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 dates.
Sec. 208. Streamlined hiring authority to support activities related to the process for the review of device applications.

TITLE III—FEES RELATING TO GENERIC DRUGS

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

TITLE IV—FEES RELATING TO BIOSIMILAR BIOLOGICAL PRODUCTS

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

TITLE V—PEDIATRIC DRUGS AND DEVICES

Sec. 501. Permanence.
Sec. 502. Written requests.
Sec. 503. Communication with Pediatric Review Committee.
Sec. 504. Access to data.
Sec. 505. Ensuring the completion of pediatric studies.
Sec. 506. Pediatric study plans.
Sec. 507. Reauthorizations.
Sec. 508. Report.
Sec. 509. Technical amendments.
Sec. 510. Relationship between pediatric labeling and new clinical investigation exclusivity.
Sec. 511. Pediatric rare diseases.

TITLE VI—MEDICAL DEVICE REGULATORY IMPROVEMENTS

Sec. 601. Reclassification procedures.
Sec. 602. Condition of approval studies.
Sec. 603. Postmarket surveillance.
Sec. 604. Sentinel.
Sec. 605. Recalls.
Sec. 606. Clinical holds on investigational device exemptions.
Sec. 607. Unique device identifier.
Sec. 608. Clarification of least burdensome standard.
Sec. 609. Custom devices.
Sec. 610. Agency documentation and review of certain decisions regarding devices.
Sec. 611. Good guidance practices relating to devices.
Sec. 612. Modification of de novo application process.
Sec. 613. Humanitarian device exemptions.
Sec. 614. Reauthorization of third-party review and inspections.
Sec. 615. 510(k) device modifications.
Sec. 616. Health information technology.

TITLE VII—DRUG SUPPLY CHAIN

Subtitle A—Drug Supply Chain

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

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Sec. 716. Compliance with international agreements.

Subtitle B—Pharmaceutical Distribution Integrity

Sec. 721. Short title.
Sec. 722. Securing the pharmaceutical distribution supply chain.
Sec. 723. Independent assessment.

TITLE VIII—GENERATING ANTIBIOTIC INCENTIVES NOW

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

TITLE IX—DRUG APPROVAL AND PATIENT ACCESS

Sec. 901. Enhancement of accelerated patient access to new medical treatments.
Sec. 902. Breakthrough therapies.
Sec. 903. Consultation with external experts on rare diseases, targeted therapies, and genetic targeting of treatments.
Sec. 904. Accessibility of information on prescription drug container labels by visually-impaired and blind consumers.
Sec. 905. Risk-benefit framework.
Sec. 906. Independent study on medical innovation inducement model.
Sec. 907. Orphan product grants program.
Sec. 908. Reporting of inclusion of demographic subgroups in clinical trials and data analysis in applications for drugs, biologics, and devices.

TITLE X—DRUG SHORTAGES

Sec. 1001. Drug shortages.

TITLE XI—OTHER PROVISIONS

Subtitle A—Reauthorizations

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

Subtitle B—Medical Gas Product Regulation

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

Subtitle C—Miscellaneous Provisions

Sec. 1121. Advisory committee conflicts of interest.
Sec. 1122. Guidance document regarding product promotion using the Internet.
Sec. 1123. Electronic submission of applications.
Sec. 1124. Combating prescription drug abuse.
Sec. 1125. Tanning bed labeling.
Sec. 1126. Optimizing global clinical trials.
Sec. 1127. Advancing regulatory science to promote public health innovation.
Sec. 1128. Information technology.
Sec. 1129. Reporting requirements.
Sec. 1130. Strategic integrated management plan.
Sec. 1131. Drug development and testing.
Sec. 1132. Patient participation in medical product discussions.
Sec. 1133. Nanotechnology regulatory science program.
Sec. 1134. Online pharmacy report to Congress.
Sec. 1135. Medication and device errors.
Sec. 1136. Compliance provision.
Sec. 1137. Ensuring adequate information regarding pharmaceuticals for all populations, particularly underrepresented subpopulations, including racial subgroups.
Sec. 1138. Report on small businesses.
Sec. 1139. Protections for the commissioned corps of the public health service act.
Sec. 1140. Regulations on clinical trial registration; GAO Study of clinical trial registration and reporting requirements.
Sec. 1141. Hydrocodone amendment.
Sec. 1142. Compliance date for rule relating to sunscreen drug products for over-the-counter human use.
Sec. 1143. Recommendations on interoperability standards.

Subtitle D—Synthetic Drugs

Sec. 1151. Short title.
Sec. 1152. Addition of synthetic drugs to schedule I of the Controlled Substances Act.
Sec. 1153. Temporary scheduling to avoid imminent hazards to public safety expansion.
Sec. 1154. Prohibition on imposing mandatory minimum sentences.

(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”.

†S 3187 ES
(b) FINDING.—The Congress finds that the fees auth-

orized by the amendments made in this title will be dedi-
cated toward expediting the drug development process and
the process for the review of human drug applications, in-
cluding 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 Con-
gressional 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 each 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 fiscal year or the first business day after the enactment of an appro-
priations Act providing for the collection and obligation of fees for such fiscal year under this section.”; and

(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) 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);

“(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 matter 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 inflation adjustment for fiscal year 2013 (as determined under paragraph (3)(A)); and

“(C) the dollar amount equal to the workload adjustment for fiscal year 2013 (as determined under paragraph (3)(B)).”; and

(B) by striking paragraphs (3) and (4) and inserting the following:
“(3) FISCAL YEAR 2013 INFLATION AND WORKLOAD 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 inflation adjustment for fiscal year 2013 shall be the sum of—

“(i) $652,709,000 multiplied by the result of an inflation adjustment calculation determined using the methodology described 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 meth-
odology described in subsection (c)(2)(A),
would exceed the percentage workload ad-
justment (as so determined) for fiscal year
2012, if both such adjustment percentages
were calculated using the 5-year base pe-
period consisting of fiscal years 2003
through 2007.

“(C) LIMITATION.—Under no cir-
cumstances shall the adjustment under sub-
paragraph (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 (e) and inserting the
following:

“(c) ADJUSTMENTS.—

“(1) INFLATION ADJUSTMENT.—For fiscal year
2014 and subsequent fiscal years, the revenues es-
tablished 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 percent 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 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; and

“(C) the average annual percent 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 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 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 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 paragraph 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”;

(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 through 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.—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 Prescription 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”.

†S 3187 ES
SEC. 105. SUNSET DATES.


(c) Previous Sunset Provision.—Section 106 of the Prescription Drug User Fee Amendments of 2007 (Title I of Public Law 110–85) is repealed.

