing them  
12 of such failure to submit or meet the requirements  
13 of the applicable subsection. Such letter shall require  
14 the person to respond in writing within 45 calendar  
15 days of issuance of such letter. Such response may  
16 include the person’s request for a deferral extension  
17 if applicable. Such letter and the person’s written re-  
18 sponse to such letter shall be made publicly available  
19 on the Internet Web site of the Food and Drug Ad-  
20 ministration 45 calendar days after issuance, with  
21 redactions for any trade secrets and confidential  
22 commercial information. If the Secretary determines  
23 that the letter was issued in error, the requirements  
24 of this paragraph shall not apply.

1           “(2) The drug or biological product that is the  
2           subject of an assessment described in subsection  
3           (a)(2), applicable requirements in subsection (a)(3),  
4           or request for approval of a pediatric formulation,  
5           may be considered misbranded solely because of that  
6           failure and subject to relevant enforcement action  
7           (except that the drug or biological product shall not  
8           be subject to action under section 303), but such  
9           failure shall not be the basis for a proceeding—

10                   “(A) to withdraw approval for a drug  
11                   under section 505(e); or

12                   “(B) to revoke the license for a biological  
13                   product under section 351 of the Public Health  
14                   Service Act.”.

15           (2) TRACKING OF LETTERS ISSUED.—Subpara-  
16           graph (D) of section 505B(f)(6) (21 U.S.C.  
17           355c(f)(6)), as amended by subsection (b), is further  
18           amended—

19                   (A) in clause (ii), by striking “; and” and  
20                   inserting a semicolon;

21                   (B) in clause (iii), by adding “and” at the  
22                   end; and

23                   (C) by adding at the end the following:

24                           “(iv) the number of postmarket non-  
25                           compliance letters issued pursuant to sub-

1 section (d), and the recipients of such let-  
2 ters;”.

3 **SEC. 506. PEDIATRIC STUDY PLANS.**

4 (a) IN GENERAL.—Subsection (e) of section 505B  
5 (21 U.S.C. 355c) is amended to read as follows:

6 “(e) PEDIATRIC STUDY PLANS.—

7 “(1) IN GENERAL.—An applicant subject to  
8 subsection (a) shall submit to the Secretary an ini-  
9 tial pediatric study plan prior to the submission of  
10 the assessments described under subsection (a)(2).

11 “(2) TIMING; CONTENT; MEETING.—

12 “(A) TIMING.—An applicant shall submit  
13 an initial pediatric study plan to the Secretary  
14 not later than 60 calendar days after the date  
15 of the end of phase II meeting or such other  
16 equivalent time agreed upon between the Sec-  
17 retary and the applicant. Nothing in this para-  
18 graph shall preclude the Secretary from accept-  
19 ing the submission of an initial pediatric study  
20 plan earlier than the date described under the  
21 preceding sentence.

22 “(B) CONTENT OF INITIAL PLAN.—The  
23 initial pediatric study plan shall include—

24 “(i) an outline of the pediatric study  
25 or studies that the applicant plans to con-

1 duct (including, to the extent practicable  
2 study objectives and design, age groups,  
3 relevant endpoints, and statistical ap-  
4 proach);

5 “(ii) any request for a deferral, partial  
6 waiver, or waiver under this section, if ap-  
7 plicable, along with any supporting infor-  
8 mation; and

9 “(iii) other information specified in  
10 the regulations promulgated under para-  
11 graph (4).

12 “(C) MEETING.—The Secretary—

13 “(i) shall meet with the applicant to  
14 discuss the initial pediatric study plan as  
15 soon as practicable, but not later than 90  
16 calendar days after the receipt of such plan  
17 under subparagraph (A);

18 “(ii) may determine that a written re-  
19 sponse to the initial pediatric study plan is  
20 sufficient to communicate comments on the  
21 initial pediatric study plan, and that no  
22 meeting is necessary; and

23 “(iii) if the Secretary determines that  
24 no meeting is necessary, shall so notify the  
25 applicant and provide written comments of

1           the Secretary as soon as practicable, but  
2           not later than 90 calendar days after the  
3           receipt of the initial pediatric study plan.

4           “(3) AGREED INITIAL PEDIATRIC STUDY  
5           PLAN.—Not later than 90 calendar days following  
6           the meeting under paragraph (2)(C)(i) or the receipt  
7           of a written response from the Secretary under para-  
8           graph (2)(C)(iii), the applicant shall document  
9           agreement on the initial pediatric study plan in a  
10          submission to the Secretary marked ‘Agreed Initial  
11          Pediatric Study Plan’, and the Secretary shall con-  
12          firm such agreement to the applicant in writing not  
13          later than 30 calendar days of receipt of such agreed  
14          initial pediatric study plan.

15          “(4) DEFERRAL AND WAIVER.—If the agreed  
16          initial pediatric study plan contains a request from  
17          the applicant for a deferral, partial waiver, or waiver  
18          under this section, the written confirmation under  
19          paragraph (3) shall include a recommendation from  
20          the Secretary as to whether such request meets the  
21          standards under paragraphs (3) or (4) of subsection  
22          (a).

23          “(5) AMENDMENTS TO THE PLAN.—At the ini-  
24          tiative of the Secretary or the applicant, the agreed  
25          initial pediatric study plan may be amended at any



1 time. The requirements of paragraph (2)(C) shall  
2 apply to any such proposed amendment in the same  
3 manner and to the same extent as such require-  
4 ments apply to an initial pediatric study plan under  
5 paragraph (1). The requirements of paragraphs (3)  
6 and (4) shall apply to any agreement resulting from  
7 such proposed amendment in the same manner and  
8 to the same extent as such requirements apply to an  
9 agreed initial pediatric study plan.

10 “(6) INTERNAL COMMITTEE.—The Secretary  
11 shall consult the internal committee under section  
12 505C on the review of the initial pediatric study  
13 plan, agreed initial pediatric plan, and any signifi-  
14 cant amendments to such plans.

15 “(7) REQUIRED RULEMAKING.—Not later than  
16 1 year after the date of enactment of the Food and  
17 Drug Administration Safety and Innovation Act, the  
18 Secretary shall promulgate proposed regulations and  
19 issue proposed guidance to implement the provisions  
20 of this subsection.”.

21 (b) CONFORMING AMENDMENTS.—Section 505B (21  
22 U.S.C. 355c) is amended—

23 (1) by amending subclause (II) of subsection  
24 (a)(3)(A)(ii) to read as follows:

1 “(II) a pediatric study plan as  
2 described in subsection (e);” and

3 (2) in subsection (f)—

4 (A) in the subsection heading, by striking  
5 “PEDIATRIC PLANS,” and inserting “PEDI-  
6 ATRIC STUDY PLANS,”;

7 (B) in paragraph (1), by striking “all pedi-  
8 atric plans” and inserting “initial pediatric  
9 study plans, agreed initial pediatric study  
10 plans,”; and

11 (C) in paragraph (4)—

12 (i) in the paragraph heading, by strik-  
13 ing “PEDIATRIC PLANS,” and inserting  
14 “PEDIATRIC STUDY PLANS,”; and

15 (ii) by striking “pediatric plans” and  
16 inserting “initial pediatric study plans,  
17 agreed initial pediatric study plans,”.

18 (c) EFFECTIVE DATES.—

19 (1) PEDIATRIC STUDY PLANS.—Subsection (e)  
20 of section 505B of the Federal Food, Drug, and  
21 Cosmetic Act (other than paragraph (4) of such sub-  
22 section), as amended by subsection (a), shall take ef-  
23 fect 180 days after the date of enactment of this  
24 Act, without regard to whether the Secretary has

1 promulgated final regulations under paragraph (4)  
2 of such subsection by such date.

3 (2) CONFORMING AMENDMENTS.—The amend-  
4 ments made by subsection (b) shall take effect 180  
5 days after the date of enactment of this Act.

6 **SEC. 507. REAUTHORIZATIONS.**

7 (a) PEDIATRIC ADVISORY COMMITTEE.—Section  
8 14(d) of the Best Pharmaceuticals for Children Act (42  
9 U.S.C. 284m note) is amended by striking “Notwith-  
10 standing section 14 of the Federal Advisory Committee  
11 Act, the advisory committee shall continue to operate dur-  
12 ing the five-year period beginning on the date of the enact-  
13 ment of the Best Pharmaceuticals for Children Act of  
14 2007” and inserting “Section 14 of the Federal Advisory  
15 Committee Act shall not apply to the advisory committee”.

16 (b) PEDIATRIC SUBCOMMITTEE OF THE ONCOLOGIC  
17 DRUGS ADVISORY COMMITTEE.—Section 15(a)(3) of the  
18 Best Pharmaceuticals for Children Act (42 U.S.C. 284m  
19 note) is amended by striking “during the five-year period  
20 beginning on the date of the enactment of the Best Phar-  
21 maceuticals for Children Act of 2007” and inserting “for  
22 the duration of the operation of the Oncologic Drugs Advi-  
23 sory Committee”.

24 (c) HUMANITARIAN DEVICE EXEMPTION EXTEN-  
25 SION.—Section 520(m)(6)(A)(iv) of the Federal Food,

1 Drug, and Cosmetic Act (21 U.S.C. 360j(m)(6)(A)(iv)) is  
2 amended by striking “2012” and inserting “2017”.

3 (d) DEMONSTRATION GRANTS TO IMPROVE PEDI-  
4 ATRIC DEVICE AVAILABILITY.—Section 305(e) of Pedi-  
5 atric Medical Device Safety and Improvement Act (Public  
6 Law 110–85; 42 U.S.C. 282 note)) is amended by striking  
7 “\$6,000,000 for each of fiscal years 2008 through 2012”  
8 and inserting “\$4,500,000 for each of fiscal years 2013  
9 through 2017”.

10 (e) PROGRAM FOR PEDIATRIC STUDY OF DRUGS IN  
11 PHSA.—Section 409I(e)(1)(B) of the Public Health Serv-  
12 ice Act (42 U.S.C. 284m((e)(1)(B)) is amended by strik-  
13 ing “of the four succeeding fiscal years” and inserting  
14 “succeeding fiscal year”.

15 **SEC. 508. REPORT.**

16 (a) IN GENERAL.—Not later than October 31, 2016,  
17 and at the end of each subsequent 5-year period, the Sec-  
18 retary shall submit to Congress a report that evaluates  
19 the effectiveness of sections 505A and 505B of the Fed-  
20 eral Food, Drug, and Cosmetic Act (21 U.S.C. 355a,  
21 355e) and section 409I of the Public Health Service Act  
22 (42 U.S.C. 284m) in ensuring that medicines used by chil-  
23 dren are tested in pediatric populations and properly la-  
24 beled for use in children.

1 (b) CONTENTS.—The report under subsection (a)  
2 shall include—

3 (1) the number and importance of drugs and  
4 biological products for children for which studies  
5 have been requested or required (as of the date of  
6 such report) under 505A and 505B of the Federal  
7 Food, Drug, and Cosmetic Act (21 U.S.C. 355a,  
8 355c) and section 409I of the Public Health Service  
9 Act (42 U.S.C. 284m), including—

10 (A) the number of labeling changes made  
11 to drugs and biological products pursuant to  
12 such sections since the date of enactment of  
13 this Act; and

14 (B) the importance of such drugs and bio-  
15 logical products in the improvement of the  
16 health of children;

17 (2) the number of required studies under such  
18 section 505B that have not met the initial deadline  
19 provided under such section, including—

20 (A) the number of deferrals and deferral  
21 extensions granted and the reasons such exten-  
22 sions were granted;

23 (B) the number of waivers and partial  
24 waivers granted; and

1 (C) the number of letters issued under  
2 subsection (d) of such section 505B;

3 (3) the number of written requests issued, de-  
4 clined, and referred to the National Institutes of  
5 Health under such section 505A since the date of  
6 enactment of this Act (including the reasons for  
7 such declination), and a description and status of re-  
8 ferrals made under subsection (n) of such section  
9 505A;

10 (4) the number of proposed pediatric study  
11 plans submitted and agreed to as identified in the  
12 marketing application under such section 505B;

13 (5) any labeling changes recommended by the  
14 Pediatric Advisory Committee as a result of the re-  
15 view by such Committee of adverse events reports;

16 (6) the number and current status of pediatric  
17 postmarketing requirements;

18 (7) the number and importance of drugs and  
19 biological products for children that are not being  
20 tested for use in pediatric populations, notwith-  
21 standing the existence of the programs under such  
22 sections 505A and 505B and section 409I of the  
23 Public Health Service Act;

24 (8) the possible reasons for the lack of testing  
25 reported under paragraph (7);

1           (9) the number of drugs and biological products  
2           for which testing is being done (as of the date of the  
3           report) and for which a labeling change is required  
4           under the programs described in paragraph (7), in-  
5           cluding—

6                   (A) the date labeling changes are made;

7                   (B) which labeling changes required the  
8           use of the dispute resolution process; and

9                   (C) for labeling changes that required such  
10          dispute resolution process, a description of—

11                   (i) the disputes;

12                   (ii) the recommendations of the Pedi-  
13          atric Advisory Committee; and

14                   (iii) the outcomes of such process; and

15                   (D) an assessment of the effectiveness in  
16          improving information about pediatric uses of  
17          drugs and biological products;

18          (10)(A) the efforts made by the Secretary to in-  
19          crease the number of studies conducted in the neo-  
20          natal population (including efforts made to encour-  
21          age the conduct of appropriate studies in neonates  
22          by companies with products that have sufficient  
23          safety and other information to make the conduct of  
24          the studies ethical and safe); and

25                   (B) the results of such efforts;

1           (11)(A) the number and importance of drugs  
2           and biological products for children with cancer that  
3           are being tested as a result of the programs de-  
4           scribed in paragraph (7); and

5           (B) any recommendations for modifications to  
6           such programs that would lead to new and better  
7           therapies for children with cancer, including a de-  
8           tailed rationale for each recommendation;

9           (12) an assessment of progress made in ad-  
10          dressing the recommendations and findings of any  
11          prior report issued by the Comptroller General, the  
12          Institute of Medicine, or the Secretary regarding the  
13          topics addressed in the report under this section, in-  
14          cluding with respect to—

15                 (A) improving public access to information  
16                 from pediatric studies conducted under such  
17                 sections 505A and 505B; and

18                 (B) improving the timeliness of pediatric  
19                 studies and pediatric study planning under such  
20                 sections 505A and 505B;

21          (13) any recommendations for modification to  
22          the programs that would improve pediatric drug re-  
23          search and increase pediatric labeling of drugs and  
24          biological products; and



1           (14) an assessment of the successes of and limi-  
2           tations to studying drugs for rare diseases under  
3           such sections 505A and 505B.

4           (c) CONSULTATION ON RECOMMENDATIONS.—At  
5           least 180 days before the report is due under subsection  
6           (a), and no sooner than 4 years after the date of enact-  
7           ment of this Act, the Secretary shall consult with rep-  
8           resentatives of patient groups, including pediatric patient  
9           groups, consumer groups, regulated industry, scientific  
10          and medical communities, academia, and other interested  
11          parties to obtain any recommendations or information rel-  
12          evant to the effectiveness of the programs described in  
13          subsection (b)(7), including suggestions for modifications  
14          to such programs.

15       **SEC. 509. TECHNICAL AMENDMENTS.**

16          (a) PEDIATRIC STUDIES OF DRUGS IN FFDCA.—  
17          Section 505A (21 U.S.C. 355a) is amended—

18               (1) in subsection (k)(2), by striking “subsection  
19               (f)(3)(F)” and inserting “subsection (f)(6)(F)”;

20               (2) in subsection (n)—

21                       (A) in the subsection heading, by striking  
22                       “COMPLETED” and inserting “SUBMITTED”;

23                       and

24                       (B) in paragraph (1)—

1 (i) in the matter preceding subpara-  
2 graph (A), by striking “have not been com-  
3 pleted” and inserting “have not been sub-  
4 mitted by the date specified in the written  
5 request issued or if the applicant or holder  
6 does not agree to the request”;

7 (ii) in subparagraph (A)—

8 (I) in the first sentence, by in-  
9 serting “, or for which a period of ex-  
10 clusivity eligible for extension under  
11 subsection (b)(1) or (c)(1) of this sec-  
12 tion or under subsection (m)(2) or  
13 (m)(3) of section 351 of the Public  
14 Health Service Act has not ended”  
15 after “expired”; and

16 (II) by striking “Prior to” and  
17 all that follows through the period at  
18 the end; and

19 (iii) in subparagraph (B), by striking  
20 “no listed patents or has 1 or more listed  
21 patents that have expired,” and inserting  
22 “no unexpired listed patents and for which  
23 no unexpired periods of exclusivity eligible  
24 for extension under subsection (b)(1) or  
25 (c)(1) of this section or under subsection

1 (m)(2) or (m)(3) of section 351 of the  
2 Public Health Service Act apply,”; and

3 (3) in subsection (o)(2), by amendment sub-  
4 paragraph (B) to read as follows:

5 “(B) a statement of any appropriate pedi-  
6 atric contraindications, warnings, precautions,  
7 or other information that the Secretary con-  
8 siders necessary to assure safe use.”.

9 (b) RESEARCH INTO PEDIATRIC USES FOR DRUGS  
10 AND BIOLOGICAL PROJECTS IN FFDCA.—Section 505B  
11 (21 U.S.C. 355c) is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (1)—

14 (i) in the matter preceding subpara-  
15 graph (A), by inserting “for a drug” after  
16 “(or supplement to an application)”;

17 (ii) in subparagraph (A), by striking  
18 “for a” and inserting “, including, with re-  
19 spect to a drug, an application (or supple-  
20 ment to an application) for a”;

21 (iii) in subparagraph (B), by striking  
22 “for a” and inserting “, including, with re-  
23 spect to a drug, an application (or supple-  
24 ment to an application) for a”; and

- 1 (iv) in the matter following subpara-  
2 graph (B), by inserting “(or supplement)”  
3 after “application”; and  
4 (B) in paragraph (4)(C)—  
5 (i) in the first sentence, by inserting  
6 “partial” before “waiver is granted”; and  
7 (ii) in the second sentence, by striking  
8 “either a full or” and inserting “such a”;  
9 (2) in subsection (b)(1), in the matter pre-  
10 ceeding subparagraph (A), by striking “After pro-  
11 viding notice” and all that follows through “studies),  
12 the” and inserting “The”;  
13 (3) in subsection (g)—  
14 (A) in paragraph (1)(A), by inserting  
15 “that receives a priority review or 330 days  
16 after the date of the submission of an applica-  
17 tion or supplement that receives a standard re-  
18 view” after “after the date of the submission of  
19 the application or supplement”; and  
20 (B) in paragraph (2), by striking “the  
21 label of such product” and inserting “the label-  
22 ing of such product”; and  
23 (4) in subsection (h)(1)—

1 (A) by inserting “an application (or sup-  
2 plement to an application) that contains” after  
3 “date of submission of”; and

4 (B) by inserting “, if the application (or  
5 supplement) receives a priority review, or not  
6 later than 330 days after the date of submis-  
7 sion of an application (or supplement to an ap-  
8 plication) that contains a pediatric assessment  
9 under this section, if the application (or supple-  
10 ment) receives a standard review,” after “under  
11 this section,”.

12 (c) INTERNAL REVIEW COMMITTEE.—The heading of  
13 section 505C (21 U.S.C. 355d) is amended by inserting  
14 “**AND DEFERRAL EXTENSIONS**” after “**DEFERRALS**”.

15 (d) PROGRAM FOR PEDIATRIC STUDIES OF DRUGS.—  
16 Section 409I(c) of the Public Health Service Act (42  
17 U.S.C. 284m(e)) is amended—

18 (1) in paragraph (1)—

19 (A) in the matter preceding subparagraph  
20 (A), by inserting “or section 351(m) of this  
21 Act,” after “Cosmetic Act,”;

22 (B) in subparagraph (A)(i), by inserting  
23 “or section 351(k) of this Act” after “Cosmetic  
24 Act”; and

1 (C) by amending subparagraph (B) to read  
2 as follows:

3 “(B) there remains no patent listed pursu-  
4 ant to section 505(b)(1) of the Federal Food,  
5 Drug, and Cosmetic Act, and every three-year  
6 and five-year period referred to in subsection  
7 (c)(3)(E)(ii), (c)(3)(E)(iii), (c)(3)(E)(iv),  
8 (j)(5)(F)(ii), (j)(5)(F)(iii), or (j)(5)(F)(iv) of  
9 section 505 of the Federal Food, Drug, and  
10 Cosmetic Act, or applicable twelve-year period  
11 referred to in section 351(k)(7) of this Act, and  
12 any seven-year period referred to in section 527  
13 of the Federal Food, Drug, and Cosmetic Act  
14 has ended for at least one form of the drug;  
15 and”;

16 (2) in paragraph (2)—

17 (A) in the paragraph heading, by striking  
18 “FOR DRUGS LACKING EXCLUSIVITY”; and

19 (B) by striking “under section 505 of the  
20 Federal Food, Drug, and Cosmetic Act”; and

21 (C) by striking “505A of such Act” and  
22 inserting “505A of the Federal Food, Drug,  
23 and Cosmetic Act or section 351(m) of this  
24 Act”.

1           (e) PEDIATRIC SUBCOMMITTEE OF THE ONCOLOGIC  
2 ADVISORY COMMITTEE.—Section 15(a) of the Best Phar-  
3 maceuticals for Children Act (Public Law 107–109), as  
4 amended by section 502(e) of the Food and Drug Admin-  
5 istration Amendments Act of 2007 (Public Law 110–85),  
6 is amended in paragraph (1)(D), by striking “section  
7 505B(f)” and inserting ““section 505C’”.

8           (f) FOUNDATION OF NATIONAL INSTITUTES OF  
9 HEALTH.—Section 499(c)(1)(C) of the Public Health  
10 Service Act (42 U.S.C. 290b(c)(1)(C)) is amended by  
11 striking “for which the Secretary issues a certification in  
12 the affirmative under section 505A(n)(1)(A) of the Fed-  
13 eral Food, Drug, and Cosmetic Act”.

14           (g) APPLICATION.—Notwithstanding any provision of  
15 section 505A and 505B of the Federal Food, Drug, and  
16 Cosmetic Act (21 U.S.C. 355a, 355c) stating that a provi-  
17 sion applies beginning on the date of the enactment of the  
18 Best Pharmaceuticals for Children Act of 2007 or the date  
19 of the enactment of the Pediatric Research Equity Act of  
20 2007, any amendment made by this title to such a provi-  
21 sion applies beginning on the date of the enactment of this  
22 Act.

1 **SEC. 510. RELATIONSHIP BETWEEN PEDIATRIC LABELING**  
2 **AND NEW CLINICAL INVESTIGATION EXCLU-**  
3 **SIVITY.**

4 (a) IN GENERAL.—Section 505 (21 U.S.C. 351) is  
5 amended by adding at the end the following:

6 “(w) RELATIONSHIP BETWEEN PEDIATRIC LABEL-  
7 ING AND NEW CLINICAL INVESTIGATION EXCLUSIVITY.—  
8 The period of market exclusivity described in clauses (iii)  
9 and (iv) of subsection (c)(3)(E) and clauses (iii) and (iv)  
10 of subsection (j)(5)(F) shall not apply to a pediatric study  
11 conducted under section 505A or 505B that results, pur-  
12 suant to section 505B(g)(2), in the inclusion in the label-  
13 ing of the product a determination that the product is not  
14 indicated for use in pediatric populations or subpopula-  
15 tions or information indicating that the results of a study  
16 were inconclusive or did not demonstrate that the product  
17 is safe or effective in pediatric populations or subpopula-  
18 tions.”.

19 (b) PEDIATRIC STUDIES OF DRUGS.—Section  
20 505A(m) (21 U.S.C. 355a(m)) is amended—

21 (1) by striking “(m) CLARIFICATION OF INTER-  
22 ACTION OF MARKET EXCLUSIVITY UNDER THIS  
23 SECTION AND MARKET EXCLUSIVITY AWARDED TO  
24 AN APPLICANT FOR APPROVAL OF A DRUG UNDER  
25 SECTION 505(j).—If a” and all that follows through



1 the end of the matter that precedes paragraph (1)  
2 and inserting the following:

3 “(m) CLARIFICATION OF INTERACTION OF MARKET  
4 EXCLUSIVITY UNDER THIS SECTION AND MARKET EX-  
5 CLUSIVITY AWARDED TO AN APPLICATION OR SUPPLE-  
6 MENT UNDER SUBSECTION (C) OR (J) OF SECTION 505.—

7 “(1) 180-DAY EXCLUSIVITY PERIOD.—If a 180-  
8 day period under section 505(j)(5)(B)(iv) overlaps  
9 with a 6-month exclusivity period under this section,  
10 so that the applicant for approval of a drug under  
11 section 505(j) entitled to the 180-day period under  
12 that section loses a portion of the 180-day period to  
13 which the applicant is entitled for the drug, the 180-  
14 day period shall be extended from—”;

15 (2) by redesignating paragraphs (1) and (2) as  
16 subparagraphs (A) and (B) and moving such sub-  
17 paragraphs, as so redesignated, 2 ems to the right;  
18 and

19 (3) by adding at the end the following:

20 “(2) 3-YEAR EXCLUSIVITY PERIOD.—The 3-year  
21 period of exclusivity under clauses (iii) and (iv) of  
22 subsection 505(c)(3)(E) and clauses (iii) and (iv) of  
23 subsection 505(j)(5)(F) are not available for ap-  
24 proval of applications or supplements to applications  
25 based on reports of pediatric studies conducted

1 under sections 505A or 505B that resulted, pursu-  
2 ant to section 505A(j) or 505B(g)(2), in the inclu-  
3 sion in the labeling of the product a determination  
4 that the product is not indicated for use in pediatric  
5 populations or subpopulations or information indi-  
6 cating that the results of an assessment were incon-  
7 clusive or did not demonstrate that the product is  
8 safe or effective in pediatric populations or sub-  
9 population.”.

