112th Congress 2nd Session

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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.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Food and Drug Administration Safety and Innovation Act”.

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

(a) Table of Contents.—The table of contents of 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. 203. Authority to assess and use device fees.
Sec. 204. Reauthorization; reporting requirements.
Sec. 205. Savings clause.
Sec. 206. Effective date.
Sec. 207. Sunset clause.
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 REAUTHORIZATIONS

Sec. 501. Sense of the Senate regarding reauthorization of vital pediatric laws.

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. Agency documentation and review of certain decisions regarding devices.
Sec. 610. Good guidance practices relating to devices.
Sec. 611. Modification of de novo application process.
Sec. 612. Humanitarian use device exemptions.
Sec. 613. Reauthorization of third-party review and inspections.
Sec. 614. Advisory committee conflicts of interest.

TITLE VII—DRUG SUPPLY CHAIN

Sec. 701. Registration of domestic drug establishments.
Sec. 702. Registration of foreign establishments.
Sec. 703. Registration 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. Destruction of unsafe drugs.
Sec. 714. Protection against intentional adulteration.
Sec. 715. Enhanced criminal penalty for counterfeiting drugs.
Sec. 716. Extraterritorial jurisdiction.
Sec. 717. 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.

TITLE X—DRUG SHORTAGES

Sec. 1001. Drug shortages.

TITLE XI—OTHER PROVISIONS

Sec. 1101. Guidance document regarding product promotion using the Internet.
Sec. 1102. Reauthorization of provision relating to exclusivity of certain drugs containing single enantiomers.
Sec. 1104. Electronic submission of applications.

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

TITLE I—FEES RELATING TO DRUGS

SEC. 101. SHORT TITLE; FINDING.

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

(b) FINDING.—The Congress finds that the fees authorized by the amendments made in this title will be dedicated toward expediting the drug development process and the process for the review of human drug applications, including postmarket drug safety activities, as set forth in the goals identified for purposes of part 2 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.
SEC. 102. DEFINITIONS.

Paragraph (7) of section 735 (21 U.S.C. 379g) is amended, in the matter preceding subparagraph (A), by striking “incurred”.

SEC. 103. AUTHORITY TO ASSESS AND USE DRUG FEES.

Section 736 (21 U.S.C. 379h) is amended—

(1) in subsection (a)—

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

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

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

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

(ii) by striking “payable on or before October 1 of each year” and inserting “due on the later of the first business day on or after October 1 of such fiscal year or the first business day after the enactment of an appropriations Act providing for the collection and obligation of fees for such fiscal year under this section”; and
(D) in paragraph (3)—

(i) in subparagraph (A)—

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

(II) by striking “payable on or before October 1 of each year.” and inserting “due on the later of the first business day on or after October 1 of each such fiscal year or the first business day after the enactment of an appropriations Act providing for the collection and obligation of fees for each such fiscal year under this section.”;

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

“(B) EXCEPTION.—A prescription drug product shall not be assessed a fee under subparagraph (A) if such product is—

“(i) identified on the list compiled under section 505(j)(7)(A) with a potency described in terms of per 100 mL;

“(ii) the same product as another product that—
“(I) was approved under an application filed under section 505(b) or 505(j); and

“(II) is not in the list of discontinued products compiled under section 505(j)(7)(A);

“(iii) the same product as another product that was approved under an abbreviated application filed under section 507 (as in effect on the day before the date of enactment of the Food and Drug Administration Modernization Act of 1997); or

“(iv) the same product as another product that was approved under an abbreviated new drug application pursuant to regulations in effect prior to the implementation of the Drug Price Competition and Patent Term Restoration Act of 1984.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in the language preceding subparagraph (A), by striking “fiscal years 2008 through 2012” and inserting “fiscal years 2013 through 2017”;
(ii) in subparagraph (A), by striking
"$392,783,000; and” and inserting
"$693,099,000;”; and

(iii) by striking subparagraph (B) and
inserting the following:
“(B) the dollar amount equal to the infla-
tion adjustment for fiscal year 2013 (as deter-
mined under paragraph (3)(A)); and

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

(B) by striking paragraphs (3) and (4) and
inserting the following:
“(3) Fiscal year 2013 inflation and work-
load adjustments.—For purposes of paragraph
(1), the dollar amount of the inflation and workload
adjustments for fiscal year 2013 shall be determined
as follows:
“(A) Inflation adjustment.—The infla-
tion adjustment for fiscal year 2013 shall be
the sum of—
“(i) $652,709,000 multiplied by the
result of an inflation adjustment calcula-
tion determined using the methodology de-
scribed in subsection (c)(1)(B); and
“(ii) $652,709,000 multiplied by the result of an inflation adjustment calculation determined using the methodology described in subsection (c)(1)(C).

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

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

“(ii) the amount (if any) by which a percentage workload adjustment for fiscal year 2013, as determined using the methodology described in subsection (c)(2)(A), would exceed the percentage workload adjustment (as so determined) for fiscal year 2012, if both such adjustment percentages were calculated using the 5-year base period consisting of fiscal years 2003 through 2007.

“(C) LIMITATION.—Under no circumstances shall the adjustment under subparagraph (B) result in fee revenues for fiscal year 2013 that are less than the sum of the
amount under paragraph (1)(A) and the
amount under paragraph (1)(B).”;

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

“(c) ADJUSTMENTS.—

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

“(A) one;

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

“(C) the average annual change that oc-
curred in the Consumer Price Index for urban
consumers (Washington-Baltimore, DC–MD–VA–WV; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than personnel compensation and benefits costs to total costs of the process for the review of human drug applications (as defined in section 735(6)) for the first 3 years of the preceding 4 fiscal years.

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

“(2) WORKLOAD ADJUSTMENT.—For fiscal year 2014 and subsequent fiscal years, after the fee revenues established in subsection (b) are adjusted for a fiscal year for inflation in accordance with paragraph (1), the fee revenues shall be adjusted further for such fiscal year to reflect changes in the workload of the Secretary for the process for the review of human drug applications. With respect to such adjustment:

“(A) The adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of human
drug applications (adjusted for changes in review activities, as described in the notice that the Secretary is required to publish in the Federal Register under this subparagraph), efficacy supplements, and manufacturing supplements submitted to the Secretary, and the change in the total number of active commercial investigational new drug applications (adjusted for changes in review activities, as so described) during the most recent 12-month period for which data on such submissions is available. The Secretary shall publish in the Federal Register the fee revenues and fees resulting from the adjustment and the supporting methodologies.

“(B) Under no circumstances shall the adjustment result in fee revenues for a fiscal year that are less than the sum of the amount under subsection (b)(1)(A) and the amount under subsection (b)(1)(B), as adjusted for inflation under paragraph (1).

“(C) The Secretary shall contract with an independent accounting or consulting firm to periodically review the adequacy of the adjustment and publish the results of those reviews.
The first review shall be conducted and published by the end of fiscal year 2013 (to examine the performance of the adjustment since fiscal year 2009), and the second review shall be conducted and published by the end of fiscal year 2015 (to examine the continued performance of the adjustment). The reports shall evaluate whether the adjustment reasonably represents actual changes in workload volume and complexity and present options to discontinue, retain, or modify any elements of the adjustment. The reports shall be published for public comment. After review of the reports and receipt of public comments, the Secretary shall, if warranted, adopt appropriate changes to the methodology. If the Secretary adopts changes to the methodology based on the first report, the changes shall be effective for the first fiscal year for which fees are set after the Secretary adopts such changes and each subsequent fiscal year.

“(3) FINAL YEAR ADJUSTMENT.—For fiscal year 2017, the Secretary may, in addition to adjustments under this paragraph and paragraphs (1) and (2), further increase the fee revenues and fees estab-
lished in subsection (b) if such an adjustment is necessary to provide for not more than 3 months of operating reserves of carryover user fees for the process for the review of human drug applications for the first 3 months of fiscal year 2018. If such an adjustment is necessary, the rationale for the amount of the increase shall be contained in the annual notice establishing fee revenues and fees for fiscal year 2017. If the Secretary has carryover balances for such process in excess of 3 months of such operating reserves, the adjustment under this subparagraph shall not be made.

“(4) Annual fee setting.—The Secretary shall, not later than 60 days before the start of each fiscal year that begins after September 30, 2012, establish, for the next fiscal year, application, product, and establishment fees under subsection (a), based on the revenue amounts established under subsection (b) and the adjustments provided under this subsection.

“(5) Limit.—The total amount of fees charged, as adjusted under this subsection, for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for the process for the review of human drug applications.”; and
(4) in subsection (g)—

(A) in paragraph (1), by striking “Fees authorized” and inserting “Subject to paragraph (2)(C), fees authorized”; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

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

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

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

“(C) Provision for early payments.—

Payment of fees authorized under this section for a fiscal year, prior to the due date for such fees, may be accepted by the Secretary in accordance with authority provided in advance in a prior year appropriations Act.”;

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

(D) in paragraph (4)—
(i) by striking “fiscal years 2008 through 2010” and inserting “fiscal years 2013 through 2015”; 
(ii) by striking “fiscal year 2011” and inserting “fiscal year 2016”; 
(iii) by striking “fiscal years 2008 though 2011” and inserting “fiscal years 2013 through 2016”; and 
(iv) by striking “fiscal year 2012” and inserting “fiscal year 2017”.

SEC. 104. REAUTHORIZATION; REPORTING REQUIREMENTS.

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

(1) by amending subsection (a) to read as follows:

“(a) PERFORMANCE REPORT.—

“(1) IN GENERAL.—Beginning with fiscal year 2013, not later than 120 days after the end of each fiscal year for which fees are collected under this part, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report concerning the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 101(b) of the Pre-
scription Drug User Fee Amendments of 2012 during such fiscal year and the future plans of the Food and Drug Administration for meeting the goals. The report under this subsection for a fiscal year shall include information on all previous cohorts for which the Secretary has not given a complete response on all human drug applications and supplements in the cohort.”;

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

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

SEC. 105. SUNSET DATES.

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


(c) PREVIOUS SUNSET PROVISION.—The Prescription Drug User Fee Amendments of 2007 is amended by striking section 106.

SEC. 106. EFFECTIVE DATE.

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

SEC. 107. SAVINGS CLAUSE.

Notwithstanding section 106 of the Prescription Drug User Fee Amendments of 2007 (21 U.S.C. 379g note), and notwithstanding the amendments made by this title, part 2 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, as in effect on the day before the date of the enactment of this title, shall continue to be in effect with respect to human drug applications and supplements (as defined in such part as of such day) that on or after October 1, 2007, but before October 1, 2012, were accepted by the Food and Drug Administration for filing with respect to assessing and collecting any fee required by such part for a fiscal year prior to fiscal year 2012.

TITLE II—FEES RELATING TO DEVICES

SEC. 201. SHORT TITLE; FINDINGS.

(a) Short Title.—This title may be cited as the “Medical Device User Fee Amendments of 2012”.
(b) FINDINGS.—The Congress finds that the fees authorized under the amendments made by this title will be dedicated toward expediting the process for the review of device applications and for assuring the safety and effectiveness of devices, as set forth in the goals identified for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.

SEC. 202. DEFINITIONS.

Section 737 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i) is amended—

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

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

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

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

(a) TYPES OF FEES.—Section 738(a) of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C. 379j(a)) is
amended—

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

(2) in paragraph (2)(A)—

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

(i) by striking “subsections (d) and
(e)” and inserting “subsections (d), (e),
and (f)”;

(ii) by striking “October 1, 2002” and
inserting “October 1, 2012”; and

(iii) by striking “subsection (c)(1)”
and inserting “subsection (c)”;

(B) in clause (viii), by striking “1.84” and
inserting “2”; and

(3) in paragraph (3)—

(A) in subparagraph (A), by inserting
“and subsection (f)” after “subparagraph (B)”;

and
(B) in subparagraph (C), by striking “initial registration” and all that follows through “section 510.” and inserting “later of—

“(i) the initial or annual registration (as applicable) of the establishment under section 510; or

“(ii) the first business day after the date of enactment of an appropriations Act providing for the collection and obligation of fees for such year under this section.”.

(b) Fee Amounts.—Section 738(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(b)) is amended to read as follows:

“(b) Fee Amounts.—

“(1) In General.—Subject to subsections (c), (d), (e), (f), and (i), for each of fiscal years 2013 through 2017, fees under subsection (a) shall be derived from the base fee amounts specified in paragraph (2), to generate the total revenue amounts specified in paragraph (3).

“(2) Base Fee Amounts.—For purposes of paragraph (1), the base fee amounts specified in this paragraph are as follows:

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<th>Fee Type</th>
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<th>Fiscal Year 2015</th>
<th>Fiscal Year 2016</th>
<th>Fiscal Year 2017</th>
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“(3) TOTAL REVENUE AMOUNTS.—For purposes of paragraph (1), the total revenue amounts specified in this paragraph are as follows:

“(A) $97,722,301 for fiscal year 2013.
“(B) $112,580,497 for fiscal year 2014.
“(C) $125,767,107 for fiscal year 2015.
“(D) $129,339,949 for fiscal year 2016.
“(E) $130,184,348 for fiscal year 2017.”.

(c) ANNUAL FEE SETTING; ADJUSTMENTS.—Section 738(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(c)) is amended—

(1) in the subsection heading, by inserting “; ADJUSTMENTS” after “SETTING”; 
(2) by striking paragraphs (1) and (2); 
(3) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and 
(4) by inserting before paragraph (4), as so redesignated, the following:

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

“(2) Inflation Adjustments.—

“(A) Adjustment to Total Revenue
Amounts.—For fiscal year 2014 and each sub-
sequent fiscal year, the Secretary shall adjust
the total revenue amount specified in subsection
(b)(3) for such fiscal year by multiplying such
amount by the applicable inflation adjustment
under subparagraph (B) for such year.

“(B) Applicable Inflation Adjust-
ment to Total Revenue Amounts.—The ap-
licable inflation adjustment for a fiscal year
is—

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

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

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

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

"(C) Base inflation adjustment to total revenue amounts.—

“(i) In general.—Subject to further adjustment under clause (ii), the base inflation adjustment for a fiscal year is the sum of one plus—

“(I) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions for the first 3 years of the preceding 4 fiscal years, multiplied by 0.60; and

“(II) the average annual change that occurred in the Consumer Price Index for urban consumers (Washington-Baltimore, DC–MD–VA–WV; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by 0.40.
“(ii) LIMITATIONS.—For purposes of subparagraph (B), if the base inflation adjustment for a fiscal year under clause (i)—

“(I) is less than 1, such adjustment shall be considered to be equal to 1; or

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

“(D) ADJUSTMENT TO BASE FEE AMOUNTS.—For each of fiscal years 2014 through 2017, the base fee amounts specified in subsection (b)(2) shall be adjusted as needed, on a uniform proportionate basis, to generate the total revenue amounts under subsection (b)(3), as adjusted for inflation under subparagraph (A).

“(3) VOLUME-BASED ADJUSTMENTS TO ESTABLISHMENT REGISTRATION BASE FEES.—For each of fiscal years 2014 through 2017, after the base fee amounts specified in subsection (b)(2) are adjusted under paragraph (2)(D), the base establishment registration fee amounts specified in such subsection shall be further adjusted, as the Secretary estimates
(d) **Fee Waiver or Reduction.**—Section 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j) is amended by—

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

(2) by inserting after subsection (e) the following new subsection (f):

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(f) **Fee Waiver or Reduction.**—

(1) **In General.**—The Secretary may, at the Secretary’s sole discretion, grant a waiver or reduction of fees under subsection (a)(2) or (a)(3) if the Secretary finds that such waiver or reduction is in the interest of public health.

(2) **Limitation.**—The sum of all fee waivers or reductions granted by the Secretary in any fiscal year under paragraph (1) shall not exceed 2 percent of the total fee revenue amounts established for such year under subsection (e).

(3) **Duration.**—The authority provided by this subsection terminates October 1, 2017.”.
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(e) **Conditions.**—Section 738(h)(1)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
379j(h)(1)(A)), as redesignated by subsection (d)(1), is amended by striking “$205,720,000” and inserting “$280,587,000”.

(f) CREDITING AND AVAILABILITY OF FEES.—Section 738(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(i)), as redesignated by subsection (d)(1), is amended—

(1) in paragraph (1), by striking “Fees authorized” and inserting “Subject to paragraph (2)(C), fees authorized”;

(2) in paragraph (2)—

(A) in subparagraph (A)—

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

(ii) in clause (ii)—

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

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

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

“(C) PROVISION FOR EARLY PAYMENTS.—

Payment of fees authorized under this section
for a fiscal year, prior to the due date for such fees, may be accepted by the Secretary in accordance with authority provided in advance in a prior year appropriations Act.”;

(3) in paragraph (3), by amending to read as follows:

“(3) AUTHORIZATIONS OF APPROPRIATIONS.—
For each of the fiscal years 2013 through 2017, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount specified under subsection (b)(3) for the fiscal year, as adjusted under subsection (c) and, for fiscal year 2017 only, as further adjusted under paragraph (4).”; and

(4) in paragraph (4)—

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

(B) by striking “fiscal year 2011” and inserting “fiscal year 2016”; 

(C) by striking “June 30, 2011” and inserting “June 30, 2016”; 

(D) by striking “the amount of fees specified in aggregate in” and inserting “the cumulative amount appropriated pursuant to”;}
(E) by striking “aggregate amount in” before “excess shall be credited”; and

(F) by striking “fiscal year 2012” and inserting “fiscal year 2017”.

(g) **CONFORMING AMENDMENT.**—Section 515(c)(4)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)(4)(A)) is amended by striking “738(g)” and inserting “738(h)”.

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

(a) **REAUTHORIZATION.**—Section 738A(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j–1(b)) is amended—

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

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

(b) **REPORTS.**—Section 738A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j–1(a)) is amended by striking “2008 through 2012” each place it appears and inserting “2013 through 2017”.

**SEC. 205. SAVINGS CLAUSE.**

Notwithstanding the amendments made by this title, part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in effect on the day before the date of the enactment of this
title, shall continue to be in effect with respect to pre-
market applications, premarket reports, premarket notifi-
cation submissions, and supplements (as defined in such
part as of such day) that on or after October 1, 2007,
but before October 1, 2012, were accepted by the Food
and Drug Administration for filing with respect to assess-
ing and collecting any fee required by such part for a fiscal
year prior to fiscal year 2013.

SEC. 206. EFFECTIVE DATE.

The amendments made by this title shall take effect
on October 1, 2012, or the date of the enactment of this
Act, whichever is later, except that fees under part 3 of
subchapter C of chapter VII of the Federal Food, Drug,
and Cosmetic Act shall be assessed for all premarket ap-
lications, premarket reports, supplements, 30-day no-
tices, and premarket notification submissions received on
or after October 1, 2012, regardless of the date of the
enactment of this Act.

SEC. 207. SUNSET CLAUSE.

(a) AUTHORIZATIONS.—Sections 737 and 738 of the
739j) shall cease to be effective October 1, 2017.

(b) REPORTING REQUIREMENTS.—Section 738A of
739j–1) shall cease to be effective January 31, 2018.
(c) Previous Sunset Provision.—The Food and Drug Administration Amendments Act of 2007 is amended by striking section 217.

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

Subchapter A of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 et seq.) is amended by inserting after section 713 the following new section:

“SEC. 714. STREAMLINED HIRING AUTHORITY.

“(a) In General.—In addition to any other personnel authorities under other provisions of law, the Secretary may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint employees to positions in the Food and Drug Administration to perform, administer, or support activities described in subsection (b), if the Secretary determines that such appointments are needed to achieve the objectives specified in subsection (c).

“(b) Activities Described.—The activities described in this subsection are activities under this Act related to the process for the review of device applications (as defined in section 737(8)).

“(c) Objectives Specified.—The objectives specified in this subsection are with respect to the activities
under subsection (b), the goals referred to in section 738A(a)(1).

“(d) INTERNAL CONTROLS.—The Secretary shall institute appropriate internal controls for appointments under this section.

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

**TITLE III—FEES RELATING TO GENERIC DRUGS**

**SEC. 301. SHORT TITLE.**

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

(b) FINDING.—The Congress finds that the fees authorized by the amendments made in this title will be dedicated to human generic drug activities, as set forth in the goals identified for purposes of part 7 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.
SEC. 302. AUTHORITY TO ASSESS AND USE HUMAN GENERIC DRUG FEES.

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

“PART 7—FEES RELATING TO GENERIC DRUGS

“SEC. 744A. DEFINITIONS.

“For purposes of this part:

“(1) The term ‘abbreviated new drug application’—

“(A) means an application submitted under section 505(j), an abbreviated application submitted under section 507 (as in effect on the day before the date of enactment of the Food and Drug Administration Modernization Act of 1997), or an abbreviated new drug application submitted pursuant to regulations in effect prior to the implementation of the Drug Price Competition and Patent Term Restoration Act of 1984; and

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

“(2) The term ‘active pharmaceutical ingredient’ means—

“(A) a substance, or a mixture when the substance is unstable or cannot be transported on its own, intended—
“(i) to be used as a component of a drug; and

“(ii) to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the human body; or

“(B) a substance intended for final crystallization, purification, or salt formation, or any combination of those activities, to become a substance or mixture described in subparagraph (A).

“(3) The term ‘adjustment factor’ means a factor applicable to a fiscal year that is the Consumer Price Index for all urban consumers (all items; United States city average) for October of the preceding fiscal year divided by such Index for October 2011.

“(4) The term ‘affiliate’ means a business entity that has a relationship with a second business entity if, directly or indirectly—

“(A) one business entity controls, or has the power to control, the other business entity; or
“(B) a third party controls, or has power
to control, both of the business entities.

“(5)(A) The term ‘facility’—

“(i) means a business or other entity—

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

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

“(ii) does not include a business or other
entity whose only manufacturing or processing
activities are one or more of the following: re-
packaging, relabeling, or testing.

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

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

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

“(iii) capable of being inspected by the
Food and Drug Administration during a single
inspection.
“(C) If a business or other entity would meet the definition of a facility under this paragraph but for being under multiple management, the business or other entity is deemed to constitute multiple facilities, one per management entity, for purposes of this paragraph.

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

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

“(B) a drug product in a form in which reconstitution is necessary prior to administration to a patient, such as oral suspensions or lyophilized powders; or

“(C) any combination of an active pharmaceutical ingredient with another component of a drug product for purposes of production of a drug product described in subparagraph (A) or (B).

“(7) The term ‘generic drug submission’ means an abbreviated new drug application, an amendment to an abbreviated new drug application, or a prior approval supplement to an abbreviated new drug application.
“(8) The term ‘human generic drug activities’ means the following activities of the Secretary associated with generic drugs and inspection of facilities associated with generic drugs:

“(A) The activities necessary for the review of generic drug submissions, including review of drug master files referenced in such submissions.