(d) Technical Clarifications.—


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 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 (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 engaged 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) (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)”; and

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

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) by inserting “and subsection (f)” after “subparagraph (B)”; and

(ii) by striking “2008” and inserting “2013”; 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) (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:

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Fiscal Year 2013</th>
<th>Fiscal Year 2014</th>
<th>Fiscal Year 2015</th>
<th>Fiscal Year 2016</th>
<th>Fiscal Year 2017</th>
</tr>
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<tbody>
<tr>
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<td>$252,960</td>
<td>$258,019</td>
<td>$263,180</td>
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<td>Establishment Registration</td>
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<td>$3,200</td>
<td>$3,750</td>
<td>$3,872</td>
<td>$3,872</td>
</tr>
</tbody>
</table>

“(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(e) (21 U.S.C. 379j(e)) is amended—

1. in the subsection heading, by inserting ‘‘;

2. **Adjustments** after ‘‘Setting’’;

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

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

5. 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 adjustments to such fees, in the Federal Register.

   ‘‘(2) **Inflation Adjustments.**—

   ‘‘(A) **Adjustment to Total Revenue Amounts.**—For fiscal year 2014 and each subsequent 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 ADJUSTMENT TO TOTAL REVENUE AMOUNTS.—The applicable inflation adjustment for a fiscal year is—

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

“(II) the product of the base inflation adjustment under subparagraph (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 percent change in the cost, per full-time equiv-
alent position of the Food and Drug
Administration, of all personnel com-
pensation and benefits paid with re-
spect to such positions for the first 3
years of the preceding 4 fiscal years,
multiplied by 0.60; and

“(II) the average annual percent
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 ad-
justment for a fiscal year under clause
(i)—

“(I) is less than 1, such adjust-
ment 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 is necessary in order for total fee collections for such fiscal year to generate the total revenue amounts, as adjusted under paragraph (2).”.

(d) Fee Waiver or Reduction.—Section 738 (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) 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 (c).

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

(e) CONDITIONS.—Section 738(h)(1)(A) (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) (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 sub-
paragraph (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) by amending paragraph (3) 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) (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) (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) (21 U.S.C. 379j–1(a)) is amended—

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

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

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 submissions described in section 738(a)(2)(A) of the Federal Food, Drug, and Cosmetic Act (as in effect 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 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 submissions described in section 738(a)(2)(A) of the Federal Food, Drug, and Cosmetic Act received on or after October 1, 2012, regardless of the date of the enactment of this Act.

SEC. 207. SUNSET DATES.

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

(b) Reporting Requirements.—Section 738A (21 U.S.C. 739j–1) shall cease to be effective January 31, 2018.

(c) Previous Sunset Provision.—Section 217 of the Medical Device User Fee Amendments of 2007 (Title II of Public Law 110–85) is repealed.

(d) Technical Clarification.—Effective September 30, 2007, section 107 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250) is repealed.
SEC. 208. STREAMLINED HIRING AUTHORITY TO SUPPORT ACTIVITIES RELATED TO THE PROCESS FOR THE REVIEW OF DEVICE APPLICATIONS.

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 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-
drect 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-
application, 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 publish 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 publish 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 publish 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 re-
quired 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 assess-
ment 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 Adminis-
tration a list of the drug master file num-
bers that correspond to drug master files
that have successfully undergone an initial
completeness assessment, in accordance
with criteria to be published by the Sec-
retary, 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 ge-
neric 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 publish 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 publish 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 fol-
lowing the applicant’s withdrawal of the appli-
cation, be subject to a full fee under subpara-
graph (A).

“(F) ADDITIONAL FEE FOR ACTIVE PHAR-
MACEUTICAL 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 re-
quired under subparagraph (A), if—

“(i) such submission contains infor-
mation concerning the manufacture of an
active pharmaceutical ingredient at a facil-
ity 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 para-
graph (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 pharma-
ceutical 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 publish in the Federal Register a notice announcing the amount of the fees provided for in sub-
paragraph (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 publish 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 subpara-
graph (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 Administration 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) 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 mas-
ter 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 ab-
breviated new drug application.

“(C) 56 percent shall be derived from fees
under subsection (a)(4)(A)(i) (relating to ge-
eric 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 possessions.

“(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 possessions 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 Reg-
ister, for a fiscal year, by an amount equal to the sum of—

“(A) one;

“(B) the average annual percent 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 percent 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 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 ab-
breviated 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 facili-
ties in subsection (f)(2), the generic drug facil-
ity fee and active pharmaceutical ingredient fa-
cility fee under subsection (a) based on the rev-
ene 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 supple-
ment 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 in-
crement information not included by ref-
ereence to type II active pharmaceutical in-
redient drug master file.—In establishing the
fees under paragraphs (1) and (2), the amount of
the fee under subsection (a)(3)(F) shall be deter-
mined by multiplying—

“(A) the sum of—

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

“(ii) for each such ingredient that is
manufactured at more than one such facil-
ity, the total number of such additional fa-
cilities; 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 (c), 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 publish in the Federal Register a no-
tice requiring each person that owns a facility de-
scribed in subsection (a)(4)(A), or a site or organi-
ization 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 the previous year.

“(3) Contents of notice.—At a minimum, the submission required by paragraph (2) shall include 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 active pharmaceutical ingredients or finished dosage 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 repackager site.

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

“(D) INSPECTION AUTHORITY.—The Sec-
retary’s inspection authority under section
704(a)(1) shall extend to all such sites and or-
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 ab-
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 af-
iliate of that person, will be received within the
meaning of section 505(j)(5)(A) until such out-
standing 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 application or supplement to an abbreviated new drug application references a Type II active pharmaceutical 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 supplement 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 calendar days of the Secretary providing the notification, 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 abbrevi-
ated new drug application shall not be re-
ceived 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 pharma-
ceutical ingredient drug master files, abbreviated
new drug applications and prior approval supple-
ments, and generic drug facilities and active phar-
aceutical 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, as defined in section 744A(3), ap-
licable 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 sub-
paragraph.
“(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 (e), 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 recommendations under paragraph (4), 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.

“(6) MINUTES OF NEGOTIATION MEETINGS.—

“(A) PUBLIC AVAILABILITY.—Before presenting 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 Administration, minutes of all negotiation meetings conducted under this subsection between
the Food and Drug Administration and the generic 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.

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

(1) in subsection (b)—

(A) by striking “are activities” and inserting “are—

“(1) activities”;

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

(C) by adding at the end the following:

“(2) activities under this Act related to human generic drug activities (as defined in section 744A).”; and
(2) by amending subsection (e) to read as follows:

“(c) OBJECTIVES SPECIFIED.—The objectives specified in this subsection are—

“(1) with respect to the activities under subsection (b)(1), the goals referred to in section 738A(a)(1); and

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

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 Fed-
eral Food, Drug, and Cosmetic Act, in the letters from
the Secretary of Health and Human Services to the Chair-
man 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 Rep-
resentatives, 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-

ty that has a relationship with a second business enti-
ty 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 Govern-
ment entity for a product that is not distributed
commercially.
“(5) The term ‘biosimilar biological product de-
development meeting’ means any meeting, other than
a biosimilar initial advisory meeting, regarding the
content of a development program, including a pro-
posed design for, or data from, a study intended to
support a biosimilar biological product application.
“(6) The term ‘biosimilar biological product de-
development program’ means the program under this
part for expediting the process for the review of sub-
missions 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 bio-
similar biological product development, biosimilar bi-
ological product applications, and supplements:

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

“(B) Actions related to submissions in con-
nection with biosimilar biological product devel-
opment, the issuance of action letters which ap-
prove biosimilar biological product applications
or which set forth in detail the specific defi-
cencies in such applications, and where appro-
priate, the actions necessary to place such ap-
plications in condition for approval.