10 (c) PROMPT APPROVAL OF DRUGS.—Section 505A(o)  
11 (21 U.S.C. 355a(o)) is amended—

12 (1) in the heading, by striking “SECTION  
13 505(J)” and inserting “SUBSECTIONS (C) AND (J)  
14 OF SECTION 505”;

15 (2) in paragraph (1), by striking “under section  
16 505(j)” and inserting “under subsection (b)(2), (c),  
17 or (j) of section 505”;

18 (3) in paragraph (2), in the matter preceding  
19 subparagraph (A), by inserting “clauses (iii) and (iv)  
20 of section 505(c)(3)(E) or” after “Notwith-  
21 standing”; and

22 (4) in paragraph (3)—

23 (A) in subparagraph (B), by inserting  
24 “that differ from adult formulations” before the  
25 semicolon at the end; and

1 (B) in subparagraph (C)—

2 (i) by striking “under section 505(j)”  
3 and inserting “under subsection (c) or (j)  
4 of section 505”; and

5 (ii) by inserting “clauses (iii) or (iv)  
6 of section 505(c)(3)(E) or” after “exclu-  
7 sivity under”.

8 **TITLE VI—MEDICAL DEVICE**  
9 **REGULATORY IMPROVEMENTS**

10 **SEC. 601. RECLASSIFICATION PROCEDURES.**

11 (a) CLASSIFICATION CHANGES.—

12 (1) IN GENERAL.—Section 513(e)(1) (21  
13 U.S.C. 360c(e)(1)) is amended to read as follows:

14 “(e)(1)(A) Based on new information respecting a de-  
15 vice, the Secretary may, upon the initiative of the Sec-  
16 retary or upon petition of an interested person, change  
17 the classification of such device, and revoke, on account  
18 of the change in classification, any regulation or require-  
19 ment in effect under section 514 or 515 with respect to  
20 such device, by administrative order published in the Fed-  
21 eral Register following publication of a proposed reclassi-  
22 fication order in the Federal Register, a meeting of a de-  
23 vice classification panel described in subsection (b), and  
24 consideration of comments to a public docket, notwith-  
25 standing subchapter II of Chapter 5 of title 5 of the

1 United States Code. An order under this subsection  
2 changing the classification of a device from class III to  
3 class II may provide that such classification shall not take  
4 effect until the effective date of a performance standard  
5 established under section 514 for such device.

6 “(B) Authority to issue such administrative order  
7 shall not be delegated below the Commissioner. The Com-  
8 missioner shall issue such an order as proposed by the Di-  
9 rector of the Center for Devices and Radiological Health  
10 unless the Commissioner, in consultation with the Office  
11 of the Secretary of Health and Human Services, concludes  
12 that the order exceeds the legal authority of the Food and  
13 Drug Administration or that the order would be lawful,  
14 but unlikely to advance the public health.”.

15 (2) TECHNICAL AND CONFORMING AMEND-  
16 MENTS.—

17 (A) Section 513(e)(2) (21 U.S.C.  
18 360c(e)(2)) is amended by striking “regulation  
19 promulgated” and inserting “an order issued”.

20 (B) Section 514(a)(1) (21 U.S.C.  
21 360d(a)(1)) is amended by striking “under a  
22 regulation under section 513(e) but such regu-  
23 lation” and inserting “under an administrative  
24 order under section 513(e) (or a regulation pro-  
25 mulgated under such section prior to the date

1 of enactment of the Food and Drug Adminis-  
2 tration Safety and Innovation Act) but such  
3 order (or regulation)”;

4 (C) Section 517(a)(1) (21 U.S.C.  
5 360g(a)(1)) is amended by striking “or chang-  
6 ing the classification of a device to class I” and  
7 inserting “, an administrative order changing  
8 the classification of a device to class I,”.

9 (3) DEVICES RECLASSIFIED PRIOR TO THE  
10 DATE OF ENACTMENT OF THIS ACT.—

11 (A) IN GENERAL.—The amendments made  
12 by this subsection shall have no effect on a reg-  
13 ulation promulgated with respect to the classi-  
14 fication of a device under section 513(e) of the  
15 Federal Food, Drug, and Cosmetic Act prior to  
16 the date of enactment of this Act.

17 (B) APPLICABILITY OF OTHER PROVI-  
18 SIONS.—In the case of a device reclassified  
19 under section 513(e) of the Federal Food,  
20 Drug, and Cosmetic Act by regulation prior to  
21 the date of enactment of this Act, section  
22 517(a)(1) of the Federal Food, Drug, and Cos-  
23 metic Act (21 U.S.C. 360g(a)(1)) shall apply to  
24 such regulation promulgated under section  
25 513(e) of such Act with respect to such device

1 in the same manner such section 517(a)(1) ap-  
2 plies to an administrative order issued with re-  
3 spect to a device reclassified after the date of  
4 enactment of this Act.

5 (b) DEVICES MARKETED BEFORE MAY 28, 1976.—

6 (1) PREMARKET APPROVAL.—Section 515 (21  
7 U.S.C. 360e) is amended—

8 (A) in subsection (a), by striking “regula-  
9 tion promulgated under subsection (b)” and in-  
10 sserting “an order issued under subsection (b)  
11 (or a regulation promulgated under such sub-  
12 section prior to the date of enactment of the  
13 Food and Drug Administration Safety and In-  
14 novation Act)”;

15 (B) in subsection (b)—

16 (i) in paragraph (1)—

17 (I) in the heading, by striking  
18 “Regulation” and inserting “Order”;

19 and

20 (II) in the matter following sub-  
21 paragraph (B)—

22 (aa) by striking “by regula-  
23 tion, promulgated in accordance  
24 with this subsection” and insert-  
25 ing “by administrative order fol-

1                   lowing publication of a proposed  
2                   order in the Federal Register, a  
3                   meeting of a device classification  
4                   panel described in section 513(b),  
5                   and consideration of comments  
6                   from all affected stakeholders, in-  
7                   cluding patients, payors, and pro-  
8                   viders, notwithstanding sub-  
9                   chapter II of chapter 5 of title 5,  
10                  United States Code”; and

11                               (bb) by adding at the end  
12                   the following:

13   “Authority to issue such administrative order shall not be  
14   delegated below the Commissioner. Before publishing such  
15   administrative order, the Commissioner shall consult with  
16   the Office of the Secretary. The Commissioner shall issue  
17   such an order as proposed by the Director of the Center  
18   for Devices and Radiological Health unless the Commis-  
19   sioner, in consultation with the Office of the Secretary,  
20   concludes that the order exceeds the legal authority of the  
21   Food and Drug Administration or that the order would  
22   be lawful, but unlikely to advance the public health.”;

23

24                               (ii) in paragraph (2)—

1 (I) by striking subparagraph (B);

2 and

3 (II) in subparagraph (A)—

4 (aa) by striking “(2)(A) A  
5 proceeding for the promulgation  
6 of a regulation under paragraph  
7 (1) respecting a device shall be  
8 initiated by the publication in the  
9 Federal Register of a notice of  
10 proposed rulemaking. Such notice  
11 shall contain—” and inserting  
12 “(2) A proposed order required  
13 under paragraph (1) shall con-  
14 tain—”;

15 (bb) by redesignating  
16 clauses (i) through (iv) as sub-  
17 paragraphs (A) through (D), re-  
18 spectively;

19 (cc) in subparagraph (A), as  
20 so redesignated, by striking “reg-  
21 ulation” and inserting “order”;  
22 and

23 (dd) in subparagraph (C), as  
24 so redesignated, by striking “reg-  
25 ulation” and inserting “order”;



1 (iii) in paragraph (3)—

2 (I) by striking “proposed regula-  
3 tion” each place such term appears  
4 and inserting “proposed order”;

5 (II) by striking “paragraph (2)  
6 and after” and inserting “paragraph  
7 (2),”;

8 (III) by inserting “and a meeting  
9 of a device classification panel de-  
10 scribed in section 513(b),” after “such  
11 proposed regulation and findings,”;

12 (IV) by striking “(A) promulgate  
13 such regulation” and inserting “(A)  
14 issue an administrative order under  
15 paragraph (1)”;

16 (V) by striking “paragraph  
17 (2)(A)(ii)” and inserting “paragraph  
18 (2)(B)”;

19 (VI) by striking “promulgation of  
20 the regulation” and inserting  
21 “issuance of the administrative  
22 order”;

23 (iv) by striking paragraph (4); and

24 (C) in subsection (i)—

25 (i) in paragraph (2)—

1 (I) in the matter preceding sub-  
2 paragraph (A)—

3 (aa) by striking “December  
4 1, 1995” and inserting “the date  
5 that is 2 years after the date of  
6 enactment of the Food and Drug  
7 Administration Safety and Inno-  
8 vation Act”; and

9 (bb) by striking “publish a  
10 regulation in the Federal Reg-  
11 ister” and inserting “issue an ad-  
12 ministrative order following pub-  
13 lication of a proposed order in  
14 the Federal Register, a meeting  
15 of a device classification panel  
16 described in section 513(b), and  
17 consideration of comments from  
18 all affected stakeholders, includ-  
19 ing patients, payors, and pro-  
20 viders, notwithstanding sub-  
21 chapter II of chapter 5 of title 5,  
22 United States Code,”;

23 (II) in subparagraph (B), by  
24 striking “final regulation has been  
25 promulgated under section 515(b)”

1 and inserting “administrative order  
2 has been issued under subsection (b)  
3 (or no regulation has been promul-  
4 gated under such subsection prior to  
5 the date of enactment of the Food  
6 and Drug Administration Safety and  
7 Innovation Act)”;

8 (III) in the matter following sub-  
9 paragraph (B), by striking “regula-  
10 tion requires” and inserting “adminis-  
11 trative order issued under this para-  
12 graph requires”; and

13 (IV) by striking the third and  
14 fourth sentences; and

15 (ii) in paragraph (3)—

16 (I) by striking “regulation requir-  
17 ing” each place such term appears  
18 and inserting “order requiring”; and

19 (II) by striking “promulgation of  
20 a section 515(b) regulation” and in-  
21 serting “issuance of an administrative  
22 order under subsection (b)”.

23 (2) TECHNICAL AND CONFORMING AMEND-  
24 MENTS.—Section 501(f) (21 U.S.C. 351(f)) is  
25 amended—

1 (A) in subparagraph (1)(A)—

2 (i) in subclause (i), by striking “a reg-  
3 ulation promulgated” and inserting “an  
4 order issued”; and

5 (ii) in subclause (ii), by striking “pro-  
6 mulgation of such regulation” and insert-  
7 ing “issuance of such order”;

8 (B) in subparagraph (2)(B)—

9 (i) by striking “a regulation promul-  
10 gated” and inserting “an order issued”;  
11 and

12 (ii) by striking “promulgation of such  
13 regulation” and inserting “issuance of  
14 such order”; and

15 (C) by adding at the end the following:

16 “(3) In the case of a device with respect to which  
17 a regulation was promulgated under section 515(b) prior  
18 to the date of enactment of the Food and Drug Adminis-  
19 tration Safety and Innovation Act, a reference in this sub-  
20 section to an order issued under section 515(b) shall be  
21 deemed to include such regulation.”.

22 (3) APPROVAL BY REGULATION PRIOR TO THE  
23 DATE OF ENACTMENT OF THIS ACT.—The amend-  
24 ments made by this subsection shall have no effect  
25 on a regulation that was promulgated prior to the

1 date of enactment of this Act requiring that a device  
2 have an approval under section 515 of the Federal  
3 Food, Drug, and Cosmetic Act (21 U.S.C. 360e) of  
4 an application for premarket approval.

5 (c) REPORTING.—The Secretary of Health and  
6 Human Services shall annually post on the Internet web  
7 site of the Food and Drug Administration—

8 (1) the number and type of class I and class II  
9 devices reclassified as class II or class III in the pre-  
10 vious calendar year under section 513(e)(1) of the  
11 Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
12 360c(e)(1));

13 (2) the number and type of class II and class  
14 III devices reclassified as class I or class II in the  
15 previous calendar year under such section 513(e)(1);  
16 and

17 (3) the number and type of devices reclassified  
18 in the previous calendar year under section 515 of  
19 the Federal Food, Drug, and Cosmetic Act (21  
20 U.S.C. 360e).

21 **SEC. 602. CONDITION OF APPROVAL STUDIES.**

22 Section 515(d)(1)(B)(ii) (21 U.S.C.  
23 360e(d)(1)(B)(ii)) is amended—

24 (1) by striking “(ii)” and inserting “(ii)(I)”;  
25 and

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

2 “(II) An order approving an application for a device  
3 may require as a condition to such approval that the appli-  
4 cant conduct a postmarket study regarding the device.”.

5 **SEC. 603. POSTMARKET SURVEILLANCE.**

6 Section 522 (21 U.S.C. 360l) is amended—

7 (1) in subsection (a)(1)(A), in the matter pre-  
8 ceding clause (i), by inserting “, at the time of ap-  
9 proval or clearance of a device or at any time there-  
10 after,” after “by order”; and

11 (2) in subsection (b)(1), by inserting “The  
12 manufacturer shall commence surveillance under this  
13 section not later than 15 months after the day on  
14 which the Secretary issues an order under this sec-  
15 tion.” after the second sentence.

16 **SEC. 604. SENTINEL.**

17 Section 519 (21 U.S.C. 360i) is amended by adding  
18 at the end the following:

19 “(h) INCLUSION OF DEVICES IN THE POSTMARKET  
20 RISK IDENTIFICATION AND ANALYSIS SYSTEM.—

21 “(1) IN GENERAL.—

22 “(A) APPLICATION TO DEVICES.—The Sec-  
23 retary shall amend the procedures established  
24 and maintained under clauses (i), (ii), (iii), and  
25 (v) of section 505(k)(3)(C) in order to expand

1 the postmarket risk identification and analysis  
2 system established under such section to include  
3 and apply to devices.

4 “(B) EXCEPTION.—Subclause (II) of  
5 clause (i) of section 505(k)(3)(C) shall not  
6 apply to devices.

7 “(C) CLARIFICATION.—With respect to de-  
8 vices, the private sector health-related electronic  
9 data provided under section  
10 505(k)(3)(C)(i)(III)(bb) may include medical  
11 device utilization data, health insurance claims  
12 data, and procedure and device registries.

13 “(2) DATA.—In expanding the system as de-  
14 scribed in paragraph (1)(A), the Secretary shall use  
15 relevant data with respect to devices cleared under  
16 section 510(k) or approved under section 515, in-  
17 cluding claims data, patient survey data, and any  
18 other data deemed appropriate by the Secretary.

19 “(3) STAKEHOLDER INPUT.—To help ensure ef-  
20 fective implementation of the system described in  
21 paragraph (1)(A), the Secretary shall engage outside  
22 stakeholders in development of the system through a  
23 public hearing, advisory committee meeting, public  
24 docket, or other like public measures, as appro-  
25 priate.

1           “(4) VOLUNTARY SURVEYS.—Chapter 35 of  
2 title 44, United States Code, shall not apply to the  
3 collection of voluntary information from health care  
4 providers, such as voluntary surveys or question-  
5 naires, initiated by the Secretary for purposes of  
6 postmarket risk identification for devices.”.

7 **SEC. 605. RECALLS.**

8           (a) ASSESSMENT OF DEVICE RECALL INFORMA-  
9 TION.—

10           (1) IN GENERAL.—

11           (A) ASSESSMENT PROGRAM.—The Sec-  
12 retary of Health and Human Services (referred  
13 to in this section as the “Secretary”) shall en-  
14 hance the Food and Drug Administration’s re-  
15 call program to routinely and systematically as-  
16 sess—

17           (i) information submitted to the Sec-  
18 retary pursuant to a device recall order  
19 under section 518(e) of the Federal Food,  
20 Drug, and Cosmetic Act (21 U.S.C.  
21 360h(e)); and

22           (ii) information required to be re-  
23 ported to the Secretary regarding a correc-  
24 tion or removal of a device under section  
25 519(g) of such Act (21 U.S.C. 360i(g)).



1           (B) USE.—The Secretary shall use the as-  
2           assessment of information described under sub-  
3           paragraph (A) to proactively identify strategies  
4           for mitigating health risks presented by defec-  
5           tive or unsafe devices.

6           (2) DESIGN.—The program under paragraph  
7           (1) shall, at a minimum, identify—

8                   (A) trends in the numbers and types of de-  
9           vice recalls;

10                   (B) the types of devices in each device  
11           class that are most frequently recalled;

12                   (C) the causes of device recalls; and

13                   (D) any other information as the Secretary  
14           determines appropriate.

15           (b) AUDIT CHECK PROCEDURES.—The Secretary  
16           shall clarify procedures for conducting device recall audit  
17           checks to improve the ability of investigators to perform  
18           these checks in a consistent manner.

19           (c) ASSESSMENT CRITERIA.—The Secretary shall de-  
20           velop explicit criteria for assessing whether a person sub-  
21           ject to a recall order under section 518(e) of the Federal  
22           Food, Drug, and Cosmetic Act (21 U.S.C. 360h(e)) or to  
23           a requirement under section 519(g) of such Act (21  
24           U.S.C. 360i(g)) has performed an effective recall under

1 such section 518(e) or an effective correction or removal  
2 action under such section 519(g), respectively.

3 (d) **TERMINATION OF RECALLS.**—The Secretary shall  
4 document the basis for the termination by the Food and  
5 Drug Administration of—

6 (1) an individual device recall ordered under  
7 section 518(e) of the Federal Food, Drug, and Cos-  
8 metic Act (21 U.S.C. 360h(e)); and

9 (2) any correction or removal action for which  
10 a report is required to be submitted to the Secretary  
11 under section 519(g) of such Act (21 U.S.C.  
12 360i(g)).

13 **SEC. 606. CLINICAL HOLDS ON INVESTIGATIONAL DEVICE**  
14 **EXEMPTIONS.**

15 Section 520(g) (21 U.S.C. 360j(g)) is amended by  
16 adding at the end the following:

17 “(8)(A) At any time, the Secretary may prohibit the  
18 sponsor of an investigation from conducting the investiga-  
19 tion (referred to in this paragraph as a ‘clinical hold’) if  
20 the Secretary makes a determination described in sub-  
21 paragraph (B). The Secretary shall specify the basis for  
22 the clinical hold, including the specific information avail-  
23 able to the Secretary which served as the basis for such  
24 clinical hold, and confirm such determination in writing.

1 “(B) For purposes of subparagraph (A), a determina-  
2 tion described in this subparagraph with respect to a clin-  
3 ical hold is a determination that—

4 “(i) the device involved represents an unreason-  
5 able risk to the safety of the persons who are the  
6 subjects of the clinical investigation, taking into ac-  
7 count the qualifications of the clinical investigators,  
8 information about the device, the design of the clin-  
9 ical investigation, the condition for which the device  
10 is to be investigated, and the health status of the  
11 subjects involved; or

12 “(ii) the clinical hold should be issued for such  
13 other reasons as the Secretary may by regulation es-  
14 tablish.

15 “(C) Any written request to the Secretary from the  
16 sponsor of an investigation that a clinical hold be removed  
17 shall receive a decision, in writing and specifying the rea-  
18 sons therefor, within 30 days after receipt of such request.  
19 Any such request shall include sufficient information to  
20 support the removal of such clinical hold.”.

21 **SEC. 607. UNIQUE DEVICE IDENTIFIER.**

22 Section 519(f) (21 U.S.C. 360i(f)) is amended—

23 (1) by striking “The Secretary shall promul-  
24 gate” and inserting “Not later than December 31,  
25 2012, the Secretary shall issue proposed”; and



1 (1) by striking “(D) Whenever” and inserting  
2 “(D)(i) Whenever”; and

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

4 “(ii) For purposes of clause (i), the term ‘necessary’  
5 means the minimum required information that would sup-  
6 port a determination of substantial equivalence between  
7 a new device and a predicate device.

8 “(iii) Nothing in this subparagraph shall alter the  
9 standard for determining substantial equivalence between  
10 a new device and a predicate device.”.

11 **SEC. 609. CUSTOM DEVICES.**

12 Section 520(b) (21 U.S.C. 360j(b)) is amended to  
13 read as follows:

14 “(b) CUSTOM DEVICES.—

15 “(1) IN GENERAL.—The requirements of sec-  
16 tions 514 and 515 shall not apply to a device that—

17 “(A) is created or modified in order to  
18 comply with the order of an individual physician  
19 or dentist (or any other specially qualified per-  
20 son designated under regulations promulgated  
21 by the Secretary after an opportunity for an  
22 oral hearing);

23 “(B) in order to comply with an order de-  
24 scribed in subparagraph (A), necessarily devi-  
25 ates from an otherwise applicable performance

1 standard under section 514 or requirement  
2 under section 515;

3 “(C) is not generally available in the  
4 United States in finished form through labeling  
5 or advertising by the manufacturer, importer,  
6 or distributor for commercial distribution;

7 “(D) is designed to treat a unique pathol-  
8 ogy or physiological condition that no other de-  
9 vice is domestically available to treat;

10 “(E)(i) is intended to meet the special  
11 needs of such physician or dentist (or other spe-  
12 cially qualified person so designated) in the  
13 course of the professional practice of such phy-  
14 sician or dentist (or other specially qualified  
15 person so designated); or

16 “(ii) is intended for use by an individual  
17 patient named in such order of such physician  
18 or dentist (or other specially qualified person so  
19 designated);

20 “(F) is assembled from components or  
21 manufactured and finished on a case-by-case  
22 basis to accommodate the unique needs de-  
23 scribed in clause (i) or (ii) of subparagraph (E);  
24 and

1           “(G) may have common, standardized de-  
2           sign characteristics, chemical and material com-  
3           positions, and manufacturing processes as com-  
4           mercially distributed devices.

5           “(2) LIMITATIONS.—Paragraph (1) shall apply  
6           to a device only if—

7                   “(A) such device is for the purpose of  
8                   treating a sufficiently rare condition, such that  
9                   conducting clinical investigations on such device  
10                  would be impractical; and

11                  “(B) production of such device under para-  
12                  graph (1) is limited to no more than 5 units per  
13                  year of a particular device type, provided that  
14                  such replication otherwise complies with this  
15                  section.

16           “(3) EXCEPTION.—Paragraph (1) shall not  
17           apply to oral facial devices.

18           “(4) GUIDANCE.—Not later than 2 years after  
19           the date of enactment of this section, the Secretary  
20           shall issue final guidance on replication of multiple  
21           devices described in paragraph (2)(B).

22           “(5) NOTIFICATION TO THE SECRETARY.—The  
23           manufacturer of a device created or modified as de-  
24           scribed in paragraph (1) shall notify the Secretary,

1 in a manner prescribed by the Secretary, of the  
2 manufacture of such device.”.

3 **SEC. 610. AGENCY DOCUMENTATION AND REVIEW OF CER-**  
4 **TAIN DECISIONS REGARDING DEVICES.**

5 Chapter V (21 U.S.C. 351 et seq.) is amended by  
6 inserting after section 517 the following:

7 **“SEC. 517A. AGENCY DOCUMENTATION AND REVIEW OF**  
8 **CERTAIN DECISIONS REGARDING DEVICES.**

9 “(a) DOCUMENTATION OF RATIONALE FOR DE-  
10 NIAL.—If the Secretary renders a final decision to deny  
11 clearance of a premarket notification under section 510(k)  
12 or approval of a premarket application under section 515,  
13 or when the Secretary disapproves an application for an  
14 investigational exemption under 520(g), the written cor-  
15 respondence to the applicant communicating that decision  
16 shall provide a substantive summary of the scientific and  
17 regulatory rationale for the decision.

18 “(b) REVIEW OF DENIAL.—

19 “(1) IN GENERAL.—A person who has sub-  
20 mitted a report under section 510(k), an application  
21 under section 515, or an application for an exemp-  
22 tion under section 520(g) and for whom clearance of  
23 the report or approval of the application is denied  
24 may request a supervisory review of the decision to  
25 deny such clearance or approval. Such review shall



1 be conducted by an individual at the organizational  
2 level above the organization level at which the deci-  
3 sion to deny the clearance of the report or approval  
4 of the application is made.

5 “(2) SUBMISSION OF REQUEST.—A person re-  
6 questing a supervisory review under paragraph (1)  
7 shall submit such request to the Secretary not later  
8 than 30 days after such denial and shall indicate in  
9 the request whether such person seeks an in-person  
10 meeting or a teleconference review.

11 “(3) TIMEFRAME.—

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraph (B), the Secretary shall schedule  
14 an in-person or teleconference review, if so re-  
15 quested, not later than 30 days after such re-  
16 quest is made. The Secretary shall issue a deci-  
17 sion to the person requesting a review under  
18 this subsection not later than 45 days after the  
19 request is made under paragraph (1), or, in the  
20 case of a person who requests an in-person  
21 meeting or teleconference, 30 days after such  
22 meeting or teleconference.

23 “(B) EXCEPTION.—Subparagraph (A)  
24 shall not apply in cases that involve consulta-  
25 tion with experts outside of the Food and Drug

1 Administration, or in cases in which the spon-  
2 sor seeks to introduce evidence not already in  
3 the administrative record at the time the denial  
4 decision was made.”.

5 **SEC. 611. GOOD GUIDANCE PRACTICES RELATING TO DE-**  
6 **VICES.**

7 Subparagraph (C) of section 701(h)(1) (21 U.S.C.  
8 371(h)(1)) is amended—

9 (1) by striking “(C) For guidance documents”  
10 and inserting “(C)(i) For guidance documents”; and

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

12 “(ii) With respect to devices, if a notice to in-  
13 dustry guidance letter, a notice to industry advisory  
14 letter, or any similar notice sets forth initial inter-  
15 pretations of a regulation or policy or sets forth  
16 changes in interpretation or policy, such notice shall  
17 be treated as a guidance document for purposes of  
18 this subparagraph.”.

19 **SEC. 612. MODIFICATION OF DE NOVO APPLICATION PROC-**  
20 **ESS.**

21 (a) IN GENERAL.—Section 513(f)(2) (21 U.S.C.  
22 360c(f)(2)) is amended—

23 (1) by redesignating subparagraphs (B) and  
24 (C) as subparagraphs (C) and (D), respectively;

1           (2) by amending subparagraph (A) to read as  
2 follows:

3           “(A) In the case of a type of device that has not pre-  
4 viously been classified under this Act, a person may do  
5 one of the following:

6           “(i) Submit a report under section 510(k), and,  
7 if the device is classified into class III under para-  
8 graph (1), such person may request, not later than  
9 30 days after receiving written notice of such a clas-  
10 sification, the Secretary to classify the device under  
11 the criteria set forth in subparagraphs (A) through  
12 (C) of subsection (a)(1). The person may, in the re-  
13 quest, recommend to the Secretary a classification  
14 for the device. Any such request shall describe the  
15 device and provide detailed information and reasons  
16 for the recommended classification.