“(B) The issuance of—

“(i) approval letters which approve abbreviated new drug applications or supplements to such applications; or

“(ii) complete response letters which set forth in detail the specific deficiencies in such applications and, where appropriate, the actions necessary to place such applications in condition for approval.

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

“(i) set forth in detail the specific deficiencies in such submissions, and where appropriate, the actions necessary to resolve those deficiencies; or
“(ii) document that no deficiencies need to be addressed.

“(D) Inspections related to generic drugs.

“(E) Monitoring of research conducted in connection with the review of generic drug submissions and drug master files.

“(F) Postmarket safety activities with respect to drugs approved under abbreviated new drug applications or supplements, including the following activities:

“(i) Collecting, developing, and reviewing safety information on approved drugs, including adverse event reports.

“(ii) Developing and using improved adverse-event data-collection systems, including information technology systems.

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

“(iv) Implementing and enforcing section 505(o) (relating to postapproval studies and clinical trials and labeling changes) and section 505(p) (relating to risk evaluation and mitigation strategies) insofar as
those activities relate to abbreviated new
drug applications.

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

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

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

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

“(11) The term ‘resources allocated for human
generic drug activities’ means the expenses for—
“(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees, and costs related to such officers and employees and to contracts with such contractors;

“(B) management of information, and the acquisition, maintenance, and repair of computer resources;

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

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

“(12) The term ‘Type II active pharmaceutical ingredient drug master file’ means a submission of information to the Secretary by a person that intends to authorize the Food and Drug Administration to reference the information to support approval of a generic drug submission without the submitter
having to disclose the information to the generic
drug submission applicant.

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

“(a) Types of Fees.—Beginning in fiscal year
2013, the Secretary shall assess and collect fees in accord-
ance with this section as follows:

“(1) One-time backlog fee for abbre-
viated new drug applications pending on oc-
tober 1, 2012.—

“(A) In general.—Each person that
owns an abbreviated new drug application that
is pending on October 1, 2012, and that has
not received a tentative approval prior to that
date, shall be subject to a fee for each such ap-
lication, as calculated under subparagraph
(B).

“(B) Method of fee amount calcula-
tion.—The amount of each one-time backlog
fee shall be calculated by dividing $50,000,000
by the total number of abbreviated new drug
applications pending on October 1, 2012, that
have not received a tentative approval as of that
date.
“(C) NOTICE.—Not later than October 31, 2012, the Secretary shall cause to be published in the Federal Register a notice announcing the amount of the fee required by subparagraph (A).

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

“(2) DRUG MASTER FILE FEE.—

“(A) IN GENERAL.—Each person that owns a Type II active pharmaceutical ingredient drug master file that is referenced on or after October 1, 2012, in a generic drug submission by any initial letter of authorization shall be subject to a drug master file fee.

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

“(C) NOTICE.—
“(i) **Fiscal Year 2013.**—Not later than October 31, 2012, the Secretary shall cause to be published in the Federal Register a notice announcing the amount of the drug master file fee for fiscal year 2013.

“(ii) **Fiscal Year 2014 Through 2017.**—Not later than 60 days before the start of each of fiscal years 2014 through 2017, the Secretary shall cause to be published in the Federal Register the amount of the drug master file fee established by this paragraph for such fiscal year.

“(D) **Availability for Reference.**—

“(i) **In General.**—Subject to subsection (g)(2)(C), for a generic drug submission to reference a Type II active pharmaceutical ingredient drug master file, the drug master file must be deemed available for reference by the Secretary.

“(ii) **Conditions.**—A drug master file shall be deemed available for reference by the Secretary if—

“(I) the person that owns a Type II active pharmaceutical ingredient
drug master file has paid the fee required under subparagraph (A) within 20 calendar days after the applicable due date under subparagraph (E); and

“(II) the drug master file has not failed an initial completeness assessment by the Secretary, in accordance with criteria to be published by the Secretary.

“(iii) List.—The Secretary shall make publicly available on the Internet Web site of the Food and Drug Administration a list of the drug master file numbers that correspond to drug master files that have successfully undergone an initial completeness assessment, in accordance with criteria to be published by the Secretary, and are available for reference.

“(E) Fee due date.—

“(i) In general.—Subject to clause (ii), a drug master file fee shall be due no later than the date on which the first generic drug submission is submitted that
references the associated Type II active pharmaceutical ingredient drug master file.

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

“(I) 30 calendar days after publication of the notice provided for in clause (i) or (ii) of subparagraph (C), as applicable; or

“(II) 30 calendar days after the date of enactment of an appropriations Act providing for the collection and obligation of fees under this section.

“(3) Abbreviated new drug application and prior approval supplement filing fee.—

“(A) IN GENERAL.—Each applicant that submits, on or after October 1, 2012, an abbreviated new drug application or a prior approval supplement to an abbreviated new drug application shall be subject to a fee for each such submission in the amount established under subsection (d).

“(B) NOTICE.—
“(i) Fiscal year 2013.—Not later than October 31, 2012, the Secretary shall cause to be published in the Federal Register a notice announcing the amount of the fees under subparagraph (A) for fiscal year 2013.

“(ii) Fiscal years 2014 through 2017.—Not later than 60 days before the start of each of fiscal years 2014 through 2017, the Secretary shall cause to be published in the Federal Register the amount of the fees under subparagraph (A) for such fiscal year.

“(C) Fee due date.—

“(i) In general.—Except as provided in clause (ii), the fees required by subparagraphs (A) and (F) shall be due no later than the date of submission of the abbreviated new drug application or prior approval supplement for which such fee applies.

“(ii) Special rule for 2013.—For fiscal year 2013, such fees shall be due on the later of—
“(I) the date on which the fee is due under clause (i);

“(II) 30 calendar days after publication of the notice referred to in subparagraph (B)(i); or

“(III) if an appropriations Act is not enacted providing for the collection and obligation of fees under this section by the date of submission of the application or prior approval supplement for which the fees under subparagraphs (A) and (F) apply, 30 calendar days after the date that such an appropriations Act is enacted.

“(D) **Refund of fee if abbreviated new drug application is not considered to have been received.**—The Secretary shall refund 75 percent of the fee paid under subparagraph (A) for any abbreviated new drug application or prior approval supplement to an abbreviated new drug application that the Secretary considers not to have been received within the meaning of section 505(j)(5)(A) for a cause other than failure to pay fees.
“(E) Fee for an application the Secretary considers not to have been received, or that has been withdrawn.—An abbreviated new drug application or prior approval supplement that was submitted on or after October 1, 2012, and that the Secretary considers not to have been received, or that has been withdrawn, shall, upon resubmission of the application or a subsequent new submission following the applicant’s withdrawal of the application, be subject to a full fee under subparagraph (A).

“(F) Additional fee for active pharmaceutical ingredient information not included by reference to type II active pharmaceutical ingredient drug master file.—An applicant that submits a generic drug submission on or after October 1, 2012, shall pay a fee, in the amount determined under subsection (d)(3), in addition to the fee required under subparagraph (A), if—

“(i) such submission contains information concerning the manufacture of an active pharmaceutical ingredient at a facility by means other than reference by a let-
ter of authorization to a Type II active pharmaceutical drug master file; and

“(ii) a fee in the amount equal to the drug master file fee established in paragraph (2) has not been previously paid with respect to such information.

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

“(A) IN GENERAL.—Facilities identified, or intended to be identified, in at least one generic drug submission that is pending or approved to produce a finished dosage form of a human generic drug or an active pharmaceutical ingredient contained in a human generic drug shall be subject to fees as follows:

“(i) GENERIC DRUG FACILITY.—Each person that owns a facility which is identified or intended to be identified in at least one generic drug submission that is pending or approved to produce one or more finished dosage forms of a human generic drug shall be assessed an annual fee for each such facility.

“(ii) ACTIVE PHARMACEUTICAL INGREDIENT FACILITY.—Each person that
owns a facility which produces, or which is pending review to produce, one or more active pharmaceutical ingredients identified, or intended to be identified, in at least one generic drug submission that is pending or approved or in a Type II active pharmaceutical ingredient drug master file referenced in such a generic drug submission, shall be assessed an annual fee for each such facility.

“(iii) FACILITIES PRODUCING BOTH ACTIVE PHARMACEUTICAL INGREDIENTS AND FINISHED DOSAGE FORMS.—Each person that owns a facility identified, or intended to be identified, in at least one generic drug submission that is pending or approved to produce both one or more finished dosage forms subject to clause (i) and one or more active pharmaceutical ingredients subject to clause (ii) shall be subject to fees under both such clauses for that facility.

“(B) AMOUNT.—The amount of fees established under subparagraph (A) shall be established under subsection (d).
“(C) NOTICE.—

“(i) FISCAL YEAR 2013.—For fiscal year 2013, the Secretary shall cause to be published in the Federal Register a notice announcing the amount of the fees provided for in subparagraph (A) within the timeframe specified in subsection (d)(1)(B).

“(ii) FISCAL YEARS 2014 THROUGH 2017.—Within the timeframe specified in subsection (d)(2), the Secretary shall cause to be published in the Federal Register the amount of the fees under subparagraph (A) for such fiscal year.

“(D) FEE DUE DATE.—

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

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

“(II) if an appropriations Act is not enacted providing for the collection and obligation of fees under this section by the date of the publication
of such notice, 30 days after the date that such an appropriations Act is enacted.

“(ii) Fiscal years 2014 through 2017.—For each of fiscal years 2014 through 2017, the fees under subparagraph (A) for such fiscal year shall be due on the later of—

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

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

“(5) Date of submission.—For purposes of this Act, a generic drug submission or Type II pharmaceutical master file is deemed to be ‘submitted’ to the Food and Drug Administration—

“(A) if it is submitted via a Food and Drug Administration electronic gateway, on the day when transmission to that electronic gateway is completed, except that a submission or master file that arrives on a weekend, Federal holiday, or day when the Food and Drug Ad-
ministration office that will review that submission is not otherwise open for business shall be deemed to be submitted on the next day when that office is open for business; or

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

“(b) Fee Revenue Amounts.—

“(1) In general.—

“(A) Fiscal Year 2013.—For fiscal year 2013, fees under subsection (a) except as provided in subsection (o) (relating to waivers) shall be established to generate a total estimated revenue amount under such subsection of $299,000,000. Of that amount—

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

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

“(B) Fiscal Years 2014 Through 2017.—

For each of the fiscal years 2014 through 2017,
fees under paragraphs (2) through (4) of subsection (a) shall be established to generate a total estimated revenue amount under such subsection that is equal to $299,000,000, as adjusted pursuant to subsection (c).

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

“(A) 6 percent shall be derived from fees under subsection (a)(2) (relating to drug master files).

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

“(C) 56 percent shall be derived from fees under subsection (a)(4)(A)(i) (relating to generic drug facilities). The amount of the fee for a facility located outside the United States and
its territories and possessions shall be not less
than $15,000 and not more than $30,000 high-
er than the amount of the fee for a facility lo-
cated in the United States and its territories
and possessions, as determined by the Secretary
on the basis of data concerning the difference
in cost between inspections of facilities located
in the United States, including its territories
and possessions, and those located outside of
the United States and its territories and posses-
sions.

“(D) 14 percent shall be derived from fees
under subsection (a)(4)(A)(ii) (relating to active
pharmaceutical ingredient facilities). The
amount of the fee for a facility located outside
the United States and its territories and posses-
sions shall be not less than $15,000 and not
more than $30,000 higher than the amount of
the fee for a facility located in the United
States, including its territories and possessions,
as determined by the Secretary on the basis of
data concerning the difference in cost between
inspections of facilities located in the United
States and its territories and possessions and
those located outside of the United States and its territories and possessions.

“(c) ADJUSTMENTS.—

“(1) INFLATION ADJUSTMENT.—For fiscal year 2014 and subsequent fiscal years, the revenues established in subsection (b) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year, by an amount equal to the sum of—

“(A) one;

“(B) the average annual change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions for the first 3 years of the preceding 4 fiscal years multiplied by the proportion of personnel compensation and benefits costs to total costs of human generic drug activities for the first 3 years of the preceding 4 fiscal years; and

“(C) the average annual change that occurred in the Consumer Price Index for urban consumers (Washington-Baltimore, DC–MD–VA–WV; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the pre-
ceding 4 years of available data multiplied by the proportion of all costs other than personnel compensation and benefits costs to total costs of human generic drug activities for the first 3 years of the preceding 4 fiscal years.

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

“(2) Final year adjustment.—For fiscal year 2017, the Secretary may, in addition to adjustments under paragraph (1), further increase the fee revenues and fees established in subsection (b) if such an adjustment is necessary to provide for not more than 3 months of operating reserves of carryover user fees for human generic drug activities for the first 3 months of fiscal year 2018. Such fees may only be used in fiscal year 2018. If such an adjustment is necessary, the rationale for the amount of the increase shall be contained in the annual notice establishing fee revenues and fees for fiscal year 2017. If the Secretary has carryover balances for such activities in excess of 3 months of such operating reserves, the adjustment under this subparagraph shall not be made.
“(d) **Annual Fee Setting.**—

“(1) **Fiscal year 2013.**—For fiscal year 2013—

“(A) the Secretary shall establish, by October 31, 2012, the one-time generic drug backlog fee for generic drug applications pending on October 1, 2012, the drug master file fee, the abbreviated new drug application fee, and the prior approval supplement fee under subsection (a), based on the revenue amounts established under subsection (b); and

“(B) the Secretary shall establish, not later than 45 days after the date to comply with the requirement for identification of facilities in subsection (f)(2), the generic drug facility fee and active pharmaceutical ingredient facility fee under subsection (a) based on the revenue amounts established under subsection (b).

“(2) **Fiscal years 2014 through 2017.**—Not more than 60 days before the first day of each of fiscal years 2014 through 2017, the Secretary shall establish the drug master file fee, the abbreviated new drug application fee, the prior approval supplement fee, the generic drug facility fee, and the active pharmaceutical ingredient facility fee under sub-
section (a) for such fiscal year, based on the revenue amounts established under subsection (b) and the adjustments provided under subsection (c).

“(3) Fee for active pharmaceutical ingredient information not included by reference to Type II active pharmaceutical ingredient drug master file.—In establishing the fees under paragraphs (1) and (2), the amount of the fee under subsection (a)(3)(F) shall be determined by multiplying—

“(A) the sum of—

“(i) the total number of such active pharmaceutical ingredients in such submission; and

“(ii) for each such ingredient that is manufactured at more than one such facility, the total number of such additional facilities; and

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

“(e) LIMIT.—The total amount of fees charged, as adjusted under subsection (e), for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for human generic drug activities.
“(f) IDENTIFICATION OF FACILITIES.—

“(1) PUBLICATION OF NOTICE; DEADLINE FOR COMPLIANCE.—Not later than October 1, 2012, the Secretary shall cause to be published in the Federal Register a notice requiring each person that owns a facility described in subsection (a)(4)(A), or a site or organization required to be identified by paragraph (4), to submit to the Secretary information on the identity of each such facility, site, or organization. The notice required by this paragraph shall specify the type of information to be submitted and the means and format for submission of such information.

“(2) REQUIRED SUBMISSION OF FACILITY IDENTIFICATION.—Each person that owns a facility described in subsection (a)(4)(A) or a site or organization required to be identified by paragraph (4) shall submit to the Secretary the information required under this subsection each year. Such information shall—

“(A) for fiscal year 2013, be submitted not later than 60 days after the publication of the notice under paragraph (1); and
“(B) for each subsequent fiscal year, be
submitted, updated, or reconfirmed on or before
June 1 of such year.

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

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

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

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

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

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

“(4) CERTAIN SITES AND ORGANIZATIONS.—

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

“(B) Sites and Organizations.—A site or organization is described in this subparagraph if it is identified in a generic drug submission and is—

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

“(ii) a clinical research organization;

“(iii) a contract analytical testing site;

or

“(iv) a contract repacker site.

“(C) Notice.—The Secretary may, by notice published in the Federal Register, specify the means and format for submission of the information under subparagraph (A) and may specify, as necessary for purposes of this section, any additional information to be submitted.

“(D) Inspection Authority.—The Secretary’s inspection authority under section 704(a)(1) shall extend to all such sites and organizations.

“(g) Effect of Failure to Pay Fees.—
“(1) Generic drug backlog fee.—Failure to pay the fee under subsection (a)(1) shall result in the Secretary placing the person that owns the abbreviated new drug application subject to that fee on an arrears list, such that no new abbreviated new drug applications or supplement submitted on or after October 1, 2012, from that person, or any affiliate of that person, will be received within the meaning of section 505(j)(5)(A) until such outstanding fee is paid.

“(2) Drug master file fee.—

“(A) Failure to pay the fee under subsection (a)(2) within 20 calendar days after the applicable due date under subparagraph (E) of such subsection (as described in subsection (a)(2)(D)(ii)(I)) shall result in the Type II active pharmaceutical ingredient drug master file not being deemed available for reference.

“(B)(i) Any generic drug submission submitted on or after October 1, 2012, that references, by a letter of authorization, a Type II active pharmaceutical ingredient drug master file that has not been deemed available for reference shall not be received within the meaning
of section 505(j)(5)(A) unless the condition
specified in clause (ii) is met.

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

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

“(ii) If such fee is not paid within 20 cal-
endar days of the Secretary providing the noti-
fication, the abbreviated new drug application
or supplement to an abbreviated new drug application shall not be received within the meaning of 505(j)(5)(A).

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

Failure to pay a fee under subparagraph (A) or (F) of subsection (a)(3) within 20 calendar days of the applicable due date under subparagraph (C) of such subsection shall result in the abbreviated new drug application or the prior approval supplement to an abbreviated new drug application not being received within the meaning of section 505(j)(5)(A) until such outstanding fee is paid.

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

“(A) IN GENERAL.—Failure to pay the fee under subsection (a)(4) within 20 calendar days of the due date as specified in subparagraph (D) of such subsection shall result in the following:

“(i) The Secretary shall place the facility on a publicly available arrears list, such that no new abbreviated new drug application or supplement submitted on or after October 1, 2012, from the person
that is responsible for paying such fee, or any affiliate of that person, will be received within the meaning of section 505(j)(5)(A).

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

“(iii) All drugs or active pharmaceutical ingredients manufactured in such a facility or containing an ingredient manufactured in such a facility shall be deemed misbranded under section 502(aa).

“(B) APPLICATION OF PENALTIES.—The penalties under this paragraph shall apply until the fee established by subsection (a)(4) is paid or the facility is removed from all generic drug submissions that refer to the facility.

“(C) NONRECEIVAL FOR NONPAYMENT.—
“(i) NOTICE.—If an abbreviated new drug application or supplement to an abbreviated new drug application submitted on or after October 1, 2012, references a facility for which a facility fee has not been paid by the applicable date under subsection (a)(4)(C), the Secretary shall notify the sponsor of the generic drug submission of the failure of the owner of the facility to pay the facility fee.

“(ii) NONRECEIVAL.—If the facility fee is not paid within 20 calendar days of the Secretary providing the notification under clause (i), the abbreviated new drug application or supplement to an abbreviated new drug application shall not be received within the meaning of section 505(j)(5)(A).

“(h) LIMITATIONS.—

“(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2012, unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or
greater than the amount of appropriations for the salaries and expenses of the Food and Drug Admin-
istration for the fiscal year 2009 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor (as defined in section 744A) applicable to the fiscal year involved.

“(2) Authority.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year and if at a later date in such fiscal year the Secretary may assess such fees, the Sec-
retary may assess and collect such fees, without any modification in the rate, for Type II active phar-
aceutical ingredient drug master files, abbreviated new drug applications and prior approval supple-
ments, and generic drug facilities and active phar-
maceutical ingredient facilities at any time in such fiscal year notwithstanding the provisions of sub-
section (a) relating to the date fees are to be paid.

“(i) Crediting and Availability of Fees.—

“(1) In general.—Fees authorized under sub-
section (a) shall be collected and available for obliga-
tion only to the extent and in the amount provided in advance in appropriations Acts, subject to para-
graph (2). Such fees are authorized to remain avail-
able until expended. Such sums as may be necessary
may be transferred from the Food and Drug Admin-
istration salaries and expenses appropriation account
without fiscal year limitation to such appropriation
account for salaries and expenses with such fiscal
year limitation. The sums transferred shall be avail-
able solely for human generic drug activities.

“(2) COLLECTIONS AND APPROPRIATION
ACTS.—

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

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

“(ii) shall be available for a fiscal year
beginning after fiscal year 2012 to defray
the costs of human generic drug activities
(including such costs for an additional
number of full-time equivalent positions in
the Department of Health and Human
Services to be engaged in such activities),
only if the Secretary allocates for such
purpose an amount for such fiscal year
(excluding amounts from fees collected under this section) no less than $97,000,000 multiplied by the adjustment factor defined in subsection (p)(3) applicable to the fiscal year involved.

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

“(C) FEE COLLECTION DURING FIRST PROGRAM YEAR.—Until the date of enactment of an Act making appropriations through September 30, 2013 for the salaries and expenses account of the Food and Drug Administration, fees authorized by this section for fiscal year 2013, may be collected and shall be credited to such account and remain available until expended.

“(D) PROVISION FOR EARLY PAYMENTS IN SUBSEQUENT YEARS.—Payment of fees authorized under this section for a fiscal year (after fiscal year 2013), prior to the due date for such
fees, may be accepted by the Secretary in accordance with authority provided in advance in a prior year appropriations Act.

“(3) Authorization of Appropriations.—For each of the fiscal years 2013 through 2017, there is authorized to be appropriated for fees under this section an amount equivalent to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted under subsection (c), if applicable, or as otherwise affected under paragraph (2) of this subsection.

“(j) Collection of Unpaid Fees.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 calendar days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

“(k) Construction.—This section may not be construed to require that the number of full-time equivalent positions in the Department of Health and Human Services, for officers, employees, and advisory committees not engaged in human generic drug activities, be reduced to offset the number of officers, employees, and advisory committees so engaged.

“(l) Positron Emission Tomography Drugs.—
“(1) Exemption from Fees.—Submission of an application for a positron emission tomography drug or active pharmaceutical ingredient for a positron emission tomography drug shall not require the payment of any fee under this section. Facilities that solely produce positron emission tomography drugs shall not be required to pay a facility fee as established in subsection (a)(4).

“(2) Identification Requirement.—Facilities that produce positron emission tomography drugs or active pharmaceutical ingredients of such drugs are required to be identified pursuant to subsection (f).

“(m) Disputes Concerning Fees.—To qualify for the return of a fee claimed to have been paid in error under this section, a person shall submit to the Secretary a written request justifying such return within 180 calendar days after such fee was paid.