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

“(D) Activities necessary for the release of
lots of biosimilar biological products under sec-
tion 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 biologies 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 databases.

“(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 described 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 develop-
ment 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 bio-
logical product development fee’).

“(ii) Due date.—The annual bio-
similar biological product development pro-
gram 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 reactivation fee due or payable under subparagraph (D).

“(2) Biosimilar biological product application and supplement fee.—

“(A) In general.—Each person that submits, 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 established 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 effective-
ness 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 ap-
plication; 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 bio-
availability 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 biological 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 with-
drawn (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 AP-
PLICATION REFUSED FOR FILING OR WITH-
DRAWN 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 PRE-
VIOUSLY REFUSED FOR FILING OR WITHDRAWN
BEFORE FILING.—A biosimilar biological prod-
duct application or supplement that was sub-
mitted but was refused for filing, or was with-
drawn before being accepted or refused for fil-
ing, shall be subject to the full fee under sub-
paragraph (A) upon being resubmitted or filed
over protest, unless the fee is waived under sub-
section (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 fiscal year for which the biosimilar biological product named in the application is assessed a fee under paragraph (4) unless the biosimilar biological product establishment listed in the application 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 providing 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 establishment, notwithstanding the number of biosimilar biological products manufactured 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 establish-
ment listed in its biosimilar biological product
application—

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

“(ii) for which the full biosimilar bio-
logical 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 biologi-
cal product application shall pay for each such
biosimilar biological product the annual fee es-
tablished under subsection (b)(1)(F).

“(B) DUE DATE.—The biosimilar biologi-
cal 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 pro-
viding 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, es-
establish, for the next fiscal year, the fees under sub-
section (a). Except as provided in subsection (c),
such fees shall be in the following amounts:
“(A) Initial biosimilar biological
product development fee.—The initial bio-
similar 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)(4) for a human drug ap-
plication 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)(4) 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(e)(4) for a human drug application described in section 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)(4) 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 biological product establishment fee under subsection (a)(3) for a fiscal year shall be equal to the
amount established under section 736(c)(4) 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)(4) 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 bio-
similar biological product application or supplement sub-
mitted 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 per-
son 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 appropria-
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-
ember 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-

"(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-
signed 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-
unds.—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 biological 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, is further amended by inserting after section

744H the following:

“SEC. 744I. REAUTHORIZATION; REPORTING REQUIRE-

MENTS.

“(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 as-
sociated 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 para-
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tograph, and any changes made to the recommenda-
tions in response to such views and comments.”.

SEC. 404. SUNSET DATES.

(a) AUTHORIZATION.—The amendment made by sec-
tion 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 sub-
section (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 bio-
similar 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 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 re-
quired by such part for a fiscal year prior to fiscal year
2013.

SEC. 407. CONFORMING AMENDMENT.

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

TITLE V—PEDIATRIC DRUGS
AND DEVICES

SEC. 501. PERMANENCE.

(a) Pediatric Studies of Drugs.—Subsection (q)
of section 505A (21 U.S.C. 355a) is amended—

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

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

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

(b) Research Into Pediatric Uses for Drugs
and Biological Products.—Section 505B (21 U.S.C.
355e) is amended—

(1) by striking subsection (m); and
(2) by redesignating subsection (n) as subsection (m).

SEC. 502. WRITTEN REQUESTS.

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

“(h) RELATIONSHIP TO PEDIATRIC RESEARCH REQUIREMENTS.—Exclusivity under this section shall only be granted for the completion of a study or studies that are the subject of a written request and for which reports are submitted and accepted in accordance with subsection (d)(3). Written requests under this section may consist of a study or studies required under section 505B.”.

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

SEC. 503. COMMUNICATION WITH PEDIATRIC REVIEW COMMITTEE.

Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this title as the “Secretary”) shall issue internal standard operating procedures that provide for the review by the internal review committee established

SEC. 504. ACCESS TO DATA.

Not later than 3 years after the date of enactment of this Act, the Secretary shall make available to the public, including through posting on the Internet website of the Food and Drug Administration, the medical, statistical, and clinical pharmacology reviews of, and corresponding written requests issued to an applicant, sponsor, or holder for, pediatric studies submitted between January 4, 2002 and September 27, 2007 under subsection (b) or (c) of section 505A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a) for which 6 months of market exclusivity was granted and that resulted in a labeling change. The Secretary shall make public the information described in the preceding sentence in a manner consistent with how the Secretary releases information under section 505A(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(k)).
SEC. 505. ENSURING THE COMPLETION OF PEDIATRIC STUDIES.

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

(1) in subsection (a)(3)—

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

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

“(B) DEFERRAL EXTENSION.—

“(i) IN GENERAL.—On the initiative of the Secretary or at the request of the applicant, the Secretary may grant an extension of a deferral approved under subparagraph (A) for submission of some or all assessments required under paragraph (1) if—

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

“(II) the applicant submits a new timeline under subparagraph (A)(ii)(IV) and any significant updates to the information required under subparagraph (A)(ii).
“(ii) Timing and information.—If the deferral extension under this subparagraph is requested by the applicant, the applicant shall submit the deferral extension request containing the information described in this subparagraph not less than 90 days prior to the date that the deferral would expire. The Secretary shall respond to such request not later than 45 days after the receipt of such letter. If the Secretary grants such an extension, the specified date shall be the extended date. The sponsor of the required assessment under paragraph (1) shall not be issued a letter described in subsection (d) unless the specified or extended date of submission for such required studies has passed or if the request for an extension is pending. For a deferral that has expired prior to the date of enactment of the Food and Drug Administration Safety and Innovation Act or that will expire prior to 270 days after the date of enactment of such Act, a deferral extension shall be requested by an applicant not later than 180 days after the date
of enactment of such Act. The Secretary shall respond to any such request as soon as practicable, but not later than 1 year after the date of enactment of such Act. Nothing in this clause shall prevent the Secretary from updating the status of a study or studies publicly if components of such study or studies are late or delayed.”; and

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

(i) in clause (i), by adding at the end the following:

“(III) Projected completion date for pediatric studies.