17           “(ii) Submit a request for initial classification  
18 of the device under this subparagraph, if the person  
19 declares that there is no legally marketed device  
20 upon which to base a substantial equivalence deter-  
21 mination as that term is defined in subsection (i).  
22 Subject to subparagraph (B), the Secretary shall  
23 classify the device under the criteria set forth in sub-  
24 paragraphs (A) through (C) of subsection (a)(1).  
25 The person submitting the request for classification

1 under this subparagraph may recommend to the  
2 Secretary a classification for the device and shall, if  
3 recommending classification in class II, include in  
4 the request an initial draft proposal for applicable  
5 special controls, as described in subsection  
6 (a)(1)(B), that are necessary, in conjunction with  
7 general controls, to provide reasonable assurance of  
8 safety and effectiveness and a description of how the  
9 special controls provide such assurance. Requests  
10 under this clause shall be subject to the electronic  
11 copy requirements of section 745A(b).”;

12 (3) by inserting after subparagraph (A) the fol-  
13 lowing:

14 “(B) The Secretary may decline to undertake a clas-  
15 sification request submitted under clause (2)(A)(ii) if the  
16 Secretary identifies a legally marketed device that could  
17 provide a reasonable basis for review of substantial equiva-  
18 lence under paragraph (1), or when the Secretary deter-  
19 mines that the device submitted is not of low-moderate  
20 risk or that general controls would be inadequate to con-  
21 trol the risks and special controls to mitigate the risks  
22 cannot be developed.”; and

23 (4) in subparagraph (C), as so redesignated—

24 (A) in clause (i), by striking “Not later  
25 than 60 days after the date of the submission

1 of the request under subparagraph (A),” and  
2 inserting “Not later than 120 days after the  
3 date of the submission of the request under  
4 subparagraph (A)(i) or 150 days after the date  
5 of the submission of the request under subpara-  
6 graph (A)(ii),”; and

7 (B) in clause (ii), by inserting “or is classi-  
8 fied in” after “remains in”.

9 (b) GAO REPORT.—Not later than 2 years after the  
10 date of enactment of this Act, the Comptroller General  
11 of the United States shall complete a study and submit  
12 to Congress a report on the effectiveness of the review  
13 pathway under section 513(f)(2)(A) of the Federal Food,  
14 Drug, and Cosmetic Act, as amended by this Act.

15 (c) CONFORMING AMENDMENT.—Section  
16 513(f)(1)(B) (21 U.S.C. 360c(f)(1)(B)) is amended by in-  
17 serting “a request under paragraph (2) or” after “re-  
18 sponse to”.

19 **SEC. 613. HUMANITARIAN DEVICE EXEMPTIONS.**

20 (a) IN GENERAL.—Section 520(m) (21 U.S.C.  
21 360j(m)) is amended—

22 (1) in paragraph (6)—

23 (A) in subparagraph (A)—

1 (i) in the matter preceding clause (i),  
2 by striking “subparagraph (D)” and in-  
3 serting “subparagraph (C)”;

4 (ii) by striking clause (i) and inserting  
5 the following:

6 “(i) The device with respect to which the ex-  
7 emption is granted—

8 “(I) is intended for the treatment or diag-  
9 nosis of a disease or condition that occurs in  
10 pediatric patients or in a pediatric subpopula-  
11 tion, and such device is labeled for use in pedi-  
12 atric patients or in a pediatric subpopulation in  
13 which the disease or condition occurs; or

14 “(II) is intended for the treatment or diag-  
15 nosis of a disease or condition that does not  
16 occur in pediatric patients or that occurs in pe-  
17 diatric patients in such numbers that the devel-  
18 opment of the device for such patients is impos-  
19 sible, highly impracticable, or unsafe.”; and

20 (iii) by striking clause (ii) and insert-  
21 ing the following:

22 “(ii) During any calendar year, the number of  
23 such devices distributed during that year under each  
24 exemption granted under this subsection does not  
25 exceed the number of such devices needed to treat,

1 diagnose, or cure a population of 4,000 individuals  
2 in the United States (referred to in this paragraph  
3 as the ‘annual distribution number’).”;

4 (B) by striking subparagraph (C);

5 (C) by redesignating subparagraphs (D)  
6 and (E) as subparagraphs (C) and (D), respec-  
7 tively; and

8 (D) in subparagraph (C), as so redesign-  
9 ated, by striking “and modified under sub-  
10 paragraph (C), if applicable,”;

11 (2) in paragraph (7), by striking “regarding a  
12 device” and inserting “regarding a device described  
13 in paragraph (6)(A)(i)(I)”;

14 (3) in paragraph (8), by striking “of all devices  
15 described in paragraph (6)” and inserting “of all de-  
16 vices described in paragraph (6)(A)(i)(I)”.

17 (b) APPLICABILITY TO EXISTING DEVICES.—A spon-  
18 sor of a device for which an exemption was approved under  
19 paragraph (2) of section 520(m) of the Federal Food,  
20 Drug, and Cosmetic Act (21 U.S.C. 360j(m)) before the  
21 date of enactment of this Act may seek a determination  
22 under subclause (I) or (II) of section 520(m)(6)(A)(i) (as  
23 amended by subsection (a)). If the Secretary determines  
24 that such subclause (I) or (II) applies with respect to a  
25 device, clauses (ii), (iii), and (iv) of subparagraph (A) and

1 subparagraphs (B), (C), and (D) of paragraph (6) of such  
2 section 520(m) shall apply to such device.

3 (c) REPORT.—Not later than January 1, 2017, the  
4 Comptroller General of the United States shall submit to  
5 Congress a report that evaluates and describes—

6 (1) the effectiveness of the amendments made  
7 by subsection (a) in stimulating innovation with re-  
8 spect to medical devices, including any favorable or  
9 adverse impact on pediatric device development;

10 (2) the impact of such amendments on pediatric  
11 device approvals for devices that received a humani-  
12 tarian use designation under section 520(m) of the  
13 Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
14 360j(m)) prior to the date of enactment of this Act;

15 (3) the status of public and private insurance  
16 coverage of devices granted an exemption under  
17 paragraph (2) of such section 520(m) (as amended  
18 by subsection (a)) and costs to patients of such de-  
19 vices;

20 (4) the impact that paragraph (4) of such sec-  
21 tion 520(m) has had on access to and insurance cov-  
22 erage of devices granted an exemption under para-  
23 graph (2) of such section 520(m); and



1           (5) the effect of the amendments made by sub-  
2           section (a) on patients described in such section  
3           520(m).

4 **SEC. 614. REAUTHORIZATION OF THIRD-PARTY REVIEW**  
5 **AND INSPECTIONS.**

6           (a) **THIRD PARTY REVIEW.**—Section 523(c) (21  
7 U.S.C. 360m(c)) is amended by striking “2012” and in-  
8 serting “2017”.

9           (b) **THIRD PARTY INSPECTIONS.**—Section  
10 704(g)(11) (21 U.S.C. 374(g)(11)) is amended by striking  
11 “2012” and inserting “2017”.

12 **SEC. 615. 510(K) DEVICE MODIFICATIONS.**

13           Having acknowledged to Congress potential unin-  
14 tended consequences that may result from the implemen-  
15 tation of the Food and Drug Administration guidance en-  
16 titled “Guidance for Industry and FDA Staff—510(k) De-  
17 vice Modifications: Deciding When to Submit a 510(k) for  
18 a Change to an Existing Device”, the Secretary of Health  
19 and Human Services shall withdraw such guidance  
20 promptly and ensure that, before any future guidance doc-  
21 ument on this issue is made final, affected stakeholders  
22 are provided with an opportunity to comment.

1 **TITLE VII—DRUG SUPPLY CHAIN**

2 **SEC. 701. REGISTRATION OF DOMESTIC DRUG ESTABLISH-**  
3 **MENTS.**

4 Section 510 (21 U.S.C. 360) is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (1), by striking “On or  
7 before” and all that follows through the period  
8 at the end and inserting the following: “During  
9 the period beginning on October 1 and ending  
10 on December 31 of each year, every person who  
11 owns or operates any establishment in any  
12 State engaged in the manufacture, preparation,  
13 propagation, compounding, or processing of a  
14 drug or drugs shall register with the Sec-  
15 retary—

16 “(A) the name of such person, places of busi-  
17 ness of such person, all such establishments, the  
18 unique facility identifier of each such establishment,  
19 and a point of contact e-mail address; and

20 “(B) the name and place of business of each  
21 drug importer that takes physical possession of a  
22 drug (other than an excipient), with which the per-  
23 son conducts business, including all establishments  
24 of each such drug importer, the unique facility iden-  
25 tifier of each such establishment, and a point of con-

1 tact e-mail address for each such drug importer.”;  
2 and

3 (B) by adding at the end the following:

4 “(3) The Secretary may specify the unique facility  
5 identifier system that shall be used by registrants under  
6 paragraph (1).”; and

7 (2) in subsection (e), by striking “with the Sec-  
8 retary his name, place of business, and such estab-  
9 lishment” and inserting “with the Secretary—

10 “(1) with respect to drugs, the information de-  
11 scribed under subsection (b)(1); and

12 “(2) with respect to devices, the information de-  
13 scribed under subsection (b)(2).”.

14 **SEC. 702. REGISTRATION OF FOREIGN ESTABLISHMENTS.**

15 (a) ENFORCEMENT OF REGISTRATION OF FOREIGN  
16 ESTABLISHMENTS.—Section 502(o) (21 U.S.C. 352(o)) is  
17 amended by striking “in any State”.

18 (b) REGISTRATION OF FOREIGN DRUG ESTABLISH-  
19 MENTS.—Section 510(i) (U.S.C. 360(i)) is amended—

20 (1) in paragraph (1)—

21 (A) by amending the matter preceding sub-  
22 paragraph (A) to read as follows: “Every per-  
23 son who owns or operates any establishment  
24 within any foreign country engaged in the man-  
25 ufacture, preparation, propagation,

1           compounding, or processing of a drug or device  
2           that is imported or offered for import into the  
3           United States shall, through electronic means  
4           in accordance with the criteria of the Sec-  
5           retary—”;

6                   (B) by amending subparagraph (A) to read  
7           as follows:

8                   “(A) upon first engaging in any such activity,  
9           immediately submit a registration to the Secretary  
10          that includes—

11                   “(i) with respect to drugs, the name and  
12           place of business of such person, all such estab-  
13           lishments, the unique facility identifier of each  
14           such establishment, a point of contact e-mail  
15           address, the name of the United States agent of  
16           each such establishment, the name and place of  
17           business of each drug importer with which such  
18           person conducts business, including all estab-  
19           lishments of each such drug importer, the  
20           unique facility identifier of each such establish-  
21           ment, and a point of contact e-mail address for  
22           each such drug importer; and

23                   “(ii) with respect to devices, the name and  
24           place of business of the establishment, the name  
25           of the United States agent for the establish-

1           ment, the name of each importer of such device  
2           in the United States that is known to the estab-  
3           lishment, and the name of each person who im-  
4           ports or offers for import such device to the  
5           United States for purposes of importation;  
6           and”; and

7           (C) by amending subparagraph (B) to read  
8           as follows:

9           “(B) each establishment subject to the require-  
10          ments of subparagraph (A) shall thereafter register  
11          with the Secretary during the period beginning on  
12          October 1 and ending on December 31 of each  
13          year.”; and

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

15          “(4) The Secretary may specify the unique facility  
16          identifier system that shall be used by registrants under  
17          paragraph (1) with respect to drugs.”.

18       **SEC. 703. IDENTIFICATION OF DRUG EXCIPIENT INFORMA-**  
19                               **TION WITH PRODUCT LISTING.**

20          Section 510(j)(1) (21 U.S.C. 360(j)(1)) is amend-  
21       ed—

22           (1) in subparagraph (C), by striking “; and”  
23           and inserting a semicolon;

24           (2) in subparagraph (D), by striking the period  
25           at the end and inserting “; and”; and

1 (3) by adding at the end the following:

2 “(E) in the case of a drug contained in the ap-  
3 plicable list and subject to section 505 or 512, the  
4 name and place of business of each manufacturer of  
5 an excipient of the listed drug with which the person  
6 listing the drug conducts business, including all es-  
7 tablishments used in the production of such excip-  
8 ient, the unique facility identifier of each such estab-  
9 lishment, and a point of contact e-mail address for  
10 each such excipient manufacturer.”.

11 **SEC. 704. ELECTRONIC SYSTEM FOR REGISTRATION AND**  
12 **LISTING.**

13 Section 510(p) (21 U.S.C. 360(p)) is amended—

14 (1) by striking “(p) Registrations and listings”  
15 and inserting the following:

16 “(p) **ELECTRONIC REGISTRATION AND LISTING.**—

17 “(1) **IN GENERAL.**—Registration and listing”;

18 and

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

20 “(2) **ELECTRONIC DATABASE.**—Not later than  
21 2 years after the Secretary specifies a unique facility  
22 identifier system under subsections (b) and (i), the  
23 Secretary shall maintain an electronic database,  
24 which shall not be subject to inspection under sub-

1 section (f), populated with the information submitted  
2 as described under paragraph (1) that—

3 “(A) enables personnel of the Food and  
4 Drug Administration to search the database by  
5 any field of information submitted in a registra-  
6 tion described under paragraph (1), or com-  
7 bination of such fields; and

8 “(B) uses the unique facility identifier sys-  
9 tem to link with other relevant databases within  
10 the Food and Drug Administration, including  
11 the database for submission of information  
12 under section 801(r).

13 “(3) RISK-BASED INFORMATION AND COORDI-  
14 NATION.—The Secretary shall ensure the accuracy  
15 and coordination of relevant Food and Drug Admin-  
16 istration databases in order to identify and inform  
17 risk-based inspections under section 510(h).”.

18 **SEC. 705. RISK-BASED INSPECTION FREQUENCY.**

19 Section 510(h) (21 U.S.C. 360(h)) is amended to  
20 read as follows:

21 “(h) INSPECTIONS.—

22 “(1) IN GENERAL.—Every establishment that is  
23 required to be registered with the Secretary under  
24 this section shall be subject to inspection pursuant  
25 to section 704.

1           “(2) BIENNIAL INSPECTIONS FOR DEVICES.—  
2           Every establishment described in paragraph (1) that  
3           is engaged in the manufacture, propagation,  
4           compounding, or processing of a device or devices  
5           classified in class II or III shall be so inspected by  
6           one or more officers or employees duly designated by  
7           the Secretary, or by persons accredited to conduct  
8           inspections under section 704(g), at least once in the  
9           2-year period beginning with the date of registration  
10          of such establishment pursuant to this section and  
11          at least once in every successive 2-year period there-  
12          after.

13           “(3) RISK-BASED SCHEDULE FOR DRUGS.—The  
14          Secretary, acting through one or more officers or  
15          employees duly designated by the Secretary, shall in-  
16          spect establishments described in paragraph (1) that  
17          are engaged in the manufacture, preparation, propa-  
18          gation, compounding, or processing of a drug or  
19          drugs (referred to in this subsection as ‘drug estab-  
20          lishments’) in accordance with a risk-based schedule  
21          established by the Secretary.

22           “(4) RISK FACTORS.—In establishing the risk-  
23          based scheduled under paragraph (3), the Secretary  
24          shall inspect establishments according to the known



1 safety risks of such establishments, which shall be  
2 based on the following factors:

3 “(A) The compliance history of the estab-  
4 lishment.

5 “(B) The record, history, and nature of re-  
6 calls linked to the establishment.

7 “(C) The inherent risk of the drug manu-  
8 factured, prepared, propagated, compounded, or  
9 processed at the establishment.

10 “(D) The certifications described under  
11 sections 801(r) and 809 for the establishment.

12 “(E) Whether the establishment has been  
13 inspected in the preceding 4-year period.

14 “(F) Any other criteria deemed necessary  
15 and appropriate by the Secretary for purposes  
16 of allocating inspection resources.

17 “(5) EFFECT OF STATUS.—In determining the  
18 risk associated with an establishment for purposes of  
19 establishing a risk-based schedule under paragraph  
20 (3), the Secretary shall not consider whether the  
21 drugs manufactured, prepared, propagated, com-  
22 pounded, or processed by such establishment are  
23 drugs described in section 503(b).

24 “(6) ANNUAL REPORT ON INSPECTIONS OF ES-  
25 TABLISHMENTS.—Not later than February 1 of each

1 year, the Secretary shall submit a report to Con-  
2 gress regarding—

3 “(A)(i) the number of domestic and foreign  
4 establishments registered pursuant to this sec-  
5 tion in the previous fiscal year; and

6 “(ii) the number of such domestic estab-  
7 lishments and the number of such foreign es-  
8 tablishments that the Secretary inspected in the  
9 previous fiscal year;

10 “(B) with respect to establishments that  
11 manufacture, prepare, propagate, compound, or  
12 process an active ingredient of a drug, a fin-  
13 ished drug product, or an excipient of a drug,  
14 the number of each such type of establishment;  
15 and

16 “(C) the percentage of the budget of the  
17 Food and Drug Administration used to fund  
18 the inspections described under subparagraph  
19 (A).

20 “(7) PUBLIC AVAILABILITY OF ANNUAL RE-  
21 PORTS.—The Secretary shall make the report re-  
22 quired under paragraph (6) available to the public  
23 on the Internet Web site of the Food and Drug Ad-  
24 ministration.”.

1 **SEC. 706. RECORDS FOR INSPECTION.**

2 Section 704(a) (21 U.S.C. 374(a)) is amended by  
3 adding at the end the following:

4 “(4)(A) Any records or other information that the  
5 Secretary is entitled to request under this section from  
6 a person that owns or operates an establishment that is  
7 engaged in the manufacture, preparation, propagation,  
8 compounding, or processing of a drug shall, upon the re-  
9 quest of the Secretary, be provided to the Secretary by  
10 such person within a reasonable time frame, within rea-  
11 sonable limits and in a reasonable manner, and in elec-  
12 tronic form, at the expense of such person. The Sec-  
13 retary’s request shall include a clear description of the  
14 records requested.

15 “(B) Upon receipt of the records requested under  
16 subparagraph (A), the Secretary shall provide to the per-  
17 son confirmation of the receipt of such records.

18 “(C) Nothing in this paragraph supplants the author-  
19 ity of the Secretary to conduct inspections otherwise per-  
20 mitted under this Act in order to ensure compliance by  
21 an establishment with this Act.”.

22 **SEC. 707. FAILURE TO ALLOW FOREIGN INSPECTION.**

23 Section 801(a) (21 U.S.C. 381(a)) is amended by  
24 adding at the end the following: “Notwithstanding any  
25 other provision of this subsection, the Secretary of Home-  
26 land Security shall, upon request from the Secretary of

1 Health and Human Services refuse to admit into the  
2 United States any article if the article was manufactured,  
3 prepared, propagated, compounded, processed, or held at  
4 an establishment that has refused to permit the Secretary  
5 of Health and Human Services to enter or inspect the es-  
6 tablishment in the same manner and to the same extent  
7 as the Secretary may inspect establishments under section  
8 704.”.

9 **SEC. 708. EXCHANGE OF INFORMATION.**

10 Section 708 (21 U.S.C. 379) is amended—

11 (1) by striking “CONFIDENTIAL INFORMATION”  
12 and all that follows through “The Secretary” and in-  
13 serting **“CONFIDENTIAL INFORMATION.**

14 “(a) CONTRACTORS.—The Secretary”; and

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

16 “(b) ABILITY TO RECEIVE AND PROTECT CONFIDEN-  
17 TIAL INFORMATION.—The Secretary shall not be required  
18 to disclose under section 552 of title 5, United States  
19 Code, or any other provision of law, any information relat-  
20 ing to drugs obtained from a Federal, State or local gov-  
21 ernment agency, or from a foreign government agency, if  
22 the agency has requested that the information be kept con-  
23 fidential, except pursuant to an order of a court of the  
24 United States. For purposes of section 552 of title 5,

1 United States Code, this subsection shall be considered a  
2 statute described in section 552(b)(3)(B).

3 “(c) AUTHORITY TO ENTER INTO MEMORANDA OF  
4 UNDERSTANDING FOR PURPOSES OF INFORMATION EX-  
5 CHANGE.—The Secretary may enter into written agree-  
6 ments regarding the exchange of information referenced  
7 in section 301(j) subject to the following criteria:

8 “(1) CERTIFICATION.—The Secretary may only  
9 enter into written agreements under this subsection  
10 with foreign governments that the Secretary has cer-  
11 tified as having the authority and demonstrated abil-  
12 ity to protect trade secret information from disclo-  
13 sure. Responsibility for this certification shall not be  
14 delegated to any officer or employee other than the  
15 Commissioner.

16 “(2) WRITTEN AGREEMENT.—The written  
17 agreement under this subsection shall include a com-  
18 mitment by the foreign government to protect infor-  
19 mation exchanged under this subsection from disclo-  
20 sure unless and until the sponsor gives written per-  
21 mission for disclosure or the Secretary makes a dec-  
22 laration of a public health emergency pursuant to  
23 section 319 of the Public Health Service Act that is  
24 relevant to the information.

1           “(3) INFORMATION EXCHANGE.—The Secretary  
2           may provide to a foreign government that has been  
3           certified under paragraph (1) and that has executed  
4           a written agreement under paragraph (2) informa-  
5           tion referenced in section 301(j) in the following cir-  
6           cumstances:

7                   “(A) Information concerning the inspection  
8                   of a facility may be provided if—

9                           “(i) the Secretary reasonably believes,  
10                           or that the written agreement described in  
11                           paragraph (2) establishes, that the govern-  
12                           ment has authority to otherwise obtain  
13                           such information; and

14                           “(ii) the written agreement executed  
15                           under paragraph (2) limits the recipient’s  
16                           use of the information to the recipient’s  
17                           civil regulatory purposes.

18                   “(B) Information not described in sub-  
19                   paragraph (A) may be provided as part of an  
20                   investigation, or to alert the foreign government  
21                   to the potential need for an investigation, if the  
22                   Secretary has reasonable grounds to believe  
23                   that a drug has a reasonable probability of  
24                   causing serious adverse health consequences or  
25                   death to humans or animals.

1           “(4) EFFECT OF SUBSECTION.—Nothing in this  
2 subsection affects the ability of the Secretary to  
3 enter into any written agreement authorized by  
4 other provisions of law to share confidential informa-  
5 tion.”.

6 **SEC. 709. ENHANCING THE SAFETY AND QUALITY OF THE**  
7 **DRUG SUPPLY.**

8           Section 501 (21 U.S.C. 351) is amended by adding  
9 at the end the following flush text:

10 “For purposes of subsection (a)(2)(B), the term ‘current  
11 good manufacturing practice’ includes the implementation  
12 of oversight and controls over the manufacture of drugs  
13 to ensure quality, including managing the risk of and es-  
14 tablishing the safety of raw materials, materials used in  
15 the manufacturing of drugs, and finished drug products.”.

16 **SEC. 710. ACCREDITATION OF THIRD-PARTY AUDITORS FOR**  
17 **DRUG ESTABLISHMENTS.**

18           (a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et  
19 seq.) is amended by adding at the end the following:

20 **“SEC. 809. ACCREDITATION OF THIRD-PARTY AUDITORS**  
21 **FOR DRUG ESTABLISHMENTS.**

22           “(a) DEFINITIONS.—In this section:

23           “(1) ACCREDITATION BODY.—The term ‘ac-  
24 creditation body’ means an authority that performs  
25 accreditation of third-party auditors.

1           “(2) ACCREDITED THIRD-PARTY AUDITOR.—

2           The term ‘accredited third-party auditor’ means a  
3           third-party auditor (which may be an individual) ac-  
4           credited by an accreditation body to conduct drug  
5           safety and quality audits.

6           “(3) AUDIT AGENT.—The term ‘audit agent’

7           means an individual who is an employee or agent of  
8           an accredited third-party auditor and, although not  
9           individually accredited, is qualified to conduct drug  
10          safety and quality audits on behalf of an accredited  
11          third-party auditor.

12          “(4) CONSULTATIVE AUDIT.—The term ‘con-

13          sultative audit’ means an audit of an eligible entity  
14          intended for internal purposes only to determine  
15          whether an establishment is in compliance with the  
16          provisions of this Act and applicable industry prac-  
17          tices, or any other such service.

18          “(5) DRUG SAFETY AND QUALITY AUDIT.—The

19          term ‘drug safety and quality audit’—

20                 “(A) means an audit of an eligible entity

21                 to certify that the eligible entity meets the re-  
22                 quirements of this Act applicable to drugs, in-  
23                 cluding the requirements of section 501 with re-  
24                 spect to drugs; and

25                 “(B) is not a consultative audit.



1           “(6) ELIGIBLE ENTITY.—The term ‘eligible en-  
2           tity’ means an entity, including a foreign drug estab-  
3           lishment registered under section 510(c), in the drug  
4           supply chain that chooses to be audited by an ac-  
5           credited third-party auditor or the audit agent of  
6           such accredited third-party auditor.

7           “(7) THIRD-PARTY AUDITOR.—The term ‘third-  
8           party auditor’ means a foreign government, agency  
9           of a foreign government or any other third party  
10          (which may be an individual), as the Secretary de-  
11          termines appropriate in accordance with the criteria  
12          described in subsection (c)(1), that is eligible to be  
13          considered for accreditation to conduct drug safety  
14          and quality audits.

15          “(b) ACCREDITATION SYSTEM.—

16                 “(1) RECOGNITION OF ACCREDITATION BOD-  
17                 IES.—

18                         “(A) IN GENERAL.—Not later than 2 years  
19                         after date of enactment of the Food and Drug  
20                         Administration Safety and Innovation Act, the  
21                         Secretary shall establish a system for the rec-  
22                         ognition of accreditation bodies that accredit  
23                         third-party auditors to conduct drug safety and  
24                         quality audits.

25                         “(B) DIRECT ACCREDITATION.—

1           “(i) IN GENERAL.—If, by the date  
2           that is 2 years after the date of establish-  
3           ment of the system described in subpara-  
4           graph (A), the Secretary has not identified  
5           and recognized an accreditation body to  
6           meet the requirements of this section, the  
7           Secretary may directly accredit third-party  
8           auditors.

9           “(ii) CERTAIN DIRECT ACCREDITA-  
10          TIONS.—Notwithstanding subparagraph  
11          (A) or clause (i), the Secretary may di-  
12          rectly accredit any foreign government or  
13          any agency of a foreign government as a  
14          third-party auditor at any time after the  
15          date of enactment of the Food and Drug  
16          Administration Safety and Innovation Act.