“(n) Substantially Complete Applications.—An abbreviated new drug application that is not considered to be received within the meaning of section 505(j)(5)(A) because of failure to pay an applicable fee under this provision within the time period specified in subsection (g) shall be deemed not to have been ‘substantially complete’ on the date of its submission within the
meaning of section 505(j)(5)(B)(iv)(II)(cc). An abbreviated new drug application that is not substantially complete on the date of its submission solely because of failure to pay an applicable fee under the preceding sentence shall be deemed substantially complete and received within the meaning of section 505(j)(5)(A) as of the date such applicable fee is received.”.

SEC. 303. REAUTHORIZATION; REPORTING REQUIREMENTS.

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

“SEC. 744C. REAUTHORIZATION; REPORTING REQUIREMENTS.

“(a) PERFORMANCE REPORT.—Beginning with fiscal year 2013, not later than 120 days after the end of each fiscal year for which fees are collected under this part, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report concerning the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 301(b) of the Generic Drug User Fee Amendments of 2012 during such fiscal year and the future plans of the Food and Drug Administration for meeting the goals.
“(b) Fiscal Report.—Beginning with fiscal year 2013, not later than 120 days after the end of each fiscal year for which fees are collected under this part, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for such fiscal year.

“(c) Public Availability.—The Secretary shall make the reports required under subsections (a) and (b) available to the public on the Internet Web site of the Food and Drug Administration.

“(d) Reauthorization.—

“(1) Consultation.—In developing recommendations to present to the Congress with respect to the goals, and plans for meeting the goals, for human generic drug activities for the first 5 fiscal years after fiscal year 2017, and for the reauthorization of this part for such fiscal years, the Secretary shall consult with—

“(A) the Committee on Energy and Commerce of the House of Representatives;
“(B) the Committee on Health, Education, Labor, and Pensions of the Senate;

“(C) scientific and academic experts;

“(D) health care professionals;

“(E) representatives of patient and consumer advocacy groups; and

“(F) the generic drug industry.

“(2) Prior Public Input.—Prior to beginning negotiations with the generic drug industry on the reauthorization of this part, the Secretary shall—

“(A) publish a notice in the Federal Register requesting public input on the reauthorization;

“(B) hold a public meeting at which the public may present its views on the reauthorization, including specific suggestions for changes to the goals referred to in subsection (a);

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

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

“(3) Periodic Consultation.—Not less frequently than once every month during negotiations with the generic drug industry, the Secretary shall
hold discussions with representatives of patient and consumer advocacy groups to continue discussions of their views on the reauthorization and their suggestions for changes to this part as expressed under paragraph (2).

“(4) Public review of recommendations.—After negotiations with the generic drug industry, the Secretary shall—

“(A) present the recommendations developed under paragraph (1) to the congressional committees specified in such paragraph;

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

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

“(D) hold a meeting at which the public may present its views on such recommendations; and

“(E) after consideration of such public views and comments, revise such recommendations as necessary.

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

“(6) MINUTES OF NEGOTIATION MEETINGS.—

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

“(B) CONTENT.—The minutes described
under subparagraph (A) shall summarize any
substantive proposal made by any party to the
negotiations as well as significant controversies
or differences of opinion during the negotiations
and their resolution.”.

SEC. 304. SUNSET DATES.

(a) AUTHORIZATION.—The amendments made by
section 302 cease to be effective October 1, 2017.
(b) Reporting Requirements.—The amendments made by section 303 cease to be effective January 31, 2018.

SEC. 305. EFFECTIVE DATE.

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

SEC. 306. AMENDMENT WITH RESPECT TO MISBRANDING.

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

“(aa) If it is a drug, or an active pharmaceutical ingredient, and it was manufactured, prepared, propagated, compounded, or processed in a facility for which fees have not been paid as required by section 744A(a)(4) or for which identifying information required by section 744B(f) has not been submitted, or it contains an active pharmaceutical ingredient that was manufactured, prepared, propagated, compounded, or processed in such a facility.”.
SEC. 307. STREAMLINED HIRING AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION TO SUPPORT ACTIVITIES RELATED TO HUMAN GENERIC DRUGS.

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

“SEC. 714. STREAMLINED HIRING AUTHORITY.

“(a) In General.—In addition to any other personnel authorities under other provisions of law, the Secretary may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint employees to positions in the Food and Drug Administration to perform, administer, or support activities described in subsection (b), if the Secretary determines that such appointments are needed to achieve the objectives specified in subsection (c).

“(b) Activities Described.—The activities described in this subsection are activities under this Act related to human generic drug activities (as defined in section 744A).

“(c) Objectives Specified.—The objectives specified in this subsection are the performance goals with respect to section 744A (regarding assessment and use of human generic drug fees), as set forth in the letters de-
scribed in section 301(b) of the Generic Drug User Fee Amendments of 2012.

“(d) INTERNAL CONTROLS.—The Secretary shall institute appropriate internal controls for appointments under this section.

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

TITLE IV—FEES RELATING TO BIOSIMILAR BIOLOGICAL PRODUCTS

SEC. 401. SHORT TITLE; FINDING.

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

(b) FINDING.—The Congress finds that the fees authorized by the amendments made in this title will be dedicated to expediting the process for the review of biosimilar biological product applications, including postmarket safety activities, as set forth in the goals identified for purposes of part 8 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Com-
mittee on Energy and Commerce of the House of Representa-
atives, as set forth in the Congressional Record

SEC. 402. FEES RELATING TO BIOSIMILAR BIOLOGICAL
PRODUCTS.

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

“PART 8—FEES RELATING TO BIOSIMILAR
BIOLOGICAL PRODUCTS

“SEC. 744G. DEFINITIONS.

“For purposes of this part:

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

“(2) The term ‘affiliate’ means a business enti-
ity that has a relationship with a second business enti-
ity if, directly or indirectly—

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

“(B) a third party controls, or has power
to control, both of the business entities.
“(3) The term ‘biosimilar biological product’ means a product for which a biosimilar biological product application has been approved.

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

“(B) Such term does not include—

“(i) a supplement to such an application;

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

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

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

“(II) an allergenic extract product;

“(III) an in vitro diagnostic biological product; or
“(IV) a biological product for further manufacturing use only; or
“(iv) an application for licensure under section 351(k) of the Public Health Service Act that is submitted by a State or Federal Government entity for a product that is not distributed commercially.
“(5) The term ‘biosimilar biological product development meeting’ means any meeting, other than a biosimilar initial advisory meeting, regarding the content of a development program, including a proposed design for, or data from, a study intended to support a biosimilar biological product application.
“(6) The term ‘biosimilar biological product development program’ means the program under this part for expediting the process for the review of submissions in connection with biosimilar biological product development.
“(7)(A) The term ‘biosimilar biological product establishment’ means a foreign or domestic place of business—
“(i) that is at one general physical location consisting of one or more buildings, all of which are within five miles of each other; and
“(ii) at which one or more biosimilar biological products are manufactured in final dosage form.

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

“(8) The term ‘biosimilar initial advisory meeting’—

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

“(i) a general discussion regarding whether licensure under section 351(k) of the Public Health Service Act may be feasible for a particular product; and

“(ii) if so, general advice on the expected content of the development program; and

“(B) does not include any meeting that involves substantive review of summary data or full study reports.

“(9) The term ‘costs of resources allocated for the process for the review of biosimilar biological product applications’ means the expenses in connection with the process for the review of biosimilar biological product applications for—
“(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees, and costs related to such officers employees and committees and to contracts with such contractors;

“(B) management of information, and the acquisition, maintenance, and repair of computer resources;

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

“(D) collecting fees under section 744H and accounting for resources allocated for the review of submissions in connection with biosimilar biological product development, biosimilar biological product applications, and supplements.

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

“(A) means an order issued by the Secretary to prohibit the sponsor of a clinical investigation from continuing the investigation if the Secretary determines that the investigation is intended to support a biosimilar biological product application and the sponsor has failed to pay any fee for the product required under subparagraph (A), (B), or (D) of section 744H(a)(1); and

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

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

“(13) The term ‘process for the review of biosimilar biological product applications’ means the following activities of the Secretary with respect to the review of submissions in connection with biosimilar biological product development, biosimilar biological product applications, and supplements:

“(A) The activities necessary for the review of submissions in connection with biosimilar biological product development, bio-
similar biological product applications, and supplements.

“(B) Actions related to submissions in connection with biosimilar biological product development, the issuance of action letters which approve biosimilar biological product applications or which set forth in detail the specific deficiencies in such applications, and where appropriate, the actions necessary to place such applications in condition for approval.

“(C) The inspection of biosimilar biological product establishments and other facilities undertaken as part of the Secretary’s review of pending biosimilar biological product applications and supplements.

“(D) Activities necessary for the release of lots of biosimilar biological products under section 351(k) of the Public Health Service Act.

“(E) Monitoring of research conducted in connection with the review of biosimilar biological product applications.

“(F) Postmarket safety activities with respect to biologics approved under biosimilar biological product applications or supplements, including the following activities:
“(i) Collecting, developing, and reviewing safety information on biosimilar biological products, including adverse-event reports.

“(ii) Developing and using improved adverse-event data-collection systems, including information technology systems.

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

“(iv) Implementing and enforcing section 505(o) (relating to postapproval studies and clinical trials and labeling changes) and section 505(p) (relating to risk evaluation and mitigation strategies).

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

“(14) The term ‘supplement’ means a request to the Secretary to approve a change in a biosimilar biological product application which has been approved, including a supplement requesting that the Secretary determine that the biosimilar biological product meets the standards for interchangeability
described in section 351(k)(4) of the Public Health Service Act.

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

“(a) Types of Fees.—Beginning in fiscal year 2013, the Secretary shall assess and collect fees in accordance with this section as follows:

“(1) Biosimilar development program fees.—

“(A) Initial biosimilar biological product development fee.—

“(i) In general.—Each person that submits to the Secretary a meeting request described under clause (ii) or a clinical protocol for an investigational new drug protocol described under clause (iii) shall pay for the product named in the meeting request or the investigational new drug application the initial biosimilar biological product development fee established under subsection (b)(1)(A).

“(ii) Meeting request.—The meeting request defined in this clause is a request for a biosimilar biological product development meeting for a product.
“(iii) CLINICAL PROTOCOL FOR IND.—

A clinical protocol for an investigational new drug protocol described in this clause is a clinical protocol consistent with the provisions of section 505(i), including any regulations promulgated under section 505(i), (referred to in this section as ‘investigational new drug application’) describing an investigation that the Secretary determines is intended to support a biosimilar biological product application for a product.

“(iv) DUE DATE.—The initial biosimilar biological product development fee shall be due by the earlier of the following:

“(I) Not later than 5 days after the Secretary grants a request for a biosimilar biological product development meeting.

“(II) The date of submission of an investigational new drug application describing an investigation that the Secretary determines is intended to support a biosimilar biological product application.
“(v) Transition Rule.—Each person that has submitted an investigational new drug application prior to the date of enactment of the Biosimilars User Fee Act of 2012 shall pay the initial biosimilar biological product development fee by the earlier of the following:

“(I) Not later than 60 days after the date of the enactment of the Biosimilars User Fee Act of 2012, if the Secretary determines that the investigational new drug application describes an investigation that is intended to support a biosimilar biological product application.

“(II) Not later than 5 days after the Secretary grants a request for a biosimilar biological product development meeting.

“(B) Annual Biosimilar Biological Product Development Fee.—

“(i) In General.—A person that pays an initial biosimilar biological product development fee for a product shall pay for such product, beginning in the fiscal year
following the fiscal year in which the initial biosimilar biological product development fee was paid, an annual fee established under subsection (b)(1)(B) for biosimilar biological product development (referred to in this section as ‘annual biosimilar biological product development fee’).

“(ii) DUE DATE.—The annual biosimilar biological product development program fee for each fiscal year will be due on the later of—

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

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

“(iii) EXCEPTION.—The annual biosimilar development program fee for each fiscal year will be due on the date specified in clause (ii), unless the person has—

“(I) submitted a marketing application for the biological product that was accepted for filing; or
“(II) discontinued participation
in the biosimilar biological product development program for the product under subparagraph (C).

“(C) DISCONTINUATION OF FEE OBLIGATION.—A person may discontinue participation in the biosimilar biological product development program for a product effective October 1 of a fiscal year by, not later than August 1 of the preceding fiscal year—

“(i) if no investigational new drug application concerning the product has been submitted, submitting to the Secretary a written declaration that the person has no present intention of further developing the product as a biosimilar biological product; or

“(ii) if an investigational new drug application concerning the product has been submitted, by withdrawing the investigational new drug application in accordance with part 312 of title 21, Code of Federal Regulations (or any successor regulations).

“(D) REACTIVATION FEE.—
“(i) In General.—A person that has discontinued participation in the biosimilar biological product development program for a product under subparagraph (C) shall pay a fee (referred to in this section as ‘reactivation fee’) by the earlier of the following:

“(I) Not later than 5 days after the Secretary grants a request for a biosimilar biological product development meeting for the product (after the date on which such participation was discontinued).

“(II) Upon the date of submission (after the date on which such participation was discontinued) of an investigational new drug application describing an investigation that the Secretary determines is intended to support a biosimilar biological product application for that product.

“(ii) Application of Annual Fee.—A person that pays a reactivation fee for a product shall pay for such product, beginning in the next fiscal year, the
annual biosimilar biological product development fee under subparagraph (B).

“(E) Effect of failure to pay biosimilar development program fees.—

“(i) No biosimilar biological product development meetings.—If a person has failed to pay an initial or annual biosimilar biological product development fee as required under subparagraph (A) or (B), or a reactivation fee as required under subparagraph (D), the Secretary shall not provide a biosimilar biological product development meeting relating to the product for which fees are owed.

“(ii) No receipt of investigational new drug applications.—Except in extraordinary circumstances, the Secretary shall not consider an investigational new drug application to have been received under section 505(i)(2) if—

“(I) the Secretary determines that the investigation is intended to support a biosimilar biological product application; and
“(II) the sponsor has failed to pay an initial or annual biosimilar biological product development fee for the product as required under subparagraph (A) or (B), or a reactivation fee as required under subparagraph (D).

“(iii) FINANCIAL HOLD.—Notwithstanding section 505(i)(2), except in extraordinary circumstances, the Secretary shall prohibit the sponsor of a clinical investigation from continuing the investigation if—

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

“(II) the sponsor has failed to pay an initial or annual biosimilar biological product development fee for the product as required under subparagraph (A) or (B), or a reactivation fee for the product as required under subparagraph (D).
“(iv) No acceptance of biosimilar biological product applications or supplements.—If a person has failed to pay an initial or annual biosimilar biological product development fee as required under subparagraph (A) or (B), or a reactivation fee as required under subparagraph (D), any biosimilar biological product application or supplement submitted by that person shall be considered incomplete and shall not be accepted for filing by the Secretary until all such fees owed by such person have been paid.

“(F) Limits regarding biosimilar development program fees.—

“(i) No refunds.—The Secretary shall not refund any initial or annual biosimilar biological product development fee paid under subparagraph (A) or (B), or any reactivation fee paid under subparagraph (D).

“(ii) No waivers, exemptions, or reductions.—The Secretary shall not grant a waiver, exemption, or reduction of any initial or annual biosimilar biological
product development fee due or payable under subparagraph (A) or (B), or any re-
activation fee due or payable under subparagraph (D).

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

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

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

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

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

“(ii) A fee for a biosimilar biological product application for which clinical data (other than comparative bioavailability
studies) with respect to safety or effectiveness are not required, that is equal to—

“(I) half of the amount of the fee established under subsection (b)(1)(D) for a biosimilar biological product application; minus

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

“(iii) A fee for a supplement for which clinical data (other than comparative bioavailability studies) with respect to safety or effectiveness are required, that is equal to half of the amount of the fee established under subsection (b)(1)(D) for a biosimilar biological product application.

“(B) REDUCTION IN FEES.—Notwithstanding section 404 of the Biosimilars User Fee Act of 2012, any person who pays a fee under subparagraph (A), (B), or (D) of paragraph (1) for a product before October 1, 2017, but submits a biosimilar biological product application for that product after such date, shall be entitled to the reduction of any biosimilar bi-
logical product application fees that may be assessed at the time when such biosimilar biological product application is submitted, by the cumulative amount of fees paid under subparagraphs (A), (B), and (D) of paragraph (1) for that product.

“(C) Payment due date.—Any fee required by subparagraph (A) shall be due upon submission of the application or supplement for which such fee applies.

“(D) Exception for previously filed application or supplement.—If a biosimilar biological product application or supplement was submitted by a person that paid the fee for such application or supplement, was accepted for filing, and was not approved or was withdrawn (without a waiver), the submission of a biosimilar biological product application or a supplement for the same product by the same person (or the person’s licensee, assignee, or successor) shall not be subject to a fee under subparagraph (A).

“(E) Refund of application fee if application refused for filing or withdrawn before filing.—The Secretary shall
refund 75 percent of the fee paid under this paragraph for any application or supplement which is refused for filing or withdrawn without a waiver before filing.

“(F) Fees for applications previously refused for filing or withdrawn before filing.—A biosimilar biological product application or supplement that was submitted but was refused for filing, or was withdrawn before being accepted or refused for filing, shall be subject to the full fee under subparagraph (A) upon being resubmitted or filed over protest, unless the fee is waived under subsection (e).

“(3) Biosimilar biological product establishment fee.—

“(A) In general.—Except as provided in subparagraph (E), each person that is named as the applicant in a biosimilar biological product application shall be assessed an annual fee established under subsection (b)(1)(E) for each biosimilar biological product establishment that is listed in the approved biosimilar biological product application as an establishment that
manufactures the biosimilar biological product
named in such application.

“(B) **Assessment in Fiscal Years.**—The
establishment fee shall be assessed in each fis-
cal year for which the biosimilar biological prod-
uct named in the application is assessed a fee
under paragraph (4) unless the biosimilar bio-
logical product establishment listed in the appli-
cation does not engage in the manufacture of
the biosimilar biological product during such
fiscal year.

“(C) **Due Date.**—The establishment fee
for a fiscal year shall be due on the later of—

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

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

“(D) **Application to Establishment.**—

“(i) Each biosimilar biological product
establishment shall be assessed only one
fee per biosimilar biological product estab-
lishment, notwithstanding the number of
biosimilar biological products manufac-


tured at the establishment, subject to clause (ii).

“(ii) In the event an establishment is listed in a biosimilar biological product application by more than one applicant, the establishment fee for the fiscal year shall be divided equally and assessed among the applicants whose biosimilar biological products are manufactured by the establishment during the fiscal year and assessed biosimilar biological product fees under paragraph (4).

“(E) EXCEPTION FOR NEW PRODUCTS.—If, during the fiscal year, an applicant initiates or causes to be initiated the manufacture of a biosimilar biological product at an establishment listed in its biosimilar biological product application—

“(i) that did not manufacture the biosimilar biological product in the previous fiscal year; and

“(ii) for which the full biosimilar biological product establishment fee has been assessed in the fiscal year at a time before
manufacture of the biosimilar biological product was begun,
the applicant shall not be assessed a share of the biosimilar biological product establishment fee for the fiscal year in which the manufacture of the product began.

“(4) BIOSIMILAR BIOLOGICAL PRODUCT FEE.—

“(A) IN GENERAL.—Each person who is named as the applicant in a biosimilar biological product application shall pay for each such biosimilar biological product the annual fee established under subsection (b)(1)(F).

“(B) DUE DATE.—The biosimilar biological product fee for a fiscal year shall be due on the later of—

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

“(ii) the first business day after the enactment of an appropriations Act providing for the collection and obligation of fees for such year under this section.

“(C) ONE FEE PER PRODUCT PER YEAR.—
The biosimilar biological product fee shall be paid only once for each product for each fiscal year.
“(b) Fee Setting and Amounts.—

“(1) In general.—Subject to paragraph (2), the Secretary shall, 60 days before the start of each fiscal year that begins after September 30, 2012, establish, for the next fiscal year, the fees under subsection (a). Except as provided in subsection (c), such fees shall be in the following amounts:

“(A) Initial biosimilar biological product development fee.—The initial biosimilar biological product development fee under subsection (a)(1)(A) for a fiscal year shall be equal to 10 percent of the amount established under section 736(c)(5) for a human drug application described in section 736(a)(1)(A)(i) for that fiscal year.

“(B) Annual biosimilar biological product development fee.—The annual biosimilar biological product development fee under subsection (a)(1)(B) for a fiscal year shall be equal to 10 percent of the amount established under section 736(c)(5) for a human drug application described in section 736(a)(1)(A)(i) for that fiscal year.

“(C) Reactivation fee.—The reactivation fee under subsection (a)(1)(D) for a fiscal
year shall be equal to 20 percent of the amount
of the fee established under section 736(c)(5)
for a human drug application described in sec-
tion 736(a)(1)(A)(i) for that fiscal year.

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

“(E) BIOSIMILAR BIOLOGICAL PRODUCT
ESTABLISHMENT FEE.—The biosimilar biologi-
cal product establishment fee under subsection
(a)(3) for a fiscal year shall be equal to the
amount established under section 736(c)(5) for
a prescription drug establishment for that fiscal
year.

“(F) BIOSIMILAR BIOLOGICAL PRODUCT
FEE.—The biosimilar biological product fee
under subsection (a)(4) for a fiscal year shall be
equal to the amount established under section
736(c)(5) for a prescription drug product for
that fiscal year.
“(2) Limit.—The total amount of fees charged for a fiscal year under this section may not exceed the total amount for such fiscal year of the costs of resources allocated for the process for the review of biosimilar biological product applications.

“(c) Application Fee Waiver for Small Business.—

“(1) Waiver of Application Fee.—The Secretary shall grant to a person who is named in a biosimilar biological product application a waiver from the application fee assessed to that person under subsection (a)(2)(A) for the first biosimilar biological product application that a small business or its affiliate submits to the Secretary for review. After a small business or its affiliate is granted such a waiver, the small business or its affiliate shall pay—

“(A) application fees for all subsequent biosimilar biological product applications submitted to the Secretary for review in the same manner as an entity that is not a small business; and

“(B) all supplement fees for all supplements to biosimilar biological product applications submitted to the Secretary for review in
the same manner as an entity that is not a small business.

“(2) CONSIDERATIONS.—In determining whether to grant a waiver of a fee under paragraph (1), the Secretary shall consider only the circumstances and assets of the applicant involved and any affiliate of the applicant.

“(3) SMALL BUSINESS DEFINED.—In this subsection, the term ‘small business’ means an entity that has fewer than 500 employees, including employees of affiliates, and does not have a drug product that has been approved under a human drug application (as defined in section 735) or a biosimilar biological product application (as defined in section 744G(4)) and introduced or delivered for introduction into interstate commerce.

“(d) EFFECT OF FAILURE TO PAY FEES.—A biosimilar biological product application or supplement submitted by a person subject to fees under subsection (a) shall be considered incomplete and shall not be accepted for filing by the Secretary until all fees owed by such person have been paid.