“(IV) The reason or reasons why a deferral or deferral extension continues to be necessary.”; and

(ii) in clause (ii)—

(I) by inserting “, as well as the date of each deferral or deferral extension, as applicable,” after “clause (i)”;

(II) by inserting “not later than 90 days after submission to the Sec-
retary or with the next routine quarterly update” after “Administration”; and

(2) in subsection (f)—

(A) in the subsection heading, by inserting “DEFERRAL EXTENSIONS,” after “DEFERRALS,”;

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

(C) in paragraph (4)—

(i) in the paragraph heading, by inserting “DEFERRAL EXTENSIONS,” after “DEFERRALS,”; and

(ii) by inserting “, deferral extensions,” after “deferrals”.

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

“(D) aggregated on an annual basis—

“(i) the total number of deferrals and deferral extensions requested and granted under this section and, if granted, the reasons for each such deferral or deferral extension;
“(ii) the timeline for completion of the
assessments; and
“(iii) the number of assessments com-
pleted and pending;”.

(c) ACTION ON FAILURE TO COMPLETE STUDIES.—

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

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

“(1) Beginning 270 days after the date of en-
actment of the Food and Drug Administration Safety
and Innovation Act, the Secretary shall issue a
non-compliance letter to such person informing them
of such failure to submit or meet the requirements
of the applicable subsection. Such letter shall require
the person to respond in writing within 45 calendar
days of issuance of such letter. Such response may
include the person’s request for a deferral extension
if applicable. Such letter and the person’s written re-
response to such letter shall be made publicly available on the Internet Web site of the Food and Drug Administration 60 calendar days after issuance, with redactions for any trade secrets and confidential commercial information. If the Secretary determines that the letter was issued in error, the requirements of this paragraph shall not apply.

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

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

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

(2) Tracking of letters issued.—Subparagraph (D) of section 505B(f)(6) (21 U.S.C. 355e(f)(6)), as amended by subsection (b), is further amended—
(A) in clause (ii), by striking “; and” and inserting a semicolon;
(B) in clause (iii), by adding “and” at the end; and
(C) by adding at the end the following:
“(iv) the number of postmarket non-compliance letters issued pursuant to subsection (d), and the recipients of such letters;”.

SEC. 506. PEDIATRIC STUDY PLANS.

(a) In General.—Subsection (e) of section 505B (21 U.S.C. 355e) is amended to read as follows:
“(e) Pediatric Study Plans.—
“(1) In General.—An applicant subject to subsection (a) shall submit to the Secretary an initial pediatric study plan prior to the submission of the assessments described under subsection (a)(2).
“(2) Timing; Content; Meeting.—
“(A) Timing.—An applicant shall submit an initial pediatric study plan to the Secretary not later than 60 calendar days after the date of the end of phase II meeting or such other equivalent time agreed upon between the Secretary and the applicant. Nothing in this paragraph shall preclude the Secretary from accept-
ing the submission of an initial pediatric study plan earlier than the date described under the preceding sentence.

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

“(i) an outline of the pediatric study or studies that the applicant plans to conduct (including, to the extent practicable study objectives and design, age groups, relevant endpoints, and statistical approach);

“(ii) any request for a deferral, partial waiver, or waiver under this section, if applicable, along with any supporting information; and

“(iii) other information specified in the regulations promulgated under paragraph (4).

“(C) MEETING.—The Secretary—

“(i) shall meet with the applicant to discuss the initial pediatric study plan as soon as practicable, but not later than 90 calendar days after the receipt of such plan under subparagraph (A);
“(ii) may determine that a written re-
response to the initial pediatric study plan is
sufficient to communicate comments on the
initial pediatric study plan, and that no
meeting is necessary; and

“(iii) if the Secretary determines that
no meeting is necessary, shall so notify the
applicant and provide written comments of
the Secretary as soon as practicable, but
not later than 90 calendar days after the
receipt of the initial pediatric study plan.

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

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

“(5) AMENDMENTS TO THE PLAN.—At the initiative of the Secretary or the applicant, the agreed initial pediatric study plan may be amended at any time. The requirements of paragraph (2)(C) shall apply to any such proposed amendment in the same manner and to the same extent as such requirements apply to an initial pediatric study plan under paragraph (1). The requirements of paragraphs (3) and (4) shall apply to any agreement resulting from such proposed amendment in the same manner and to the same extent as such requirements apply to an agreed initial pediatric study plan.

“(6) INTERNAL COMMITTEE.—The Secretary shall consult the internal committee under section 505C on the review of the initial pediatric study plan, agreed initial pediatric plan, and any significant amendments to such plans.

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

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

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

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

(2) in subsection (f)—

(A) in the subsection heading, by striking “PEDIATRIC PLANS,” and inserting “PEDIATRIC STUDY PLANS,”;

(B) in paragraph (1), by striking “all pediatric plans” and inserting “initial pediatric study plans, agreed initial pediatric study plans,”; and

(C) in paragraph (4)—

(i) in the paragraph heading, by striking “PEDIATRIC PLANS,” and inserting “PEDIATRIC STUDY PLANS,”; and

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

(c) EFFECTIVE DATES.—
(1) **Pediatric Study Plans.**—Subsection (e) of section 505B of the Federal Food, Drug, and Cosmetic Act (other than paragraph (4) of such subsection), as amended by subsection (a), shall take effect 180 days after the date of enactment of this Act, without regard to whether the Secretary has promulgated final regulations under paragraph (4) of such subsection by such date.

(2) **Conforming Amendments.**—The amendments made by subsection (b) shall take effect 180 days after the date of enactment of this Act.

**SEC. 507. REAUTHORIZATIONS.**

(a) **Pediatric Advisory Committee.**—Section 14(d) of the Best Pharmaceuticals for Children Act (42 U.S.C. 284m note) is amended by striking “Notwithstanding section 14 of the Federal Advisory Committee Act, the advisory committee shall continue to operate during the five-year period beginning on the date of the enactment of the Best Pharmaceuticals for Children Act of 2007” and inserting “Section 14 of the Federal Advisory Committee Act shall not apply to the advisory committee”.

(b) **Pediatric Subcommitteee of the Oncologic Drugs Advisory Committee.**—Section 15(a)(3) of the Best Pharmaceuticals for Children Act (42 U.S.C. 284m note) is amended by striking “during the five-year period
beginning on the date of the enactment of the Best Pharmaceuticals for Children Act of 2007” and inserting “for the duration of the operation of the Oncologic Drugs Advisory Committee”.


(d) **Demonstration Grants To Improve Pediatric Device Availability.**—Section 305(e) of Pediatric Medical Device Safety and Improvement Act (Public Law 110–85; 42 U.S.C. 282 note)) is amended by striking “$6,000,000 for each of fiscal years 2008 through 2012” and inserting “$4,500,000 for each of fiscal years 2013 through 2017”.

(e) **Program for Pediatric Study of Drugs in PHSA.**—Section 409I(e)(1) of the Public Health Service Act (42 U.S.C. 284m(e)(1)) is amended by striking “to carry out this section” and all that follows through the end of paragraph (1) and inserting “to carry out this section $25,000,000 for each of fiscal years 2012 through 2017.”.