17          “(2) NOTIFICATION.—Each accreditation body  
18          recognized by the Secretary shall submit to the Sec-  
19          retary—

20                 “(A) a list of all accredited third-party  
21                 auditors accredited by such body (including the  
22                 name, contact information, and scope and dura-  
23                 tion of accreditation for each such auditor), and  
24                 the audit agents of such auditors; and

1           “(B) updated lists as needed to ensure the  
2           list held by the Secretary is accurate.

3           “(3) REVOCATION OF RECOGNITION AS AN AC-  
4           CREDITATION BODY.—The Secretary shall promptly  
5           revoke, after the opportunity for an informal hear-  
6           ing, the recognition of any accreditation body found  
7           not to be in compliance with the requirements of this  
8           section.

9           “(4) REINSTATEMENT.—The Secretary shall es-  
10          tablish procedures to reinstate recognition of an ac-  
11          creditation body if the Secretary determines, based  
12          on evidence presented by such accreditation body,  
13          that revocation was inappropriate or that the body  
14          meets the requirements for recognition under this  
15          section.

16          “(5) MODEL ACCREDITATION STANDARDS.—

17               “(A) IN GENERAL.—Not later than 18  
18               months after the date of enactment of the Food  
19               and Drug Administration Safety and Innova-  
20               tion Act, the Secretary shall develop model  
21               standards, including standards for drug safety  
22               and quality audit results, reports, and certifi-  
23               cations, and each recognized accreditation body  
24               shall ensure that third-party auditors and audit  
25               agents of such auditors meet such standards in

1 order to qualify such third-party auditors as ac-  
2 credited third-party auditors under this section.

3 “(B) CONTENT.—The standards developed  
4 under subparagraph (A) may—

5 “(i) include a description of required  
6 standards relating to the training proce-  
7 dures, competency, management respon-  
8 sibilities, quality control, and conflict of in-  
9 terest requirements of accredited third-  
10 party auditors; and

11 “(ii) set forth procedures for the peri-  
12 odic renewal of the accreditation of accred-  
13 ited third-party auditors.

14 “(C) REQUIREMENT TO PROVIDE RESULTS  
15 AND REPORTS TO THE SECRETARY.—An ac-  
16 creditation body (or, in the case of direct ac-  
17 creditation under subsection (b)(1)(B), the Sec-  
18 retary) may not accredit a third-party auditor  
19 unless such third-party auditor agrees to pro-  
20 vide to the Secretary, upon request, the results  
21 and reports of any drug safety and quality  
22 audit conducted pursuant to the accreditation  
23 provided under this section.

24 “(6) DISCLOSURE.—The Secretary shall main-  
25 tain on the Internet Web site of the Food and Drug

1 Administration a list of recognized accreditation  
2 bodies and accredited third-party auditors under this  
3 section.

4 “(c) ACCREDITED THIRD-PARTY AUDITORS.—

5 “(1) REQUIREMENTS FOR ACCREDITATION AS A  
6 THIRD-PARTY AUDITOR.—

7 “(A) FOREIGN GOVERNMENTS.—Prior to  
8 accrediting a foreign government or an agency  
9 of a foreign government as an accredited third-  
10 party auditor, the accreditation body (or, in the  
11 case of direct accreditation under subsection  
12 (b)(1)(B), the Secretary) shall perform such re-  
13 views and audits of drug safety programs, sys-  
14 tems, and standards of the government or agen-  
15 cy of the government as the Secretary deems  
16 necessary, including requirements under the  
17 standards developed under subsection (b)(5), to  
18 determine that the foreign government or agen-  
19 cy of the foreign government is capable of ade-  
20 quately ensuring that eligible entities or drugs  
21 certified by such government or agency meet  
22 the requirements of this Act.

23 “(B) OTHER THIRD PARTIES.—Prior to  
24 accrediting any other third party to be an ac-  
25 credited third-party auditor, the accreditation

1           body (or, in the case of direct accreditation  
2           under subsection (b)(1)(B), the Secretary) shall  
3           perform such reviews and audits of the training  
4           and qualifications of audit agents used by that  
5           party and conduct such reviews of internal sys-  
6           tems and such other investigation of the party  
7           as the Secretary deems necessary, including re-  
8           quirements under the standards developed  
9           under subsection (b)(5), to determine that the  
10          third-party auditor is capable of adequately en-  
11          suring that an eligible entity or drug certified  
12          by such third-party auditor meets the require-  
13          ments of this Act.

14           “(2) USE OF AUDIT AGENTS.—An accredited  
15          third-party auditor may conduct drug safety and  
16          quality audits and may employ or use audit agents  
17          to conduct drug safety and quality audits, but must  
18          ensure that such audit agents comply with all re-  
19          quirements the Secretary deems necessary, including  
20          requirements under paragraph (1) and subsection  
21          (b)(5).

22           “(3) REVOCATION OF ACCREDITATION.—

23           “(A) IN GENERAL.—The Secretary shall  
24          promptly revoke, after the opportunity for an

1 informal hearing, the accreditation of an ac-  
2 credited third-party auditor—

3 “(i) if, following an evaluation, the  
4 Secretary finds that the accredited third-  
5 party auditor is not in compliance with the  
6 requirements of this section; or

7 “(ii) following a refusal to allow  
8 United States officials to conduct such au-  
9 dits and investigations as may be necessary  
10 to determine compliance with the require-  
11 ments set forth in this section.

12 “(B) ADDITIONAL BASIS FOR REVOCATION  
13 OF ACCREDITATION.—The Secretary may re-  
14 voke accreditation from an accredited third-  
15 party auditor in the case that such third-party  
16 auditor is accredited by an accreditation body  
17 for which recognition as an accreditation body  
18 under subsection (b)(3) is revoked, if the Sec-  
19 retary determines that there is good cause for  
20 the revocation of accreditation.

21 “(4) REACCREDITATION.—The Secretary shall  
22 establish procedures to reinstate the accreditation of  
23 a third-party auditor for which accreditation has  
24 been revoked under paragraph (3)—

1           “(A) if the Secretary determines, based on  
2 evidence presented, that—

3                   “(i) the third-party auditor satisfies  
4 the requirements of this section; and

5                   “(ii) adequate grounds for revocation  
6 no longer exist; and

7           “(B) in the case of a third-party auditor  
8 accredited by an accreditation body for which  
9 recognition as an accreditation body is revoked  
10 under subsection (b)(3)—

11                   “(i) if the third-party auditor becomes  
12 accredited not later than 1 year after rev-  
13 ocation of accreditation under paragraph  
14 (3), through direct accreditation under  
15 subsection (b)(1)(B), or by an accredita-  
16 tion body in good standing; or

17                   “(ii) under such other conditions as  
18 the Secretary may require.

19           “(5) REQUIREMENT TO ISSUE CERTIFICATION  
20 OF ELIGIBLE ENTITIES FOR COMPLIANCE WITH CUR-  
21 RENT GOOD MANUFACTURING PRACTICE.—

22                   “(A) IN GENERAL.—An accreditation body  
23 (or, in the case of direct accreditation under  
24 subsection (b)(1)(B), the Secretary) may not  
25 accredit a third-party auditor unless such third-



1 party auditor agrees to issue a written and, as  
2 appropriate, electronic, document or certifi-  
3 cation, as the Secretary may require under this  
4 Act, regarding compliance with section 501.  
5 The Secretary may consider any such document  
6 or certification to satisfy requirements under  
7 section 801(r) and to target inspection re-  
8 sources under section 510(h).

9 “(B) REQUIREMENTS FOR ISSUING CER-  
10 TIFICATION.—

11 “(i) IN GENERAL.—An accredited  
12 third-party auditor shall issue a drug cer-  
13 tification described in subparagraph (A)  
14 only after conducting a drug safety and  
15 quality audit and such other activities that  
16 may be necessary to establish compliance  
17 with the provisions of section 501.

18 “(ii) PROVISION OF CERTIFICATION.—  
19 Only an accredited third-party auditor or  
20 the Secretary may provide a drug certifi-  
21 cation described in subparagraph (A).

22 “(C) RECORDS.—Following any accredita-  
23 tion of a third-party auditor, the Secretary  
24 may, at any time, require the accredited third-  
25 party auditor or any audit agent of such audi-

1 tor to submit to the Secretary a drug safety  
2 and quality audit report and such other reports  
3 or documents required as part of the drug safe-  
4 ty and quality audit process, for any eligible en-  
5 tity for which the accredited third-party auditor  
6 or audit agent of such auditor performed a  
7 drug safety and quality audit. The Secretary  
8 may require documentation that the eligible en-  
9 tity is in compliance with any applicable reg-  
10 istration requirements.

11 “(D) LIMITATION.—The requirement  
12 under subparagraph (C) shall not include any  
13 report or other documents resulting from a con-  
14 sultative audit, except that the Secretary may  
15 access the results of a consultative audit in ac-  
16 cordance with section 704.

17 “(E) DECLARATION OF AUDIT TYPE.—Be-  
18 fore an accredited third-party auditor begins  
19 any audit or provides any consultative service to  
20 an eligible entity, both the accredited third-  
21 party auditor and eligible entity shall establish  
22 in writing whether the audit is intended to be  
23 a drug safety and quality audit. Any audit, in-  
24 spection, or consultative service of any type pro-  
25 vided by an accredited third-party auditor on

1           behalf of an eligible entity shall be presumed to  
2           be a drug safety and quality audit in the ab-  
3           sence of such a written agreement. Once a drug  
4           safety and quality audit is initiated, it shall be  
5           subject to the requirements of this section, and  
6           no person may withhold from the Secretary any  
7           document subject to subparagraph (C) on the  
8           grounds that the audit was a consultative audit  
9           or otherwise not a drug safety and quality  
10          audit.

11                   “(F) RULE OF CONSTRUCTION.—Nothing  
12           in this section shall be construed to limit the  
13           authority of the Secretary under section 704.

14                   “(6) REQUIREMENTS REGARDING SERIOUS  
15           RISKS TO THE PUBLIC HEALTH.—If, at any time  
16           during a drug safety and quality audit, an accredited  
17           third-party auditor or an audit agent of such auditor  
18           discovers a condition that could cause or contribute  
19           to a serious risk to the public health, such auditor  
20           shall immediately notify the Secretary of—

21                   “(A) the identity and location of the eligi-  
22           ble entity subject to the drug safety and quality  
23           audit; and

24                   “(B) such condition.

25                   “(7) LIMITATIONS.—

1           “(A) IN GENERAL.—An audit agent of an  
2           accredited third-party auditor may not perform  
3           a drug safety and quality audit of an eligible  
4           entity if such audit agent has performed a drug  
5           safety and quality audit or consultative audit of  
6           such eligible entity during the previous 13-  
7           month period.

8           “(B) WAIVER.—The Secretary may waive  
9           the application of subparagraph (A) if the Sec-  
10          retary determines that there is insufficient ac-  
11          cess to accredited third-party auditors in a  
12          country or region or that the use of the same  
13          audit agent or accredited third-party auditor is  
14          otherwise necessary.

15          “(8) CONFLICTS OF INTEREST.—

16                 “(A) ACCREDITATION BODIES.—A recog-  
17                 nized accreditation body shall—

18                         “(i) not be owned, managed, or con-  
19                         trolled by any person that owns or operates  
20                         a third-party auditor to be accredited by  
21                         such body;

22                         “(ii) in carrying out accreditation of  
23                         third-party auditors under this section,  
24                         have procedures to ensure against the use  
25                         of any officer or employee of such body

1 that has a financial conflict of interest re-  
2 garding a third-party auditor to be accred-  
3 ited by such body; and

4 “(iii) annually make available to the  
5 Secretary disclosures of the extent to  
6 which such body and the officers and em-  
7 ployees of such body have maintained com-  
8 pliance with clauses (i) and (ii) relating to  
9 financial conflicts of interest.

10 “(B) ACCREDITED THIRD-PARTY AUDI-  
11 TORS.—An accredited third-party auditor  
12 shall—

13 “(i) not be owned, managed, or con-  
14 trolled by any person that owns or operates  
15 an eligible entity to be certified by such  
16 auditor;

17 “(ii) in carrying out drug safety and  
18 quality audits of eligible entities under this  
19 section, have procedures to ensure against  
20 the use of any officer or employee of such  
21 auditor that has a financial conflict of in-  
22 terest regarding an eligible entity to be  
23 certified by such auditor; and

24 “(iii) annually make available to the  
25 Secretary disclosures of the extent to

1           which such auditor and the officers and  
2           employees of such auditor have maintained  
3           compliance with clauses (i) and (ii) relat-  
4           ing to financial conflicts of interest.

5           “(C) AUDIT AGENTS.—An audit agent  
6           shall—

7                   “(i) not own or operate an eligible en-  
8                   tity to be audited by such agent;

9                   “(ii) in carrying out audits of eligible  
10                  entities under this section, have procedures  
11                  to ensure that such agent does not have a  
12                  financial conflict of interest regarding an  
13                  eligible entity to be audited by such agent;  
14                  and

15                  “(iii) annually make available to the  
16                  Secretary disclosures of the extent to  
17                  which such agent has maintained compli-  
18                  ance with clauses (i) and (ii) relating to fi-  
19                  nancial conflicts of interest.

20           “(d) FALSE STATEMENTS.—Any statement or rep-  
21           resentation made—

22                   “(1) by an employee or agent of an eligible enti-  
23                   ty to an accredited third-party auditor or audit  
24                   agent; or

1           “(2) by an accreditation body, accredited third-  
2           party auditor, or audit agent of such auditor to the  
3           Secretary, shall be subject to section 1001 of title  
4           18, United States Code.

5           “(e) MONITORING.—To ensure compliance with the  
6           requirements of this section, the Secretary—

7           “(1) shall periodically, or at least once every 4  
8           years, reevaluate the accreditation bodies described  
9           in subsection (b)(1);

10           “(2) shall periodically, or at least once every 4  
11           years, evaluate the performance of each accredited  
12           third-party auditor, through the review of regulatory  
13           audit reports by such auditors, the compliance his-  
14           tory as available of eligible entities certified by such  
15           auditors, and any other measures deemed necessary  
16           by the Secretary;

17           “(3) may at any time, conduct an onsite audit  
18           of any eligible entity certified by an accredited third-  
19           party auditor, with or without the auditor present;  
20           and

21           “(4) shall take any other measures deemed nec-  
22           essary by the Secretary.

23           “(f) EFFECT OF AUDIT.—The results of a drug safe-  
24           ty and quality audit by an accredited third-party auditor  
25           under this section—

1 “(1) may be used by the eligible entity—

2 “(A) as documentation of compliance with  
3 section 501(a)(2)(B) or section 801(r); and

4 “(B) for other purposes as determined ap-  
5 propriate by the Secretary; and

6 “(2) shall be used by the Secretary in estab-  
7 lishing the risk-based inspection schedules under sec-  
8 tion 510(h).

9 “(g) COSTS.—

10 “(1) AUTHORIZED FEES OF SECRETARY.—The  
11 Secretary may assess fees on accreditation bodies  
12 and accredited third-party auditors in such an  
13 amount necessary to establish and administer the  
14 recognition and accreditation program under this  
15 section. The Secretary may require accredited third-  
16 party auditors and audit agents to reimburse the  
17 Food and Drug Administration for the work per-  
18 formed to carry out this section. The Secretary shall  
19 not generate surplus revenue from such a reimburse-  
20 ment mechanism. Fees authorized under this para-  
21 graph shall be collected and available for obligation  
22 only to the extent and in the amount provided in ad-  
23 vance in appropriation Acts. Such fees are author-  
24 ized to remain available until expended.



1           “(2) AUTHORIZED FEES FOR RECOGNIZED AC-  
2           CREDITATION BODIES.—An accreditation body rec-  
3           ognized by the Secretary under subsection (b) may  
4           assess a reasonable fee to accredit third-party audi-  
5           tors.

6           “(h) LIMITATIONS.—

7           “(1) NO EFFECT ON SECTION 704 INSPEC-  
8           TIONS.—The drug safety and quality audits per-  
9           formed under this section shall not be considered in-  
10          spections under section 704.

11          “(2) NO EFFECT ON INSPECTION AUTHOR-  
12          ITY.—Nothing in this section affects the authority of  
13          the Secretary to inspect any eligible entity pursuant  
14          to this Act.

15          “(i) REGULATIONS.—

16          “(1) IN GENERAL.—Not later than 18 months  
17          after the date of enactment of the Food and Drug  
18          Administration Safety and Innovation Act, the Sec-  
19          retary shall adopt final regulations implementing  
20          this section.

21          “(2) PROCEDURE.—In promulgating the regula-  
22          tions implementing this section, the Secretary  
23          shall—

24                  “(A) issue a notice of proposed rulemaking  
25                  that includes the proposed regulation;

1           “(B) provide a period of not less than 60  
2           days for comments on the proposed regulation;  
3           and

4           “(C) publish the final regulation not less  
5           than 30 days before the effective date of the  
6           regulation.

7           “(3) CONTENT.—Such regulations shall in-  
8           clude—

9           “(A) requirements that, to the extent prac-  
10          ticable, drug safety and quality audits per-  
11          formed under this section be unannounced;

12          “(B) a structure to decrease the potential  
13          for conflicts of interest, including timing and  
14          public disclosure, for fees paid by eligible enti-  
15          ties to accredited third-party auditors; and

16          “(C) appropriate limits on financial affili-  
17          ations between an accredited third-party audi-  
18          tor or audit agents of such auditor and any per-  
19          son that owns or operates an eligible entity to  
20          be audited by such auditor, as described in sub-  
21          paragraphs (A) and (B).

22          “(4) RESTRICTIONS.—Notwithstanding any  
23          other provision of law, the Secretary shall promul-  
24          gate regulations implementing this section only as  
25          described in paragraph (2).”.

1 (b) REPORT ON ACCREDITED THIRD-PARTY AUDI-  
2 TORS.—Not later than January 20, 2017, the Comptroller  
3 General of the United States shall submit to Congress a  
4 report that addresses the following, with respect to the pe-  
5 riod beginning on the date of implementation of section  
6 809 of the Federal Food, Drug, and Cosmetic Act (as  
7 added by subsection (a)) and ending on the date of such  
8 report:

9 (1) The extent to which drug safety and quality  
10 audits completed by accredited third-party auditors  
11 under such section 809 are being used by the Sec-  
12 retary of Health and Human Services (referred to in  
13 this subsection as the “Secretary”) in establishing or  
14 applying the risk-based inspection schedules under  
15 section 510(h) of such Act (as amended by section  
16 705).

17 (2) The extent to which drug safety and quality  
18 audits completed by accredited third-party auditors  
19 or agents are assisting the Food and Drug Adminis-  
20 tration in evaluating compliance with sections  
21 501(a)(2)(B) of such Act (21 U.S.C. 351(a)(2)(B))  
22 and 801(r) of such Act (as added by section 711).

23 (3) Whether the Secretary has been able to ac-  
24 cess drug safety and quality audit reports completed

1 by accredited third-party auditors under such section  
2 809.

3 (4) Whether accredited third-party auditors ac-  
4 credited under such section 809 have adhered to the  
5 conflict of interest provisions set forth in such sec-  
6 tion.

7 (5) The extent to which the Secretary has au-  
8 dited recognized accreditation bodies or accredited  
9 third-party auditors to ensure compliance with the  
10 requirements of such section 809.

11 (6) The number of waivers under subsection  
12 (c)(7)(B) of such section 809 issued during the most  
13 recent 12-month period and the official justification  
14 by the Secretary for each determination that there  
15 was insufficient access to an accredited third-party  
16 auditor.

17 (7) The number of times a manufacturer has  
18 used the same accredited third-party auditor for 2 or  
19 more consecutive drug safety and quality audits  
20 under such section 809.

21 (8) Recommendations to Congress regarding  
22 the accreditation program under such section 809,  
23 including whether Congress should continue, modify,  
24 or terminate the program.

1 **SEC. 711. STANDARDS FOR ADMISSION OF IMPORTED**  
2 **DRUGS.**

3 Section 801 (21 U.S.C. 381) is amended—

4 (1) in subsection (o), by striking “drug or”;  
5 and

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

7 “(r)(1) The Secretary may require, as a condition of  
8 granting admission to a drug imported or offered for im-  
9 port into the United States, that the importer electroni-  
10 cally submit information demonstrating that the drug  
11 complies with applicable requirements of this Act.

12 “(2) The information described under paragraph (1)  
13 may include—

14 “(A) information demonstrating the regulatory  
15 status of the drug, such as the new drug application,  
16 abbreviated new drug application, or investigational  
17 new drug or drug master file number;

18 “(B) facility information, such as proof of reg-  
19 istration and the unique facility identifier;

20 “(C) indication of compliance with current good  
21 manufacturing practice, testing results, certifications  
22 relating to satisfactory inspections, and compliance  
23 with the country of export regulations; and

24 “(D) any other information deemed necessary  
25 and appropriate by the Secretary to assess compli-  
26 ance of the article being offered for import.

1       “(3) Information requirements referred to in para-  
2 graph (2)(C) may, at the discretion of the Secretary, be  
3 satisfied—

4           “(A) by certifications from accredited third par-  
5 ties, as described under section 809;

6           “(B) through representation by a foreign gov-  
7 ernment, if such inspection is conducted using  
8 standards and practices as agreed to by the Sec-  
9 retary; or

10          “(C) other appropriate documentation or evi-  
11 dence as described by the Secretary.

12       “(4)(A) Not later than 18 months after the date of  
13 enactment of the Food and Drug Administration Safety  
14 and Innovation Act, the Secretary shall adopt final regula-  
15 tions implementing this subsection. Such requirements  
16 shall be appropriate for the type of import, such as wheth-  
17 er the drug is for import into the United States for use  
18 in preclinical research or in a clinical investigation under  
19 an investigational new drug exemption under 505(i).

20       “(B) In promulgating the regulations implementing  
21 this subsection, the Secretary shall—

22           “(i) issue a notice of proposed rulemaking that  
23 includes the proposed regulation;

24           “(ii) provide a period of not less than 60 days  
25 for comments on the proposed regulation; and

1           “(iii) publish the final regulation not less than  
2           30 days before the effective date of the regulation.

3           “(C) Notwithstanding any other provision of law, the  
4 Secretary shall promulgate regulations implementing this  
5 subsection only as described in subparagraph (B).”.

6 **SEC. 712. NOTIFICATION.**

7           (a) PROHIBITED ACTS.—Section 301 (21 U.S.C.  
8 331) is amended by adding at the end the following:

9           “(aaa) The failure to notify the Secretary in violation  
10 of section 568.”.

11           (b) NOTIFICATION.—

12           (1) IN GENERAL.—Subchapter E of chapter V  
13 (21 U.S.C. 360bbb et seq.) is amended by adding at  
14 the end the following:

15 **“SEC. 568. NOTIFICATION.**

16           “(a) NOTIFICATION TO SECRETARY.—With respect  
17 to a drug, the Secretary may require notification to the  
18 Secretary by a covered person if the covered person  
19 knows—

20           “(1) of a substantial loss or theft of such drug;

21           or

22           “(2) that such drug—

23           “(A) has been or is being counterfeited;

24           and

1           “(B)(i) is the counterfeit product in com-  
2           merce in the United States; or

3           “(ii) is offered for import into the United  
4           States.

5           “(b) MANNER OF NOTIFICATION.—Notification  
6 under this section shall be made in a reasonable time, in  
7 such reasonable manner, and by such reasonable means  
8 as the Secretary may require by regulation or specify in  
9 guidance.

10          “(c) DEFINITION.—In this section, the term ‘covered  
11 person’ means—

12           “(1) a person who is required to register under  
13           section 510 with respect to an establishment en-  
14           gaged in the manufacture, preparation, propagation,  
15           compounding, or processing of a drug; or

16           “(2) a person engaged in the wholesale distribu-  
17           tion (as defined in section 503(e)(3)(B)) of a drug.”.

18           (2) APPLICABILITY.—Notifications under sec-  
19           tion 568 of the Federal Food, Drug, and Cosmetic  
20           Act (as added by paragraph (1)) apply to losses,  
21           thefts, or counterfeiting, as described in subsection  
22           (a) of such section 568, that occur on or after the  
23           date of enactment of this Act.



1 **SEC. 713. PROTECTION AGAINST INTENTIONAL ADULTERA-**  
2 **TION.**

3 Section 303(b) (21 U.S.C. 333(b)) is amended by  
4 adding at the end the following:

5 “(7) Notwithstanding subsection (a)(2), any person  
6 that knowingly and intentionally adulterates a drug such  
7 that the drug is adulterated under subsection (a)(1), (b),  
8 (c), or (d) of section 501 and has a reasonable probability  
9 of causing serious adverse health consequences or death  
10 to humans or animals shall be imprisoned for not more  
11 than 20 years or fined not more than \$1,000,000, or  
12 both.”.

13 **SEC. 714. ENHANCED CRIMINAL PENALTY FOR COUNTER-**  
14 **FEITING DRUGS.**

15 Section 303(b) (21 U.S.C. 333(b)), as amended by  
16 section 713, is further amended by adding at the end the  
17 following:

18 “(8) Notwithstanding subsection (a)(2), any person  
19 who knowingly and intentionally violates section 301(i)  
20 shall be imprisoned for not more than 20 years or fined  
21 not more than \$4,000,000 or both.”.

22 **SEC. 715. EXTRATERRITORIAL JURISDICTION.**

23 Chapter III (21 U.S.C. 331 et seq.) is amended by  
24 adding at the end the following:

1 **“SEC. 311. EXTRATERRITORIAL JURISDICTION.**

2 “There is extraterritorial jurisdiction over any viola-  
3 tion of this Act relating to any article regulated under this  
4 Act if such article was intended for import into the United  
5 States or if any act in furtherance of the violation was  
6 committed in the United States.”.

7 **SEC. 716. COMPLIANCE WITH INTERNATIONAL AGREE-**  
8 **MENTS.**

9 The provisions of this title (and the amendments  
10 made by this title) shall be applied in a manner that the  
11 Secretary of Health and Human Services, in consultation  
12 with the United States Trade Representative, considers  
13 necessary to comply with the obligations of the United  
14 States under international agreements.