“(e) CREDITING AND AVAILABILITY OF FEES.—

“(1) IN GENERAL.—Subject to paragraph (2), fees authorized under subsection (a) shall be col-
lected and available for obligation only to the extent
and in the amount provided in advance in appropri-
tions Acts. Such fees are authorized to remain avail-
able until expended. Such sums as may be necessary
may be transferred from the Food and Drug Admin-
istration salaries and expenses appropriation account
without fiscal year limitation to such appropriation
account for salaries and expenses with such fiscal
year limitation. The sums transferred shall be avail-
able solely for the process for the review of bio-
similar biological product applications.

“(2) COLLECTIONS AND APPROPRIATION
ACTS.—

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

“(B) USE OF FEES AND LIMITATION.—
The fees authorized by this section shall be
available for a fiscal year beginning after fiscal
year 2012 to defray the costs of the process for
the review of biosimilar biological product appli-
cations (including such costs for an additional
number of full-time equivalent positions in the
Department of Health and Human Services to be engaged in such process), only if the Sec-
retary allocates for such purpose an amount for such fiscal year (excluding amounts from fees collected under this section) no less than $20,000,000, multiplied by the adjustment fac-
tor applicable to the fiscal year involved.

“(C) Fee collection during first program year.—Until the date of enactment of an Act making appropriations through Sep-
tember 30, 2013, for the salaries and expenses account of the Food and Drug Administration, fees authorized by this section for fiscal year 2013 may be collected and shall be credited to such account and remain available until ex-
pended.

“(D) Provision for early payments in subsequent years.—Payment of fees author-
ized under this section for a fiscal year (after fiscal year 2013), prior to the due date for such fees, may be accepted by the Secretary in ac-
cordance with authority provided in advance in a prior year appropriations Act.
“(3) Authorization of Appropriations.—
For each of fiscal years 2013 through 2017, there
is authorized to be appropriated for fees under this
section an amount equivalent to the total amount of
fees assessed for such fiscal year under this section.
“(f) Collection of Unpaid Fees.—In any case
where the Secretary does not receive payment of a fee as-
sessed under subsection (a) within 30 days after it is due,
such fee shall be treated as a claim of the United States
Government subject to subchapter II of chapter 37 of title
31, United States Code.
“(g) Written Requests for Waivers and Re-

funds.—To qualify for consideration for a waiver under
subsection (c), or for a refund of any fee collected in ac-
cordance with subsection (a)(2)(A), a person shall submit
to the Secretary a written request for such waiver or re-
fund not later than 180 days after such fee is due.
“(h) Construction.—This section may not be con-
strued to require that the number of full-time equivalent
positions in the Department of Health and Human Serv-
ices, for officers, employers, and advisory committees not
engaged in the process of the review of biosimilar biologi-
cal product applications, be reduced to offset the number
of officers, employees, and advisory committees so en-
gaged.”.
SEC. 403. REAUTHORIZATION; REPORTING REQUIREMENTS.

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

“SEC. 744I. REAUTHORIZATION; REPORTING REQUIREMENTS.

“(a) Performance Report.—Beginning with fiscal year 2013, not later than 120 days after the end of each fiscal year for which fees are collected under this part, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report concerning the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 401(b) of the Biosimilar User Fee Act of 2012 during such fiscal year and the future plans of the Food and Drug Administration for meeting such goals. The report for a fiscal year shall include information on all previous cohorts for which the Secretary has not given a complete response on all biosimilar biological product applications and supplements in the cohort.

“(b) Fiscal Report.—Not later than 120 days after the end of fiscal year 2013 and each subsequent fiscal year for which fees are collected under this part, the Secretary shall prepare and submit to the Committee on Energy and
Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected for such fiscal year.

“(c) Public Availability.—The Secretary shall make the reports required under subsections (a) and (b) available to the public on the Internet Web site of the Food and Drug Administration.

“(d) Study.—

“(1) In general.—The Secretary shall contract with an independent accounting or consulting firm to study the workload volume and full costs associated with the process for the review of biosimilar biological product applications.

“(2) Interim results.—Not later than June 1, 2015, the Secretary shall publish, for public comment, interim results of the study described under paragraph (1).

“(3) Final results.—Not later than September 30, 2016, the Secretary shall publish, for public comment, the final results of the study described under paragraph (1).

“(e) Reauthorization.—
“(1) CONSULTATION.—In developing recommendations to present to the Congress with respect to the goals described in subsection (a), and plans for meeting the goals, for the process for the review of biosimilar biological product applications for the first 5 fiscal years after fiscal year 2017, and for the reauthorization of this part for such fiscal years, the Secretary shall consult with—

“(A) the Committee on Energy and Commerce of the House of Representatives;

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

“(C) scientific and academic experts;

“(D) health care professionals;

“(E) representatives of patient and consumer advocacy groups; and

“(F) the regulated industry.

“(2) PUBLIC REVIEW OF RECOMMENDATIONS.—After negotiations with the regulated industry, the Secretary shall—

“(A) present the recommendations developed under paragraph (1) to the congressional committees specified in such paragraph;

“(B) publish such recommendations in the Federal Register;
“(C) provide for a period of 30 days for the public to provide written comments on such recommendations;

“(D) hold a meeting at which the public may present its views on such recommendations; and

“(E) after consideration of such public views and comments, revise such recommendations as necessary.

“(3) TRANSMITTAL OF RECOMMENDATIONS.—Not later than January 15, 2017, the Secretary shall transmit to the Congress the revised recommendations under paragraph (2), a summary of the views and comments received under such paragraph, and any changes made to the recommendations in response to such views and comments.”.

SEC. 404. SUNSET DATES.

(a) AUTHORIZATION.—The amendment made by section 402 shall cease to be effective October 1, 2017.

(b) REPORTING REQUIREMENTS.—The amendment made by section 403 shall cease to be effective January 31, 2018.
SEC. 405. EFFECTIVE DATE.

(a) In General.—Except as provided under subsection (b), the amendments made by this title shall take effect on the later of—

(1) October 1, 2012; or

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

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

SEC. 406. SAVINGS CLAUSE.

Notwithstanding section 106 of the Prescription Drug User Fee Amendments of 2007 (21 U.S.C. 379g note), and notwithstanding the amendments made by this title, part 2 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, as in effect on the day before the date of the enactment of this title, shall continue to be in effect with respect to human drug applications and supplements (as defined in such part as of such day) that were accepted by the Food and Drug Administration for filing on or after October 1, 2007, but before October 1, 2012, with respect to assessing and collecting any fee required by such part for a fiscal year prior to fiscal year 2013.
1 SEC. 407. CONFORMING AMENDMENT.
2 Section 735(1)(B) (21 U.S.C. 379g(1)(B)) is amend-
3 ed by striking “or (k)”.

4 TITLE V—PEDIATRIC
5 REAUTHORIZATIONS

6 SEC. 501. SENSE OF THE SENATE REGARDING REAUTHOR-
7 IZATION OF VITAL PEDIATRIC LAWS.
8 (a) FINDINGS.—The Senate finds as follows:
9 (1) Since 1997, the Pediatric Rule, the Best
10 Pharmaceuticals for Children Act (Public Law 107–
11 109), and the Pediatric Research Equity Act of
12 2003 (Public Law 108–155) have resulted in 427
13 drug labeling changes that have included important
14 pediatric information about the safety and effective-
15 ness of drugs used in children.

16 (2) Before the Best Pharmaceuticals for Chil-
17 dren Act and the Pediatric Research Equity Act of
18 2003 more than 80 percent of drugs used in chil-
19 dren lacked sufficient information or labeling for pe-
20 diatric use, but today that number has been dra-
21 matically reduced in most pediatric subpopulations.

22 (3) The lives of children with cancer, HIV/
23 AIDS, diabetes, allergy and asthma, juvenile arthri-
24 tis, and many other conditions have been saved and
25 improved as a result of the data and labeling
26 changes generated by the Best Pharmaceuticals for

(4) There is bipartisan legislation that would renew and strengthen these laws by improving the timing, quality, and transparency of pediatric drug research and that would continue promising research of older, off-patent drugs at the National Institutes of Health.

(5) Such bipartisan legislation would also renew and extend a successful pediatric incentive for medical devices designed specifically for children and a Pediatric Device Consortia initiative.

(b) Sense of the Senate.—It is the sense of the Senate that Congress should reauthorize the Best Pharmaceuticals for Children Act, the Pediatric Research Equity Act of 2003, and the Pediatric Medical Device Safety and Improvement Act of 2007 as part of the comprehensive Food and Drug Administration user fee legislation.

**TITLE VI—MEDICAL DEVICE REGULATORY IMPROVEMENTS**

**SEC. 601. RECLASSIFICATION PROCEDURES.**

(a) Classification Changes.—

(1) In general.—Section 513(e)(1) (21 U.S.C. 360c(e)(1)) is amended to read as follows:
“(e)(1)(A) Based on new information respecting a device, the Secretary may, upon the initiative of the Secretary or upon petition of an interested person, change the classification of such device, and revoke, on account of the change in classification, any regulation or requirement in effect under section 514 or 515 with respect to such device, by administrative order published in the Federal Register following publication of a proposed reclassification order in the Federal Register, a meeting of a device classification panel described in subsection (b), and consideration of comments to a public docket, notwithstanding subchapter II of Chapter 5 of title 5 of the United States Code. An order under this subsection changing the classification of a device from class III to class II may provide that such classification shall not take effect until the effective date of a performance standard established under section 514 for such device.

“(B) Authority to issue such administrative order shall not be delegated below the Commissioner. The Commissioner shall issue such an order as proposed by the Director of the Center for Devices and Radiological Health unless the Commissioner, in consultation with the Office of the Secretary of Health and Human Services, concludes that the order exceeds the legal authority of the Food and
Drug Administration or that the order would be lawful, but unlikely to advance the public health.”.

(2) Technical and Conforming Amendments.—

(A) Section 513(e)(2) (21 U.S.C. 360c(e)(2)) is amended by striking “regulation promulgated” and inserting “an order issued”.

(B) Section 514(a)(1) (21 U.S.C. 360d(a)(1)) is amended in paragraph (1), by striking “under a regulation under section 513(e) but such regulation” and inserting “under an administrative order under section 513(e) (or a regulation promulgated under such section prior to the date of enactment of the Food and Drug Administration Safety and Innovation Act) but such order (or regulation)”;

(C) Section 517(a)(1) (21 U.S.C. 360g(a)) is amended by striking “or changing the classification of a device to class I” and inserting “, an administrative order changing the classification of a device to class I,”.

(3) Devices Reclassified Prior to the Date of Enactment of This Act.—

(A) In General.—The amendments made by this subsection shall have no effect on a reg-
ulation promulgated with respect to the classification of a device under section 513(e) of the Federal Food, Drug, and Cosmetic Act prior to the date of enactment of this Act.

(B) Applicability of other provisions.—In the case of a device reclassified under section 513(e) of the Federal Food, Drug, and Cosmetic Act by regulation prior to the date of enactment of this Act, section 517(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360g(a)(1)) shall apply to such regulation promulgated under section 513(e) of such Act with respect to such device in the same manner such section 517(a)(1) applies to an administrative order issued with respect to a device reclassified after the date of enactment of this Act.

(b) Devices Marketed Before May 28, 1976.—

(1) Premarket approval.—Section 515 (21 U.S.C. 360e) is amended—

(A) in subsection (a), by striking “regulation promulgated under subsection (b)” and inserting “an order issued under subsection (b) (or a regulation promulgated under such subsection prior to the date of enactment of the
Food and Drug Administration Safety and Innovation Act’’;

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the heading, by striking “Regulation” and inserting “Order”; and

(II) in the matter following subparagraph (B)—

(aa) by striking “by regulation, promulgated in accordance with this subsection” and inserting “by administrative order following publication of a proposed order in the Federal Register, a meeting of a device classification panel described in section 513(b), and consideration of comments from all affected stakeholders, including patients, payors, and providers, notwithstanding subchapter II of chapter 5 of title 5, United States Code,”; and

(bb) by adding at the end the following:
“Authority to issue such administrative order shall not be delegated below the Commissioner. Before publishing such administrative order, the Commissioner shall consult with the Office of the Secretary of Health and Human Services. The Commissioner shall issue such an order as proposed by the Director of the Center for Devices and Radiological Health unless the Commissioner, in consultation with the Office of the Secretary of Health and Human Services, concludes that the order exceeds the legal authority of the Food and Drug Administration or that the order would be lawful, but unlikely to advance the public health.”

(ii) in paragraph (2)—

(I) by striking subparagraph (B);

and

(II) in subparagraph (A)—

(aa) by striking “(2)(A) A proceeding for the promulgation of a regulation under paragraph (1) respecting a device shall be initiated by the publication in the Federal Register of a notice of proposed rulemaking. Such notice shall contain—” and inserting ““(2) A proposed order required
under paragraph (1) shall con-
tain—”;

(bb) by redesignating
clauses (i) through (iv) as sub-
paragraphs (A) through (D), re-
spectively;

(cc) in subparagraph (A), as
so redesignated, by striking “reg-
ulation” and inserting “order”;

and

(dd) in subparagraph (C), as
so redesignated, by striking “reg-
ulation” and inserting “order”;

and

(iii) in paragraph (3)—

(I) by striking “proposed regula-
tion” each place such term appears
and inserting “proposed order”; 

(II) by striking “paragraph (2)
and after” and inserting “paragraph
(2),”;

(III) by inserting “and a meeting
of a device classification panel de-
scribed in section 513(b),” after “such
proposed regulation and findings,”;
(IV) by striking “(A) promulgate such regulation” and inserting “(A) issue an administrative order under paragraph (1)”; 

(V) by striking “paragraph (2)(A)(ii)” and inserting “paragraph (2)(B)” and 

(VI) by striking “promulgation of the regulation” and inserting “issuance of the administrative order”; and 

(iv) by striking paragraph (4); and 

(C) in subsection (i)— 

(i) in paragraph (2)— 

(I) in the matter preceding subparagraph (A)— 

(aa) by striking “December 1, 1995” and inserting “the date that is 2 years after the date of enactment of the Food and Drug Administration Safety and Innovation Act”; and 

(bb) by striking “publish a regulation in the Federal Register” and inserting “issue an ad
ministrative order following publication of a proposed order in the Federal Register, a meeting of a device classification panel described in section 513(b), and consideration of comments from all affected stakeholders, including patients, payors, and providers, notwithstanding subchapter II of chapter 5 of title 5, United States Code,”;

(II) in subparagraph (B) by striking “final regulation has been promulgated under section 515(b)” and inserting “administrative order has been issued under subsection (b) (or no regulation has been promulgated under such subsection prior to the date of enactment of the Food and Drug Administration Safety and Innovation Act)”;

(III) in the matter following subparagraph (B), by striking “regulation requires” and inserting “adminis-
127

     trative order issued under this para-

     graph requires”; and

     (IV) by striking the third and

     fourth sentences; and

     (ii) in paragraph (3)—

     (I) by striking “regulation requir-

     ing” each place such term appears

     and inserting “order requiring”; and

     (II) by striking “promulgation of

     a section 515(b) regulation” and in-

     serting “issuance of an administrative

     order under subsection (b)”.

(2) TECHNICAL AND CONFORMING AMEND-

MENTS.—Section 501(f) (21 U.S.C. 351) is amend-

ed—

     (A) in subparagraph (1)(A)—

     (i) in subclause (i), by striking “a reg-

     ulation promulgated” and inserting “an

     order issued”; and

     (ii) in subclause (ii), by striking “pro-

     mulgation of such regulation” and insert-

     ing “issuance of such order”;

     (B) in subparagraph (2)(B)—
(i) by striking “a regulation promulgated” and inserting “an order issued”; and

(ii) by striking “promulgation of such regulation” and inserting “issuance of such order”; and

(C) by adding at the end the following:

“(3) In the case of a device with respect to which a regulation was promulgated under section 515(b) prior to the date of enactment of the Food and Drug Administration Safety and Innovation Act, a reference in this subsection to an order issued under section 515(b) shall be deemed to include such regulation.”.

(3) APPROVAL BY REGULATION PRIOR TO THE DATE OF ENACTMENT OF THIS ACT.—The amendments made by this subsection shall have no effect on a regulation that was promulgated prior to the date of enactment of this Act requiring that a device have an approval under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e) of an application for premarket approval.

(e) REPORTING.—The Secretary of Health and Human Services shall annually post on the Internet web site of the Food and Drug Administration—
(1) the number and type of class I and class II devices reclassified as class II or class III in the previous calendar year under section 513(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(e)(1));

(2) the number and type of class II and class III devices reclassified as class I or class II in the previous calendar year under such section 513(e)(1); and

(3) the number and type of devices reclassified in the previous calendar year under section 515.

SEC. 602. CONDITION OF APPROVAL STUDIES.


(1) by striking “(ii)” and inserting “(ii)(I)”;

and

(2) by adding at the end the following:

“(II) An order approving an application for a device may require as a condition to such approval that the applicant conduct a postmarket study regarding the device.”.

SEC. 603. POSTMARKET SURVEILLANCE.

Section 522 (21 U.S.C. 360l) is amended—

(1) in subsection (a)(1)(A), in the matter preceding clause (i), by inserting “, at the time of ap-
proval or clearance of a device or at any time there-
after,” after “by order”; and

(2) in subsection (b)(1), by inserting “The
manufacturer shall commence surveillance under this
section not later than 15 months after the day on
which the Secretary issues an order under this sec-
tion.” after the second sentence.

SEC. 604. SENTINEL.

Section 519 (21 U.S.C. 360i) is amended by adding
at the end the following:

“(h) INCLUSION OF DEVICES IN THE POSTMARKET
RISK IDENTIFICATION AND ANALYSIS SYSTEM.—

“(1) IN GENERAL.—

“(A) APPLICATION TO DEVICES.—The Sec-
retary shall amend the procedures established
and maintained under clauses (i), (ii), (iii), and
(v) of section 505(k)(3)(C) in order to expand
the postmarket risk identification and analysis
system established under such section to include
and apply to devices.

“(B) EXCEPTION.—Clause (i)(II) of sec-
tion 505(k)(3)(C) shall not apply to devices.

“(C) CLARIFICATION.—With respect to de-
vices, the private sector health-related electronic
data provided under section
505(k)(3)(C)(i)(III)(bb) may include medical
device utilization data, health insurance claims
data, and procedure and device registries.

“(2) DATA.—In expanding the system as de-
scribed in subsection (a), the Secretary shall use rel-
evant data with respect to devices cleared under sec-
tion 510(k) or approved under section 515, including
claims data, patient survey data, and any other data
deemed appropriate by the Secretary.

“(3) STAKEHOLDER INPUT.—To help ensure ef-
fective implementation of the system described in
subsection (a), the Secretary shall engage outside
stakeholders in development of the system through a
public hearing, advisory committee meeting, public
docket, or other like measures, as appropriate.

“(4) VOLUNTARY SURVEYS.—Chapter 35 of
title 44, United States Code, shall not apply to the
collection of voluntary information from health care
providers, such as voluntary surveys or question-
naires, initiated by the Secretary for purposes of
postmarket risk identification for devices.”.

SEC. 605. RECALLS.

(a) ASSESSMENT OF DEVICE RECALL INforma-
tion.—

(1) IN GENERAL.—
(A) **Assessment Program.**—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall enhance the Food and Drug Administration’s recall program to routinely and systematically assess—

(i) information submitted to the Secretary pursuant to a device recall order under section 518(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h(e)); and

(ii) information required to be reported to the Secretary regarding a correction or removal of a device under section 519(g) of such Act (21 U.S.C. 360i(g)).

(B) **Use.**—The Secretary shall use the assessment of information described under subparagraph (A) to proactively identify strategies for mitigating health risks presented by defective or unsafe devices.

(2) **Design.**—The program under paragraph (1) shall, at a minimum, identify—

(A) trends in the numbers and types of device recalls;
(B) the types of devices in each device class that are most frequently recalled;
(C) the causes of device recalls; and
(D) any other information as the Secretary determines appropriate.

(b) Audit Check Procedures.—The Secretary shall clarify procedures for conducting device recall audit checks to improve the ability of investigators to perform these checks in a consistent manner.

(c) Assessment Criteria.—The Secretary shall develop explicit criteria for assessing whether a person subject to a recall order under section 518(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h(e)) or to a requirement under section 519(g) of such Act (21 U.S.C. 360i(g)) has performed an effective correction or removal action under such section 519(g).

(d) Termination of Recalls.—The Secretary shall document the basis for the termination by the Food and Drug Administration of—

(1) an individual device recall ordered under section 518(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360h(e)); and
(2) any correction or removal action for which a report is required to be submitted to the Secretary
under section 519(g) of such Act (21 U.S.C. 360i(g)).

SEC. 606. CLINICAL HOLDS ON INVESTIGATIONAL DEVICE EXEMPTIONS.

Section 520(g) (21 U.S.C. 360j(g)) is amended by adding at the end the following:

“(8)(A) At any time, the Secretary may prohibit the sponsor of an investigation from conducting the investigation (referred to in this paragraph as a ‘clinical hold’) if the Secretary makes a determination described in subparagraph (B). The Secretary shall specify the basis for the clinical hold, including the specific information available to the Secretary which served as the basis for such clinical hold, and confirm such determination in writing.

“(B) For purposes of subparagraph (A), a determination described in this subparagraph with respect to a clinical hold is that—

“(i) the device involved represents an unreasonable risk to the safety of the persons who are the subjects of the clinical investigation, taking into account the qualifications of the clinical investigators, information about the device, the design of the clinical investigation, the condition for which the device is to be investigated, and the health status of the subjects involved; or
“(ii) the clinical hold should be issued for such other reasons as the Secretary may by regulation establish.

“(C) Any written request to the Secretary from the sponsor of an investigation that a clinical hold be removed shall receive a decision, in writing and specifying the reasons therefor, within 30 days after receipt of such request. Any such request shall include sufficient information to support the removal of such clinical hold.”.

SEC. 607. UNIQUE DEVICE IDENTIFIER.

Section 519(f) (21 U.S.C. 360i(f)) is amended—

(1) by striking “The Secretary shall promulgate” and inserting “Not later than December 31, 2012, the Secretary shall issue final”; and

(2) by adding at the end the following:

“The Secretary shall implement the unique device identification system under this subsection as soon as practicable.”.

SEC. 608. CLARIFICATION OF LEAST BURDENSOME STANDARD.

(a) Premarket Approval.—Section 513(a)(3)(D) (21 U.S.C. 360c(a)(3)(D)) is amended—

(1) by redesignating clause (iii) as clause (v); and

(2) by inserting after clause (ii) the following:
“(iii) For purposes of clause (ii), the term ‘necessary’ means the minimum required information that would support a determination by the Secretary that an application provides reasonable assurance of the effectiveness of the device.