**SEC. 508. REPORT.**

(a) **In General.**—Not later than October 31, 2016, and at the end of each subsequent 5-year period, the Sec-
retary shall submit to Congress a report that evaluates the effectiveness of sections 505A and 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a, 355c) and section 409I of the Public Health Service Act (42 U.S.C. 284m) in ensuring that medicines used by children are tested in pediatric populations and properly labeled for use in children.

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

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

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

(B) the importance of such drugs and biological products in the improvement of the health of children;
(2) the number of required studies under such section 505B that have not met the initial deadline provided under such section, including—

(A) the number of deferrals and deferral extensions granted and the reasons such extensions were granted;

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

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

(3) the number of written requests issued, declined, and referred to the National Institutes of Health under such section 505A since the date of enactment of this Act (including the reasons for such declination), and a description and status of referrals made under subsection (n) of such section 505A;

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

(5) any labeling changes recommended by the Pediatric Advisory Committee as a result of the review by such Committee of adverse events reports;

(6) the number and current status of pediatric postmarketing requirements;
(7) the number and importance of drugs and biological products for children that are not being tested for use in pediatric populations, notwithstanding the existence of the programs under such sections 505A and 505B and section 409I of the Public Health Service Act;

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

(9) the number of drugs and biological products for which testing is being done (as of the date of the report) and for which a labeling change is required under the programs described in paragraph (7), including—

(A) the date labeling changes are made;

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

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

(i) the disputes;

(ii) the recommendations of the Pediatric Advisory Committee; and

(iii) the outcomes of such process; and

(D) an assessment of the effectiveness in improving information about pediatric uses of drugs and biological products;
(10)(A) the efforts made by the Secretary to increase the number of studies conducted in the neonatal population (including efforts made to encourage the conduct of appropriate studies in neonates by companies with products that have sufficient safety and other information to make the conduct of the studies ethical and safe); and

(B) the results of such efforts;

(11)(A) the number and importance of drugs and biological products for children with cancer that are being tested as a result of the programs described in paragraph (7); and

(B) any recommendations for modifications to such programs that would lead to new and better therapies for children with cancer, including a detailed rationale for each recommendation;

(12) an assessment of progress made in addressing the recommendations and findings of any prior report issued by the Comptroller General, the Institute of Medicine, or the Secretary regarding the topics addressed in the report under this section, including with respect to—

(A) improving public access to information from pediatric studies conducted under such sections 505A and 505B; and
(B) improving the timeliness of pediatric studies and pediatric study planning under such sections 505A and 505B;

(13) any recommendations for modification to the programs that would improve pediatric drug research and increase pediatric labeling of drugs and biological products; and

(14) an assessment of the successes of and limitations to studying drugs for rare diseases under such sections 505A and 505B.

(c) Consultation on Recommendations.—At least 180 days before the report is due under subsection (a), and no sooner than 4 years after the date of enactment of this Act, the Secretary shall consult with representatives of patient groups, including pediatric patient groups, consumer groups, regulated industry, scientific and medical communities, academia, and other interested parties to obtain any recommendations or information relevant to the effectiveness of the programs described in subsection (b)(7), including suggestions for modifications to such programs.

SEC. 509. TECHNICAL AMENDMENTS.

(a) Pediatric Studies of Drugs in FFDCA.—Section 505A (21 U.S.C. 355a) is amended—

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(2) in subsection (n)—

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

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “have not been completed” and inserting “have not been submitted by the date specified in the written request issued or if the applicant or holder does not agree to the request”;

(ii) in subparagraph (A)—

(I) in the first sentence, by inserting “, or for which a period of exclusivity eligible for extension under subsection (b)(1) or (c)(1) of this section or under subsection (m)(2) or (m)(3) of section 351 of the Public Health Service Act has not ended” after “expired”; and

(II) by striking “Prior to” and all that follows through the period at the end; and
(iii) in subparagraph (B), by striking “no listed patents or has 1 or more listed patents that have expired,” and inserting “no unexpired listed patents and for which no unexpired periods of exclusivity eligible for extension under subsection (b)(1) or (c)(1) of this section or under subsection (m)(2) or (m)(3) of section 351 of the Public Health Service Act apply,”; and

(3) in subsection (o)(2), by amendment subparagraph (B) to read as follows:

“(B) a statement of any appropriate pediatric contraindications, warnings, precautions, or other information that the Secretary considers necessary to assure safe use.”.

(b) Research Into Pediatric Uses for Drugs and Biological Projects in FFDCA.—Section 505B (21 U.S.C. 355e) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “for a drug” after “(or supplement to an application)”;

(ii) in subparagraph (A), by striking “for a” and inserting “, including, with re-
spect to a drug, an application (or supplement to an application) for a’’;

(iii) in subparagraph (B), by striking “for a” and inserting “, including, with respect to a drug, an application (or supplement to an application) for a”; and

(iv) in the matter following subparagraph (B), by inserting “(or supplement)” after “application”; and

(B) in paragraph (4)(C)—

(i) in the first sentence, by inserting “partial” before “waiver is granted”; and

(ii) in the second sentence, by striking “either a full or” and inserting “such a”;

(2) in subsection (b)(1), in the matter preceding subparagraph (A), by striking “After providing notice” and all that follows through “studies), the” and inserting “The”;

(3) in subsection (g)—

(A) in paragraph (1)(A), by inserting “that receives a priority review or 330 days after the date of the submission of an application or supplement that receives a standard review” after “after the date of the submission of the application or supplement”; and
(B) in paragraph (2), by striking “the label of such product” and inserting “the labeling of such product”; and

(4) in subsection (h)(1)—

(A) by inserting “an application (or supplement to an application) that contains” after “date of submission of”; and

(B) by inserting “, if the application (or supplement) receives a priority review, or not later than 330 days after the date of submission of an application (or supplement to an application) that contains a pediatric assessment under this section, if the application (or supplement) receives a standard review,” after “under this section,”.

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

(d) PROGRAM FOR PEDIATRIC STUDIES OF DRUGS.—

Section 409I(c) of the Public Health Service Act (42 U.S.C. 284m(c)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by inserting “or section 351(m) of this Act,” after “Cosmetic Act,”;
(B) in subparagraph (A)(i), by inserting “or section 351(k) of this Act” after “Cosmetic Act”; and

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

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

(2) in paragraph (2)—

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

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

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

(e) **Pediatric Subcommittee of the Oncologic Advisory Committee.**—Section 15(a) of the Best Pharmaceuticals for Children Act (Public Law 107–109), as amended by section 502(e) of the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85), is amended in paragraph (1)(D), by striking “section 505B(f)” and inserting “‘section 505C’”.

(f) **Foundation of National Institutes of Health.**—Section 499(c)(1)(C) of the Public Health Service Act (42 U.S.C. 290b(c)(1)(C)) is amended by striking “for which the Secretary issues a certification in the affirmative under section 505A(n)(1)(A) of the Federal Food, Drug, and Cosmetic Act”.