15 **TITLE VIII—GENERATING**  
16 **ANTIBIOTIC INCENTIVES NOW**

17 **SEC. 801. EXTENSION OF EXCLUSIVITY PERIOD FOR DRUGS.**

18 (a) IN GENERAL.—Chapter V (21 U.S.C. 351 et seq.)  
19 is amended by inserting after section 505D the following:

20 **“SEC. 505E. EXTENSION OF EXCLUSIVITY PERIOD FOR NEW**  
21 **QUALIFIED INFECTIOUS DISEASE PRODUCTS.**

22 “(a) EXTENSION.—If the Secretary approves an ap-  
23 plication pursuant to section 505 for a drug that has been  
24 designated as a qualified infectious disease product under  
25 subsection (d), the 4- and 5-year periods described in sub-  
26 sections (c)(3)(E)(ii) and (j)(5)(F)(ii) of section 505, the

1 3-year periods described in clauses (iii) and (iv) of sub-  
2 section (c)(3)(E) and clauses (iii) and (iv) of subsection  
3 (j)(5)(F) of section 505, or the 7-year period described  
4 in section 527, as applicable, shall be extended by 5 years.

5 “(b) RELATION TO PEDIATRIC EXCLUSIVITY.—Any  
6 extension under subsection (a) of a period shall be in addi-  
7 tion to any extension of the period under section 505A  
8 with respect to the drug.

9 “(c) LIMITATIONS.—Subsection (a) does not apply to  
10 the approval of—

11 “(1) a supplement to an application under sec-  
12 tion 505(b) for any qualified infectious disease prod-  
13 uct for which an extension described in subsection  
14 (a) is in effect or has expired;

15 “(2) a subsequent application filed with respect  
16 to a product approved under section 505 for a  
17 change that results in a new indication, route of ad-  
18 ministration, dosing schedule, dosage form, delivery  
19 system, delivery device, or strength; or

20 “(3) an application for a product that is not ap-  
21 proved for the use for which it received a designa-  
22 tion under subsection (d).

23 “(d) DESIGNATION.—

24 “(1) IN GENERAL.—The manufacturer or spon-  
25 sor of a drug may request the Secretary to designate

1 a drug as a qualified infectious disease product at  
2 any time before the submission of an application  
3 under section 505(b) for such drug. The Secretary  
4 shall, not later than 60 days after the submission of  
5 such a request, determine whether the drug is a  
6 qualified infectious disease product.

7 “(2) LIMITATION.—Except as provided in para-  
8 graph (3), a designation under this subsection shall  
9 not be withdrawn for any reason, including modifica-  
10 tions to the list of qualifying pathogens under sub-  
11 section (f)(2)(C).

12 “(3) REVOCATION OF DESIGNATION.—The Sec-  
13 retary may revoke a designation of a drug as a  
14 qualified infectious disease product if the Secretary  
15 finds that the request for such designation contained  
16 an untrue statement of material fact.

17 “(e) REGULATIONS.—

18 “(1) IN GENERAL.—Not later than 2 years  
19 after the date of enactment of the Food and Drug  
20 Administration Safety and Innovation Act, the Sec-  
21 retary shall adopt final regulations implementing  
22 this section.

23 “(2) PROCEDURE.—In promulgating a regula-  
24 tion implementing this section, the Secretary shall—

1           “(A) issue a notice of proposed rulemaking  
2           that includes the proposed regulation;

3           “(B) provide a period of not less than 60  
4           days for comments on the proposed regulation;  
5           and

6           “(C) publish the final regulation not less  
7           than 30 days before the effective date of the  
8           regulation.

9           “(3) RESTRICTIONS.—Notwithstanding any  
10          other provision of law, the Secretary shall promul-  
11          gate regulations implementing this section only as  
12          described in paragraph (2), except that the Sec-  
13          retary may issue interim guidance for sponsors seek-  
14          ing designation under subsection (d) prior to the  
15          promulgation of such regulations.

16          “(4) DESIGNATION PRIOR TO REGULATIONS.—  
17          The Secretary may designate drugs as qualified in-  
18          fectious disease products under subsection (d) prior  
19          to the promulgation of regulations under this sub-  
20          section.

21          “(f) QUALIFYING PATHOGEN.—

22          “(1) DEFINITION.—In this section, the term  
23          ‘qualifying pathogen’ means a pathogen identified  
24          and listed by the Secretary under paragraph (2) that

1 has the potential to pose a serious threat to public  
2 health, such as—

3 “(A) resistant gram positive pathogens, in-  
4 cluding methicillin-resistant *Staphylococcus*  
5 *aureus*, vancomycin-resistant *Staphylococcus*  
6 *aureus*, and vancomycin-resistant enterococcus;

7 “(B) multi-drug resistant gram negative  
8 bacteria, including *Acinetobacter*, *Klebsiella*,  
9 *Pseudomonas*, and *E. coli* species;

10 “(C) multi-drug resistant tuberculosis; and

11 “(D) *Clostridium difficile*.

12 “(2) LIST OF QUALIFYING PATHOGENS.—

13 “(A) IN GENERAL.—The Secretary shall  
14 establish and maintain a list of qualifying  
15 pathogens, and shall make public the method-  
16 ology for developing such list.

17 “(B) CONSIDERATIONS.—In establishing  
18 and maintaining the list of pathogens described  
19 under this section the Secretary shall—

20 “(i) consider—

21 “(I) the impact on the public  
22 health due to drug-resistant orga-  
23 nisms in humans;

24 “(II) the rate of growth of drug-  
25 resistant organisms in humans;

1                   “(III) the increase in resistance  
2                   rates in humans; and

3                   “(IV) the morbidity and mor-  
4                   tality in humans; and

5                   “(ii) consult with experts in infectious  
6                   diseases and antibiotic resistance, includ-  
7                   ing the Centers for Disease Control and  
8                   Prevention, the Food and Drug Adminis-  
9                   tration, medical professionals, and the clin-  
10                  ical research community.

11                  “(C) REVIEW.—Every 5 years, or more  
12                  often as needed, the Secretary shall review, pro-  
13                  vide modifications to, and publish the list of  
14                  qualifying pathogens under subparagraph (A)  
15                  and shall by regulation revise the list as nec-  
16                  essary, in accordance with subsection (e).

17                  “(g) QUALIFIED INFECTIOUS DISEASE PRODUCT.—  
18                  The term ‘qualified infectious disease product’ means an  
19                  antibacterial or antifungal drug for human use intended  
20                  to treat serious or life-threatening infections, including  
21                  those caused by—

22                  “(1) an antibacterial or antifungal resistant  
23                  pathogen, including novel or emerging infectious  
24                  pathogens; or

1           “(2) qualifying pathogens listed by the Sec-  
2           retary under subsection (f).”.

3           (b) APPLICATION.—Section 505E of the Federal  
4 Food, Drug, and Cosmetic Act, as added by subsection  
5 (a), applies only with respect to a drug that is first ap-  
6 proved under section 505(c) of such Act (21 U.S.C.  
7 355(c)) on or after the date of the enactment of this Act.

8 **SEC. 802. PRIORITY REVIEW.**

9           (a) AMENDMENT.—Chapter V (21 U.S.C. 351 et  
10 seq.) is amended by inserting after section 524 the fol-  
11 lowing:

12 **“SEC. 524A. PRIORITY REVIEW FOR QUALIFIED INFECTIOUS**  
13 **DISEASE PRODUCTS.**

14           “If the Secretary designates a drug under section  
15 505E(d) as a qualified infectious disease product, then the  
16 Secretary shall give priority review to any application sub-  
17 mitted for approval for such drug under section 505(b).”.

18           (b) APPLICATION.—Section 524A of the Federal  
19 Food, Drug, and Cosmetic Act, as added by subsection  
20 (a), applies only with respect to an application that is sub-  
21 mitted under section 505(b) of such Act (21 U.S.C.  
22 355(b)) on or after the date of the enactment of this Act.

23 **SEC. 803. FAST TRACK PRODUCT.**

24           Section 506(a)(1) (21 U.S.C. 356(a)(1)), as amended  
25 by section 901(b), is amended by inserting “, or if the



1 Secretary designates the drug as a qualified infectious dis-  
2 ease product under section 505E(d)” before the period at  
3 the end of the first sentence.

4 **SEC. 804. GAO STUDY.**

5 (a) IN GENERAL.—The Comptroller General of the  
6 United States shall—

7 (1) conduct a study—

8 (A) on the need for, and public health im-  
9 pact of, incentives to encourage the research,  
10 development, and marketing of qualified infec-  
11 tious disease biological products and antifungal  
12 products; and

13 (B) consistent with trade and confiden-  
14 tiality data protections, assessing, for all anti-  
15 bacterial and antifungal drugs, including bio-  
16 logical products, the average or aggregate—

17 (i) costs of all clinical trials for each  
18 phase;

19 (ii) percentage of success or failure at  
20 each phase of clinical trials; and

21 (iii) public versus private funding lev-  
22 els of the trials for each phase; and

23 (2) not later than 1 year after the date of en-  
24 actment of this Act, submit a report to Congress on  
25 the results of such study, including any rec-

1       ommendations of the Comptroller General on appro-  
2       priate incentives for addressing such need.

3       (b) CONTENTS.—The part of the study described in  
4 subsection (a)(1)(A) shall include—

5           (1) an assessment of any underlying regulatory  
6 issues related to qualified infectious disease prod-  
7 ucts, including qualified infectious disease biological  
8 products;

9           (2) an assessment of the management by the  
10 Food and Drug Administration of the review of  
11 qualified infectious disease products, including quali-  
12 fied infectious disease biological products and the  
13 regulatory certainty of related regulatory pathways  
14 for such products;

15          (3) a description of any regulatory impediments  
16 to the clinical development of new qualified infec-  
17 tious disease products, including qualified infectious  
18 disease biological products, and the efforts of the  
19 Food and Drug Administration to address such im-  
20 pediments; and

21          (4) recommendations with respect to—

22           (A) improving the review and predictability  
23 of regulatory pathways for such products; and

24           (B) overcoming any regulatory impedi-  
25 ments identified in paragraph (3).

1 (c) DEFINITIONS.—In this section:

2 (1) The term “biological product” has the  
3 meaning given to such term in section 351 of the  
4 Public Health Service Act (42 U.S.C. 262).

5 (2) The term “qualified infectious disease bio-  
6 logical product” means a biological product intended  
7 to treat a serious or life-threatening infection de-  
8 scribed in section 505E(g) of the Federal Food,  
9 Drug, and Cosmetic Act, as added by section 801.

10 (3) The term “qualified infectious disease prod-  
11 uct” has the meaning given such term in section  
12 505E(g) of the Federal Food, Drug, and Cosmetic  
13 Act, as added by section 801.

14 **SEC. 805. CLINICAL TRIALS.**

15 (a) REVIEW AND REVISION OF GUIDANCE DOCU-  
16 MENTS.—

17 (1) IN GENERAL.—The Secretary of Health and  
18 Human Services (referred to in this section as the  
19 “Secretary”) shall review and, as appropriate, revise  
20 not fewer than 3 guidance documents per year,  
21 which shall include—

22 (A) reviewing the guidance documents of  
23 the Food and Drug Administration for the con-  
24 duct of clinical trials with respect to anti-  
25 bacterial and antifungal drugs; and

1 (B) as appropriate, revising such guidance  
2 documents to reflect developments in scientific  
3 and medical information and technology and to  
4 ensure clarity regarding the procedures and re-  
5 quirements for approval of antibacterial and  
6 antifungal drugs under chapter V of the Fed-  
7 eral Food, Drug, and Cosmetic Act (21 U.S.C.  
8 351 et seq.).

9 (2) ISSUES FOR REVIEW.—At a minimum, the  
10 review under paragraph (1) shall address the appro-  
11 priate animal models of infection, in vitro tech-  
12 niques, valid micro-biological surrogate markers, the  
13 use of non-inferiority versus superiority trials, trial  
14 enrollment, data requirements, and appropriate delta  
15 values for non-inferiority trials.

16 (3) RULE OF CONSTRUCTION.—Except to the  
17 extent to which the Secretary makes revisions under  
18 paragraph (1)(B), nothing in this section shall be  
19 construed to repeal or otherwise effect the guidance  
20 documents of the Food and Drug Administration.

21 (b) RECOMMENDATIONS FOR INVESTIGATIONS.—

22 (1) REQUEST.—The sponsor of a drug intended  
23 to be designated as a qualified infectious disease  
24 product may request that the Secretary provide writ-  
25 ten recommendations for nonclinical and clinical in-

1       vestigations which the Secretary believes may be  
2       necessary to be conducted with the drug before such  
3       drug may be approved under section 505 of the Fed-  
4       eral Food, Drug, and Cosmetic Act (21 U.S.C. 355)  
5       for use in treating, detecting, preventing, or identi-  
6       fying a qualifying pathogen, as defined in section  
7       505E of such Act.

8               (2) RECOMMENDATIONS.—If the Secretary has  
9       reason to believe that a drug for which a request is  
10      made under this subsection is a qualified infectious  
11      disease product, the Secretary shall provide the per-  
12      son making the request written recommendations for  
13      the nonclinical and clinical investigations which the  
14      Secretary believes, on the basis of information avail-  
15      able to the Secretary at the time of the request,  
16      would be necessary for approval under section 505  
17      of the Federal Food, Drug, and Cosmetic Act (21  
18      U.S.C. 355) of such drug for the use described in  
19      paragraph (1).

20             (c) GAO STUDY.—Not later than January 1, 2016,  
21      the Comptroller General of the United States shall submit  
22      to Congress a report—

23               (1) regarding the review and revision of the  
24      clinical trial guidance documents required under  
25      subsection (a) and the impact such review and revi-

1 sion has had on the review and approval of qualified  
2 infectious disease products;

3 (2) assessing—

4 (A) the effectiveness of the results-oriented  
5 metrics managers employ to ensure that review-  
6 ers of such products are familiar with, and con-  
7 sistently applying, clinical trial guidance docu-  
8 ments; and

9 (B) the predictability of related regulatory  
10 pathways and review;

11 (3) identifying any outstanding regulatory im-  
12 pediments to the clinical development of qualified in-  
13 fectionous disease products;

14 (4) reporting on the progress the Food and  
15 Drug Administration has made in addressing the im-  
16 pediments identified under paragraph (3); and

17 (5) containing recommendations regarding how  
18 to improve the review of, and regulatory pathway  
19 for, such products.

20 (d) QUALIFIED INFECTIOUS DISEASE PRODUCT.—

21 For purposes of this section, the term “qualified infectious  
22 disease product” has the meaning given such term in sec-  
23 tion 505E(g) of the Federal Food, Drug, and Cosmetic  
24 Act, as added by section 801.

1 **SEC. 806. REGULATORY CERTAINTY AND PREDICTABILITY.**

2 (a) INITIAL STRATEGY AND IMPLEMENTATION  
3 PLAN.—Not later than 1 year after the date of enactment  
4 of this Act, the Secretary of Health and Human Services  
5 (referred to in this section as the “Secretary”) shall sub-  
6 mit to Congress a strategy and implementation plan with  
7 respect to the requirements of this Act. The strategy and  
8 implementation plan shall include—

9 (1) a description of the regulatory challenges to  
10 clinical development, approval, and licensure of  
11 qualified infectious disease products;

12 (2) the regulatory and scientific priorities of the  
13 Secretary with respect to such challenges; and

14 (3) the steps the Secretary will take to ensure  
15 regulatory certainty and predictability with respect  
16 to qualified infectious disease products, including  
17 steps the Secretary will take to ensure managers and  
18 reviewers are familiar with related regulatory path-  
19 ways, requirements of the Food and Drug Adminis-  
20 tration, guidance documents related to such prod-  
21 ucts, and applying such requirements consistently.

22 (b) SUBSEQUENT REPORT.—Not later than 3 years  
23 after the date of enactment of this Act, the Secretary shall  
24 submit to Congress a report on—

25 (1) the progress made toward the priorities  
26 identified under subsection (a)(2);

1           (2) the number of qualified infectious disease  
2 products that have been submitted for approval or li-  
3 censure on or after the date of enactment of this  
4 Act;

5           (3) a list of qualified infectious disease products  
6 with information on the types of exclusivity granted  
7 for each product, consistent with the information  
8 published under section 505(j)(7)(A)(iii) of the Fed-  
9 eral Food, Drug, and Cosmetic Act (21 U.S.C.  
10 355(j)(7)(A)(iii));

11           (4) the number of such qualified infectious dis-  
12 ease products and that have been approved or li-  
13 censed on or after the date of enactment of this Act;  
14 and

15           (5) the number of calendar days it took for the  
16 approval or licensure of the qualified infectious dis-  
17 ease products approved or licensed on or after the  
18 date of enactment of this Act.

19           (c) QUALIFIED INFECTIOUS DISEASE PRODUCT.—  
20 For purposes of this section, the term “qualified infectious  
21 disease product” has the meaning given such term in sec-  
22 tion 505E(g) of the Federal Food, Drug, and Cosmetic  
23 Act, as added by section 801.



1 **TITLE IX—DRUG APPROVAL AND**  
2 **PATIENT ACCESS**

3 **SEC. 901. ENHANCEMENT OF ACCELERATED PATIENT AC-**  
4 **CESS TO NEW MEDICAL TREATMENTS.**

5 (a) FINDINGS; SENSE OF CONGRESS.—

6 (1) FINDINGS.—Congress finds as follows:

7 (A) The Food and Drug Administration  
8 (referred to in this section as the “FDA”)  
9 serves a critical role in helping to assure that  
10 new medicines are safe and effective. Regu-  
11 latory innovation is 1 element of the Nation’s  
12 strategy to address serious and life-threatening  
13 diseases or conditions by promoting investment  
14 in and development of innovative treatments for  
15 unmet medical needs.

16 (B) During the 2 decades following the es-  
17 tablishment of the accelerated approval mecha-  
18 nism, advances in medical sciences, including  
19 genomics, molecular biology, and bioinformatics,  
20 have provided an unprecedented understanding  
21 of the underlying biological mechanism and  
22 pathogenesis of disease. A new generation of  
23 modern, targeted medicines is under develop-  
24 ment to treat serious and life-threatening dis-  
25 eases, some applying drug development strate-

1           gies based on biomarkers or pharmacogenomics,  
2           predictive toxicology, clinical trial enrichment  
3           techniques, and novel clinical trial designs, such  
4           as adaptive clinical trials.

5           (C) As a result of these remarkable sci-  
6           entific and medical advances, the FDA should  
7           be encouraged to implement more broadly effec-  
8           tive processes for the expedited development  
9           and review of innovative new medicines in-  
10          tended to address unmet medical needs for seri-  
11          ous or life-threatening diseases or conditions,  
12          including those for rare diseases or conditions,  
13          using a broad range of surrogate or clinical  
14          endpoints and modern scientific tools earlier in  
15          the drug development cycle when appropriate.  
16          This may result in fewer, smaller, or shorter  
17          clinical trials for the intended patient popu-  
18          lation or targeted subpopulation without com-  
19          promising or altering the high standards of the  
20          FDA for the approval of drugs.

21          (D) Patients benefit from expedited access  
22          to safe and effective innovative therapies to  
23          treat unmet medical needs for serious or life-  
24          threatening diseases or conditions.

1           (E) For these reasons, the statutory au-  
2           thority in effect on the day before the date of  
3           enactment of this Act governing expedited ap-  
4           proval of drugs for serious or life-threatening  
5           diseases or conditions should be amended in  
6           order to enhance the authority of the FDA to  
7           consider appropriate scientific data, methods,  
8           and tools, and to expedite development and ac-  
9           cess to novel treatments for patients with a  
10          broad range of serious or life-threatening dis-  
11          eases or conditions.

12          (2) SENSE OF CONGRESS.—It is the sense of  
13          Congress that the Food and Drug Administration  
14          should apply the accelerated approval and fast track  
15          provisions set forth in section 506 of the Federal  
16          Food, Drug, and Cosmetic Act (21 U.S.C. 356), as  
17          amended by this section, to help expedite the devel-  
18          opment and availability to patients of treatments for  
19          serious or life-threatening diseases or conditions  
20          while maintaining safety and effectiveness standards  
21          for such treatments.

22          (b) EXPEDITED APPROVAL OF DRUGS FOR SERIOUS  
23          OR LIFE-THREATENING DISEASES OR CONDITIONS.—Sec-  
24          tion 506 (21 U.S.C. 356) is amended to read as follows:

1 **“SEC. 506. EXPEDITED APPROVAL OF DRUGS FOR SERIOUS**  
2 **OR LIFE-THREATENING DISEASES OR CONDI-**  
3 **TIONS.**

4 “(a) DESIGNATION OF DRUG AS FAST TRACK PROD-  
5 UCT.—

6 “(1) IN GENERAL.—The Secretary shall, at the  
7 request of the sponsor of a new drug, facilitate the  
8 development and expedite the review of such drug if  
9 it is intended, whether alone or in combination with  
10 one or more other drugs, for the treatment of a seri-  
11 ous or life-threatening disease or condition, and it  
12 demonstrates the potential to address unmet medical  
13 needs for such a disease or condition. (In this sec-  
14 tion, such a drug is referred to as a ‘fast track prod-  
15 uct’.)

16 “(2) REQUEST FOR DESIGNATION.—The spon-  
17 sor of a new drug may request the Secretary to des-  
18 ignate the drug as a fast track product. A request  
19 for the designation may be made concurrently with,  
20 or at any time after, submission of an application  
21 for the investigation of the drug under section 505(i)  
22 or section 351(a)(3) of the Public Health Service  
23 Act.

24 “(3) DESIGNATION.—Within 60 calendar days  
25 after the receipt of a request under paragraph (2),  
26 the Secretary shall determine whether the drug that

1 is the subject of the request meets the criteria de-  
2 scribed in paragraph (1). If the Secretary finds that  
3 the drug meets the criteria, the Secretary shall des-  
4 ignate the drug as a fast track product and shall  
5 take such actions as are appropriate to expedite the  
6 development and review of the application for ap-  
7 proval of such product.

8 “(b) ACCELERATED APPROVAL OF A DRUG FOR A  
9 SERIOUS OR LIFE-THREATENING DISEASE OR CONDI-  
10 TION, INCLUDING A FAST TRACK PRODUCT.—

11 “(1) IN GENERAL.—

12 “(A) ACCELERATED APPROVAL.—The Sec-  
13 retary may approve an application for approval  
14 of a product for a serious or life-threatening  
15 disease or condition, including a fast track  
16 product, under section 505(c) or section 351(a)  
17 of the Public Health Service Act upon a deter-  
18 mination that the product has an effect on a  
19 surrogate endpoint that is reasonably likely to  
20 predict clinical benefit, or on a clinical endpoint  
21 that can be measured earlier than irreversible  
22 morbidity or mortality, that is reasonably likely  
23 to predict an effect on irreversible morbidity or  
24 mortality or other clinical benefit, taking into  
25 account the severity, rarity, or prevalence of the

1 condition and the availability or lack of alter-  
2 native treatments. The approval described in  
3 the preceding sentence is referred to in this sec-  
4 tion as ‘accelerated approval’.

5 “(B) EVIDENCE.—The evidence to support  
6 that an endpoint is reasonably likely to predict  
7 clinical benefit under subparagraph (A) may in-  
8 clude epidemiological, pathophysiological, thera-  
9 peutic, pharmacologic, or other evidence devel-  
10 oped using biomarkers, for example, or other  
11 scientific methods or tools.

12 “(2) LIMITATION.—Approval of a product  
13 under this subsection may be subject to 1 or both  
14 of the following requirements:

15 “(A) That the sponsor conduct appropriate  
16 post-approval studies to verify and describe the  
17 predicted effect on irreversible morbidity or  
18 mortality or other clinical benefit.

19 “(B) That the sponsor submit copies of all  
20 promotional materials related to the product  
21 during the preapproval review period and, fol-  
22 lowing approval and for such period thereafter  
23 as the Secretary determines to be appropriate,  
24 at least 30 days prior to dissemination of the  
25 materials.

1           “(3) EXPEDITED WITHDRAWAL OF AP-  
2 PROVAL.—The Secretary may withdraw approval of  
3 a product approved under accelerated approval using  
4 expedited procedures (as prescribed by the Secretary  
5 in regulations which shall include an opportunity for  
6 an informal hearing) if—

7           “(A) the sponsor fails to conduct any re-  
8 quired post-approval study of the drug with due  
9 diligence;

10           “(B) a study required to verify and de-  
11 scribe the predicted effect on irreversible mor-  
12 bidity or mortality or other clinical benefit of  
13 the product fails to verify and describe such ef-  
14 fect or benefit;

15           “(C) other evidence demonstrates that the  
16 product is not safe or effective under the condi-  
17 tions of use; or

18           “(D) the sponsor disseminates false or  
19 misleading promotional materials with respect  
20 to the product.

21           “(c) REVIEW OF INCOMPLETE APPLICATIONS FOR  
22 APPROVAL OF A FAST TRACK PRODUCT.—

23           “(1) IN GENERAL.—If the Secretary deter-  
24 mines, after preliminary evaluation of clinical data  
25 submitted by the sponsor, that a fast track product

1       may be effective, the Secretary shall evaluate for fil-  
2       ing, and may commence review of portions of, an ap-  
3       plication for the approval of the product before the  
4       sponsor submits a complete application. The Sec-  
5       retary shall commence such review only if the appli-  
6       cant—

7               “(A) provides a schedule for submission of  
8       information necessary to make the application  
9       complete; and

10              “(B) pays any fee that may be required  
11       under section 736.

12              “(2) EXCEPTION.—Any time period for review  
13       of human drug applications that has been agreed to  
14       by the Secretary and that has been set forth in goals  
15       identified in letters of the Secretary (relating to the  
16       use of fees collected under section 736 to expedite  
17       the drug development process and the review of  
18       human drug applications) shall not apply to an ap-  
19       plication submitted under paragraph (1) until the  
20       date on which the application is complete.

21              “(d) AWARENESS EFFORTS.—The Secretary shall—

22               “(1) develop and disseminate to physicians, pa-  
23       tient organizations, pharmaceutical and bio-  
24       technology companies, and other appropriate persons  
25       a description of the provisions of this section appli-



1 cable to accelerated approval and fast track prod-  
2 ucts; and

3 “(2) establish a program to encourage the de-  
4 velopment of surrogate and clinical endpoints, in-  
5 cluding biomarkers, and other scientific methods and  
6 tools that can assist the Secretary in determining  
7 whether the evidence submitted in an application is  
8 reasonably likely to predict clinical benefit for seri-  
9 ous or life-threatening conditions for which signifi-  
10 cant unmet medical needs exist.

11 “(e) CONSTRUCTION.—

12 “(1) PURPOSE.—The amendments made by the  
13 Food and Drug Administration Safety and Innova-  
14 tion Act to this section are intended to encourage  
15 the Secretary to utilize innovative and flexible ap-  
16 proaches to the assessment of products under accel-  
17 erated approval for treatments for patients with seri-  
18 ous or life-threatening diseases or conditions and  
19 unmet medical needs.