“(iv) Nothing in this subparagraph shall alter the criteria for evaluating an application for premarket approval of a device.”.

(b) Premarket Notification Under Section 510(k).—Section 513(i)(1)(D) (21 U.S.C. 360e(i)(1)(D)) is amended—

(1) by striking “(D) Whenever” and inserting “(D)(i) Whenever”; and

(2) by adding at the end the following:

“(ii) For purposes of clause (i), the term ‘necessary’ means the minimum required information that would support a determination of substantial equivalence between a new device and a predicate device.

“(iii) Nothing in this subparagraph shall alter the standard for determining substantial equivalence between a new device and a predicate device.”.
SEC. 609. AGENCY DOCUMENTATION AND REVIEW OF CERTAIN DECISIONS REGARDING DEVICES.

Chapter V (21 U.S.C. 351 et seq.) is amended by inserting after section 517 the following:

“SEC. 517A. AGENCY DOCUMENTATION AND REVIEW OF CERTAIN DECISIONS REGARDING DEVICES.

“(a) DOCUMENTATION OF RATIONALE FOR DENIAL.—If the Secretary renders a final decision to deny clearance of a premarket notification under section 510(k) or approval of a premarket application under section 515, or when the Secretary disapproves an application for an investigational exemption under 520(g), the written correspondence to the applicant communicating that decision shall provide a substantive summary of the scientific and regulatory rationale for the decision.

“(b) REVIEW OF DENIAL.—

“(1) IN GENERAL.—A person who has submitted a report under section 510(k), an application under section 515, or an application for an exemption under section 520(g) and for whom clearance of the report or approval of the application is denied may request a supervisory review of the decision to deny such clearance or approval. Such review shall be conducted by an individual at the organizational level above the organization level at which the deci-
sion to deny the clearance of the report or approval of the application is made.

“(2) Submission of request.—A person requesting a supervisory review under paragraph (1) shall submit such request to the Secretary not later than 30 days after such denial and shall indicate in the request whether such person seeks an in-person meeting or a teleconference review.

“(3) Timeframe.—

“(A) In general.—Except as provided in subparagraph (B), the Secretary shall schedule an in-person or teleconference review, if so requested, not later than 30 days after such request is made. The Secretary shall issue a decision to the person requesting a review under this subsection not later than 45 days after the request is made under paragraph (1), or, in the case of a person who requests an in-person meeting or teleconference, 30 days after such meeting or teleconference.

“(B) Exception.—Subparagraph (A) shall not apply in cases that involve consultation with experts outside of the Food and Drug Administration, or in cases in which the sponsor seeks to introduce evidence not already in
the administrative record at the time the denial decision was made.”

SEC. 610. GOOD GUIDANCE PRACTICES RELATING TO DEVICES.

Subparagraph C of section 701(h)(1) (21 U.S.C. 371(h)(1)) is amended—

(1) by striking “(C) For guidance documents” and inserting “(C)(i) For guidance documents”; and

(2) by adding at the end the following:

“(ii) With respect to devices, if a notice to industry guidance letter, a notice to industry advisory letter, or any similar notice sets forth initial interpretations of a regulation or policy or sets forth changes in interpretation or policy, such notice shall be treated as a guidance document for purposes of this subparagraph.”.

SEC. 611. MODIFICATION OF DE NOVO APPLICATION PROCESS.

(a) IN GENERAL.—Section 513(f)(2) (21 U.S.C. 360c(f)(2)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(2) by amending subparagraph (A) to read as follows:
“(A) In the case of a type of device that has not previously been classified under this Act, a person may do one of the following:

“(i) Submit a report under section 510(k), and, if the device is classified into class III under paragraph (1), such person may request, not later than 30 days after receiving written notice of such a classification, the Secretary to classify the device under the criteria set forth in subparagraphs (A) through (C) of subsection (a)(1). The person may, in the request, recommend to the Secretary a classification for the device. Any such request shall describe the device and provide detailed information and reasons for the recommended classification.

“(ii) Submit a request for initial classification of the device under this subparagraph, if the person declares that there is no legally marketed device upon which to base a substantial equivalence determination as that term is defined in subsection (i). Subject to subparagraph (B), the Secretary shall classify the device under the criteria set forth in subparagraphs (A) through (C) of subsection (a)(1). The person submitting the request for classification under this subparagraph may recommend to the Secretary a classification for the device and shall in-
clude in the request an initial draft proposal for applicable special controls, as described in subsection (a)(1)(B), that are necessary, in conjunction with general controls, to provide reasonable assurance of safety and effectiveness and a description of how the special controls provide such assurance. Requests under this clause shall be subject to the electronic copy requirements of section 745A(b).”;

(3) by inserting after subparagraph (A) the following:

“(B) The Secretary may decline to undertake a classification request submitted under clause (2)(A)(ii) if the Secretary identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence under paragraph (1), or when the Secretary determines that the device submitted is not of low-moderate risk.”; and

(4) in subparagraph (C), as so redesignated—

(A) in clause (i), by striking “Not later than 60 days after the date of the submission of the request under subparagraph (A),” and inserting “Not later than 120 days after the date of the submission of the request under subparagraph (A)(i) or 150 days after the date
of the submission of the request under subparagraph (A)(ii),”; and

(B) in clause (ii), by inserting “or is classified in” after “remains in”.

(b) GAO REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall complete a study and submit to Congress a report on the effectiveness of the review pathway under section 513(f)(2)(A) of the Federal Food, Drug, and Cosmetic Act, as amended by this Act.

(c) CONFORMING AMENDMENT.—Section 513(f)(1)(B) (21 U.S.C. 360c(f)(1)(B)) is amended by inserting “a request under paragraph (2) or” after “response to”.

SEC. 612. HUMANITARIAN USE DEVICE EXEMPTIONS.

(a) IN GENERAL.—Section 520(m) (21 U.S.C. 360j(m)) is amended—

(1) in paragraph (6)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking “subparagraph (D)” and inserting “subparagraph (C)”;

(ii) by striking clause (i) and inserting the following:
“(i) The device with respect to which the exemption is granted—

“(I) is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or

“(II) is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.”;

(iii) by striking clause (ii) and inserting the following:

“(ii) During any calendar year, the number of such devices distributed during that year under each exemption granted under this subsection does not exceed the number of such devices needed to treat, diagnose, or cure a population of 4,000 individuals in the United States (referred to in this paragraph as the ‘annual distribution number’).’’; and

(iv) in clause (iv), by striking ‘‘2012’’ and inserting ‘‘2017’’;
(B) by striking subparagraph (C);
(C) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and
(D) in subparagraph (C), as so redesignated, by striking “and modified under subparagraph (C), if applicable,”;
(2) in paragraph (7), by striking “regarding a device” and inserting “regarding a device described in paragraph (6)(A)(i)(I)”;
and
(3) in paragraph (8), by striking “of all devices described in paragraph (6)” and inserting “of all devices described in paragraph (6)(A)(i)(I)”.

(b) APPLICABILITY TO EXISTING DEVICES.—A sponsor of a device for which an exemption was approved under paragraph (2) of section 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(m)) before the date of enactment of this Act may seek a determination under subclause (I) or (II) of section 520(m)(6)(A)(i) (as amended by subsection (a)). If the Secretary determines that such subclause (I) or (II) applies with respect to a device, clauses (ii), (iii), and (iv) of subparagraph (A) and subparagraphs (B), (C), and (D) of paragraph (6) of such section 520(m) shall apply to such device.
(c) REPORT.—Not later than January 1, 2017, the Comptroller General of the United States shall submit to Congress a report that evaluates and describes—

(1) the effectiveness of the amendments made by subsection (a) in stimulating innovation with respect to medical devices, including any favorable or adverse impact on pediatric device development;

(2) the impact of such amendments on pediatric device approvals for devices that received a humanitarian use designation under section 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(m)) prior to the date of enactment of this Act;

(3) the status of public and private insurance coverage of devices granted an exemption under paragraph (2) of such section 520(m) (as amended by subsection (a)) and costs to patients of such devices;

(4) the impact that paragraph (4) of such section 520(m) has had on access to and insurance coverage of devices granted an exemption under paragraph (2) of such section 520(m); and

(5) the effect of the amendments made by subsection (a) on patients described in such section 520(m).
SEC. 613. REAUTHORIZATION OF THIRD-PARTY REVIEW AND INSPECTIONS.

(a) Third Party Review.—Section 523(c) (21 U.S.C. 360m(c)) is amended by striking “2012” and inserting “2017”.

(b) Third Party Inspections.—Section 704(g)(11) (21 U.S.C. 374(g)(11)) is amended by striking “2012” and inserting “2017”.

SEC. 614. ADVISORY COMMITTEE CONFLICTS OF INTEREST.

Section 712 (21 U.S.C. 379d–1) is amended—

(1) in subsection (b)—

(A) by striking paragraph (2); and

(B) in paragraph (1)—

(i) by redesignating subparagraph (B) as paragraph (2);

(ii) in subparagraph (A), by redesignating clauses (i) through (iii) as subparagraphs (A) through (C), respectively;

(iii) by striking “(1) Recruitment” and inserting “(1) Recruitment in General—The Secretary shall—”;

(iv) by striking “(A) In General—The Secretary shall—”;

(v) by redesignating clauses (i) through (iii) of paragraph (2) (as so redes-
signated) as subparagraphs (A) through (C), respectively; and

(vi) in paragraph (2) (as so redesignated), in the matter before subparagraph (A) (as so redesignated), by striking “subparagraph (A)” and inserting “paragraph (1)”;

(2) by amending subsection (c)(2)(C) to read as follows:

“(C) CONSIDERATION BY SECRETARY.—

The Secretary shall ensure that each determination made under subparagraph (B) considers the type, nature, and magnitude of the financial interests at issue and the public health interest in having the expertise of the member with respect to the particular matter before the advisory committee.”;

(3) in subsection (e), by inserting “, and shall make publicly available,” after “House of Representa-
tives”; and

(4) by adding at the end the following:

“(g) GUIDANCE ON REPORTED FINANCIAL INTEREST OR INVOLVEMENT.—The Secretary shall issue guidance that describes how the Secretary reviews the financial interests and involvement of advisory committee members

"
that are reported under subsection (c)(1) but that the Secretary determines not to meet the definition of a disqualifying interest under section 208 of title 18, United States Code for the purposes of participating in a particular matter.”

**TITLE VII—DRUG SUPPLY CHAIN**

**SEC. 701. REGISTRATION OF DOMESTIC DRUG ESTABLISHMENTS.**

Section 510 (21 U.S.C. 360) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking “On or before” and all that follows through the period at the end and inserting the following “During the period beginning on October 1 and ending on December 31 of each year, every person who owns or operates any establishment in any State engaged in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs shall register with the Secretary—

“(A) the name of such person, places of business of such person, all such establishments, the unique facility identifier of each such establishment, and a point of contact e-mail address; and
“(B) the name and place of business of each drug importer or broker that takes physical possess-
ion of a finished drug product or active pharma-
ceutical ingredient with which the person conducts business, including all establishments of each such drug importer or broker, the unique facility identi-
fer of each such establishment, and a point of con-
tact e-mail address for each such drug importer or broker.”; and

(B) by adding at the end the following:

“(3) The Secretary may specify the unique facility identifier system that shall be used by registrants under paragraph (1).”; and

(2) in subsection (e), by striking “with the Sec-
retary his name, place of business, and such estab-
ishment” and inserting “with the Secretary—

“(1) with respect to drugs, the information de-
scribed under subsection (b)(1); and

“(2) with respect to devices, the information de-
scribed under subsection (b)(2).”.

SEC. 702. REGISTRATION OF FOREIGN ESTABLISHMENTS.

(a) Enforcement of Registration of Foreign Establishments.—Section 502(o) (21 U.S.C. 352(o)) is amended by striking “in any State”.

149
(b) Registration of Foreign Drug Establishments.—Section 510(i) (U.S.C. 360(i)) is amended—

(1) in paragraph (1)—

(A) by amending the matter preceding subparagraph (A) to read as follows: “Every person who owns or operates any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a drug or device that is imported or offered for import into the United States shall, through electronic means in accordance with the criteria of the Secretary—”;

(B) by amending subparagraph (A) to read as follows:

“(A) upon first engaging in any such activity, immediately submit a registration to the Secretary that includes—

“(i) with respect to drugs, the name and place of business of such person, all such establishments, the unique facility identifier of each such establishment, a point of contact e-mail address, the name of the United States agent of each such establishment, the name and place of business of each drug importer with which such
person conducts business, including all establishments of each such drug importer, the unique facility identifier of each such establishment, and a point of contact e-mail address for each such drug importer; and

“(ii) with respect to devices, the name and place of business of the establishment, the name of the United States agent for the establishment, the name of each importer of such device in the United States that is known to the establishment, and the name of each person who imports or offers for import such device to the United States for purposes of importation; and”; and

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

“(B) each establishment subject to the requirements of subparagraph (A) shall thereafter register with the Secretary during the period beginning on October 1 and ending on December 31 of each year.”; and

(2) by adding at the end the following:

“(4) The Secretary may specify the unique facility identifier system that shall be used by registrants under paragraph (1) with respect to drugs.”.
SEC. 703. REGISTRATION OF DRUG EXCIPIENT INFORMATION WITH PRODUCT LISTING.

Section 510(j)(1) (21 U.S.C. 360(j)(1)) is amended—

(1) in subparagraph (C), by striking “; and” and inserting a semicolon;

(2) in subparagraph (D), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(E) in the case of a drug contained in the applicable list and subject to section 505 or 512, the name and place of business of each manufacturer of an excipient of the drug with which the person so registered conducts business, including all establishments of each such excipient manufacturer, the unique facility identifier of each such establishment, and a point of contact e-mail address for each such excipient manufacturer.”.

SEC. 704. ELECTRONIC SYSTEM FOR REGISTRATION AND LISTING.

Section 510(p) (21 U.S.C. 360(p)) is amended—

(1) by striking “(p) Registrations and listings” and inserting the following:

“(p) ELECTRONIC REGISTRATION AND LISTING.—

“(1) IN GENERAL.—Registration and listing”; and
(2) by adding at the end the following:

“(2) ELECTRONIC DATABASE.—Not later than 2 years after the Secretary specifies a unique facility identifier system under subsections (b) and (i), the Secretary shall maintain an electronic database, which shall not be subject to inspection under subsection (f), populated with the information submitted as described under paragraph (1) that—

“(A) enables personnel of the Food and Drug Administration to search the database by any field of information submitted in a registration described under paragraph (1), or combination of such fields; and

“(B) uses the unique facility identifier system to link with other relevant databases within the Food and Drug Administration, including the database for submission of information under section 801(r).

“(3) RISK-BASED INFORMATION AND COORDINATION.—The Secretary shall ensure the accuracy and coordination of relevant Food and Drug Administration databases in order to identify and inform risk-based inspections under section 510(h).”.
SEC. 705. RISK-BASED INSPECTION FREQUENCY.

Section 510(h) (21 U.S.C. 360(h)) is amended to read as follows:

“(h) INSPECTIONS.—

“(1) IN GENERAL.—Every establishment that is required to be registered with the Secretary under this section shall be subject to inspection pursuant to section 704.

“(2) RISK-BASED SCHEDULE.—The Secretary, acting through one or more officers or employees duly designated by the Secretary, shall inspect establishments described in paragraph (1) that are engaged in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs (referred to in this subsection as a ‘drug establishments’) in accordance with a risk-based schedule established by the Secretary.

“(3) RISK FACTORS.—In establishing the risk-based schedule under paragraph (2), the Secretary shall allocate resources to inspect establishments according to the known safety risks of such establishments, which shall be based on the following factors:

“(A) The compliance history of the establishment.

“(B) The record, history, and nature of recalls linked to the establishment.
“(C) The inherent risk of the drug manufactured, prepared, propagated, compounded, or processed at the establishment.

“(D) The certifications described under sections 801(r) and 809 for the establishment.

“(E) Whether the establishment has been inspected in the preceding 4-year period.

“(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

“(4) Effect of Status.—In determining the risk associated with an establishment for purposes of establishing a risk-based schedule under paragraph (2), the Secretary shall not consider whether the drugs manufactured, prepared, propagated, compounded, or processed by such establishment are drugs described in section 503(b).

“(5) Annual Report on Inspections of Establishments.—Not later than February 1 of each year, the Secretary shall submit a report to Congress regarding—

“(A)(i) the number of domestic and foreign establishments registered pursuant to this section in the previous fiscal year; and
“(ii) the number of such domestic establishments and the number of such foreign establishments that the Secretary inspected in the previous fiscal year;

“(B) with respect to establishments that manufacture, prepare, propagate, compound, or process an active ingredient of a drug, a finished drug product, or an excipient of a drug, the number of each such type of establishment; and

“(C) the percentage of the budget of the Food and Drug Administration used to fund the inspections described under subparagraph (A).

“(6) PUBLIC AVAILABILITY OF ANNUAL REPORTS.—The Secretary shall make the report required under paragraph (5) available to the public on the Internet Web site of the Food and Drug Administration.”.

SEC. 706. RECORDS FOR INSPECTION.

Section 704(a) (21 U.S.C. 374(a)) is amended by adding at the end the following:

“(4)(A) Any records or other information that the Secretary is entitled to request under this section from a person that owns or operates an establishment that is
engaged in the manufacture, preparation, propagation, compounding, or processing of a drug shall, upon the request of the Secretary, be provided to the Secretary by such person within a reasonable time frame, within reasonable limits and in a reasonable manner, and in electronic form, at the expense of such person. The Secretary’s request shall include a clear description of the records requested.

“(B) Upon receipt of the records requested under subparagraph (A), the Secretary shall provide to the person confirmation of the receipt of such records.

“(C) Nothing in this paragraph supplants the authority of the Secretary to conduct inspections otherwise permitted under this Act in order to ensure compliance by an establishment with this Act.”.

**SEC. 707. FAILURE TO ALLOW FOREIGN INSPECTION.**

Section 801(a) (21 U.S.C. 381(a)) is amended by adding at the end the following: “Notwithstanding any other provision of this subsection, the Secretary of Homeland Security shall, upon request from the Secretary of Health and Human Services refuse to admit into the United States any article if the article was manufactured, prepared, propagated, compounded, processed, or held at an establishment that has refused to permit the Secretary of Health and Human Services to enter or inspect the es-
establishment in the same manner and to the same extent
as the Secretary may inspect establishments under section
704.”.

SEC. 708. EXCHANGE OF INFORMATION.

Section 708 (21 U.S.C. 379) is amended—

(1) by striking “CONFIDENTIAL INFORMATION”
and all that follows through “The Secretary” and in-
serting “CONFIDENTIAL INFORMATION.
“(a) CONTRACTORS.—The Secretary”; and

(2) by adding at the end the following:

“(b) ABILITY TO RECEIVE AND PROTECT CONFIDEN-
TIAL INFORMATION.—The Secretary shall not be required
to disclose under section 552 of title 5, United States
Code, or any other provision of law, any information relat-
ing to drugs obtained from a Federal, State or local gov-
ernment agency, or from a foreign government agency, if
the agency has requested that the information be kept con-
fidential, except pursuant to an order of a court of the
United States. For purposes of section 552 of title 5,
United States Code, this subsection shall be considered a
statute described in section 552(b)(3)(B).

“(c) AUTHORITY TO ENTER INTO MEMORANDA OF
UNDERSTANDING FOR PURPOSES OF INFORMATION EX-
CHANGE.—The Secretary may enter into written agree-
ments regarding the exchange of information referenced in section 301(j) subject to the following criteria:

“(1) CERTIFICATION.—The Secretary may only enter into written agreements under this subsection with foreign governments that the Secretary has certified as having the authority and demonstrated ability to protect trade secret information from disclosure. Responsibility for this certification shall not be delegated to any officer or employee other than the Commissioner.

“(2) WRITTEN AGREEMENT.—The written agreement under this subsection shall include a commitment by the foreign government to protect information exchanged under this subsection from disclosure unless and until the sponsor gives written permission for disclosure or the Secretary makes a declaration of a public health emergency pursuant to section 319 of the Public Health Service Act that is relevant to the information.

“(3) INFORMATION EXCHANGE.—The Secretary may provide to a foreign government that has been certified under paragraph (1) and that has executed a written agreement under paragraph (2) information referenced in section 301(j) in the following circumstances:
“(A) Information concerning the inspection of a facility may be provided if—

“(i) the Secretary reasonably believes, or that the written agreement described in paragraph (2) establishes, that the government has authority to otherwise obtain such information; and

“(ii) the written agreement executed under paragraph (2) limits the recipient’s use of the information to the recipient’s civil regulatory purposes.

“(B) Information not described in sub-paragraph (A) may be provided as part of an investigation, or to alert the foreign government to the potential need for an investigation, if the Secretary has reasonable grounds to believe that a drug has a reasonable probability of causing serious adverse health consequences or death to humans or animals.

“(4) Effect of subsection.—Nothing in this subsection affects the ability of the Secretary to enter into any written agreement authorized by other provisions of law to share confidential information.”.
SEC. 709. ENHANCING THE SAFETY AND QUALITY OF THE
DRUG SUPPLY.

Section 501 (21 U.S.C. 351) is amended by adding
at the end the following flush text:

“For purposes of subsection (a)(2)(B), the term ‘current
good manufacturing practice’ includes the implementation
of oversight and controls over the manufacture of drugs
to ensure quality, including managing the risk of and es-
tablishing the safety of raw materials, materials used in
the manufacturing of drugs, and finished drug products.”.

SEC. 710. ACCREDITATION OF THIRD-PARTY AUDITORS FOR
DRUG ESTABLISHMENTS.

(a) In general.—Chapter VIII (21 U.S.C. 381 et
seq.) is amended by adding at the end the following:

“SEC. 809. ACCREDITATION OF THIRD-PARTY AUDITORS
FOR DRUG ESTABLISHMENTS.

“(a) Definitions.—In this section:

“(1) Accreditation body.—The term ‘ac-
creditation body’ means an authority that performs
accreditation of third-party auditors.

“(2) Accredited third-party auditor.—
The term ‘accredited third-party auditor’ means a
third-party auditor (which may be an individual) ac-
credited by an accreditation body to conduct drug
safety and quality audits."
“(3) Audit Agent.—The term ‘audit agent’ means an individual who is an employee or agent of an accredited third-party auditor and, although not individually accredited, is qualified to conduct drug safety and quality audits on behalf of an accredited third-party auditor.

“(4) Consultative Audit.—The term ‘consultative audit’ means an audit of an eligible entity intended for internal purposes only to determine whether an establishment is in compliance with the provisions of this Act and applicable industry practices, or any other such service.