(g) **Application.**—Notwithstanding any provision of section 505A and 505B of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a, 355e) stating that a provision applies beginning on the date of the enactment of the Best Pharmaceuticals for Children Act of 2007 or the date of the enactment of the Pediatric Research Equity Act of 2007, any amendment made by this title to such a provision applies beginning on the date of the enactment of this Act.
SEC. 510. RELATIONSHIP BETWEEN PEDIATRIC LABELING AND NEW CLINICAL INVESTIGATION EXCLUSIVITY.

(a) In General.—Section 505 (21 U.S.C. 351) is amended by adding at the end the following:

"(w) RELATIONSHIP BETWEEN PEDIATRIC LABELING AND NEW CLINICAL INVESTIGATION EXCLUSIVITY.—The period of market exclusivity described in clauses (iii) and (iv) of subsection (c)(3)(E) and clauses (iii) and (iv) of subsection (j)(5)(F) shall not apply to a pediatric study conducted under section 505A or 505B that results, pursuant to section 505B(g)(2), in the inclusion in the labeling of the product a determination that the product is not indicated for use in pediatric populations or subpopulations or information indicating that the results of a study were inconclusive or did not demonstrate that the product is safe or effective in pediatric populations or subpopulations."

(b) Pediatric Studies of Drugs.—Section 505A(m) (21 U.S.C. 355a(m)) is amended—

(1) by striking ""(m) CLARIFICATION OF INTERACTION OF MARKET EXCLUSIVITY UNDER THIS SECTION AND MARKET EXCLUSIVITY AWARDED TO AN APPLICANT FOR APPROVAL OF A DRUG UNDER SECTION 505(j).—If a"" and all that follows through
the end of the matter that precedes paragraph (1) and inserting the following:

“(m) Clarification of Interaction of Market Exclusivity Under This Section and Market Exclusivity Awarded to an Application or Supplement Under Subsection (c) or (j) of Section 505.—

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

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) and moving such subparagraphs, as so redesignated, 2 ems to the right; and

(3) by adding at the end the following:

“(2) 3-year exclusivity period.—The 3-year period of exclusivity under clauses (iii) and (iv) of subsection 505(c)(3)(E) and clauses (iii) and (iv) of subsection 505(j)(5)(F) are not available for approval of applications or supplements to applications based on reports of pediatric studies conducted
under sections 505A or 505B that resulted, pursuant to section 505A(j) or 505B(g)(2), in the inclusion in the labeling of the product a determination that the product is not indicated for use in pediatric populations or subpopulations or information indicating that the results of an assessment were inconclusive or did not demonstrate that the product is safe or effective in pediatric populations or subpopulation.”.

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

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

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

(3) in paragraph (2), in the matter preceding subparagraph (A), by inserting “clauses (iii) and (iv) of section 505(c)(3)(E) or” after “Notwithstanding”; and

(4) in paragraph (3)—

(A) in subparagraph (B), by inserting “that differ from adult formulations” before the semicolon at the end; and
(B) in subparagraph (C)—

(i) by striking “under section 505(j)” and inserting “under subsection (e) or (j) of section 505”; and

(ii) by inserting “clauses (iii) or (iv) of section 505(c)(3)(E) or” after “exclusivity under”.

SEC. 511. PEDIATRIC RARE DISEASES.

(a) Public Meeting.—Not later than 18 months after the date of enactment of this Act, the Secretary shall hold a public meeting to discuss ways to encourage and accelerate the development of new therapies for pediatric rare diseases.

(b) Report.—Not later than 180 days after the date of the public meeting under subsection (a), the Secretary shall issue a report that includes a strategic plan for encouraging and accelerating the development of new therapies for treating pediatric rare diseases.

TITLE VI—MEDICAL DEVICE REGULATORY IMPROVEMENTS

SEC. 601. RECLASSIFICATION PROCEDURES.

(a) Classification Changes.—

(1) In general.—Section 513(e)(1) (21 U.S.C. 360e(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 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)(1)) 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 sub-

chapter 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. 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, 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”;

(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)”;

(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 sub-paragraph (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, includ-
ing patients, payors, and pro-
viders, notwithstanding sub-
chapter 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 promul-
gated under such subsection prior to
the date of enactment of the Food
and Drug Administration Safety and
Innovation Act)”;

(III) in the matter following sub-
paragraph (B), by striking “regula-
tion requires” and inserting “adminis-
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(f)) is
amended—

(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 promul-
gated” 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 Adminis-
tration Safety and Innovation Act, a reference in this sub-
section 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 amend-
ments 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
website 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. 360e(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 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e).

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 approval or clearance of a device or at any time thereafter,” 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 section.” 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 Secretary 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.—Subclause (II) of clause (i) of section 505(k)(3)(C) shall not apply to devices.
“(C) CLARIFICATION.—With respect to devices, 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 described in paragraph (1)(A), the Secretary shall use relevant data with respect to devices cleared under section 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 effective implementation of the system described in paragraph (1)(A), the Secretary shall engage outside stakeholders in development of the system through a public hearing, advisory committee meeting, public docket, or other like public 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 questionnaires, initiated by the Secretary for purposes of postmarket risk identification for devices.”.
SEC. 605. RECALLS.

(a) ASSESSMENT OF DEVICE RECALL INFORMATION.—

(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 recall under such section 518(e) or an effective correction or removal action under such section 519(g), respectively.

(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 investiga-
tion (referred to in this paragraph as a ‘clinical hold’) if
the Secretary makes a determination described in sub-
paragraph (B). The Secretary shall specify the basis for
the clinical hold, including the specific information avail-
able 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 determina-
tion described in this subparagraph with respect to a clin-
ical hold is a determination that—

“(i) the device involved represents an unreason-
able risk to the safety of the persons who are the
subjects of the clinical investigation, taking into ac-
count the qualifications of the clinical investigators,
information about the device, the design of the clin-
ical 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 es-

“(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 rea-
sons 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 promul-
gate” and inserting “Not later than December 31,
2012, the Secretary shall issue proposed”; and

(2) by adding at the end the following: “The
Secretary shall finalize the proposed regulations not
later than 6 months after the close of the comment
period and shall implement the final regulations with
respect to devices that are implantable, life-saving,
and life sustaining not later than 2 years after the
regulations are finalized.”.

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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. 360c(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. CUSTOM DEVICES.