20 “(2) CONSTRUCTION.—Nothing in this section  
21 shall be construed to alter the standards of evidence  
22 under subsection (c) or (d) of section 505 (including  
23 the substantial evidence standard in section 505(d))  
24 of this Act or under section 351(a) of the Public  
25 Health Service Act. Such sections and standards of

1 evidence apply to the review and approval of prod-  
2 ucts under this section, including whether a product  
3 is safe and effective. Nothing in this section alters  
4 the ability of the Secretary to rely on evidence that  
5 does not come from adequate and well-controlled in-  
6 vestigations for the purpose of determining whether  
7 an endpoint is reasonably likely to predict clinical  
8 benefit as described in subsection (b)(1)(B).”.

9 (c) GUIDANCE; AMENDED REGULATIONS.—

10 (1) DRAFT GUIDANCE.—Not later than 1 year  
11 after the date of enactment of this Act, the Sec-  
12 retary of Health and Human Services (referred to in  
13 this section as the “Secretary”) shall issue draft  
14 guidance to implement the amendments made by  
15 this section. In developing such guidance, the Sec-  
16 retary shall specifically consider issues arising under  
17 the accelerated approval and fast track processes  
18 under section 506 of the Federal Food, Drug, and  
19 Cosmetic Act, as amended by subsection (b), for  
20 drugs designated for a rare disease or condition  
21 under section 526 of such Act (21 U.S.C. 360bb)  
22 and shall also consider any unique issues associated  
23 with very rare diseases.

24 (2) FINAL GUIDANCE.—Not later than 1 year  
25 after the issuance of draft guidance under para-

1 graph (1), and after an opportunity for public com-  
2 ment, the Secretary shall issue final guidance.

3 (3) CONFORMING CHANGES.—The Secretary  
4 shall issue, as necessary, conforming amendments to  
5 the applicable regulations under title 21, Code of  
6 Federal Regulations, governing accelerated approval.

7 (4) NO EFFECT OF INACTION ON REQUESTS.—  
8 If the Secretary fails to issue final guidance or  
9 amended regulations as required by this subsection,  
10 such failure shall not preclude the review of, or ac-  
11 tion on, a request for designation or an application  
12 for approval submitted pursuant to section 506 of  
13 the Federal Food, Drug, and Cosmetic Act, as  
14 amended by subsection (b).

15 (d) INDEPENDENT REVIEW.—The Secretary may, in  
16 conjunction with other planned reviews, contract with an  
17 independent entity with expertise in assessing the quality  
18 and efficiency of biopharmaceutical development and regu-  
19 latory review programs to evaluate the Food and Drug Ad-  
20 ministration's application of the processes described in  
21 section 506 of the Federal Food, Drug, and Cosmetic Act,  
22 as amended by subsection (b), and the impact of such  
23 processes on the development and timely availability of in-  
24 novative treatments for patients suffering from serious or  
25 life-threatening conditions. Any such evaluation shall in-

1 clude consultation with regulated industries, patient advo-  
2 cacy and disease research foundations, and relevant aca-  
3 demic medical centers.

4 **SEC. 902. BREAKTHROUGH THERAPIES.**

5 (a) IN GENERAL.—Section 506 (21 U.S.C. 356), as  
6 amended by section 901, is further amended—

7 (1) by redesignating subsections (a) through (c)  
8 as subsections (b) through (d), respectively;

9 (2) by redesignating subsection (d) as sub-  
10 section (f);

11 (3) by inserting before subsection (b), as so re-  
12 designated, the following:

13 “(a) DESIGNATION OF A DRUG AS A BREAKTHROUGH  
14 THERAPY.—

15 “(1) IN GENERAL.—The Secretary shall, at the  
16 request of the sponsor of a drug, expedite the devel-  
17 opment and review of such drug if the drug is in-  
18 tended, alone or in combination with 1 or more other  
19 drugs, to treat a serious or life-threatening disease  
20 or condition and preliminary clinical evidence indi-  
21 cates that the drug may demonstrate substantial im-  
22 provement over existing therapies on 1 or more clini-  
23 cally significant endpoints, such as substantial treat-  
24 ment effects observed early in clinical development.

1 (In this section, such a drug is referred to as a  
2 ‘breakthrough therapy’.)

3 “(2) REQUEST FOR DESIGNATION.—The spon-  
4 sor of a drug may request the Secretary to designate  
5 the drug as a breakthrough therapy. A request for  
6 the designation may be made concurrently with, or  
7 at any time after, the submission of an application  
8 for the investigation of the drug under section 505(i)  
9 or section 351(a)(3) of the Public Health Service  
10 Act.

11 “(3) DESIGNATION.—

12 “(A) IN GENERAL.—Not later than 60 cal-  
13 endar days after the receipt of a request under  
14 paragraph (2), the Secretary shall determine  
15 whether the drug that is the subject of the re-  
16 quest meets the criteria described in paragraph  
17 (1). If the Secretary finds that the drug meets  
18 the criteria, the Secretary shall designate the  
19 drug as a breakthrough therapy and shall take  
20 such actions as are appropriate to expedite the  
21 development and review of the application for  
22 approval of such drug.

23 “(B) ACTIONS.—The actions to expedite  
24 the development and review of an application

1 under subparagraph (A) may include, as appro-  
2 priate—

3 “(i) holding meetings with the sponsor  
4 and the review team throughout the devel-  
5 opment of the drug;

6 “(ii) providing timely advice to, and  
7 interactive communication with, the spon-  
8 sor regarding the development of the drug  
9 to ensure that the development program to  
10 gather the non-clinical and clinical data  
11 necessary for approval is as efficient as  
12 practicable;

13 “(iii) involving senior managers and  
14 experienced review staff, as appropriate, in  
15 a collaborative, cross-disciplinary review;

16 “(iv) assigning a cross-disciplinary  
17 project lead for the Food and Drug Ad-  
18 ministration review team to facilitate an  
19 efficient review of the development pro-  
20 gram and to serve as a scientific liaison be-  
21 tween the review team and the sponsor;  
22 and

23 “(v) taking steps to ensure that the  
24 design of the clinical trials is as efficient as  
25 practicable, when scientifically appropriate,

1           such as by minimizing the number of pa-  
2           tients exposed to a potentially less effica-  
3           cious treatment.”;

4           (4) in subsection (f)(1), as so redesignated, by  
5           striking “applicable to accelerated approval” and in-  
6           serting “applicable to breakthrough therapies, accel-  
7           erated approval, and”; and

8           (5) by adding at the end the following:

9           “(g) REPORT.—Beginning in fiscal year 2013, the  
10          Secretary shall annually prepare and submit to the Com-  
11          mittee on Health, Education, Labor, and Pensions of the  
12          Senate and the Committee on Energy and Commerce of  
13          the House of Representatives, and make publicly available,  
14          with respect to this section for the previous fiscal year—

15                 “(1) the number of drugs for which a sponsor  
16                 requested designation as a breakthrough therapy;

17                 “(2) the number of products designated as a  
18                 breakthrough therapy; and

19                 “(3) for each product designated as a break-  
20                 through therapy, a summary of the actions taken  
21                 under subsection (a)(3).”.

22          (b) GUIDANCE; AMENDED REGULATIONS.—

23                 (1) IN GENERAL.—

24                         (A) GUIDANCE.—Not later than 18  
25                         months after the date of enactment of this Act,

1 the Secretary of Health and Human Services  
2 (referred to in this section as the “Secretary”)  
3 shall issue draft guidance on implementing the  
4 requirements with respect to breakthrough  
5 therapies, as set forth in section 506(a) of the  
6 Federal Food, Drug, and Cosmetic Act (21  
7 U.S.C. 356(a)), as amended by this section.  
8 The Secretary shall issue final guidance not  
9 later than 1 year after the close of the comment  
10 period for the draft guidance.

11 (B) AMENDED REGULATIONS.—

12 (i) IN GENERAL.—If the Secretary de-  
13 termines that it is necessary to amend the  
14 regulations under title 21, Code of Federal  
15 Regulations in order to implement the  
16 amendments made by this section to sec-  
17 tion 506(a) of the Federal Food, Drug,  
18 and Cosmetic Act, the Secretary shall  
19 amend such regulations not later than 2  
20 years after the date of enactment of this  
21 Act.

22 (ii) PROCEDURE.—In amending regu-  
23 lations under clause (i), the Secretary  
24 shall—



1 (I) issue a notice of proposed  
2 rulemaking that includes the proposed  
3 regulation;

4 (II) provide a period of not less  
5 than 60 days for comments on the  
6 proposed regulation; and

7 (III) publish the final regulation  
8 not less than 30 days before the effec-  
9 tive date of the regulation.

10 (iii) RESTRICTIONS.—Notwithstanding  
11 any other provision of law, the Secretary  
12 shall promulgate regulations implementing  
13 the amendments made by section only as  
14 described in clause (ii).

15 (2) REQUIREMENTS.—Guidance issued under  
16 this section shall—

17 (A) specify the process and criteria by  
18 which the Secretary makes a designation under  
19 section 506(a)(3) of the Federal Food, Drug,  
20 and Cosmetic Act; and

21 (B) specify the actions the Secretary shall  
22 take to expedite the development and review of  
23 a breakthrough therapy pursuant to such des-  
24 ignation under such section 506(a)(3), includ-

1           ing updating good review management practices  
2           to reflect breakthrough therapies.

3           (c) INDEPENDENT REVIEW.—Not later than 3 years  
4 after the date of enactment of this Act, the Comptroller  
5 General of the United States, in consultation with appro-  
6 priate experts, shall assess the manner by which the Food  
7 and Drug Administration has applied the processes de-  
8 scribed in section 506(a) of the Federal Food, Drug, and  
9 Cosmetic Act, as amended by this section, and the impact  
10 of such processes on the development and timely avail-  
11 ability of innovative treatments for patients affected by se-  
12 rious or life-threatening conditions. Such assessment shall  
13 be made publicly available upon completion.

14           (d) CONFORMING AMENDMENTS.—Section 506B(e)  
15 (21 U.S.C. 356b) is amended by striking “section  
16 506(b)(2)(A)” each place such term appears and inserting  
17 “section 506(c)(2)(A)”.

18 **SEC. 903. CONSULTATION WITH EXTERNAL EXPERTS ON**  
19 **RARE DISEASES, TARGETED THERAPIES, AND**  
20 **GENETIC TARGETING OF TREATMENTS.**

21           Subchapter E of chapter V (21 U.S.C. 360bbb et  
22 seq.), as amended by section 712, is further amended by  
23 adding at the end the following:

1 **“SEC. 569. CONSULTATION WITH EXTERNAL EXPERTS ON**  
2 **RARE DISEASES, TARGETED THERAPIES, AND**  
3 **GENETIC TARGETING OF TREATMENTS.**

4 “(a) IN GENERAL.—For the purpose of promoting  
5 the efficiency of and informing the review by the Food  
6 and Drug Administration of new drugs and biological  
7 products for rare diseases and drugs and biological prod-  
8 ucts that are genetically targeted, the following shall  
9 apply:

10 “(1) CONSULTATION WITH STAKEHOLDERS.—  
11 Consistent with sections X.C and IX.E.4 of the  
12 PDUFA Reauthorization Performance Goals and  
13 Procedures Fiscal Years 2013 through 2017, as ref-  
14 erenced in the letters described in section 101(b) of  
15 the Prescription Drug User Fee Amendments of  
16 2012, the Secretary shall ensure that opportunities  
17 exist, at a time the Secretary determines appro-  
18 priate, for consultations with stakeholders on the  
19 topics described in subsection (c).

20 “(2) CONSULTATION WITH EXTERNAL EX-  
21 PERTS.—The Secretary shall develop and maintain a  
22 list of external experts who, because of their special  
23 expertise, are qualified to provide advice on rare dis-  
24 ease issues, including topics described in subsection  
25 (c). The Secretary may, when appropriate to address  
26 a specific regulatory question, consult such external

1 experts on issues related to the review of new drugs  
2 and biological products for rare diseases and drugs  
3 and biological products that are genetically targeted,  
4 including the topics described in subsection (c),  
5 when such consultation is necessary because the Sec-  
6 retary lacks specific scientific, medical, or technical  
7 expertise necessary for the performance of its regu-  
8 latory responsibilities and the necessary expertise  
9 can be provided by the external experts.

10 “(b) EXTERNAL EXPERTS.—For purposes of sub-  
11 section (a)(2), external experts are those who possess sci-  
12 entific or medical training that the Secretary lacks with  
13 respect to one or more rare diseases.

14 “(c) TOPICS FOR CONSULTATION.—Topics for con-  
15 sultation pursuant to this section may include—

16 “(1) rare diseases;

17 “(2) the severity of rare diseases;

18 “(3) the unmet medical need associated with  
19 rare diseases;

20 “(4) the willingness and ability of individuals  
21 with a rare disease to participate in clinical trials;

22 “(5) an assessment of the benefits and risks of  
23 therapies to treat rare diseases;

24 “(6) the general design of clinical trials for rare  
25 disease populations and subpopulations; and

1           “(7) demographics and the clinical description  
2           of patient populations.

3           “(d) CLASSIFICATION AS SPECIAL GOVERNMENT EM-  
4 PLOYEES.—The external experts who are consulted under  
5 this section may be considered special government employ-  
6 ees, as defined under section 202 of title 18, United States  
7 Code.

8           “(e) PROTECTION OF PROPRIETARY INFORMA-  
9 TION.—Nothing in this section shall be construed to alter  
10 the protections offered by laws, regulations, and policies  
11 governing disclosure of confidential commercial or trade  
12 secret information, and any other information exempt  
13 from disclosure pursuant to section 552(b) of title 5,  
14 United States Code, as such provisions would be applied  
15 to consultation with individuals and organizations prior to  
16 the date of enactment of this section.

17           “(f) OTHER CONSULTATION.—Nothing in this sec-  
18 tion shall be construed to limit the ability of the Secretary  
19 to consult with individuals and organizations as authorized  
20 prior to the date of enactment of this section.

21           “(g) NO RIGHT OR OBLIGATION.—Nothing in this  
22 section shall be construed to create a legal right for a con-  
23 sultation on any matter or require the Secretary to meet  
24 with any particular expert or stakeholder. Nothing in this  
25 section shall be construed to alter agreed upon goals and

1 procedures identified in the letters described in section  
2 101(b) of the Prescription Drug User Fee Amendments  
3 of 2012. Nothing in this section is intended to increase  
4 the number of review cycles as in effect before the date  
5 of enactment of this section.”.

6 **SEC. 904. ACCESSIBILITY OF INFORMATION ON PRESCRIP-**  
7 **TION DRUG CONTAINER LABELS BY VIS-**  
8 **UALLY-IMPAIRED AND BLIND CONSUMERS.**

9 (a) ESTABLISHMENT OF WORKING GROUP.—

10 (1) IN GENERAL.—The Architectural and  
11 Transportation Barriers Compliance Board (referred  
12 to in this section as the “Access Board”) shall con-  
13 vene a stakeholder working group (referred to in this  
14 section as the “working group”) to develop best  
15 practices on access to information on prescription  
16 drug container labels for individuals who are blind  
17 or visually impaired.

18 (2) MEMBERS.—The working group shall be  
19 comprised of representatives of national organiza-  
20 tions representing blind and visually-impaired indi-  
21 viduals, national organizations representing the el-  
22 derly, and industry groups representing stake-  
23 holders, including retail, mail order, and independent  
24 community pharmacies, who would be impacted by  
25 such best practices. Representation within the work-

1       ing group shall be divided equally between consumer  
2       and industry advocates.

3           (3) BEST PRACTICES.—

4           (A) IN GENERAL.—The working group  
5       shall develop, not later than 1 year after the  
6       date of the enactment of this Act, best practices  
7       for pharmacies to ensure that blind and vis-  
8       ually-impaired individuals have safe, consistent,  
9       reliable, and independent access to the informa-  
10      tion on prescription drug container labels.

11          (B) PUBLIC AVAILABILITY.—The best  
12      practices developed under subparagraph (A)  
13      may be made publicly available, including  
14      through the Internet Web sites of the working  
15      group participant organizations, and through  
16      other means, in a manner that provides access  
17      to interested individuals, including individuals  
18      with disabilities.

19          (C) LIMITATIONS.—The best practices de-  
20      veloped under subparagraph (A) shall not be  
21      construed as accessibility guidelines or stand-  
22      ards of the Access Board, and shall not confer  
23      any rights or impose any obligations on working  
24      group participants or other persons. Nothing in  
25      this section shall be construed to limit or condi-

1           tion any right, obligation, or remedy available  
2           under the Americans with Disabilities Act of  
3           1990 (42 U.S.C. 12101 et seq.) or any other  
4           Federal or State law requiring effective commu-  
5           nication, barrier removal, or nondiscrimination  
6           on the basis of disability.

7           (4) CONSIDERATIONS.—In developing and  
8           issuing the best practices under paragraph (3)(A),  
9           the working group shall consider—

10                   (A) the use of—

11                           (i) Braille;

12                           (ii) auditory means, such as—

13                                   (I) “talking bottles” that provide  
14                                   audible container label information;

15                                   (II) digital voice recorders at-  
16                                   tached to the prescription drug con-  
17                                   tainer; and

18                                   (III) radio frequency identifica-  
19                                   tion tags;

20                           (iii) enhanced visual means, such as—

21                                   (I) large font labels or large font  
22                                   “duplicate” labels that are affixed or  
23                                   matched to a prescription drug con-  
24                                   tainer;

25                                   (II) high-contrast printing; and



1 (III) sans-serif font; and

2 (iv) other relevant alternatives as de-  
3 termined by the working group;

4 (B) whether there are technical, financial,  
5 manpower, or other factors unique to phar-  
6 macies with 20 or fewer retail locations which  
7 may pose significant challenges to the adoption  
8 of the best practices; and

9 (C) such other factors as the working  
10 group determines to be appropriate.

11 (5) INFORMATION CAMPAIGN.—Upon comple-  
12 tion of development of the best practices under sub-  
13 section (a)(3), the National Council on Disability, in  
14 consultation with the working group, shall conduct  
15 an informational and educational campaign designed  
16 to inform individuals with disabilities, pharmacists,  
17 and the public about such best practices.

18 (6) FACA WAIVER.—The Federal Advisory  
19 Committee Act (5 U.S.C. App.) shall not apply to  
20 the working group.

21 (b) GAO STUDY.—

22 (1) IN GENERAL.—Beginning 18 months after  
23 the completion of the development of best practices  
24 under subsection (a)(3)(A), the Comptroller General  
25 of the United States shall conduct a review of the

1 extent to which pharmacies are utilizing such best  
2 practices, and the extent to which barriers to acces-  
3 sible information on prescription drug container la-  
4 bels for blind and visually-impaired individuals con-  
5 tinue.

6 (2) REPORT.—Not later than September 30,  
7 2016, the Comptroller General of the United States  
8 shall submit to Congress a report on the review con-  
9 ducted under paragraph (1). Such report shall in-  
10 clude recommendations about how best to reduce the  
11 barriers experienced by blind and visually-impaired  
12 individuals to independently accessing information  
13 on prescription drug container labels.

14 (c) DEFINITIONS.—In this section—

15 (1) the term “pharmacy” includes a pharmacy  
16 that receives prescriptions and dispenses prescription  
17 drugs through an Internet Web site or by mail;

18 (2) the term “prescription drug” means a drug  
19 subject to section 503(b)(1) of the Federal Food,  
20 Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)); and

21 (3) the term “prescription drug container label”  
22 means the label with the directions for use that is  
23 affixed to the prescription drug container by the  
24 pharmacist and dispensed to the consumer.

1 **SEC. 905. RISK-BENEFIT FRAMEWORK.**

2 Section 505(d) (21 U.S.C. 355(d)) is amended by  
3 adding at the end the following: “The Secretary shall im-  
4 plement a structured risk-benefit assessment framework  
5 in the new drug approval process to facilitate the balanced  
6 consideration of benefits and risks, a consistent and sys-  
7 tematic approach to the discussion and regulatory deci-  
8 sionmaking, and the communication of the benefits and  
9 risks of new drugs. Nothing in the preceding sentence  
10 shall alter the criteria for evaluating an application for  
11 premarket approval of a drug.”.

12 **SEC. 906. INDEPENDENT STUDY ON MEDICAL INNOVATION**  
13 **INDUCEMENT MODEL.**

14 (a) IN GENERAL.—The Secretary of Health and  
15 Human Services shall enter into an agreement with the  
16 National Academies to provide expert consultation and  
17 conduct a study that evaluates the feasibility and possible  
18 consequences of the use of innovation inducement prizes  
19 to reward successful medical innovations. Under the  
20 agreement, the National Academies shall submit to the  
21 Secretary a report on such study not later than 15 months  
22 after the date of enactment of this Act.

23 (b) REQUIREMENTS.—

24 (1) IN GENERAL.—The study conducted under  
25 subsection (a) shall model at least 3 separate seg-  
26 ments on the medical technologies market as can-

1       didate targets for the new incentive system and con-  
2       sider different medical innovation inducement prize  
3       design issues, including the challenges presented in  
4       the implementation of prizes for end products, open  
5       source dividend prizes, and prizes for upstream re-  
6       search.

7               (2) MARKET SEGMENTS.—The segments on the  
8       medical technologies market that shall be considered  
9       under paragraph (1) include—

10                   (A) all pharmaceutical and biologic drugs  
11                   and vaccines;

12                   (B) drugs and vaccines used solely for the  
13                   treatment of HIV/AIDS; and

14                   (C) antibiotics.

15       (c) ELEMENTS.—The study conducted under sub-  
16       section (a) shall include consideration of each of the fol-  
17       lowing:

18               (1) Whether a system of large innovation in-  
19       ducement prizes could work as a replacement for the  
20       existing product monopoly/patent-based system, as  
21       in effect on the date of enactment of this Act.

22               (2) How large the innovation prize funds would  
23       have to be in order to induce at least as much re-  
24       search and development investment in innovation as  
25       is induced under the current system of time-limited

1 market exclusivity, as in effect on the date of enact-  
2 ment of this Act.

3 (3) Whether a system of large innovation in-  
4 ducement prizes would be more or less expensive  
5 than the current system of time-limited market ex-  
6 clusivity, as in effect on the date of enactment of  
7 this Act, calculated over different time periods.

8 (4) Whether a system of large innovation in-  
9 ducement prizes would expand access to new prod-  
10 ucts and improve health outcomes.

11 (5) The type of information and decisionmaking  
12 skills that would be necessary to manage end prod-  
13 uct prizes.

14 (6) Whether there would there be major advan-  
15 tages in rewarding the incremental impact of innova-  
16 tions, as benchmarked against existing products.

17 (7) How open-source dividend prizes could be  
18 managed, and whether such prizes would increase  
19 access to knowledge, materials, data and tech-  
20 nologies.

21 (8) Whether a system of competitive inter-  
22 mediaries for interim research prizes would provide  
23 an acceptable solution to the valuation challenges for  
24 interim prizes.

1       **TITLE X—DRUG SHORTAGES**

2       **SEC. 1001. DRUG SHORTAGES.**

3           (a) IN GENERAL.—Section 506C (21 U.S.C. 356e)  
4 is amended to read as follows:

5       **“SEC. 506C. DISCONTINUANCE OR INTERRUPTION IN THE**  
6                           **PRODUCTION OF LIFE-SAVING DRUGS.**

7           “(a) IN GENERAL.—A manufacturer of a drug—

8                   “(1) that is—

9                           “(A) life-supporting;

10                           “(B) life-sustaining;

11                           “(C) intended for use in the prevention of  
12 a debilitating disease or condition;

13                           “(D) a sterile injectable product; or

14                           “(E) used in emergency medical care or  
15 during surgery; and

16                   “(2) that is not a radio pharmaceutical drug  
17 product, a human tissue replaced by a recombinant  
18 product, a product derived from human plasma pro-  
19 tein, or any other product as designated by the Sec-  
20 retary,

21 shall notify the Secretary, in accordance with subsection  
22 (b), of a permanent discontinuance in the manufacture of  
23 the drug or an interruption of the manufacture of the drug  
24 that could lead to a meaningful disruption in the supply  
25 of that drug in the United States.

1       “(b) TIMING.—A notice required under subsection (a)  
2 shall be submitted to the Secretary—

3           “(1) at least 6 months prior to the date of the  
4 discontinuance or interruption; or

5           “(2) if compliance with paragraph (1) is not  
6 possible, as soon as practicable.

7       “(c) EXPEDITED INSPECTIONS AND REVIEWS.—If,  
8 based on notifications described in subsection (a) or any  
9 other relevant information, the Secretary concludes that  
10 there is, or is likely to be, a drug shortage of a drug de-  
11 scribed in subsection (a), the Secretary may—

12           “(1) expedite the review of a supplement to a  
13 new drug application submitted under section  
14 505(b), an abbreviated new drug application sub-  
15 mitted under section 505(j), or a supplement to such  
16 an application submitted under section 505(j) that  
17 could help mitigate or prevent such shortage; or

18           “(2) expedite an inspection or reinspection of  
19 an establishment that could help mitigate or prevent  
20 such drug shortage.

21       “(d) COORDINATION.—

22           “(1) TASK FORCE AND STRATEGIC PLAN.—

23           “(A) IN GENERAL.—

24           “(i) TASK FORCE.—As soon as prac-  
25 ticable after the date of enactment of the

1 Food and Drug Administration Safety and  
2 Innovation Act, the Secretary shall estab-  
3 lish a Task Force to develop and imple-  
4 ment a strategic plan for enhancing the  
5 Secretary's response to preventing and  
6 mitigating drug shortages.

7 “(ii) STRATEGIC PLAN.—The strategic  
8 plan described in clause (i) shall include—

9 “(I) plans for enhanced inter-  
10 agency and intraagency coordination,  
11 communication, and decisionmaking;

12 “(II) plans for ensuring that  
13 drug shortages are considered when  
14 the Secretary initiates a regulatory  
15 action that could precipitate a drug  
16 shortage or exacerbate an existing  
17 drug shortage;

18 “(III) plans for effective commu-  
19 nication with outside stakeholders, in-  
20 cluding who the Secretary should alert  
21 about potential or actual drug short-  
22 ages, how the communication should  
23 occur, and what types of information  
24 should be shared; and



1                   “(IV) plans for considering the  
2                   impact of drug shortages on research  
3                   and clinical trials.