“(5) Drug Safety and Quality Audit.—The term ‘drug safety and quality audit’—

“(A) means an audit of an eligible entity to certify that the eligible entity meets the requirements of this Act applicable to drugs, including the requirements of section 501 with respect to drugs; and

“(B) is not a consultative audit.

“(6) Eligible Entity.—The term ‘eligible entity’ means an entity, including a foreign drug establishment registered under section 510(e), in the drug supply chain that chooses to be audited by an ac-
credited third-party auditor or the audit agent of such accredited third-party auditor.

“(7) THIRD-PARTY AUDITOR.—The term ‘third-party auditor’ means a foreign government, agency of a foreign government or any other third party (which may be an individual), as the Secretary determines appropriate in accordance with the criteria described in subsection (c)(1), that is eligible to be considered for accreditation to conduct drug safety and quality audits.

“(b) ACCREDITATION SYSTEM.—

“(1) RECOGNITION OF ACCREDITATION BODIES.—

“(A) IN GENERAL.—Not later than 2 years after date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary shall establish a system for the recognition of accreditation bodies that accredit third-party auditors to conduct drug safety and quality audits.

“(B) DIRECT ACCREDITATION.—

“(i) IN GENERAL.—If, by the date that is 2 years after the date of establishment of the system described in subparagraph (A), the Secretary has not identified
and recognized an accreditation body to meet the requirements of this section, the Secretary may directly accredit third-party auditors.

“(ii) Certain Direct Accreditations.—Notwithstanding subparagraph (A) or clause (i), the Secretary may directly accredit any foreign government or any agency of a foreign government as a third-party auditor at any time after the date of enactment of the Food and Drug Administration Safety and Innovation Act.

“(2) Notification.—Each accreditation body recognized by the Secretary shall submit to the Secretary—

“(A) a list of all accredited third-party auditors accredited by such body (including the name, contact information, and scope and duration of accreditation for each such auditor), and the audit agents of such auditors; and

“(B) updated lists as needed to ensure the list held by the Secretary is accurate.

“(3) Revocation of Recognition as an Accreditation Body.—The Secretary shall promptly revoke, after the opportunity for an informal hear-
ing, the recognition of any accreditation body found not to be in compliance with the requirements of this section.

“(4) REINSTATEMENT.—The Secretary shall establish procedures to reinstate recognition of an accreditation body if the Secretary determines, based on evidence presented by such accreditation body, that revocation was inappropriate or that the body meets the requirements for recognition under this section.

“(5) MODEL ACCREDITATION STANDARDS.—

“(A) IN GENERAL.—Not later than 18 months after the date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary shall develop model standards, including standards for drug safety and quality audit results, reports, and certifications, and each recognized accreditation body shall ensure that third-party auditors and audit agents of such auditors meet such standards in order to qualify such third-party auditors as accredited third-party auditors under this section.

“(B) CONTENT.—The standards developed under subparagraph (A) may—
“(i) include a description of required standards relating to the training procedures, competency, management responsibilities, quality control, and conflict of interest requirements of accredited third-party auditors; and

“(ii) set forth procedures for the periodic renewal of the accreditation of accredited third-party auditors.

“(C) REQUIREMENT TO PROVIDE RESULTS AND REPORTS TO THE SECRETARY.—An accreditation body (or, in the case of direct accreditation under subsection (b)(1)(B), the Secretary) may not accredit a third-party auditor unless such third-party auditor agrees to provide to the Secretary, upon request, the results and reports of any drug safety and quality audit conducted pursuant to the accreditation provided under this section.

“(6) DISCLOSURE.—The Secretary shall maintain on the Internet Web site of the Food and Drug Administration a list of recognized accreditation bodies and accredited third-party auditors under this section.

“(c) ACCREDITED THIRD-PARTY AUDITORS.—
“(1) Requirements for accreditation as a third-party auditor.—

“(A) Foreign governments.—Prior to accrediting a foreign government or an agency of a foreign government as an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(B), the Secretary) shall perform such reviews and audits of drug safety programs, systems, and standards of the government or agency of the government as the Secretary deems necessary, including requirements under the standards developed under subsection (b)(5), to determine that the foreign government or agency of the foreign government is capable of adequately ensuring that eligible entities or drugs certified by such government or agency meet the requirements of this Act.

“(B) Other third parties.—Prior to accrediting any other third party to be an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(B), the Secretary) shall perform such reviews and audits of the training and qualifications of audit agents used by that
party and conduct such reviews of internal systems and such other investigation of the party as the Secretary deems necessary, including requirements under the standards developed under subsection (b)(5), to determine that the third party auditor is capable of adequately ensuring that an eligible entity or drug certified by such third party auditor meets the requirements of this Act.

''(2) USE OF AUDIT AGENTS.—An accredited third-party auditor may conduct drug safety and quality audits and may employ or use audit agents to conduct drug safety and quality audits, but must ensure that such audit agents comply with all requirements the Secretary deems necessary, including requirements under subsections (c)(1) and (b)(5).

''(3) REVOCATION OF ACCREDITATION.—

''(A) IN GENERAL.—The Secretary shall promptly revoke, after the opportunity for an informal hearing, the accreditation of an accredited third-party auditor—

''(i) if, following an evaluation, the Secretary finds that the accredited third-party auditor is not in compliance with the requirements of this section; or
“(ii) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to determine compliance with the requirements set forth in this section.

“(B) ADDITIONAL BASIS FOR REVOCATION OF ACCREDITATION.—The Secretary may revoke accreditation from an accredited third-party auditor in the case that such third-party auditor is accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(3) is revoked, if the Secretary determines that there is good cause for the revocation of accreditation.

“(4) REACCREDITATION.—The Secretary shall establish procedures to reinstate the accreditation of a third-party auditor for which accreditation has been revoked under paragraph (3)—

“(A) if the Secretary determines, based on evidence presented, that—

“(i) the third-party auditor satisfies the requirements of this section; and

“(ii) adequate grounds for revocation no longer exist; and
“(B) in the case of a third-party auditor accredited by an accreditation body for which recognition as an accreditation body is revoked under subsection (b)(3)—

“(i) if the third-party auditor becomes accredited not later than 1 year after revocation of accreditation under paragraph (3), through direct accreditation under subsection (b)(1)(B), or by an accreditation body in good standing; or

“(ii) under such other conditions as the Secretary may require.

“(5) Requirement to issue certification of eligible entities for compliance with current good manufacturing practice.—

“(A) In general.—An accreditation body (or, in the case of direct accreditation under subsection (b)(1)(B), the Secretary) may not accredit a third-party auditor unless such third-party auditor agrees to issue a written and, as appropriate, electronic, document or certification, as the Secretary may require under this Act, regarding compliance with section 501. The Secretary may consider any such document or certification to satisfy requirements under
section 801(r) and to target inspection re-
sources under section 510(h).

“(B) REQUIREMENTS FOR ISSUING CER-
TIFICATION.—

“(i) IN GENERAL.—An accredited
third-party auditor shall issue a drug cer-
tification described in subparagraph (A)
and subsection (h) only after conducting a
drug safety and quality audit and such
other activities that may be necessary to
establish compliance with the provisions of
section 501.

“(ii) PROVISION OF CERTIFICATION.—
Only an accredited third-party auditor or
the Secretary may provide a drug certifi-
cation described in subparagraph (A).

“(C) RECORDS.—Following any accredit-
tion of a third-party auditor, the Secretary
may, at any time, require the accredited third-
party auditor or any audit agent of such audi-
tor to submit to the Secretary a drug safety
and quality audit report and such other reports
or documents required as part of the drug safe-
ty and quality audit process, for any eligible en-
tity for which the accredited third-party auditor
or audit agent of such auditor performed a
drug safety and quality audit. The Secretary
may require documentation that the eligible en-
tity is in compliance with any applicable reg-
istration requirements.

“(D) LIMITATION.—The requirement
under subparagraph (C) shall not include any
report or other documents resulting from a con-
sultative audit, except that the Secretary may
access the results of a consultative audit in ac-
cordance with section 704.

“(E) DECLARATION OF AUDIT TYPE.—Be-
fore an accredited third-party auditor begins
any audit or provides any consultative service to
an eligible entity, both the accredited third-
party auditor and eligible entity shall establish
in writing whether the audit is intended to be
a drug safety and quality audit. Any audit, in-
speecion, or consultative service of any type pro-
vided by an accredited third-party auditor on
behalf of an eligible entity shall be presumed to
be a drug safety and quality audit in the ab-
sence of such a written agreement. Once a drug
safety and quality audit is initiated, it shall be
subject to the requirements of this section, and
no person may withhold from the Secretary any
document subject to subparagraph (C) on the
grounds that the audit was a consultative audit
or otherwise not a drug safety and quality audit.

“(F) Rule of construction.—Nothing
in this section shall be construed to limit the
authority of the Secretary under section 704.

“(6) Requirements regarding serious
risks to the public health.—If, at any time
during a drug safety and quality audit, an accredited
third-party auditor or an audit agent of such auditor
discovers a condition that could cause or contribute
to a serious risk to the public health, such auditor
shall immediately notify the Secretary of—

“(A) the identity and location of the eligi-
bale entity subject to the drug safety and quality
audit; and

“(B) such condition.

“(7) Limitations.—

“(A) In general.—An audit agent of an
accredited third party auditor may not perform
a drug safety and quality audit of an eligible
entity if such audit agent has performed a drug
safety and quality audit or consultative audit of
such eligible entity during the previous 13-month period.

“(B) WAIVER.—The Secretary may waive the application of subparagraph (A) if the Secretary determines that there is insufficient access to accredited third-party auditors in a country or region or that the use of the same audit agent or accredited third party auditor is otherwise necessary.

“(8) CONFLICTS OF INTEREST.—

“(A) ACCREDITATION BODIES.—A recognized accreditation body shall—

“(i) not be owned, managed, or controlled by any person that owns or operates an third-party auditor to be accredited by such body;

“(ii) in carrying out accreditation of third-party auditors under this section, have procedures to ensure against the use of any officer or employee of such body that has a financial conflict of interest regarding a third-party auditor to be accredited by such body; and

“(iii) annually make available to the Secretary disclosures of the extent to
which such body and the officers and employees of such body have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

“(B) ACCREDITED THIRD-PARTY AUDITORS.—An accredited third-party auditor shall—

“(i) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor;

“(ii) in carrying out drug safety and quality audits of eligible entities under this section, have procedures to ensure against the use of any officer or employee of such auditor that has a financial conflict of interest regarding an eligible entity to be certified by such auditor; and

“(iii) annually make available to the Secretary disclosures of the extent to which such auditor and the officers and employees of such auditor have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.
“(C) AUDIT AGENTS.—An audit agent shall—

“(i) not own or operate an eligible entity to be audited by such agent;

“(ii) in carrying out audits of eligible entities under this section, have procedures to ensure that such agent does not have a financial conflict of interest regarding an eligible entity to be audited by such agent; and

“(iii) annually make available to the Secretary disclosures of the extent to which such agent has maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

“(D) REGULATIONS.—The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the Food and Drug Administration Safety and Innovation Act to implement this section and to ensure that there are protections against conflicts of interest between a recognized accreditation body and the third-party auditor to be accredited by such accreditation body, and between an accredited third-party auditor and the eligible
entity to be audited by such auditor or audited by such audit agent. Such regulations shall include—

“(i) requiring that, to the extent practicable, drug safety and quality audits performed under this section be unannounced;

“(ii) a structure to decrease the potential for conflicts of interest, including timing and public disclosure, for fees paid by eligible entities to accredited third-party auditors; and

“(iii) appropriate limits on financial affiliations between an accredited third-party auditor or audit agents of such auditor and any person that owns or operates an eligible entity to be audited by such auditor, as described in subparagraphs (A) and (B).

“(d) FALSE STATEMENTS.—Any statement or representation made—

“(1) by an employee or agent of an eligible entity to an accredited third-party auditor or audit agent; or

“(2) by an accreditation body, accredited third-party auditor, or audit agent of such auditor to the
Secretary, shall be subject to section 1001 of title 18, United States Code.

“(e) MONITORING.—To ensure compliance with the requirements of this section, the Secretary—

“(1) shall periodically, or at least once every 4 years, reevaluate the accreditation bodies described in subsection (b)(1);

“(2) shall periodically, or at least once every 4 years, evaluate the performance of each accredited third-party auditor, through the review of regulatory audit reports by such auditors, the compliance history as available of eligible entities certified by such auditors, and any other measures deemed necessary by the Secretary;

“(3) may at any time, conduct an onsite audit of any eligible entity certified by an accredited third-party auditor, with or without the auditor present; and

“(4) shall take any other measures deemed necessary by the Secretary.

“(f) EFFECT OF AUDIT.—The results of a drug safety and quality audit by an accredited third-party auditor under this section—

“(1) may be used by the eligible entity—
“(A) as documentation of compliance with section 501(a)(2)(B) or section 801(r); and

“(B) for other purposes as determined appropriate by the Secretary; and

“(2) shall be used by the Secretary in establishing the risk-based inspection schedules under section 510(h).

“(g) Costs.—

“(1) Authorized fees of Secretary.—The Secretary may assess fees on accreditation bodies and accredited third-party auditors in such an amount necessary to establish and administer the recognition and accreditation program under this section. The Secretary may require accredited third-party auditors and audit agents to reimburse the Food and Drug Administration for the work performed to carry out this section. The Secretary shall not generate surplus revenue from such a reimbursement mechanism. Fees authorized under this paragraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriation Acts. Such fees are authorized to remain available until expended.

“(2) Authorized fees for recognized accreditation bodies.—An accreditation body rec-
recognized by the Secretary under subsection (b) may
assess a reasonable fee to accredit third-party audi-
tors.

“(h) LIMITATIONS.—

“(1) NO EFFECT ON SECTION 704 INSPEC-
TIONS.—The drug safety and quality audits per-
formed under this section shall not be considered in-
spections under section 704.

“(2) NO EFFECT ON INSPECTION AUTHOR-
ITY.—Nothing in this section affects the authority of
the Secretary to inspect any eligible entity pursuant
to this Act.”.

(b) REPORT ON ACCREDITED THIRD-PARTY AUDI-
TORS.—Not later than January 20, 2017, the Comptroller
General of the United States shall submit to Congress a
report that addresses the following, with respect to the pe-
riod beginning on the date of implementation of section
809 of the Federal Food, Drug, and Cosmetic Act (as
added by subsection (a)) and ending on the date of such
report:

(1) The extent to which drug safety and quality
audits completed by accredited third-party auditors
under such section 809 are being used by the Sec-
retary of Health and Human Services (referred to in
this subsection as the “Secretary”) in establishing or
applying the risk-based inspection schedules under
section 510(h) of such Act (as amended by section
705).

(2) The extent to which drug safety and quality
audits completed by accredited third-party auditors
or agents are assisting the Food and Drug Adminis-
tration in evaluating compliance with sections
and 801(r) of such Act (as added by section 711).

(3) Whether the Secretary has been able to ac-
cess drug safety and quality audit reports completed
by accredited third-party auditors under such section
809.

(4) Whether accredited third-party auditors ac-
credited under such section 809 have adhered to the
conflict of interest provisions set forth in such sec-
tion.

(5) The extent to which the Secretary has au-
dited recognized accreditation bodies or accredited
third-party auditors to ensure compliance with the
requirements of such section 809.

(6) The number of waivers under subsection
(e)(7)(B) of such section 809 issued during the most
recent 12-month period and the official justification
by the Secretary for each determination that there
was insufficient access to an accredited third-party auditor.

(7) The number of times a manufacturer has used the same accredited third-party auditor for 2 or more consecutive drug safety and quality audits under such section 809.

(8) Recommendations to Congress regarding the accreditation program under such section 809, including whether Congress should continue, modify, or terminate the program.

SEC. 711. STANDARDS FOR ADMISSION OF IMPORTED DRUGS.

Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (o), by striking “drug or”; and

(2) by adding at the end the following:

“(r)(1) The Secretary may require, as a condition of granting admission to a drug imported or offered for import into the United States (other than an unapproved drug imported or offered for import into the United States for use in preclinical research or in a clinical investigation under an investigational new drug exemption under section 505(i)) that the importer electronically submit information demonstrating that the drug complies with applicable requirements of this Act.
“(2) The information described under paragraph (1) may include—

“(A) information demonstrating the regulatory status of the drug, such as the new drug application, abbreviated new drug application, or investigational new drug or Drug Master File number;

“(B) facility information, such as proof of registration and the unique facility identifier;

“(C) indication of compliance with current good manufacturing practice, testing results, certifications relating to satisfactory inspections, and compliance with the country of export regulations; and

“(D) any other information deemed necessary and appropriate by the Secretary to assess compliance of the article being offered for import.

“(3) Information requirements referred to in paragraph (2)(C) may, at the discretion of the Secretary, be satisfied—

“(A) by certifications from accredited third parties, as described under section 809;

“(B) through representation by a foreign government, if such inspection is conducted using standards and practices as agreed to by the Secretary; or
“(C) other appropriate documentation or evidence as described by the Secretary.

“(4) Not later than 18 months after the date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary shall publish a notice of proposed rulemaking in the Federal Register to promulgate regulations with respect to the requirements described in paragraph (1). Such requirements shall not be effective before 180 days after the Secretary promulgates the final rule.”.

SEC. 712. NOTIFICATION.

(a) Prohibited Acts.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

“(aaa) The failure to notify the Secretary in violation of section 569.”.

(b) Notification.—Subchapter E of chapter V (21 U.S.C. 360bbb et seq.) is amended by adding at the end the following:

“SEC. 569. NOTIFICATION.

“(a) Notification to Secretary.—With respect to a drug, the Secretary may require notification to the Secretary by a covered person if the covered person knows—

“(1) of a substantial loss or known theft of such drug in the United States; or
“(2) that such drug—

“(A) has been or is being counterfeited; and

“(B)(i) is the counterfeit product in commerce in the United States; or

“(ii) has been or is being imported into the United States.

“(b) MANNER OF NOTIFICATION.—Notification under this section shall be made in a reasonable time, in such reasonable manner, and by such reasonable means as the Secretary may require by regulation or specify in guidance.

“(c) DEFINITION.—In this section, the term ‘covered person’ means—

“(1) a person who is required to register under section 510 with respect to an establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a drug; or

“(2) a person engaged in the wholesale distribution (as defined in section 503(e)(3)(B)) of a drug.”.

SEC. 713. DESTRUCTION OF UNSAFE DRUGS.

(a) IN GENERAL.—The sixth sentence of section 801(a) (21 U.S.C. 381(a)) is amended by inserting before the period at the end the following: “, except that the Secretary of Health and Human Services, in collaboration
with the Secretary of Homeland Security, may cause the
destruction, without the opportunity for export, of any
drug refused admission that has reasonable probability of
causing serious adverse health consequences or death to
humans or animals, as determined by the Secretary of
Health and Human Services, or that is valued at an
amount that is $2,000 or less (or such higher amount as
the Secretary of Homeland Security may set by regulation
pursuant to section 1498 of title 19, United States
Code)’’.

(b) Notice.—Subsection (a) of section 801 (21
U.S.C. 381), as amended by subsection (a), is further
amended by inserting after the sixth sentence the fol-
lowing: “The Secretary of Health and Human Services
shall issue regulations providing for notice and an oppor-
tunity for an informal hearing, as described in the first
sentence of this subsection, on destruction of a drug under
the sixth sentence of this subsection. The regulations shall
provide notice and an opportunity for an informal hearing
to the owner or consignee before the destruction occurs.”.

(c) Applicability.—The amendment made by sub-
section (a) shall apply beginning on the effective date of
the regulations promulgated under the amendment made
by subsection (b).
SEC. 714. PROTECTION AGAINST INTENTIONAL ADULTERATION.

Section 303(b) (21 U.S.C. 333(b)) is amended by adding at the end the following:

“(7) Notwithstanding subsection (a)(2), any person that knowingly and intentionally adulterates a drug such that the drug is adulterated under subsection (a)(1), (b), (c), or (d) of section 501 and has a reasonable probability of causing serious adverse health consequences or death to humans or animals shall be imprisoned for not more than 20 years or fined not more than $1,000,000, or both.”.

SEC. 715. ENHANCED CRIMINAL PENALTY FOR COUNTERFEITING DRUGS.

Section 303(b) (21 U.S.C. 333(b)), as amended by section 714, is further amended by adding at the end the following:

“(8) Notwithstanding subsection (a)(2), any person who knowingly and intentionally violates section 301(i) shall be imprisoned for not more than 20 years or fined not more than $4,000,000 or both.”.

SEC. 716. EXTRATERRITORIAL JURISDICTION.

Chapter III (21 U.S.C. 331 et seq.) is amended by adding at the end the following:
“SEC. 311. EXTRATERRITORIAL JURISDICTION.

“There is extraterritorial jurisdiction over any violation of this Act relating to any article regulated under this Act if such article was intended for import into the United States or if any act in furtherance of the violation was committed in the United States.”.

SEC. 717. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this title (or an amendment made by this title) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

TITLE VIII—GENERATING ANTIBIOTIC INCENTIVES NOW

SEC. 801. EXTENSION OF EXCLUSIVITY PERIOD FOR DRUGS.

(a) In General.—Chapter V (21 U.S.C. 351 et seq.) is amended by inserting after section 505D the following:

“SEC. 505E. EXTENSION OF EXCLUSIVITY PERIOD FOR NEW QUALIFIED INFECTIOUS DISEASE PRODUCTS.

“(a) Extension.—If the Secretary approves an application pursuant to section 505 for a drug that has been designated as a qualified infectious disease product under subsection (d), the 4- and 5-year periods described in subsections(c)(3)(E)(ii) and (j)(5)(F)(ii) of section 505, the 3-year periods described in clauses (iii) and (iv) of sub-
section (c)(3)(E) and clauses (iii) and (iv) of subsection (j)(5)(F) of section 505, or the 7-year period described in section 527, as applicable, shall be extended by 5 years.

“(b) Relation to Pediatric Exclusivity.—Any extension under subsection (a) of a period shall be in addition to any extension of the period under section 505A with respect to the drug.

“(c) Limitations.—Subsection (a) does not apply to the approval of—

“(1) a supplement to an application under section 505(b) for any qualified infectious disease product for which an extension described in subsection (a) is in effect or has expired;

“(2) a subsequent application filed with respect to a product approved under section 505 for a change that results in a new indication, route of administration, dosing schedule, dosage form, delivery system, delivery device, or strength; or

“(3) an application for a product that is not approved for the use for which it received a designation under subsection (d).

“(d) Designation.—

“(1) In general.—The manufacturer or sponsor of a drug may request the Secretary to designate a drug as a qualified infectious disease product at
any time before the submission of an application under section 505(b) for such drug. The Secretary shall, not later than 60 days after the submission of such a request, determine whether the drug is a qualified infectious disease product.