Section 520(b) (21 U.S.C. 360j(b)) is amended to
read as follows:

“(b) CUSTOM DEVICES.—

“(1) IN GENERAL.—The requirements of sec-
tions 514 and 515 shall not apply to a device that—

“(A) is created or modified in order to
comply with the order of an individual physician
or dentist (or any other specially qualified per-
son designated under regulations promulgated
by the Secretary after an opportunity for an
oral hearing);

“(B) in order to comply with an order de-
scribed in subparagraph (A), necessarily devi-
ates from an otherwise applicable performance
standard under section 514 or requirement
under section 515;

“(C) is not generally available in the
United States in finished form through labeling
or advertising by the manufacturer, importer,
or distributor for commercial distribution;
“(D) is designed to treat a unique pathology or physiological condition that no other device is domestically available to treat;

“(E)(i) is intended to meet the special needs of such physician or dentist (or other specially qualified person so designated) in the course of the professional practice of such physician or dentist (or other specially qualified person so designated); or

“(ii) is intended for use by an individual patient named in such order of such physician or dentist (or other specially qualified person so designated);

“(F) is assembled from components or manufactured and finished on a case-by-case basis to accommodate the unique needs described in clause (i) or (ii) of subparagraph (E); and

“(G) may have common, standardized design characteristics, chemical and material compositions, and manufacturing processes as commercially distributed devices.

“(2) LIMITATIONS.—Paragraph (1) shall apply to a device only if—
“(A) such device is for the purpose of treating a sufficiently rare condition, such that conducting clinical investigations on such device would be impractical;

“(B) production of such device under paragraph (1) is limited to no more than 5 units per year of a particular device type, provided that such replication otherwise complies with this section; and

“(C) the manufacturer of such device created or modified as described in paragraph (1) notifies the Secretary on an annual basis, in a manner prescribed by the Secretary, of the manufacture of such device.

“(3) EXCEPTION.—Paragraph (1) shall not apply to oral facial devices.

“(4) GUIDANCE.—Not later than 2 years after the date of enactment of this section, the Secretary shall issue final guidance on replication of multiple devices described in paragraph (2)(B).”.

SEC. 610. 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 decision 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 re-
quested, not later than 30 days after such re-
quest is made. The Secretary shall issue a deci-
sion 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 consulta-
tion with experts outside of the Food and Drug
Administration, or in cases in which the spon-
sor seeks to introduce evidence not already in
the administrative record at the time the denial
decision was made.”.
SEC. 611. 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. 612. MODIFICATION OF DE NOVO APPLICATION PROCESSES.

(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, if recommending classification in class II, include 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 fol-
lowing:

“(B) The Secretary may decline to undertake a clas-
sification 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 equiva-
ence under paragraph (1), or when the Secretary deter-
mines that the device submitted is not of low-moderate
risk or that general controls would be inadequate to con-
trol the risks and special controls to mitigate the risks
cannot be developed.”; 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. 613. HUMANITARIAN 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) 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.”; and

(ii) 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 annual distribution number for such device. In this paragraph, the term ‘annual distribution number’ means the number of such devices reasonably needed to treat, diagnose, or cure a population of 4,000 individuals in the United States. The Secretary shall determine the annual distribution number when the Secretary grants such exemption.”; and

(B) by amending subparagraph (C) to read as follows:
“(C) A person may petition the Secretary to modify the annual distribution number determined by the Secretary under subparagraph (A)(ii) with respect to a device if additional information arises, and the Secretary may modify such annual distribution number.”;

(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 of Health and Human Services 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), (D), and (E) of paragraph (6) of such section 520(m) shall apply to such device, and the Secretary shall determine the annual distribution number for purposes of
clause (ii) of such subparagraph (A) when making the determination under this subsection.

(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. 614. REAUTHORIZATION OF THIRD-PARTY REVIEW AND INSPECTIONS.

(a) THIRD PARTY REVIEW.—Section 523(c) (21 U.S.C. 360m(e)) 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. 615. 510(K) DEVICE MODIFICATIONS.

Having acknowledged to Congress potential unintended consequences that may result from the implementation of the Food and Drug Administration guidance entitled “Guidance for Industry and FDA Staff—510(k) Device Modifications: Deciding When to Submit a 510(k) for a Change to an Existing Device”, the Secretary of Health and Human Services shall withdraw such guidance promptly and ensure that, before any future guidance document on this issue is made final, affected stakeholders are provided with an opportunity to comment.

SEC. 616. HEALTH INFORMATION TECHNOLOGY.

(a) LIMITATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services

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(referred to in this section as the “Secretary”) may issue final guidance on medical mobile applications only after the requirements under subsections (b) and (c) are met.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Commissioner of Food and Drugs, the National Coordinator for Health Information Technology, and the Chairman of the Federal Communications Commission, 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 that contains a proposed strategy and recommendations on an appropriate, risk-based regulatory framework pertaining to medical device regulation and health information technology software, including mobile applications, that promotes innovation and protects patient safety.

(c) WORKING GROUP.—

(1) IN GENERAL.—In carrying out subsection (b), the Secretary shall convene a working group of external stakeholders and experts to provide appropriate input on the strategy and recommendations required for the report under subsection (b).

(2) REPRESENTATIVES.—The Secretary shall determine the number of representatives partici-
participating in the working group, and shall ensure that the working group is geographically diverse and includes representatives of patients, consumers, health care providers, startup companies, health plans or other third-party payers, venture capital investors, information technology vendors, small businesses, purchasers, employers, and other stakeholders with relevant expertise, as determined by the Secretary.

(3) Other Requirements.—

(A) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the working group under this section.

(B) FFDCA Advisory Committees.— The requirements for advisory committees under section 712 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379d–1), as amended by section 1121, shall not apply to the working group under this section.

TITLE VII—DRUG SUPPLY CHAIN
Subtitle A—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 importer that takes physical possession of and supplies a drug (other than an excipient) to such person, including all establishments of each such drug importer, the unique facility identifier of each such drug importer establishment, and a point of contact e-mail address for each such drug importer.”; 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 (c), 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”.

(b) Registration of Foreign Drug Establish-
ments.—Section 510(i) (U.S.C. 360(i)) is amended—

(1) in paragraph (1)—

(A) by amending the matter preceding sub-
paragraph (A) to read as follows: “Every per-
son who owns or operates any establishment
within any foreign country engaged in the man-
ufacture, preparation, propagation,
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 Sec-
retary—”;
(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 to import or offer to import drugs into the United States, 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

(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. IDENTIFICATION 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, the name and place of business of each manufacturer of an excipient of the listed drug with
which the person listing the drug conducts business, including all establishments used in the production of such excipient, 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 registra-
tion described under paragraph (1), or combi-

nation of such fields; and

“(B) uses the unique facility identifier sys-
tem 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 COORDI-

NATION.—The Secretary shall ensure the accuracy
and coordination of relevant Food and Drug Admin-
istration 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) BIENNIAL INSPECTIONS FOR DEVICES.—
Every establishment described in paragraph (1), in
any State, that is engaged in the manufacture, prop-
agation, compounding, or processing of a device or
devices classified in class II or III shall be so in-
(3) Risk-based Schedule for Drugs.—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 ‘drug establishments’) in accordance with a risk-based schedule established by the Secretary.

(4) Risk Factors.—In establishing the risk-based schedule under paragraph (3), the Secretary shall 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.

“(5) Effect of Status.—In determining the risk associated with an establishment for purposes of establishing a risk-based schedule under paragraph (3), the Secretary shall not consider whether the drugs manufactured, prepared, propagated, compounded, or processed by such establishment are drugs described in section 503(b).