4                   “(iii) CONSULTATION.—In carrying  
5                   out this subparagraph, the Task Force  
6                   shall ensure consultation with the appro-  
7                   priate offices within the Food and Drug  
8                   Administration, including the Office of the  
9                   Commissioner, the Center for Drug Eval-  
10                  uation and Research, the Office of Regu-  
11                  latory Affairs, and employees within the  
12                  Department of Health and Human Serv-  
13                  ices with expertise regarding drug short-  
14                  ages. The Secretary shall engage external  
15                  stakeholders and experts as appropriate.

16                  “(B) TIMING.—Not later than 1 year after  
17                  the date of enactment Food and Drug Adminis-  
18                  tration Safety and Innovation Act, the Task  
19                  Force shall—

20                         “(i) publish the strategic plan de-  
21                         scribed in subparagraph (A); and

22                         “(ii) submit such plan to Congress.

23                  “(2) COMMUNICATION.—The Secretary shall  
24                  ensure that, prior to any enforcement action or  
25                  issuance of a warning letter that the Secretary de-

1 termines could reasonably be anticipated to lead to  
2 a meaningful disruption in the supply in the United  
3 States of a drug described under subsection (a),  
4 there is communication with the appropriate office  
5 of the Food and Drug Administration with expertise  
6 regarding drug shortages regarding whether the ac-  
7 tion or letter could cause, or exacerbate, a shortage  
8 of the drug.

9 “(3) ACTION.—If the Secretary determines,  
10 after the communication described in paragraph (2),  
11 that an enforcement action or a warning letter could  
12 reasonably cause or exacerbate a shortage of a drug  
13 described under subsection (a), then the Secretary  
14 shall evaluate the risks associated with the impact of  
15 such shortage upon patients and those risks associ-  
16 ated with the violation involved before taking such  
17 action or issuing such letter, unless there is immi-  
18 nent risk of serious adverse health consequences or  
19 death to humans.

20 “(4) REPORTING BY OTHER ENTITIES.—The  
21 Secretary shall identify or establish a mechanism by  
22 which healthcare providers and other third-party or-  
23 ganizations may report to the Secretary evidence of  
24 a drug shortage.

1           “(5) REVIEW AND CONSTRUCTION.—No deter-  
2           mination, finding, action, or omission of the Sec-  
3           retary under this subsection shall—

4                   “(A) be subject to judicial review; or

5                   “(B) be construed to establish a defense to  
6           an enforcement action by the Secretary.

7           “(e) RECORDKEEPING AND REPORTING.—

8                   “(1) RECORDKEEPING.—The Secretary shall  
9           maintain records related to drug shortages, includ-  
10          ing with respect to each of the following:

11                   “(A) The number of manufacturers that  
12           submitted a notification to the Secretary under  
13           subsection (a) in each calendar year.

14                   “(B) The number of drug shortages that  
15           occurred in each calendar year and a list of  
16           drug names, drug types, and classes that were  
17           the subject of such shortages.

18                   “(C) A list of the known factors contrib-  
19           uting to the drug shortages described in sub-  
20           paragraph (B).

21                   “(D)(i) A list of major actions taken by  
22           the Secretary to prevent or mitigate the drug  
23           shortages described in subparagraph (B).

24                   “(ii) The Secretary shall include in the list  
25           under clause (i) the following:

1           “(I) The number of applications for  
2           which the Secretary expedited review under  
3           subsection (c)(1) in each calendar year.

4           “(II) The number of establishment in-  
5           spections or reinspections that the Sec-  
6           retary expedited under subsection (c)(2) in  
7           each calendar year.

8           “(E) The number of notifications sub-  
9           mitted to the Secretary under subsection (a) in  
10          each calendar year.

11          “(F) The names of manufacturers that the  
12          Secretary has learned did not comply with the  
13          notification requirement under subsection (a) in  
14          each calendar year.

15          “(G) The number of times in each cal-  
16          endar year that the Secretary determined under  
17          subsection (d)(3) that an enforcement action or  
18          a warning letter could reasonably cause or exac-  
19          erbate a shortage of a drug described under  
20          subsection (a), but did not evaluate the risks  
21          associated with the impact of such shortage  
22          upon patients and those risks associated with  
23          the violation involved before taking such action  
24          or issuing such letter on the grounds that there  
25          was imminent risk of serious adverse health

1           consequences or death to humans, and a sum-  
2           mary of the determinations.

3           “(H) A summary of the communications  
4           made and actions taken under subsection (d) in  
5           each calendar year.

6           “(I) Any other information the Secretary  
7           deems appropriate to better prevent and miti-  
8           gate drug shortages.

9           “(2) TREND ANALYSIS.—The Secretary is au-  
10          thorized to retain a third party to conduct a study,  
11          if the Secretary believes such a study would help  
12          clarify the causes, trends, or solutions related to  
13          drug shortages.

14          “(3) ANNUAL SUMMARY.—Not later than 18  
15          months after the date of enactment of the Food and  
16          Drug Administration Safety and Innovation Act, and  
17          annually thereafter, the Secretary shall submit to  
18          the Committee on Health, Education, Labor, and  
19          Pensions of the Senate and the Committee on En-  
20          ergy and Commerce of the House of Representatives  
21          a report summarizing, with respect to the 1-year pe-  
22          riod preceding such report, the information de-  
23          scribed in paragraph (1). Such report shall not in-  
24          clude any information that is exempt from disclosure  
25          under subsection (a) of section 552 of title 5, United

1 States Code, by reason of subsection (b)(4) of such  
2 section.

3 “(f) DEFINITIONS.—For purposes of this section—

4 “(1) the term ‘drug’—

5 “(A) means a drug (as defined in section  
6 201(g)) that is intended for human use; and

7 “(B) does not include biological products  
8 (as defined in section 351 of the Public Health  
9 Service Act), unless otherwise provided by the  
10 Secretary in the regulations promulgated under  
11 subsection (h);

12 “(2) the term ‘drug shortage’ or ‘shortage’,  
13 with respect to a drug, means a period of time when  
14 the demand or projected demand for the drug within  
15 the United States exceeds the supply of the drug;  
16 and

17 “(3) the term ‘meaningful disruption’—

18 “(A) means a change in production that is  
19 reasonably likely to lead to a reduction in the  
20 supply of a drug by a manufacturer that is  
21 more than negligible and impacts the ability of  
22 the manufacturer to fill orders or meet expected  
23 demand for its product; and

24 “(B) does not include interruptions in  
25 manufacturing due to matters such as routine

1 maintenance or insignificant changes in manu-  
2 facturing so long as the manufacturer expects  
3 to resume operations in a short period of time.

4 “(g) DISTRIBUTION.—To the maximum extent prac-  
5 ticable, the Secretary may distribute information on drug  
6 shortages and on the permanent discontinuation of the  
7 drugs described in this section to appropriate provider and  
8 patient organizations, except that any such distribution  
9 shall not include any information that is exempt from dis-  
10 closure under section 552 of title 5, United States Code,  
11 by reason of subsection (b)(4) of such section.

12 “(h) REGULATIONS.—

13 “(1) IN GENERAL.—Not later than 18 months  
14 after the date of enactment of the Food and Drug  
15 Administration Safety and Innovation Act, the Sec-  
16 retary shall adopt a final regulation implementing  
17 this section.

18 “(2) INCLUSION OF BIOLOGICAL PRODUCTS.—

19 “(A) IN GENERAL.—The Secretary may by  
20 regulation apply this section to biological prod-  
21 ucts (as defined in section 351 of the Public  
22 Health Service Act) if the Secretary determines  
23 such inclusion would benefit the public health.

1           “(B) RULE FOR VACCINES.—If the Sec-  
2           retary applies this section to vaccines pursuant  
3           to subparagraph (A), the Secretary shall—

4                   “(i) consider whether the notification  
5                   requirement under subsection (a) may be  
6                   satisfied by submitting a notification to the  
7                   Centers for Disease Control and Preven-  
8                   tion under the vaccine shortage notification  
9                   program of such Centers; and

10                   “(ii) explain the determination made  
11                   by the Secretary under clause (i) in the  
12                   regulation.

13           “(3) PROCEDURE.—In promulgating a regula-  
14           tion implementing this section, the Secretary shall—

15                   “(A) issue a notice of proposed rulemaking  
16                   that includes the proposed regulation;

17                   “(B) provide a period of not less than 60  
18                   days for comments on the proposed regulation;  
19                   and

20                   “(C) publish the final regulation not less  
21                   than 30 days before the regulation’s effective  
22                   date.

23           “(4) RESTRICTIONS.—Notwithstanding any  
24           other provision of Federal law, in implementing this



1 section, the Secretary shall only promulgate regula-  
2 tions as described in paragraph (3).”.

3 (b) EFFECT OF NOTIFICATION.—The submission of  
4 a notification to the Secretary of Health and Human Serv-  
5 ices (referred to in this section as the “Secretary”) for  
6 purposes of complying with the requirement in section  
7 506C(a) of the Federal Food, Drug, and Cosmetic Act (as  
8 amended by subsection (a)) shall not be construed—

9 (1) as an admission that any product that is  
10 the subject of such notification violates any provision  
11 of the Federal Food, Drug, and Cosmetic Act (21  
12 U.S.C. 301 et seq.); or

13 (2) as evidence of an intention to promote or  
14 market the product for an indication or use for  
15 which the product has not been approved by the Sec-  
16 retary.

17 (c) INTERNAL REVIEW.—Not later than 2 years after  
18 the date of enactment of this Act, the Secretary shall—

19 (1) analyze and review the regulations promul-  
20 gated under the Federal Food, Drug, and Cosmetic  
21 Act (21 U.S.C. 301 et seq.), the guidances or poli-  
22 cies issued under such Act related to drugs intended  
23 for human use, and the practices of the Food and  
24 Drug Administration regarding enforcing such Act  
25 related to manufacturing of such drugs, to identify

1 any such regulations, guidances, policies, or prac-  
2 tices that cause, exacerbate, prevent, or mitigate  
3 drug shortages (as defined in section 506C of the  
4 Federal Food, Drug, and Cosmetic Act (as amended  
5 by subsection (a)); and

6 (2) determine how regulations, guidances, poli-  
7 cies, or practices identified under paragraph (1)  
8 should be modified, streamlined, expanded, or dis-  
9 continued in order to reduce or prevent such drug  
10 shortages, taking into consideration the effect of any  
11 changes on the public health.

12 (d) STUDY ON MARKET FACTORS CONTRIBUTING TO  
13 DRUG SHORTAGES AND STOCKPILING.—

14 (1) IN GENERAL.—Not later than 1 year after  
15 the date of enactment of this Act, the Comptroller  
16 General of the United States, in consultation with  
17 the Secretary, the Department of Health and  
18 Human Services Office of the Inspector General, the  
19 Attorney General, and Chairman of the Federal  
20 Trade Commission, shall publish a report reviewing  
21 any findings that drug shortages (as so defined)  
22 have led market participants to stockpile affected  
23 drugs or sell them at significantly increased prices,  
24 the impact of such activities on Federal revenue, and

1 any economic factors that have exacerbated or cre-  
2 ated a market for such actions.

3 (2) CONTENT.—The report under paragraph  
4 (1) shall include—

5 (A) an analysis of the incidence of any of  
6 the activities described in paragraph (1) and  
7 the effect of such activities on the public health;

8 (B) an evaluation of whether in such cases  
9 there is a correlation between drugs in shortage  
10 and—

11 (i) the number of manufacturers pro-  
12 ducing such drugs;

13 (ii) the pricing structure, including  
14 Federal reimbursements, for such drugs  
15 before such drugs were in shortage, and to  
16 the extent possible, revenue received by  
17 each such manufacturer of such drugs;

18 (iii) pricing structure and revenue, to  
19 the extent possible, for the same drugs  
20 when sold under the conditions described  
21 in paragraph (1); and

22 (iv) the impact of contracting prac-  
23 tices by market participants (including  
24 manufacturers, distributors, group pur-  
25 chasing organizations, and providers) on

1 competition, access to drugs, and pricing  
2 of drugs;

3 (C) whether the activities described in  
4 paragraph (1) are consistent with applicable  
5 law; and

6 (D) recommendations to Congress on what,  
7 if any, additional reporting or enforcement ac-  
8 tions are necessary.

9 (3) TRADE SECRET AND CONFIDENTIAL INFOR-  
10 MATION.—Nothing in this subsection alters or  
11 amends section 1905 of title 18, United States Code,  
12 or section 552(b)(4) of title 5, United States Code.

13 (e) GUIDANCE REGARDING REPACKAGING.—Not  
14 later than 1 year after the date of enactment of this Act,  
15 the Secretary shall issue guidance that clarifies the policy  
16 of the Food and Drug Administration regarding hospital  
17 pharmacies repackaging and safely transferring repack-  
18 aged drugs among hospitals within a common health sys-  
19 tem during a drug shortage, as identified by the Secretary.

# **TITLE XI—OTHER PROVISIONS**

## **Subtitle A—Reauthorizations**

### **SEC. 1101. REAUTHORIZATION OF PROVISION RELATING TO EXCLUSIVITY OF CERTAIN DRUGS CON- TAINING SINGLE ENANTIOMERS.**

Section 505(u)(4) (21 U.S.C. 355(u)(4)) is amended by striking “2012” and inserting “2017”.

### **SEC. 1102. REAUTHORIZATION OF THE CRITICAL PATH PUBLIC-PRIVATE PARTNERSHIPS.**

Section 566(f) (21 U.S.C. 360bbb–5(f)) is amended by striking “2012” and inserting “2017”.

## **Subtitle B—Medical Gas Product Regulation**

### **SEC. 1111. REGULATION OF MEDICAL GAS PRODUCTS.**

(a) REGULATION.—Chapter V (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

#### **“Subchapter G—Medical Gas Products**

##### **“SEC. 575. DEFINITIONS.**

“In this subchapter:

“(1) The term ‘designated medical gas product’ means any of the following:

“(A) Oxygen, that meets the standards set forth in an official compendium.

“(B) Nitrogen, that meets the standards set forth in an official compendium.

1           “(C) Nitrous oxide, that meets the stand-  
2           ards set forth in an official compendium.

3           “(D) Carbon dioxide, that meets the stand-  
4           ards set forth in an official compendium.

5           “(E) Helium, that meets the standards set  
6           forth in an official compendium.

7           “(F) Carbon monoxide, that meets the  
8           standards set forth in an official compendium.

9           “(G) Medical air, that meets the standards  
10          set forth in an official compendium.

11          “(H) Any other medical gas product  
12          deemed appropriate by the Secretary, unless  
13          any period of exclusivity under section  
14          505(c)(3)(E)(ii) or 505(j)(5)(F)(ii), or the ex-  
15          tension of any such period under section 505A,  
16          applicable to such medical gas product has not  
17          expired.

18          “(2) The term ‘medical gas product’ means a  
19          drug that—

20                 “(A) is manufactured or stored in a lique-  
21                 fied, nonliquefied, or cryogenic state; and

22                 “(B) is administered as a gas.

23          **“SEC. 576. REGULATION OF MEDICAL GAS PRODUCTS.**

24                 “(a) CERTIFICATION OF DESIGNATED MEDICAL GAS  
25          PRODUCTS.—

1           “(1) SUBMISSION.—

2                   “(A) IN GENERAL.—Beginning on the date  
3 of enactment of this section, any person may  
4 file with the Secretary a request for a certifi-  
5 cation of a designated medical gas product.

6                   “(B) CONTENT.—A request under sub-  
7 paragraph (A) shall contain—

8                           “(i) a description of the medical gas  
9 product;

10                           “(ii) the name and address of the  
11 sponsor;

12                           “(iii) the name and address of the fa-  
13 cility or facilities where the gas product is  
14 or will be manufactured; and

15                           “(iv) any other information deemed  
16 appropriate by the Secretary to determine  
17 whether the medical gas product is a des-  
18 ignated medical gas product.

19           “(2) GRANT OF CERTIFICATION.—A certifi-  
20 cation described under paragraph (1)(A) shall be de-  
21 termined to have been granted unless, not later than  
22 60 days after the filing of a request under para-  
23 graph (1), the Secretary finds that—

1           “(A) the medical gas product subject to  
2 the certification is not a designated medical gas  
3 product;

4           “(B) the request does not contain the in-  
5 formation required under paragraph (1) or oth-  
6 erwise lacks sufficient information to permit the  
7 Secretary to determine that the gas product is  
8 a designated medical gas product; or

9           “(C) granting the request would be con-  
10 trary to public health.

11       “(3) EFFECT OF CERTIFICATION.—

12           “(A) IN GENERAL.—

13           “(i) APPROVED USES.—A designated  
14 medical gas product for which a certifi-  
15 cation is granted under paragraph (2) is  
16 deemed, alone or in combination with an-  
17 other designated gas product or products  
18 as medically appropriate, to have in effect  
19 an approved application under section 505  
20 or 512, subject to all applicable post-  
21 approval requirements, for the following in-  
22 dications for use:

23           “(I) Oxygen for the treatment or  
24 prevention of hypoxemia or hypoxia.



1                   “(II) Nitrogen for use in hypoxic  
2 challenge testing.

3                   “(III) Nitrous oxide for analge-  
4 sia.

5                   “(IV) Carbon dioxide for use in  
6 extracorporeal membrane oxygenation  
7 therapy or respiratory stimulation.

8                   “(V) Helium for the treatment of  
9 upper airway obstruction or increased  
10 airway resistance.

11                   “(VI) Medical air to reduce the  
12 risk of hyperoxia.

13                   “(VII) Carbon monoxide for use  
14 in lung diffusion testing.

15                   “(VIII) Any other indication for  
16 use for a designated medical gas prod-  
17 uct or combination of designated med-  
18 ical gas products deemed appropriate  
19 by the Secretary, unless any period of  
20 exclusivity under clause (iii) or (iv) of  
21 section 505(c)(3)(E), under clause  
22 (iii) or (iv) of section 505(j)(5)(F), or  
23 under section 527, or the extension of  
24 any such period under section 505A,  
25 applicable to such indication for use

1 for such gas product or combination  
2 of products has not expired.

3 “(ii) LABELING.—The requirements  
4 established in sections 503(b)(4) and  
5 502(f) shall be deemed to have been met  
6 for a designated medical gas product if the  
7 labeling on final use containers of such gas  
8 product bears the information required by  
9 section 503(b)(4) and a warning statement  
10 concerning the use of the gas product, as  
11 determined by the Secretary by regulation,  
12 as well as appropriate directions and warn-  
13 ings concerning storage and handling.

14 “(B) INAPPLICABILITY OF EXCLUSIVITY  
15 PROVISIONS.—

16 “(i) EFFECT ON INELIGIBILITY.—No  
17 designated medical gas product deemed  
18 under paragraph (3)(A)(i) to have in effect  
19 an approved application shall be eligible for  
20 any periods of exclusivity under sections  
21 505(e), 505(j), or 527, or the extension of  
22 any such period under section 505A, on  
23 the basis of such deemed approval.

24 “(ii) EFFECT ON CERTIFICATION.—  
25 No period of exclusivity under sections

1           505(c), 505(j), or section 527, or the ex-  
2           tension of any such period under section  
3           505A, with respect to an application for a  
4           drug shall prohibit, limit, or otherwise af-  
5           fect the submission, grant, or effect of a  
6           certification under this section, except as  
7           provided in paragraph (3)(A)(i)(VIII).

8           “(4) WITHDRAWAL, SUSPENSION, OR REVOCATION OF APPROVAL.—  
9

10           “(A) IN GENERAL.—Nothing in this sub-  
11           chapter limits the authority of the Secretary to  
12           withdraw or suspend approval of a drug, includ-  
13           ing a designated medical gas product deemed  
14           under this section to have in effect an approved  
15           application, under section 505 or section 512.

16           “(B) REVOCATION.—The Secretary may  
17           revoke the grant of a certification under this  
18           section if the Secretary determines that the re-  
19           quest for certification contains any material  
20           omission or falsification.

21           “(b) PRESCRIPTION REQUIREMENT.—

22           “(1) IN GENERAL.—A designated medical gas  
23           product shall be subject to section 503(b)(1) unless  
24           the Secretary exercises the authority provided in sec-  
25           tion 503(b)(3) to remove such gas product from the

1 requirements of section 503(b)(1) or the use in ques-  
2 tion is authorized pursuant to another provision of  
3 this Act relating to use of medical products in emer-  
4 gencies.

5 “(2) EXCEPTION FOR OXYGEN.—

6 “(A) IN GENERAL.—Notwithstanding para-  
7 graph (1), oxygen may be provided without a  
8 prescription for the following uses:

9 “(i) The use in the event of depres-  
10 surization or other environmental oxygen  
11 deficiency.

12 “(ii) The use in the event of oxygen  
13 deficiency or use in emergency resuscita-  
14 tion, when administered by properly  
15 trained personnel.

16 “(B) LABELING.—For oxygen provided  
17 pursuant to subparagraph (A), the require-  
18 ments established in section 503(b)(4) shall be  
19 deemed to have been met if the labeling of the  
20 oxygen bears a warning that the medical gas  
21 product can be used for emergency use only and  
22 for all other medical applications a prescription  
23 is required.

24 “(c) INAPPLICABILITY OF DRUGS FEES TO DES-  
25 IGNATED MEDICAL GAS PRODUCTS.—A designated med-

1 ical gas product deemed under this section to have in ef-  
2 fect an approved application shall not be assessed fees  
3 under section 736(a) on the basis of such deemed ap-  
4 proval.”.

5 **SEC. 1112. REGULATIONS.**

6 (a) REVIEW OF REGULATIONS.—Not later than 18  
7 months after the date of enactment of this Act, the Sec-  
8 retary of Health and Human Services (referred to in this  
9 section as the “Secretary”) shall, after obtaining input  
10 from medical gas product manufacturers, and any other  
11 interested members of the public, submit a report to the  
12 Committee on Health, Education, Labor, and Pensions of  
13 the Senate and the Committee on Energy and Commerce  
14 of the House of Representatives regarding any changes to  
15 the Federal drug regulations in title 21, Code of Federal  
16 Regulations that the Secretary determines to be necessary.

17 (b) AMENDED REGULATIONS.—If the Secretary de-  
18 termines that changes to the Federal drug regulations in  
19 title 21, Code of Federal Regulations are necessary under  
20 subsection (a), the Secretary shall issue final regulations  
21 implementing such changes not later than 4 years after  
22 the date of enactment of this Act.

23 **SEC. 1113. APPLICABILITY.**

24 Nothing in this subtitle or the amendments made by  
25 this subtitle shall apply to—

1 (1) a drug that is covered by an application  
 2 under section 505 or 512 of the Federal Food,  
 3 Drug, and Cosmetic Act (21 U.S.C. 355, 360b) ap-  
 4 proved prior to May 1, 2012; or

5 (2) any of the gases listed in subparagraphs (A)  
 6 through (G) of section 575(1) of such Act (as added  
 7 by section 1111), or any mixture of any such gases,  
 8 for an indication that—

9 (A) is not included in, or is different from,  
 10 those specified in subclauses (I) through (VII)  
 11 of section 576(a)(3)(i) of such Act (as added by  
 12 section 1111); and

13 (B) is approved on or after May 1, 2012,  
 14 pursuant to an application submitted under sec-  
 15 tion 505 or 512 of such Act.

## 16 **Subtitle C—Miscellaneous** 17 **Provisions**

### 18 **SEC. 1121. ADVISORY COMMITTEE CONFLICTS OF INTER-**

#### 19 **EST.**

20 Section 712 (21 U.S.C. 379d–1) is amended—

21 (1) in subsection (b)—

22 (A) by striking paragraph (2); and

23 (B) in paragraph (1)—

24 (i) by redesignating subparagraph (B)  
 25 as paragraph (2) and moving such para-

1 graph, as so redesignated, 2 ems to the  
2 left;

3 (ii) in subparagraph (A), by redesignating clauses (i) through (iii) as subparagraphs (A) through (C), respectively, and  
4 moving such subparagraphs, as so redesignated, 2 ems to the left;

5  
6  
7  
8 (iii) in subparagraph (A), as so redesignated, by inserting “, including strategies  
9 to increase the number of special Government employees across medical and scientific specialties in areas where the Secretary would benefit from specific scientific, medical, or technical expertise necessary for the performance of its regulatory responsibilities” before the semicolon  
10 at the end;

11  
12  
13  
14  
15  
16  
17 (iv) by striking “(1) RECRUITMENT.—” and inserting “(1) RECRUITMENT IN GENERAL.—The Secretary shall—”;

18  
19  
20  
21 (v) by striking “(A) IN GENERAL.—The Secretary shall—”;

22  
23 (vi) by redesignating clauses (i) through (iii) of paragraph (2) (as so redesignated) as subparagraphs (A) through

1 (C), respectively, and moving such sub-  
2 paragraphs, as so redesignated, 2 ems to  
3 the left;

4 (vii) in paragraph (2) (as so redesign-  
5 ated), in the matter before subparagraph  
6 (A) (as so redesignated), by striking “sub-  
7 paragraph (A)” and inserting “paragraph  
8 (1)”; and

9 (viii) by adding at the end the fol-  
10 lowing:

11 “(3) RECRUITMENT THROUGH REFERRALS.—In  
12 carrying out paragraph (1), the Secretary shall, in  
13 order to further the goal of including in advisory  
14 committees the most qualified and specialized ex-  
15 perts in the specific diseases to be considered by  
16 such advisory committees, at least every 180 days,  
17 request referrals from a variety of stakeholders, in-  
18 cluding the Institute of Medicine, the National Insti-  
19 tutes of Health, product developers, patient groups,  
20 disease advocacy organizations, professional soci-  
21 eties, medical societies, including the American  
22 Academy of Medical Colleges, and other govern-  
23 mental organizations.”;

24 (2) by amending subsection (c)(2)(C) to read as  
25 follows:





1 shall issue guidance that describes Food and Drug Admin-  
2 istration policy regarding the promotion, using the Inter-  
3 net (including social media), of medical products that are  
4 regulated by such Administration.

5 **SEC. 1123. ELECTRONIC SUBMISSION OF APPLICATIONS.**

6 Subchapter D of chapter VII (21 U.S.C. 379k et  
7 seq.) is amended by inserting after section 745 the fol-  
8 lowing:

9 **“SEC. 745A. ELECTRONIC FORMAT FOR SUBMISSIONS.**

10 “(a) DRUGS AND BIOLOGICS.—

11 “(1) IN GENERAL.—Beginning no earlier than  
12 24 months after the issuance of a final guidance  
13 issued after public notice and opportunity for com-  
14 ment, submissions under subsection (b), (i), or (j) of  
15 section 505 of this Act or subsection (a) or (k) of  
16 section 351 of the Public Health Service Act shall  
17 be submitted in such electronic format as specified  
18 by the Secretary in such guidance.