“(2) LIMITATION.—Except as provided in paragraph (3), a designation under this subsection shall not be withdrawn for any reason, including modifications to the list of qualifying pathogens under subsection (f)(2)(C).

“(3) REVOCATION OF DESIGNATION.—The Secretary may revoke a designation of a drug as a qualified infectious disease product if the Secretary finds that the request for such designation contained an untrue statement of material fact.

“(e) REGULATIONS.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary shall adopt final regulations implementing this section.

“(2) PROCEDURE.—In promulgating a regulation implementing this section, the Secretary shall—

“(A) issue a notice of proposed rulemaking that includes a copy of the proposed regulation;
“(B) provide a period of not less than 60 days for comments on the proposed regulation; and

“(C) publish the final regulation not less than 30 days before the effective date of the regulation.

“(3) RESTRICTIONS.—Notwithstanding any other provision of law, the Secretary shall promulgate regulations implementing this section only as described in paragraph (2), except that the Secretary may issue interim guidance for sponsors seeking designation under subsection (d) prior to the promulgation of such regulations.

“(4) DESIGNATION PRIOR TO REGULATIONS.—The Secretary may designate drugs as qualified infectious disease products under subsection (d) prior to the promulgation of regulations under this subsection.

“(f) QUALIFYING PATHOGEN.—

“(1) DEFINITION.—In this section, the term ‘qualifying pathogen’ means a pathogen identified and listed by the Secretary under paragraph (2) that has the potential to pose a serious threat to public health, such as—
“(A) resistant gram positive pathogens, including methicillin-resistant Staphylococcus aureus, vancomycin-resistant Staphylococcus aureus, and vancomycin-resistant enterococcus;

“(B) multi-drug resistant gram negative bacteria, including Acinetobacter, Klebsiella, Pseudomonas, and E. coli species;

“(C) multi-drug resistant tuberculosis; and

“(D) Clostridium difficile.

“(2) LIST OF QUALIFYING PATHOGENS.—

“(A) IN GENERAL.—The Secretary shall establish and maintain a list of qualifying pathogens.

“(B) CONSIDERATIONS.—In establishing and maintaining the list of pathogens described under this section the Secretary shall—

“(i) consider—

“(I) the impact on the public health due to drug-resistant organisms in humans;

“(II) the rate of growth of drug-resistant organisms in humans;

“(III) the increase in resistance rates in humans; and
“(IV) the morbidity and mortality in humans; and

“(ii) consult with experts in infectious diseases, including the Centers for Disease Control and Prevention, the Food and Drug Administration, medical professionals, and the clinical research community.

“(C) Review.—Every 5 years, or more often as needed, the Secretary shall review, provide modifications to, and publish the list of qualifying pathogens under subparagraph (A) and shall by regulation revise the list as necessary, in accordance with subsection (e).

“(g) Qualified Infectious Disease Product.—The term ‘qualified infectious disease product’ means an antibacterial or antifungal drug for human use intended to treat serious or life-threatening infections, including those caused by—

“(1) an antibacterial or antifungal resistant pathogen, including novel or emerging infectious pathogens; or

“(2) qualifying pathogens listed by the Secretary under subsection (f).”.
(b) **APPLICATION.**—Section 505E of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), applies only with respect to a drug that is first approved under section 505(c) of such Act (21 U.S.C. 355(c)) on or after the date of the enactment of this Act.

SEC. 802. PRIORITY REVIEW.

(a) **AMENDMENT.**—Chapter V (21 U.S.C. 351 et seq.) is further amended by inserting after section 524 the following:

“SEC. 524A. PRIORITY REVIEW FOR QUALIFIED INFECTIOUS DISEASE PRODUCTS.

“If the Secretary designates a drug under section 505E(d) as a qualified infectious disease product, then the Secretary shall give priority review to any application submitted for approval for such drug under section 505(b).”.

(b) **APPLICATION.**—Section 524A of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), applies only with respect to an application that is submitted under section 505(b) of such Act (21 U.S.C. 355(b)) on or after the date of the enactment of this Act.

SEC. 803. FAST TRACK PRODUCT.

Section 506(a)(1) (21 U.S.C. 356(a)(1)) is amended by inserting “or if the Secretary designates the drug as a qualified infectious disease product under section 505E(d)” after “such a condition”.

SEC. 804. GAO STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall—

(1) conduct a study—

(A) on the need for incentives to encourage the research, development, and marketing of qualified infectious disease biological products and antifungal products; and

(B) consistent with trade and confidentiality data protections, assessing, for all antibacterial and antifungal drugs, including biological products, the average or aggregate—

(i) costs of all clinical trials for each phase;

(ii) percentage of success or failure at each phase of clinical trials; and

(iii) public versus private funding levels of the trials for each phase; and

(2) not later than 1 year after the date of enactment of this Act, submit a report to Congress on the results of such study, including any recommendations of the Comptroller General on appropriate incentives for addressing such need.

(b) CONTENTS.—The part of the study described in subsection (a)(1)(A) shall include—
(1) an assessment of any underlying regulatory issues related to qualified infectious disease products, including qualified infectious disease biological products;

(2) an assessment of the management by the Food and Drug Administration of the review of qualified infectious disease products, including qualified infectious disease biological products and the regulatory certainty of related regulatory pathways for such products;

(3) a description of any regulatory impediments to the clinical development of new qualified infectious disease products, including qualified infectious disease biological products, and the efforts of the Food and Drug Administration to address such impediments; and

(4) recommendations with respect to—

(A) improving the review and predictability of regulatory pathways for such products; and

(B) overcoming any regulatory impediments identified in paragraph (3).

(c) DEFINITIONS.—In this section:

(1) The term “biological product” has the meaning given to such term in section 351 of the Public Health Service Act (42 U.S.C. 262).
(2) The term “qualified infectious disease biological product” means a biological product intended to treat a serious or life-threatening infection described in section 505E(g) of the Federal Food, Drug, and Cosmetic Act, as added by section 3.

(3) The term “qualified infectious disease product” has the meaning given such term in section 505E(g) of the Federal Food, Drug, and Cosmetic Act, as added by section 3.

SEC. 805. CLINICAL TRIALS.

(a) Review and Revision of Guidance Documents.—

(1) In General.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall review and, as appropriate, revise not fewer than 3 guidance documents per year, which shall include—

(A) reviewing the guidance documents of the Food and Drug Administration for the conduct of clinical trials with respect to antibiotic drugs; and

(B) as appropriate, revising such guidance documents to reflect developments in scientific and medical information and technology and to ensure clarity regarding the procedures and re-

(2) **Issues for review.**—At a minimum, the review under paragraph (1) shall address the appropriate animal models of infection, in vitro techniques, valid micro-biological surrogate markers, the use of non-inferiority versus superiority trials, trial enrollment, data requirements, and appropriate delta values for non-inferiority trials.

(3) **Rule of construction.**—Except to the extent to which the Secretary makes revisions under paragraph (1)(B), nothing in this section shall be construed to repeal or otherwise affect the guidance documents of the Food and Drug Administration.

(b) **Recommendations for investigations.**—

(1) **Request.**—The sponsor of a drug intended to be designated as a qualified infectious disease product may request that the Secretary provide written recommendations for nonclinical and clinical investigations which the Secretary believes may be necessary to be conducted with the drug before such drug may be approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in treating, detecting, preventing, or identi-
199

fying a qualifying pathogen, as defined in section
505E of such Act.

(2) RECOMMENDATIONS.—If the Secretary has
reason to believe that a drug for which a request is
made under this subsection is a qualified infectious
disease product, the Secretary shall provide the per-
son making the request written recommendations for
the nonclinical and clinical investigations which the
Secretary believes, on the basis of information avail-
able to the Secretary at the time of the request,
would be necessary for approval under section 505
of the Federal Food, Drug, and Cosmetic Act (21
U.S.C. 355) of such drug for the use described in
paragraph (1).

(c) GAO STUDY.—Not later than January 1, 2016,
the Comptroller General of the United States shall submit
to Congress a report—

(1) regarding the review and revision of the
clinical trial guidance documents required under
subsection (a) and the impact such review and revi-
sion has had on the review and approval of qualified
infectious disease products;

(2) assessing—

(A) the effectiveness of the results-oriented
metrics managers employ to ensure that review-
ers of such products are familiar with, and consistently applying, clinical trial guidance documents; and

(B) the predictability of related regulatory pathways and review;

(3) identifying any outstanding regulatory impediments to the clinical development of qualified infectious disease products;

(4) reporting on the progress the Food and Drug Administration has made in addressing the impediments identified under paragraph (3); and

(5) containing recommendations regarding how to improve the review of, and regulatory pathway for, such products.

SEC. 806. REGULATORY CERTAINTY AND PREDICTABILITY.

(a) Initial Strategy and Implementation Plan.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the "Secretary") shall submit to Congress a strategy and implementation plan with respect to the requirements of this Act. The strategy and implementation plan shall include—

(1) a description of the regulatory challenges to clinical development, approval, and licensure of qualified infectious disease products;
(2) the regulatory and scientific priorities of the Secretary with respect to such challenges; and

(3) the steps the Secretary will take to ensure regulatory certainty and predictability with respect to qualified infectious disease products, including steps the Secretary will take to ensure managers and reviewers are familiar with related regulatory pathways, requirements of the Food and Drug Administration, guidance documents related to such products, and applying such requirements consistently.

(b) Subsequent Report.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on—

(1) the progress made toward the priorities identified under subsection (a)(2);

(2) the number of qualified infectious disease products that have been submitted for approval or licensure on or after the date of enactment of this Act;

(3) a list of qualified infectious disease products with information on the types of exclusivity granted for each product, consistent with the information published under section 505(j)(7)(A)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)(A)(iii));
(4) the number of such qualified infectious disease products and that have been approved or licensed on or after the date of enactment of this Act; and

(5) the number of calendar days it took for the approval or licensure of the qualified infectious disease products approved or licensed on or after the date of enactment of this Act.

TITLE IX—DRUG APPROVAL AND PATIENT ACCESS

SEC. 901. ENHANCEMENT OF ACCELERATED PATIENT ACCESS TO NEW MEDICAL TREATMENTS.

(a) Findings; Sense of Congress.—

(1) Findings.—Congress finds as follows:

(A) The Food and Drug Administration (referred to in this section as the “FDA”) serves a critical role in helping to assure that new medicines are safe and effective. Regulatory innovation is 1 element of the Nation’s strategy to address serious and life-threatening diseases or conditions by promoting investment in and development of innovative treatments for unmet medical needs.

(B) During the 2 decades following the establishment of the accelerated approval mecha-
nism, advances in medical sciences, including
genomics, molecular biology, and bioinformatics,
have provided an unprecedented understanding
of the underlying biological mechanism and
pathogenesis of disease. A new generation of
modern, targeted medicines is under develop-
ment to treat serious and life-threatening dis-
cases, some applying drug development strate-
gies based on biomarkers or pharmacogenomics,
predictive toxicology, clinical trial enrichment
techniques, and novel clinical trial designs, such
as adaptive clinical trials.

(C) As a result of these remarkable sci-
entific and medical advances, the FDA should
be encouraged to implement more broadly effec-
tive processes for the expedited development
and review of innovative new medicines in-
tended to address unmet medical needs for seri-
ous or life-threatening diseases or conditions,
including those for rare diseases or conditions,
using a broad range of surrogate or clinical
endpoints and modern scientific tools earlier in
the drug development cycle when appropriate.
This may result in fewer, smaller, or shorter
clinical trials for the intended patient popu-
lation or targeted subpopulation without compromising or altering the high standards of the FDA for the approval of drugs.

(D) Patients benefit from expedited access to safe and effective innovative therapies to treat unmet medical needs for serious or life-threatening diseases or conditions.

(E) For these reasons, the statutory authority in effect on the day before the date of enactment of this Act governing expedited approval of drugs for serious or life-threatening diseases or conditions should be amended in order to enhance the authority of the FDA to consider appropriate scientific data, methods, and tools, and to expedite development and access to novel treatments for patients with a broad range of serious or life-threatening diseases or conditions.

(2) Sense of Congress.—It is the sense of Congress that the Food and Drug Administration should apply the accelerated approval and fast track provisions set forth in section 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356), as amended by this section, to help expedite the development and availability to patients of treatments for
serious or life-threatening diseases or conditions while maintaining safety and effectiveness standards for such treatments.

(b) Expedited Approval of Drugs for Serious or Life-Threatening Diseases or Conditions.—Section 506 (21 U.S.C. 356) is amended to read as follows:

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“SEC. 506. EXPEDITED APPROVAL OF DRUGS FOR SERIOUS OR LIFE-THREATENING DISEASES OR CONDITIONS.

“(a) Designation of Drug as Fast Track Product.—

“(1) In general.—The Secretary shall, at the request of the sponsor of a new drug, facilitate the development and expedite the review of such drug if it is intended, whether alone or in combination with one or more other drugs, for the treatment of a serious or life-threatening disease or condition, and it demonstrates the potential to address unmet medical needs for such a disease or condition. (In this section, such a drug is referred to as a ‘fast track product’.)

“(2) Request for designation.—The sponsor of a new drug may request the Secretary to designate the drug as a fast track product. A request for the designation may be made concurrently with,
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or at any time after, submission of an application
for the investigation of the drug under section 505(i)
or section 351(a)(3) of the Public Health Service
Act.

“(3) DESIGNATION.—Within 60 calendar days
after the receipt of a request under paragraph (2),
the Secretary shall determine whether the drug that
is the subject of the request meets the criteria de-
scribed in paragraph (1). If the Secretary finds that
the drug meets the criteria, the Secretary shall des-
ignate the drug as a fast track product and shall
take such actions as are appropriate to expedite the
development and review of the application for ap-
proval of such product.

“(b) ACCELERATED APPROVAL OF A DRUG FOR A
SERIOUS OR LIFE-THREATENING DISEASE OR CONDI-
TION, INCLUDING A FAST TRACK PRODUCT.—

“(1) IN GENERAL.—

“(A) ACCELERATED APPROVAL.—The Sec-
retary may approve an application for approval
of a product for a serious or life-threatening
disease or condition, including a fast track
product, under section 505(e) or section 351(a)
of the Public Health Service Act upon a deter-
mination that the product has an effect on a
surrogate endpoint that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit, taking into account the severity, rarity, or prevalence of the condition and the availability or lack of alternative treatments. The approval described in the preceding sentence is referred to in this section as ‘accelerated approval’.

“(B) EVIDENCE.—The evidence to support that an endpoint is reasonably likely to predict clinical benefit under subparagraph (A) may include epidemiological, pathophysiological, therapeutic, pharmacologic, or other evidence developed using biomarkers, for example, or other scientific methods or tools.

“(2) LIMITATION.—Approval of a product under this subsection may be subject to 1 or both of the following requirements:

“(A) That the sponsor conduct appropriate post-approval studies to verify and describe the predicted effect on irreversible morbidity or mortality or other clinical benefit.
“(B) That the sponsor submit copies of all promotional materials related to the product during the preapproval review period and, following approval and for such period thereafter as the Secretary determines to be appropriate, at least 30 days prior to dissemination of the materials.

“(3) EXPEDITED WITHDRAWAL OF APPROVAL.—The Secretary may withdraw approval of a product approved under accelerated approval using expedited procedures (as prescribed by the Secretary in regulations which shall include an opportunity for an informal hearing) if—

“(A) the sponsor fails to conduct any required post-approval study of the drug with due diligence;

“(B) a study required to verify and describe the predicted effect on irreversible morbidity or mortality or other clinical benefit of the product fails to verify and describe such effect or benefit;

“(C) other evidence demonstrates that the product is not safe or effective under the conditions of use; or
“(D) the sponsor disseminates false or misleading promotional materials with respect to the product.

“(c) Review of Incomplete Applications for Approval of a Fast Track Product.—

“(1) In general.—If the Secretary determines, after preliminary evaluation of clinical data submitted by the sponsor, that a fast track product may be effective, the Secretary shall evaluate for filing, and may commence review of portions of, an application for the approval of the product before the sponsor submits a complete application. The Secretary shall commence such review only if the applicant—

“(A) provides a schedule for submission of information necessary to make the application complete; and

“(B) pays any fee that may be required under section 736.

“(2) Exception.—Any time period for review of human drug applications that has been agreed to by the Secretary and that has been set forth in goals identified in letters of the Secretary (relating to the use of fees collected under section 736 to expedite the drug development process and the review of
human drug applications) shall not apply to an application submitted under paragraph (1) until the date on which the application is complete.

“(d) AWARENESS EFFORTS.—The Secretary shall—

“(1) develop and disseminate to physicians, patient organizations, pharmaceutical and biotechnology companies, and other appropriate persons a description of the provisions of this section applicable to accelerated approval and fast track products; and

“(2) establish a program to encourage the development of surrogate and clinical endpoints, including biomarkers, and other scientific methods and tools that can assist the Secretary in determining whether the evidence submitted in an application is reasonably likely to predict clinical benefit for serious or life-threatening conditions for which significant unmet medical needs exist.

“(e) CONSTRUCTION.—

“(1) PURPOSE.—The amendments made by the Food and Drug Administration Safety and Innovation Act to this section are intended to encourage the Secretary to utilize innovative and flexible approaches to the assessment of products under accelerated approval for treatments for patients with seri-
ous or life-threatening diseases or conditions and unmet medical needs.

“(2) CONSTRUCTION.—Nothing in this section shall be construed to alter the standards of evidence under subsection (c) or (d) of section 505 (including the substantial evidence standard in section 505(d)) of this Act or under section 351(a) of the Public Health Service Act. Such sections and standards of evidence apply to the review and approval of products under this section, including whether a product is safe and effective. Nothing in this section alters the ability of the Secretary to rely on evidence that does not come from adequate and well-controlled investigations for the purpose of determining whether an endpoint is reasonably likely to predict clinical benefit as described in subsection (b)(1)(B).”.

(c) GUIDANCE; AMENDED REGULATIONS.—

(1) DRAFT GUIDANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall issue draft guidance to implement the amendments made by this section. In developing such guidance, the Secretary shall specifically consider issues arising under the accelerated approval and fast track processes
under section 506 of the Federal Food, Drug, and Cosmetic Act, as amended by subsection (b), for drugs designated for a rare disease or condition under section 526 of such Act (21 U.S.C. 360bb) and shall also consider any unique issues associated with very rare diseases.

(2) Final Guidance.—Not later than 1 year after the issuance of draft guidance under paragraph (1), and after an opportunity for public comment, the Secretary shall issue final guidance.

(3) Conforming Changes.—The Secretary shall issue, as necessary, conforming amendments to the applicable regulations under title 21, Code of Federal Regulations, governing accelerated approval.

(4) No Effect of Inaction on Requests.—If the Secretary fails to issue final guidance or amended regulations as required by this subsection, such failure shall not preclude the review of, or action on, a request for designation or an application for approval submitted pursuant to section 506 of the Federal Food, Drug, and Cosmetic Act, as amended by subsection (b).

(d) Independent Review.—The Secretary may, in conjunction with other planned reviews, contract with an independent entity with expertise in assessing the quality
and efficiency of biopharmaceutical development and regulatory review programs to evaluate the Food and Drug Administration’s application of the processes described in section 506 of the Federal Food, Drug, and Cosmetic Act, as amended by subsection (b), and the impact of such processes on the development and timely availability of innovative treatments for patients suffering from serious or life-threatening conditions. Any such evaluation shall include consultation with regulated industries, patient advocacy and disease research foundations, and relevant academic medical centers.

**SEC. 902. BREAKTHROUGH THERAPIES.**

(a) In General.—Section 506 (21 U.S.C. 356), as amended by section 2, is further amended—

(1) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(2) by redesignating subsection (d) as subsection (f);

(3) by inserting before subsection (b), as so redesignated, the following:

“(a) Designation of a Drug as a Breakthrough Therapy.—

“(1) In General.—The Secretary shall, at the request of the sponsor of a drug, expedite the development and review of such drug if the drug is in—
tended, alone or in combination with 1 or more other
drugs, to treat a serious or life-threatening disease
or condition and preliminary clinical evidence indi-
cates that the drug may demonstrate substantial im-
provement over existing therapies on 1 or more clini-
cally significant endpoints, such as substantial treat-
ment effects observed early in clinical development.
(In this section, such a drug is referred to as a
‘breakthrough therapy’.)

“(2) Request for designation.—The spon-
sor of a drug may request the Secretary to designate
the drug as a breakthrough therapy. A request for
the designation may be made concurrently with, or
at any time after, the submission of an application
for the investigation of the drug under section 505(i)
or section 351(a)(3) of the Public Health Service
Act.

“(3) Designation.—

“(A) In general.—Not later than 60 cal-
endar days after the receipt of a request under
paragraph (2), the Secretary shall determine
whether the drug that is the subject of the re-
quest meets the criteria described in paragraph
(1). If the Secretary finds that the drug meets
the criteria, the Secretary shall designate the
drug as a breakthrough therapy and shall take
such actions as are appropriate to expedite the
development and review of the application for
approval of such drug.

“(B) ACTIONS.—The actions to expedite
the development and review of an application
under subparagraph (A) may include, as appro-
priate—

“(i) holding meetings with the sponsor
and the review team throughout the devel-
opment of the drug;

“(ii) providing timely advice to, and
interactive communication with, the spon-
sor regarding the development of the drug
to ensure that the development program to
gather the non-clinical and clinical data
necessary for approval is as efficient as
practicable;

“(iii) involving senior managers and
experienced review staff, as appropriate, in
a collaborative, cross-disciplinary review;

“(iv) assigning a cross-disciplinary
project lead for the Food and Drug Ad-
ministration review team to facilitate an
efficient review of the development pro-
gram and to serve as a scientific liaison between the review team and the sponsor; and

“(v) taking steps to ensure that the design of the clinical trials is as efficient as practicable, when scientifically appropriate, such as by minimizing the number of patients exposed to a potentially less efficacious treatment.”;

(4) in subsection (f)(1), as so redesignated, by striking “applicable to accelerated approval” and inserting “applicable to breakthrough therapies, accelerated approval, and”; and

(5) by adding at the end the following:

“(g) REPORT.—Beginning in fiscal year 2013, the Secretary shall annually prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, and make publicly available, with respect to this section for the previous fiscal year—

“(1) the number of drugs for which a sponsor requested designation as a breakthrough therapy;

“(2) the number of products designated as a breakthrough therapy; and
“(3) for each product designated as a breakthrough therapy, a summary of the actions taken under subsection (a)(3).”.

(b) GUIDANCE; AMENDED REGULATIONS.—

(1) IN GENERAL.—

(A) GUIDANCE.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall issue draft guidance on implementing the requirements with respect to breakthrough therapies, as set forth in section 506(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356(a)), as amended by this section. The Secretary shall issue final guidance not later than 1 year after the close of the comment period for the draft guidance.