19 “(2) GUIDANCE CONTENTS.—In the guidance  
20 under paragraph (1), the Secretary may—

21 “(A) provide a timetable for establishment  
22 by the Secretary of further standards for elec-  
23 tronic submission as required by such para-  
24 graph; and

1           “(B) set forth criteria for waivers of and  
2           exemptions from the requirements of this sub-  
3           section.

4           “(3) EXCEPTION.—This subsection shall not  
5           apply to submissions described in section 561.

6           “(b) DEVICES.—

7           “(1) IN GENERAL.—Beginning after the  
8           issuance of final guidance implementing this para-  
9           graph, pre-submissions and submissions for devices  
10          under section 510(k), 513(f)(2)(A), 515(c), 515(d),  
11          515(f), 520(g), 520(m), or 564 of this Act or section  
12          351 of the Public Health Service Act, and any sup-  
13          plements to such pre-submissions or submissions,  
14          shall include an electronic copy of such pre-submis-  
15          sions or submissions.

16          “(2) GUIDANCE CONTENTS.—In the guidance  
17          under paragraph (1), the Secretary may—

18                 “(A) provide standards for the electronic  
19                 copy required under such paragraph; and

20                 “(B) set forth criteria for waivers of and  
21                 exemptions from the requirements of this sub-  
22                 section.”.

23 **SEC. 1124. COMBATING PRESCRIPTION DRUG ABUSE.**

24          (a) IN GENERAL.—To combat the significant rise in  
25          prescription drug abuse and the consequences of such

1 abuse, the Secretary of Health and Human Services (re-  
2 ferred to in this section as the “Secretary”), acting  
3 through the Commissioner of Food and Drugs (referred  
4 to in this section as the “Commissioner”) and in coordina-  
5 tion with other Federal agencies, as appropriate, shall re-  
6 view current Federal initiatives and identify gaps and op-  
7 portunities with respect to ensuring the safe use of pre-  
8 scription drugs with the potential for abuse.

9 (b) REPORT.—Not later than 1 year after the date  
10 of enactment of this Act, the Secretary shall issue a report  
11 to Congress on the findings of the review under subsection  
12 (a). Such report shall include recommendations on—

13 (1) how best to leverage and build upon existing  
14 Federal and federally funded data sources, such as  
15 prescription drug monitoring program data and the  
16 sentinel initiative of the Food and Drug Administra-  
17 tion under section 505(k)(3) of the Federal Food,  
18 Drug, and Cosmetic Act (21 U.S.C. 351(k)(3)), as  
19 it relates to collection of information relevant to ad-  
20 verse events, patient safety, and patient outcomes, to  
21 create a centralized data clearinghouse and early  
22 warning tool;

23 (2) how best to develop and disseminate widely  
24 best practices models and suggested standard re-  
25 quirements to States for achieving greater interoper-

1 ability and effectiveness of prescription drug moni-  
2 toring programs, especially with respect to producing  
3 standardized data on adverse events, patient safety,  
4 and patient outcomes; and

5 (3) how best to develop provider and patient  
6 education tools and a strategy to widely disseminate  
7 such tools and assess the efficacy of such tools.

8 (c) **GUIDANCE ON TAMPER-DETERRENT PROD-**  
9 **UCTS.**—Not later than 6 months after the date of enact-  
10 ment of this Act, the Secretary, acting through the Com-  
11 missioner, shall promulgate guidance on the development  
12 of tamper-deterrent drug products.

13 **SEC. 1125. TANNING BED LABELING.**

14 Not later than 18 months after the date of enactment  
15 of this Act, the Secretary of Health and Human Services  
16 shall determine whether to amend the warning label re-  
17 quirements for sunlamp products to include specific re-  
18 quirements to more clearly and effectively convey the risks  
19 that such products pose for the development of irreversible  
20 damage to the eyes and skin, including skin cancer.

21 **SEC. 1126. OPTIMIZING GLOBAL CLINICAL TRIALS.**

22 Subchapter E of chapter V (21 U.S.C. 360bbb et  
23 seq.), as amended by section 903, is further amended by  
24 adding at the end the following:

1 **“SEC. 569A. OPTIMIZING GLOBAL CLINICAL TRIALS.**

2 “(a) IN GENERAL.—The Secretary shall—

3 “(1) work with other regulatory authorities of  
4 similar standing, medical research companies, and  
5 international organizations to foster and encourage  
6 uniform, scientifically-driven clinical trial standards  
7 with respect to medical products around the world;  
8 and

9 “(2) enhance the commitment to provide con-  
10 sistent parallel scientific advice to manufacturers  
11 seeking simultaneous global development of new  
12 medical products in order to—

13 “(A) enhance medical product develop-  
14 ment;

15 “(B) facilitate the use of foreign data; and

16 “(C) minimize the need to conduct duplica-  
17 tive clinical studies, preclinical studies, or non-  
18 clinical studies.

19 “(b) MEDICAL PRODUCT.—In this section, the term  
20 ‘medical product’ means a drug, as defined in subsection  
21 (g) of section 201, a device, as defined in subsection (h)  
22 of such section, or a biological product, as defined in sec-  
23 tion 351(i) of the Public Health Service Act.

24 “(c) SAVINGS CLAUSE.—Nothing in this section shall  
25 alter the criteria for evaluating the safety or effectiveness  
26 of a medical product under this Act.”.

1 **SEC. 1127. ADVANCING REGULATORY SCIENCE TO PRO-**  
2 **MOTE PUBLIC HEALTH INNOVATION.**

3 (a) IN GENERAL.—Not later than 1 year after the  
4 date of enactment of this Act, the Secretary of Health and  
5 Human Services (referred to in this section as the “Sec-  
6 retary”) shall develop a strategy and implementation plan  
7 for advancing regulatory science for medical products in  
8 order to promote the public health and advance innovation  
9 in regulatory decisionmaking.

10 (b) REQUIREMENTS.—The strategy and implementa-  
11 tion plan developed under subsection (a) shall be con-  
12 sistent with the user fee performance goals in the Pre-  
13 scription Drug User Fee Agreement commitment letter,  
14 the Generic Drug User Fee Agreement commitment letter,  
15 and the Biosimilar User Fee Agreement commitment let-  
16 ter transmitted by the Secretary to Congress on January  
17 13, 2012, and the Medical Device User Fee Agreement  
18 commitment letter transmitted by the Secretary to Con-  
19 gress on April 20, 2012, and shall—

20 (1) identify a clear vision of the fundamental  
21 role of efficient, consistent, and predictable, science-  
22 based decisions throughout regulatory decision-  
23 making of the Food and Drug Administration with  
24 respect to medical products;

25 (2) identify the regulatory science priorities of  
26 the Food and Drug Administration directly related

1 to fulfilling the mission of the agency with respect  
2 to decisionmaking concerning medical products and  
3 allocation of resources towards such regulatory  
4 science priorities;

5 (3) identify regulatory and scientific gaps that  
6 impede the timely development and review of, and  
7 regulatory certainty with respect to, the approval, li-  
8 censure, or clearance of medical products, including  
9 with respect to companion products and new tech-  
10 nologies, and facilitating the timely introduction and  
11 adoption of new technologies and methodologies in a  
12 safe and effective manner;

13 (4) identify clear, measurable metrics by which  
14 progress on the priorities identified under paragraph  
15 (2) and gaps identified under paragraph (3) will be  
16 measured by the Food and Drug Administration, in-  
17 cluding metrics specific to the integration and adop-  
18 tion of advances in regulatory science described in  
19 paragraph (5) and improving medical product deci-  
20 sionmaking, in a predictable and science-based man-  
21 ner; and

22 (5) set forth how the Food and Drug Adminis-  
23 tration will ensure that advances in regulatory  
24 science for medical products are adopted, as appro-  
25 priate, on an ongoing basis and in an manner inte-



1       grated across centers, divisions, and branches of the  
2       Food and Drug Administration, including by senior  
3       managers and reviewers, including through the—

4               (A) development, updating, and consistent  
5               application of guidance documents that support  
6               medical product decisionmaking; and

7               (B) the adoption of the tools, methods, and  
8               processes under section 566 of the Federal  
9               Food, Drug, and Cosmetic Act (21 U.S.C.  
10              360bbb–5).

11       (c) ANNUAL PERFORMANCE REPORTS.—As part of  
12 the annual performance reports submitted to Congress  
13 under sections 736B(a) (as amended by section 104),  
14 738A(a) (as amended by section 204), 744C(a) (as added  
15 by section 303), and 744I(a) (as added by section 403)  
16 of the Federal Food, Drug, and Cosmetic Act for each  
17 of fiscal years 2013 through 2017, the Secretary shall an-  
18 nually report on the progress made with respect to—

19              (1) advancing the regulatory science priorities  
20              identified under paragraph (2) of subsection (b) and  
21              resolving the gaps identified under paragraph (3) of  
22              such subsection, including reporting on specific  
23              metrics identified under paragraph (4) of such sub-  
24              section;

1           (2) the integration and adoption of advances in  
2 regulatory science as set forth in paragraph (5) of  
3 such subsection; and

4           (3) the progress made in advancing the regu-  
5 latory science goals outlined in the Prescription  
6 Drug User Fee Agreement commitment letter, the  
7 Generic Drug User Fee Agreement commitment let-  
8 ter, and the Biosimilar User Fee Agreement commit-  
9 ment letter transmitted by the Secretary to Congress  
10 on January 13, 2012, and the Medical Device User  
11 Fee Agreement transmitted by the Secretary to Con-  
12 gress on April 20, 2012.

13       (d) INDEPENDENT ASSESSMENT.—Not later than  
14 January 1, 2016, the Comptroller General of the United  
15 States shall submit to Congress a report—

16           (1) detailing the progress made by the Food  
17 and Drug Administration in meeting the priorities  
18 and addressing the gaps identified in subsection (b),  
19 including any outstanding gaps; and

20           (2) containing recommendations, as appro-  
21 priate, on how regulatory science initiatives for med-  
22 ical products can be strengthened and improved to  
23 promote the public health and advance innovation in  
24 regulatory decisionmaking.

1 (e) MEDICAL PRODUCT.—In this section, the term  
2 “medical product” means a drug, as defined in subsection  
3 (g) of section 201 of the Federal Food, Drug, and Cos-  
4 metic Act (21 U.S.C. 321), a device, as defined in sub-  
5 section (h) of such section, or a biological product, as de-  
6 fined in section 351(i) of the Public Health Service Act.

7 **SEC. 1128. INFORMATION TECHNOLOGY.**

8 (a) HHS REPORT.—Not later than 1 year after the  
9 date of enactment of this Act, the Secretary of Health and  
10 Human Services shall—

11 (1) report to Congress on—

12 (A) the milestones and a completion date  
13 for developing and implementing a comprehen-  
14 sive information technology strategic plan to  
15 align the information technology systems mod-  
16 ernization projects with the strategic goals of  
17 the Food and Drug Administration, including  
18 results-oriented goals, strategies, milestones,  
19 performance measures;

20 (B) efforts to finalize and approve a com-  
21 prehensive inventory of the information tech-  
22 nology systems of the Food and Drug Adminis-  
23 tration that includes information describing  
24 each system, such as costs, system function or  
25 purpose, and status information, and incor-

1           porate use of the system portfolio into the in-  
2           formation investment management process of  
3           the Food and Drug Administration;

4           (C) the ways in which the Food and Drug  
5           Administration uses the plan described in sub-  
6           paragraph (A) to guide and coordinate the  
7           modernization projects and activities of the  
8           Food and Drug Administration, including the  
9           interdependencies among projects and activities;  
10          and

11          (D) the extent to which the Food and  
12          Drug Administration has fulfilled or is imple-  
13          menting recommendations of the Government  
14          Accountability Office with respect to the Food  
15          and Drug Administration and information tech-  
16          nology; and

17          (2) develop—

18               (A) a documented enterprise architecture  
19               program management plan that includes the  
20               tasks, activities, and timeframes associated with  
21               developing and using the architecture and ad-  
22               dresses how the enterprise architecture program  
23               management will be performed in coordination  
24               with other management disciplines, such as or-  
25               ganizational strategic planning, capital planning

1 and investment control, and performance man-  
2 agement; and

3 (B) a skills inventory, needs assessment,  
4 gap analysis, and initiatives to address skills  
5 gaps as part of a strategic approach to informa-  
6 tion technology human capital planning.

7 (b) GAO REPORT.—Not later than January 1, 2016,  
8 the Comptroller General of the United States shall issue  
9 a report regarding the strategic plan described in sub-  
10 section (a)(1)(A) and related actions carried out by the  
11 Food and Drug Administration. Such report shall assess  
12 the progress the Food and Drug Administration has made  
13 on—

14 (1) the development and implementation of a  
15 comprehensive information technology strategic plan,  
16 including the results-oriented goals, strategies, mile-  
17 stones, and performance measures identified in sub-  
18 section (a)(1)(A);

19 (2) the effectiveness of the comprehensive infor-  
20 mation technology strategic plan described in sub-  
21 section (a)(1)(A), including the results-oriented  
22 goals and performance measures; and

23 (3) the extent to which the Food and Drug Ad-  
24 ministration has fulfilled recommendations of the

1 Government Accountability Office with respect to  
2 such agency and information technology.

3 **SEC. 1129. REPORTING REQUIREMENTS.**

4 Subchapter A of chapter VII (21 U.S.C. 371 et seq.),  
5 as amended by section 208, is further amended by adding  
6 at the end the following:

7 **“SEC. 715. REPORTING REQUIREMENTS.**

8 “(a) NEW DRUGS.—Beginning with fiscal year 2013  
9 and ending with fiscal year 2017, not later than 120 days  
10 after the end of each fiscal year for which fees are col-  
11 lected under part 2 of subchapter C, the Secretary shall  
12 prepare and submit to the Committee on Health Edu-  
13 cation, Labor, and Pensions of the Senate and the Com-  
14 mittee on Energy and Commerce of the House of Rep-  
15 resentatives a report concerning, for all applications for  
16 approval of a new drug under section 505(b) of this Act  
17 or a new biological product under section 351(a) of the  
18 Public Health Service Act filed in the previous fiscal  
19 year—

20 “(1) the number of such applications that met  
21 the goals identified for purposes of part 2 of sub-  
22 chapter C in the letters from the Secretary of  
23 Health and Human Services to the Chairman of the  
24 Committee on Health, Education, Labor, and Pen-  
25 sions of the Senate and the Chairman of the Com-

1 mittee on Energy and Commerce of the House of  
2 Representatives, as set forth in the Congressional  
3 Record;

4 “(2) the percentage of such applications that  
5 were approved;

6 “(3) the percentage of such applications that  
7 were issued complete response letters;

8 “(4) the percentage of such applications that  
9 were subject to a refuse-to-file action;

10 “(5) the percentage of such applications that  
11 were withdrawn; and

12 “(6) the average total time to decision by the  
13 Secretary for all applications for approval of a new  
14 drug under section 505(b) of this Act or a new bio-  
15 logical product under section 351(a) of the Public  
16 Health Service Act filed in the previous fiscal year,  
17 including the number of calendar days spent during  
18 the review by the Food and Drug Administration  
19 and the number of calendar days spent by the spon-  
20 sor responding to a complete response letter or rel-  
21 evant legal, scientific, or medical questions raised by  
22 the Secretary.”.

23 “(b) GENERIC DRUGS.—Beginning with fiscal year  
24 2013 and ending after fiscal year 2017, not later than  
25 120 days after the end of each fiscal year for which fees

1 are collected under part 7 of subchapter C, the Secretary  
2 shall prepare and submit to the Committee on Health  
3 Education, Labor, and Pensions of the Senate and the  
4 Committee on Energy and Commerce of the House of  
5 Representatives a report concerning, for all applications  
6 for approval of a generic drug under section 505(j),  
7 amendments to such applications, and prior approval sup-  
8 plements with respect to such applications filed in the pre-  
9 vious fiscal year—

10           “(1) the number of such applications that met  
11 the goals identified for purposes of part 7 of sub-  
12 chapter C, in the letters from the Secretary of  
13 Health and Human Services to the Chairman of the  
14 Committee on Health, Education, Labor, and Pen-  
15 sions of the Senate and the Chairman of the Com-  
16 mittee on Energy and Commerce of the House of  
17 Representatives, as set forth in the Congressional  
18 Record;

19           “(2) the average total time to decision by the  
20 Secretary for applications for approval of a generic  
21 drug under section 505(j), amendments to such ap-  
22 plications, and prior approval supplements with re-  
23 spect to such applications filed in the previous fiscal  
24 year, including the number of calendar days spent  
25 during the review by the Food and Drug Adminis-



1       tration and the number of calendar days spent by  
2       the sponsor responding to a complete response letter  
3       or relevant legal, scientific, or medical questions  
4       raised by the Secretary;

5           “(3) the total number of applications under sec-  
6       tion 505(j), amendments to such applications, and  
7       prior approval supplements with respect to such ap-  
8       plications that were pending with the Secretary for  
9       more than 10 months on the date of enactment of  
10      the Food and Drug Administration Safety and Inno-  
11      vation Act; and

12          “(4) the number of applications described in  
13      paragraph (3) on which the Food and Drug Admin-  
14      istration took final regulatory action in the previous  
15      fiscal year.

16      “(c) BIOSIMILAR BIOLOGICAL PRODUCTS.—

17          “(1) IN GENERAL.—Beginning with fiscal year  
18      2014, not later than 120 days after the end of each  
19      fiscal year for which fees are collected under part 8  
20      of subchapter C, the Secretary shall prepare and  
21      submit to the Committee on Health Education,  
22      Labor, and Pensions of the Senate and the Com-  
23      mittee on Energy and Commerce of the House of  
24      Representatives a report concerning—

1           “(A) the number of applications for ap-  
2           proval filed under section 351(k) of the Public  
3           Health Service Act; and

4           “(B) the percentage of applications de-  
5           scribed in subparagraph (A) that were approved  
6           by the Secretary.

7           “(2) ADDITIONAL INFORMATION.—As part of  
8           the performance report described in paragraph (1),  
9           the Secretary shall include an explanation of how the  
10          Food and Drug Administration is managing the bio-  
11          logical product review program to ensure that the  
12          user fees collected under part 2 are not used to re-  
13          view an application under section 351(k) of the Pub-  
14          lic Health Service Act.”.

15 **SEC. 1130. STRATEGIC INTEGRATED MANAGEMENT PLAN.**

16          (a) STRATEGIC INTEGRATED MANAGEMENT PLAN.—  
17          Not later than 1 year after the date of enactment of this  
18          Act, the Secretary of Health and Human Services (re-  
19          ferred to in this section as the “Secretary”) shall submit  
20          to Congress a strategic integrated management plan for  
21          the Center for Drug Evaluation and Research, the Center  
22          for Biologics Evaluation and Research, and the Center for  
23          Devices and Radiological Health. Such strategic manage-  
24          ment plan shall—

1           (1) identify strategic institutional goals and pri-  
2           orities for the Center for Drug Evaluation and Re-  
3           search, the Center for Biologics Evaluation and Re-  
4           search, and the Center for Devices and Radiological  
5           Health;

6           (2) describe the actions the Secretary will take  
7           to recruit, retain, train, and continue to develop the  
8           workforce at the Center for Drug Evaluation and  
9           Research, the Center for Biologics Evaluation and  
10          Research, and the Center for Devices and Radio-  
11          logical Health to fulfill the public health mission of  
12          the Food and Drug Administration; and

13          (3) identify results-oriented, outcome-based  
14          measures that the Secretary will use to measure the  
15          progress of achieving the strategic goals and prior-  
16          ities identified under paragraph (1) and the effec-  
17          tiveness of the actions identified under paragraph  
18          (2), including metrics to ensure that managers and  
19          reviewers of the Center for Drug Evaluation and Re-  
20          search, the Center for Biologics Evaluation and Re-  
21          search, and the Center for Devices and Radiological  
22          Health are familiar with and appropriately and con-  
23          sistently apply the requirements under the Federal  
24          Food, Drug, and Cosmetic Act (21 U.S.C. 301 et  
25          seq.), including new requirements under parts 2, 3,

1       7, and 8 of subchapter C of title VII of the Federal  
2       Food, Drug, and Cosmetic Act (21 U.S.C. 379f et  
3       seq.).

4       (b) REPORT.—Not later than January 1, 2016, the  
5       Comptroller General of the United States shall issue a re-  
6       port regarding the strategic management plan described  
7       in subsection (a) and related actions carried out by the  
8       Food and Drug Administration. Such report shall—

9               (1) assess the effectiveness of the actions de-  
10       scribed in subsection (a)(2) in recruiting, retaining,  
11       training, and developing the workforce at the Center  
12       for Drug Evaluation and Research, the Center for  
13       Biologics Evaluation and Research, and the Center  
14       for Devices and Radiological Health in fulfilling the  
15       public health mission of the Food and Drug Admin-  
16       istration;

17               (2) assess the effectiveness of the measures  
18       identified under subsection (a)(3) in gauging  
19       progress against the strategic goals and priorities  
20       identified under subsection (a)(1);

21               (3) assess the extent to which the Center for  
22       Drug Evaluation and Research, the Center for Bio-  
23       logics Evaluation and Research, and the Center for  
24       Devices and Radiological Health are using the iden-  
25       tified results-oriented set of performance measures

1 in tracking their workload by strategic goals and the  
2 effectiveness of such measures;

3 (4) assess the extent to which performance in-  
4 formation is collected, analyzed, and acted on by  
5 managers; and

6 (5) make recommendations, as appropriate, re-  
7 garding how the strategic management plan and re-  
8 lated actions of the Center for Drug Evaluation and  
9 Research, the Center for Biologics Evaluation and  
10 Research, and the Center for Devices and Radio-  
11 logical Health could be improved to fulfill the public  
12 health mission of the Food and Drug Administration  
13 in as efficient and effective manner as possible.

14 **SEC. 1131. DRUG DEVELOPMENT AND BIOEQUIVALENCE**  
15 **TESTING.**

16 (a) IN GENERAL.—Section 505–1 (21 U.S.C. 355–  
17 1) is amended by adding at the end the following:

18 “(k) DRUG DEVELOPMENT AND BIOEQUIVALENCE  
19 TESTING.—

20 “(1) IN GENERAL.—Notwithstanding any other  
21 provision of law, if a drug is a covered drug, no ele-  
22 ments to ensure safe use shall prohibit, or be con-  
23 strued or applied to prohibit, supply of such drug to  
24 any eligible drug developer for the purpose of devel-  
25 oping, or conducting bioequivalence testing necessary

1 to support, an application under subsection (b)(2) or  
2 (j) of section 505 of this Act or section 351(k) of  
3 the Public Health Service Act, if the Secretary has  
4 issued a written notice described in paragraph (2),  
5 and the eligible drug developer has agreed to comply  
6 with the terms of the notice.

7 “(2) WRITTEN NOTICE.—For purposes of this  
8 subsection, the Secretary shall issue a written notice  
9 to an eligible drug developer and the holder of an  
10 application for a covered drug authorizing the supply  
11 of a drug to such eligible drug developer for pur-  
12 poses of bioequivalence testing if—

13 “(A) the eligible drug developer has agreed  
14 to comply with any conditions the Secretary  
15 considers necessary; and

16 “(B) the eligible drug developer has sub-  
17 mitted and the Secretary has approved a pro-  
18 tocol for bioequivalence testing that includes  
19 protections that the Secretary finds will provide  
20 assurance of safety comparable to the assurance  
21 of safety provided by the elements to ensure  
22 safe use in the risk evaluation and mitigation  
23 strategy for the covered drug.

24 “(3) ADDITIONAL REQUIRED ELEMENT.—The  
25 Secretary shall require as an element of each risk

1 evaluation and mitigation strategy approved by the  
2 Secretary that the holder of an application for a cov-  
3 ered drug shall not restrict the resale of the covered  
4 drug to an eligible drug developer that receives a  
5 written notice from the Secretary under paragraph  
6 (2).

7 “(4) PENALTIES.—For purposes of subsection  
8 (f)(8) and sections 301, 303(f)(4), 502(y), and  
9 505(p), it shall be a violation of the risk evaluation  
10 and mitigation strategy for the holder of the applica-  
11 tion for a covered drug to restrict the sale of the  
12 drug to an eligible drug developer. The Secretary  
13 shall provide written notice to the Committee on  
14 Health, Education, Labor, and Pensions of the Sen-  
15 ate and the Committee on Energy and Commerce of  
16 the House of Representatives of any penalty as-  
17 sessed under this subsection within 7 days of such  
18 assessment.

19 “(5) LIABILITY.—The holder of an application  
20 for a covered drug shall not be liable for any claim  
21 arising out of the eligible drug developer’s provision  
22 or testing of a drug obtained under this subsection,  
23 including a claim arising out of failure of the eligible  
24 drug developer to follow adequate safeguards to en-  
25 sure safe use of the drug.

1 “(6) DEFINITIONS.—

2 “(A) COVERED DRUG.—Notwithstanding  
3 subsection (b)(2), for purposes of this sub-  
4 section, the term ‘covered drug’ means a drug  
5 subject to a risk evaluation and mitigation  
6 strategy with elements to ensure safe use under  
7 subsection (f), or that is deemed under section  
8 909(b) of the Food and Drug Administration  
9 Amendments Act of 2007 to be a drug, includ-  
10 ing a biological product licensed under section  
11 351(a) of the Public Health Service Act, subject  
12 to a risk evaluation and mitigation strategy  
13 with elements to ensure safe use.

14 “(B) ELIGIBLE DRUG DEVELOPER.—For  
15 purposes of this subsection, the term ‘eligible  
16 drug developer’ means a sponsor seeking to de-  
17 velop an application for submission under sub-  
18 section (b)(2) or (j) of section 505 of this Act  
19 or section 351(k) of the Public Health Service  
20 Act.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
22 Section 505–1(c)(2) (21 U.S.C. 355–1(c)(2)) is amended  
23 by striking “(e) and (f)” and inserting “(e), (f), and  
24 (k)(3)”.





Calendar No. 389

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2516**

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**A BILL**

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs and medical devices, to establish user-fee programs for generic drugs and biosimilars, and for other purposes.

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MAY 7, 2012

Read twice and placed on the calendar