(B) AMENDED REGULATIONS.—If the Secretary determines that it is necessary to amend the regulations under title 21, Code of Federal Regulations in order to implement the amendments made by this section to section 506(a) of the Federal Food, Drug, and Cosmetic Act, the Secretary shall amend such regulations not
later than 2 years after the date of enactment of this Act.

(2) REQUIREMENTS.—Guidance issued under this section shall—

(A) specify the process and criteria by which the Secretary makes a designation under section 506(a)(3) of the Federal Food, Drug, and Cosmetic Act; and

(B) specify the actions the Secretary shall take to expedite the development and review of a breakthrough therapy pursuant to such designation under such section 506(a)(3), including updating good review management practices to reflect breakthrough therapies.

(c) INDEPENDENT REVIEW.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States, in consultation with appropriate experts, shall assess the manner by which the Food and Drug Administration has applied the processes described in section 506(a) of the Federal Food, Drug, and Cosmetic Act, as amended by this section, and the impact of such processes on the development and timely availability of innovative treatments for patients affected by serious or life-threatening conditions. Such assessment shall be made publicly available upon completion.
(d) CONFORMING AMENDMENTS.—Section 506B(e) (21 U.S.C. 356b) is amended by striking “section 506(b)(2)(A)” each place such term appears and inserting “section 506(c)(2)(A)”.

SEC. 903. CONSULTATION WITH EXTERNAL EXPERTS ON RARE DISEASES, TARGETED THERAPIES, AND GENETIC TARGETING OF TREATMENTS.

Subchapter E of chapter V (21 U.S.C. 360bbb et seq.) is amended by adding at the end the following:

“SEC. 568. CONSULTATION WITH EXTERNAL EXPERTS ON RARE DISEASES, TARGETED THERAPIES, AND GENETIC TARGETING OF TREATMENTS.

“(a) IN GENERAL.—For the purpose of promoting the efficiency of and informing the review by the Food and Drug Administration of new drugs and biological products for rare diseases and drugs and biological products that are genetically targeted, the following shall apply:

“(1) CONSULTATION WITH STAKEHOLDERS.—Consistent with sections X.C and IX.E.4 of the PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017, as referenced in the letters described in section 101(b) of the Prescription Drug User Fee Amendments of 2012, the Secretary shall ensure that opportunities exist, at a time the Secretary determines appro-
appropriate, for consultations with stakeholders on the
topics described in subsection (e).

“(2) CONSULTATION WITH EXTERNAL EXPERTS.—The Secretary shall develop and maintain a
list of external experts who, because of their special
expertise, are qualified to provide advice on rare dis-
ease issues, including topics described in subsection
(c). The Secretary may, when appropriate to address
a specific regulatory question, consult such external
experts, or other experts as appropriate, on any
topic, including the topics described in subsection
(c), when such consultation is necessary because the
Secretary lacks specific scientific, medical, or tech-
nical expertise necessary for the performance of its
regulatory responsibilities and the necessary exper-
tise can be provided by the external experts.

“(b) EXTERNAL EXPERTS.—For purposes of sub-
section (a)(2), external experts are those who possess sci-
entific or medical training that the Secretary lacks with
respect to one or more rare diseases.

“(c) TOPICS FOR CONSULTATION.—Topics for con-
sultation pursuant to this section may include—

“(1) rare diseases;

“(2) the severity of rare diseases;
“(3) the unmet medical need associated with rare diseases;

“(4) the willingness and ability of individuals with a rare disease to participate in clinical trials;

“(5) an assessment of the risk-benefit tolerance of patients with rare diseases;

“(6) the general design of clinical trials for rare disease populations and subpopulations; and

“(7) demographics and the clinical description of patient populations.

“(d) Classification as Special Government Employees.—The external experts who are consulted under this section may be considered special government employees, as defined under section 202 of title 18, United States Code.

“(e) Protection of Proprietary Information.—Nothing in this section shall be construed to alter the protections offered by laws, regulations, and policies governing disclosure of confidential commercial or trade secret information, and any other information exempt from disclosure pursuant to section 552(b) of title 5, United States Code, as such provisions would be applied to consultation with individuals and organizations prior to the date of enactment of this section.
“(f) OTHER CONSULTATION.—Nothing in this section shall be construed to limit the Secretary’s ability to consult with individuals and organizations as authorized prior to the date of enactment of this section.

“(g) NO RIGHT OR OBLIGATION.—Nothing in this section shall be construed to create a legal right for a consultation on any matter or require the Secretary to meet with any particular expert or stakeholder. Nothing in this section shall be construed to alter agreed upon goals and procedures identified in the letters described in section 101(b) of the Prescription Drug User Fee Amendments of 2012. Nothing in this section is intended to increase the number of review cycles as in effect before the date of enactment of this section.”.

SEC. 904. ACCESSIBILITY OF INFORMATION ON PRESCRIPTION DRUG CONTAINER LABELS BY VISUALLY-IMPAIRED AND BLIND CONSUMERS.

(a) ENSURING ACCESSIBILITY.—

   (1) IN GENERAL.—The Architectural and Transportation Barriers Compliance Board (referred to in this section as the “Access Board”) shall convene a stakeholder working group (referred to in this section as the “working group”) to develop best practices on access to information on prescription
drug container labels for individuals who are blind
or visually impaired.

(2) MEMBERS.—The working group shall be
comprised of representatives of national organiza-
tions representing blind and visually-impaired indi-
viduals, national organizations representing the el-
derly, and industry groups representing stake-
holders, including retail, mail order, and independent
community pharmacies, who would be impacted by
such best practices. Representation within the work-
ing group shall be divided equally between consumer
and industry advocates.

(3) BEST PRACTICES.—

(A) IN GENERAL.—The working group
shall develop, not later than 1 year after the
date of the enactment of this Act, best practices
for pharmacies to ensure that blind and vis-
ually-impaired individuals have safe, consistent,
reliable, and independent access to the informa-
tion on prescription drug container labels.

(B) PUBLIC AVAILABILITY.—The best
practices developed under subparagraph (A)
may be made publicly available, including
through the Internet Web sites of the working
group participant organizations, and through
other means, in a manner that provides access
to interested individuals, including individuals
with disabilities.

(C) LIMITATIONS.—The best practices de-
developed under subparagraph (A) shall not be
construed as accessibility guidelines or stand-
ards of the Access Board, and shall not confer
any rights or impose any obligations on working
group participants or other persons. Nothing in
this section shall be construed to limit or condi-
tion any right, obligation, or remedy available
under the Americans with Disabilities Act of
1990 (42 U.S.C. 12101 et seq.) or any other
Federal or State law requiring effective commu-
ication, barrier removal, or nondiscrimination
on the basis of disability.

(4) CONSIDERATIONS.—In developing and
issuing the best practices under paragraph (3)(A),
the working group shall consider—

(A) the use of—

(i) Braille;

(ii) auditory means, such as—

(I) “talking bottles” that provide
audible container label information;
(II) digital voice recorders attached to the prescription drug container; and

(III) radio frequency identification tags;

(iii) enhanced visual means, such as—

(I) large font labels or large font “duplicate” labels that are affixed or matched to a prescription drug container;

(II) high-contrast printing; and

(III) sans-serif font; and

(iv) other relevant alternatives as determined by the working group;

(B) whether there are technical, financial, manpower, or other factors unique to pharmacies with 20 or fewer retail locations which may pose significant challenges to the adoption of the best practices; and

(C) such other factors as the working group determines to be appropriate.

(5) INFORMATION CAMPAIGN.—Upon completion of development of the best practices under subsection (a)(3), the National Council on Disability, in consultation with the working group, shall conduct
an informational and educational campaign designed
to inform individuals with disabilities, pharmacists,
and the public about such best practices.

(6) FACA waiver.—The Federal Advisory
Committee Act (5 U.S.C. App.) shall not apply to
the working group.

(b) GAO Study.—

(1) In general.—Beginning 18 months after
the completion of the development of best practices
under subsection (a)(3)(A), the Comptroller General
of the United States shall conduct a review of the
extent to which pharmacies are utilizing such best
practices, and the extent to which barriers to accessible information on prescription drug container la-

(2) Report.—Not later than September 30,
2016, the Comptroller General of the United States
shall submit to Congress a report on the review con-
ducted under paragraph (1). Such report shall in-
clude recommendations about how best to reduce the
barriers experienced by blind and visually-impaired
individuals to independently accessing information
on prescription drug container labels.

(c) Definitions.—In this section—
(1) the term “pharmacy” includes a pharmacy that receives prescriptions and dispenses prescription drugs through an Internet Web site or by mail;

(2) the term “prescription drug” means a drug subject to section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)); and

(3) the term “prescription drug container label” means the label with the directions for use that is affixed to the prescription drug container by the pharmacist and dispensed to the consumer.

TITLE X—DRUG SHORTAGES

SEC. 1001. DRUG SHORTAGES.

(a) In General.—Section 506C (21 U.S.C. 356c) is amended to read as follows:

“SEC. 506C. DISCONTINUANCE OR INTERRUPTION IN THE PRODUCTION OF LIFE-SAVING DRUGS.

“(a) In General.—A manufacturer of a drug—

“(1) that is—

“(A) life-supporting;

“(B) life-sustaining;

“(C) intended for use in the prevention of a debilitating disease or condition;

“(D) a sterile injectable product; or

“(E) used in emergency medical care or during surgery; and
“(2) that is not a radio pharmaceutical drug product, a human tissue replaced by a recombinant product, a product derived from human plasma protein, or any other product as designated by the Secretary,

shall notify the Secretary, in accordance with subsection (b), of a permanent discontinuance in the manufacture of the drug or an interruption of the manufacture of the drug that could lead to a meaningful disruption in the supply of that drug in the United States.

“(b) Timing.—A notice required under subsection (a) shall be submitted to the Secretary—

“(1) at least 6 months prior to the date of the discontinuance or interruption; or

“(2) if compliance with paragraph (1) is impossible, as soon as practicable.

“(c) Expedited Inspections and Reviews.—If, based on notifications described in subsection (a) or any other relevant information, the Secretary concludes that there is, or is likely to be, a drug shortage of a drug described in subsection (a), the Secretary may—

“(1) expedite the review of a supplement to a new drug application submitted under section 505(b), an abbreviated new drug application submitted under section 505(j), or a supplement to such
an application submitted under section 505(j) that
could help mitigate or prevent such shortage; or

“(2) expedite an inspection or reinspection of
an establishment that could help mitigate or prevent
such drug shortage.

“(d) COORDINATION.—

“(1) TASK FORCE AND STRATEGIC PLAN.—

“(A) IN GENERAL.—

“(i) TASK FORCE.—As soon as prac-
ticable after the date of enactment of the
Food and Drug Administration Safety and
Innovation Act, the Secretary shall estab-
lish a Task Force to develop and imple-
ment a strategic plan for enhancing the
Secretary’s response to preventing and
mitigating drug shortages.

“(ii) STRATEGIC PLAN.—The strategic
plan described in clause (i) shall include—

“(I) plans for enhanced inter-
agency and intraagency coordination,
communication, and decisionmaking;

“(II) plans for ensuring that
drug shortages are considered when
the Secretary initiates a regulatory
action that could precipitate a drug
shortage or exacerbate an existing drug shortage;

“(III) plans for effective communication with outside stakeholders, including who the Secretary should alert about potential or actual drug shortages, how the communication should occur, and what types of information should be shared; and

“(IV) plans for considering the impact of drug shortages on research and clinical trials.

“(iii) CONSULTATION.—In carrying out this subparagraph, the Task Force shall ensure consultation with the appropriate offices within the Food and Drug Administration, including the Office of the Commissioner, the Center for Drug Evaluation and Research, the Office of Regulatory Affairs, and employees within the Department of Health and Human Services with expertise regarding drug shortages. The Secretary shall engage external stakeholders and experts as appropriate.
“(B) TIMING.—Not later than 1 year after
the date of enactment Food and Drug Adminis-
tration Safety and Innovation Act, the Task
Force shall—

“(i) publish the strategic plan de-
scribed in subparagraph (A); and

“(ii) submit such plan to Congress.

“(2) COMMUNICATION.—The Secretary shall
ensure that, prior to any enforcement action or
issuance of a warning letter that the Secretary de-
termines could reasonably be anticipated to lead to
a meaningful disruption in the supply in the United
States of a drug described under subsection (a),
there is communication with the appropriate office
of the Food and Drug Administration with expertise
regarding drug shortages regarding whether the ac-
tion or letter could cause, or exacerbate, a shortage
of the drug.

“(3) ACTION.—If the Secretary determines,
after the communication described in paragraph (2),
that an enforcement action or a warning letter could
reasonably cause or exacerbate a shortage of a drug
described under subsection (a), then the Secretary
shall evaluate the risks associated with the impact of
such shortage upon patients and those risks associ-
ated with the violation involved before taking such
action or issuing such letter, unless there is immi-
nent risk of serious adverse health consequences or
death to humans.

“(4) Reporting by Other Entities.—The
Secretary shall identify or establish a mechanism by
which healthcare providers and other third-party or-
ganizations may report to the Secretary evidence of
a drug shortage.

“(5) Review and Construction.—No deter-
mination, finding, action, or omission of the Sec-
etary under this subsection shall—

“(A) be subject to judicial review; or

“(B) be construed to establish a defense to
an enforcement action by the Secretary.

“(e) Recordkeeping and Reporting.—

“(1) Recordkeeping.—The Secretary shall
maintain records related to drug shortages, includ-
ing with respect to each of the following:

“(A) The number of manufacturers that
submitted a notification to the Secretary under
subsection (a) in each calendar year.

“(B) The number of drug shortages that
occurred in each calendar year and a list of
drug names, drug types, and classes that were
the subject of such shortages.

“(C) A list of the known factors contrib-
uting to the drug shortages described in sub-
paragraph (B).

“(D)(i) A list of major actions taken by
the Secretary to prevent or mitigate the drug
shortages described in subparagraph (B).

“(ii) The Secretary shall include in the list
under clause (i) the following:

“(I) The number of applications for
which the Secretary expedited review under
subsection (c)(1) in each calendar year.

“(II) The number of expedited estab-
lishment inspections or reinspections that
the Secretary expedited under subsection
(c)(2) in each calendar year.

“(E) The number of notifications sub-
mited to the Secretary under subsection (a) in
each calendar year.

“(F) The names of manufacturers that the
Secretary has learned did not comply with the
notification requirement under subsection (a) in
each calendar year.
“(G) The number of times in each calendar year that the Secretary determined under subsection (d)(3) that an enforcement action or a warning letter could reasonably cause or exacerbate a shortage of a drug described under subsection (a), but did not evaluate the risks associated with the impact of such shortage upon patients and those risks associated with the violation involved before taking such action or issuing such letter on the grounds that there was imminent risk of serious adverse health consequences or death to humans, and a summary of the determinations.

“(H) A summary of the communications made and actions taken under subsection (d) in each calendar year.

“(I) Any other information the Secretary deems appropriate to better prevent and mitigate drug shortages.

“(2) TRENDS ANALYSIS.—The Secretary is authorized to retain a third party to conduct a study, if the Secretary believes such a study would help clarify the causes, trends, or solutions related to drug shortages.
“(3) Annual summary.—Not later than 18 months after the date of enactment of the Food and Drug Administration Safety and Innovation Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing, with respect to the 1-year period preceding such report, the findings described in paragraph (1). Such report shall not include any information that is exempt from disclosure under section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section.

“(f) Definitions.—For purposes of this section—

“(1) the term ‘drug’—

“(A) means a drug (as defined in section 201(g)) that is intended for human use; and

“(B) does not include biological products (as defined in section 351 of the Public Health Service Act), unless otherwise provided by the Secretary in the regulations promulgated under subsection (h);

“(2) the term ‘drug shortage’ or ‘shortage’, with respect to a drug, means a period of time when the demand or projected demand for the drug within
the United States exceeds the supply of the drug; and

“(3) the term ‘meaningful disruption’—

“(A) means a change in production that is reasonably likely to lead to a reduction in the supply of a drug by a manufacturer that is more than negligible and impacts the ability of the manufacturer to fill orders or meet expected demand for its product; and

“(B) does not include interruptions in manufacturing due to matters such as routine maintenance or insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time.

“(g) DISTRIBUTION.—To the maximum extent practicable, the Secretary may distribute information on drug shortages and on the permanent discontinuation of the drugs described in this section to appropriate provider and patient organizations, except that any such distribution shall not include any information that is exempt from disclosure under section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section.

“(h) REGULATIONS.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of the Food and Drug
Administration Safety and Innovation Act, the Secretary shall adopt a final regulation implementing this section.

“(2) INCLUSION OF BIOLOGICAL PRODUCTS.—

“(A) IN GENERAL.—The Secretary may by regulation apply this section to biological products (as defined in section 351 of the Public Health Service Act) if the Secretary determines such inclusion would benefit the public health.

“(B) RULE FOR VACCINES.—If the Secretary applies this section to vaccines pursuant to subparagraph (A), the Secretary shall—

“(i) consider whether the notification requirement under subsection (a) may be satisfied by submitting a notification to the Centers for Disease Control and Prevention under the vaccine shortage notification program of such Centers; and

“(ii) explain the determination made by the Secretary under clause (i) in the regulation.

“(3) PROCEDURE.—In promulgating a regulation implementing this section, the Secretary shall—

“(A) issue a notice of proposed rulemaking that includes a copy of the proposed regulation;
“(B) provide a period of not less than 60 days for comments on the proposed regulation;

and

“(C) publish the final regulation not less than 30 days before the regulation’s effective date.

“(4) Restrictions.—Notwithstanding any other provision of Federal law, in implementing this section, the Secretary shall only promulgate regulations as described in paragraph (3).”.

(b) Effect of Notification.—The submission of a notification to the Secretary of Health and Human Services (referred to in this section as the “Secretary”) for purposes of complying with the requirement in section 506C(a) of the Federal Food, Drug, and Cosmetic Act (as amended by subsection (a)) shall not be construed—

(1) as an admission that any product that is the subject of such notification violates any provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(2) as evidence of an intention to promote or market the product for an indication or use for which the product has not been approved by the Secretary.
(c) INTERNAL REVIEW.—Not later than 2 years after the date of enactment of this Act, the Secretary shall—

(1) analyze and review the regulations promulgated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the guidances or policies issued under such Act related to drugs intended for human use, and the practices of the Food and Drug Administration regarding enforcing such Act related to manufacturing of such drugs, to identify any such regulations, guidances, policies, or practices that cause, exacerbate, prevent, or mitigate drug shortages (as defined in section 506C of the Federal Food, Drug, and Cosmetic Act (as amended by subsection (a)); and

(2) determine how regulations, guidances, policies, or practices identified under paragraph (1) should be modified, streamlined, expanded, or discontinued in order to reduce or prevent such drug shortages, taking into consideration the effect of any changes on the public health.

(d) STUDY ON MARKET FACTORS CONTRIBUTING TO DRUG SHORTAGES AND STOCKPILING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States, in consultation with
the Secretary, the Department of Health and Human Services Office of the Inspector General, the Attorney General, and Chairman of the Federal Trade Commission, shall publish a report reviewing any findings that drug shortages (as so defined) have led market participants to stockpile affected drugs or sell them at significantly increased prices, the impact of such activities on Federal revenue, and any economic factors that have exacerbated or created a market for such actions.

(2) CONTENT.—The report under paragraph (1) shall include—

(A) an analysis of the incidence of any of the activities described in paragraph (1) and the effect of such activities on the public health;

(B) an evaluation of whether in such cases there is a correlation between drugs in shortage and—

(i) the number of manufacturers producing such drugs;

(ii) the pricing structure, including Federal reimbursements, for such drugs before such drugs were in shortage, and to the extent possible, revenue received by each such manufacturer of such drugs;
(iii) pricing structure and revenue, to
the extent possible, for the same drugs
when sold under the conditions described
in paragraph (1); and
(iv) the impact of contracting prac-
tices by market participants (including
manufacturers, distributors, group pur-
chasing organizations, and providers) on
competition, access to drugs, and pricing
of drugs;
(C) whether the activities described in
paragraph (1) are consistent with applicable
law; and
(D) recommendations to Congress on what,
if any, additional reporting or enforcement ac-
tions are necessary.
(e) Trade Secret and Confidential Infor-
mation.—Nothing in this section alters or amends section
1905 of title 18, United States Code, or section 552(b)(4)
of title 5, United States Code.

**TITLE XI—OTHER PROVISIONS**

**SEC. 1101. GUIDANCE DOCUMENT REGARDING PRODUCT**

**PROMOTION USING THE INTERNET.**

Not later than 2 years after the date of enactment
this Act, the Secretary of Health and Human Services
shall issue a guidance document that describes the policy
of the Food and Drug Administration regarding the pro-
motion, using the Internet (including social media), of
medical products that are regulated by such Administra-
tion.

SEC. 1102. REAUTHORIZATION OF PROVISION RELATING TO
EXCLUSIVITY OF CERTAIN DRUGS CONTAINING SINGLE ENANTIOMERS.

Section 505(u)(4) (21 U.S.C. 355(u)(4)) is amended
by striking “2012” and inserting “2017”.

SEC. 1103. 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”.

SEC. 1104. ELECTRONIC SUBMISSION OF APPLICATIONS.

Subchapter D of chapter VII (21 U.S.C. 379k et seq.) is amended by inserting after section 745 the fol-
lowing:

“SEC. 745A. ELECTRONIC FORMAT FOR SUBMISSIONS.

“(a) DRUGS AND BIOLOGICS.—

“(1) IN GENERAL.—Beginning no earlier than
24 months after the issuance of a final guidance
issued after public notice and opportunity for com-
ment, submissions under subsection (b), (i), or (j) of
section 505 of this Act or subsection (a) or (k) of
section 351 of the Public Health Service Act shall be submitted in such electronic format as specified by the Secretary in such guidance.

“(2) GUIDANCE CONTENTS.—In the guidance under paragraph (1), the Secretary may—

“(A) provide a timetable for establishment by the Secretary of further standards for electronic submission as required by such paragraph; and

“(B) set forth criteria for waivers of and exemptions from the requirements of this subsection.

“(3) EXCEPTION.—This subsection shall not apply to submissions described in section 561.

“(b) DEVICES.—

“(1) IN GENERAL.—Beginning after the issuance of final guidance implementing this paragraph, pre-submissions and submissions for devices under section 510(k), 513(f)(2)(A)(ii), 515(c), 515(d), 515(f), 520(g), 520(m), or 564 of this Act or section 351 of the Public Health Service Act, and any supplements to such pre-submissions or submissions, shall include an electronic copy of such pre-submissions or submissions.
“(2) GUIDANCE CONTENTS.—In the guidance under paragraph (1), the Secretary may—

“(A) provide standards for the electronic copy required under such paragraph; and

“(B) set forth criteria for waivers of and exemptions from the requirements of this subsection.”.