“(6) 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).

“(7) Public availability of annual reports.—The Secretary shall make the report required under paragraph (6) 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 inspect under this section from a person that owns or operates an establishment that is en-
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gaged in the manufacture, preparation, propagation,
compounding, or processing of a drug shall, upon the re-
quest of the Secretary, be provided to the Secretary by
such person within a reasonable time frame, within rea-
sonable limits and in a reasonable manner, and in elec-
tronic form, at the expense of such person. The Sec-
retary’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 per-
son confirmation of the receipt of such records.

“(C) Nothing in this paragraph supplants the author-
ity of the Secretary to conduct inspections otherwise per-
mitted 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 Home-
land 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 inserting “CONFIDENTIAL INFORMATION.

“(a) CONTRACTORS.—The Secretary”; and

(2) by adding at the end the following:

“(b) ABILITY TO RECEIVE AND PROTECT CONFIDENTIAL INFORMATION OBTAINED FROM FOREIGN GOVERNMENTS.—

“(1) IN GENERAL.—The Secretary shall not be required to disclose under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), or any other provision of law, any information described in subsection (c)(3) obtained from a foreign government agency, if—

“(A) the information is provided or made available to the United States Government voluntarily and on the condition that the information not be released to the public; and
“(B) the information is covered by, and subject to, a certification and written agreement under subsections (c)(1) and (c)(2).

“(2) TIME LIMITATIONS.—The written agreement described in subsection (c)(2) shall specify the time period for which the non-disclosure requirements under paragraph (1) shall apply to the voluntarily disclosed information. The non-disclosure requirements under paragraph (1) shall not apply after the date specified, but all other applicable legal protections, including section 552 of title 5, United States Code and section 319L(e)(1) of the Public Health Service Act, shall continue to apply to such information, as appropriate. If no date is specified in the written agreement, the non-disclosure protections described in paragraph (1) shall not exceed 3 years.

“(3) DISCLOSURES NOT AFFECTED.—Nothing in this section authorizes any official to withhold, or to authorize the withholding of, information from Congress or information required to be disclosed pursuant to an order of a court of the United States.

“(4) PUBLIC INFORMATION.—For purposes of section 552 of title 5, United States Code, this sub-
section shall be considered a statute described in section 552(b)(3)(B).

“(c) Authority To Enter Into Memoranda of Understanding for Purposes of Information Exchange.—The Secretary may enter into written agreements 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 subparagraph (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 establishing 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 ‘accreditation 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) accredited 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(c), in the drug supply chain that chooses to be audited by an accredited 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 hearing, 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 paragraph (1) and subsection (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 resources under section 510(h).

“(B) REQUIREMENTS FOR ISSUING CERTIFICATION.—

“(i) IN GENERAL.—An accredited third-party auditor shall issue a drug certification described in subparagraph (A) 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 certification described in subparagraph (A).

“(C) RECORDS.—Following any accreditation 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 safety and quality audit process, for any eligible entity 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 entity is in compliance with any applicable registration requirements.

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

“(E) DECLARATION OF AUDIT TYPE.—Before 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, inspection, or consultative service of any type provided 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 absence 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 eligible 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 a 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) 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 ap-
propriate by the Secretary; and

“(2) shall be used by the Secretary in estab-
lishing the risk-based inspection schedules under sec-
tion 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 per-
formed to carry out this section. The Secretary shall
not generate surplus revenue from such a reimburse-
ment mechanism. Fees authorized under this para-
graph shall be collected and available for obligation
only to the extent and in the amount provided in ad-
ance in appropriation Acts. Such fees are author-
ized to remain available until expended.
“(2) Authorized fees for recognized accreditation bodies.—An accreditation body recognized by the Secretary under subsection (b) may assess a reasonable fee to accredit third-party auditors.

“(h) Limitations.—

“(1) No effect on section 704 inspections.—The drug safety and quality audits performed under this section shall not be considered inspections under section 704.

“(2) No effect on inspection authority.—Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.

“(i) 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 final regulations implementing this section.

“(2) Procedure.—In promulgating the regulations implementing this section, the Secretary shall—

“(A) issue a notice of proposed rulemaking that includes 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) CONTENT.—Such regulations shall include—

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

“(B) 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

“(C) 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).

“(4) RESTRICTIONS.—Notwithstanding any other provision of law, the Secretary shall promulgate regulations implementing this section only as described in paragraph (2).”.
(b) Report on Accredited Third-party Auditors.—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 period 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 Secretary 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 Administration in evaluating compliance with sections 501(a)(2)(B) of such Act (21 U.S.C. 351(a)(2)(B)) and 801(r) of such Act (as added by section 711).

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

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

(5) The extent to which the Secretary has audited 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 (c)(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, 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 determined appropriate by the Secretary; or

“(C) other appropriate documentation or evidence as described by the Secretary.

“(4)(A) Not later than 18 months after the date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary shall adopt final regulations implementing this subsection. Such requirements shall be appropriate for the type of import, such as whether the drug is for import into the United States for use in preclinical research or in a clinical investigation under an investigational new drug exemption under 505(i).

“(B) In promulgating the regulations implementing this subsection, the Secretary shall—

“(i) issue a notice of proposed rulemaking that includes the proposed regulation;

“(ii) provide a period of not less than 60 days for comments on the proposed regulation; and
“(iii) publish the final regulation not less than
30 days before the effective date of the regulation.
“(C) Notwithstanding any other provision of law, the
Secretary shall promulgate regulations implementing this
subsection only as described in subparagraph (B).”.

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 568.”.

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

“SEC. 568. 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 theft of such drug;
or
“(2) that such drug—
“(A) has been or is being counterfeited;
and
“(B)(i) is a counterfeit product in commerce in the United States; or

“(ii) is offered for import 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.”.

(2) APPLICABILITY.—Notifications under section 568 of the Federal Food, Drug, and Cosmetic Act (as added by paragraph (1)) apply to losses, thefts, or counterfeiting, as described in subsection (a) of such section 568, that occur on or after the date of enactment of this Act.
SEC. 713. 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. 714. ENHANCED CRIMINAL PENALTY FOR COUNTERFEITING DRUGS.

(a) FFDCA.—Section 303(b) (21 U.S.C. 333(b)), as amended by section 713, 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.”.

(b) TITLE 18.—Section 2320(b) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and
(2) by inserting after paragraph (1) the following:

“(2) COUNTERFEIT DRUGS.—

“(A) IN GENERAL.—Whoever commits an offense under subsection (a) with respect to a drug (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)) shall—

“(i) if an individual, be fined not more than $4,000,000, imprisoned not more than 20 years, or both; and

“(ii) if a person other than an individual, be fined not more than $10,000,000.

“(B) MULTIPLE OFFENSES.—In the case of an offense by a person under this paragraph that occurs after that person is convicted of another offense under this paragraph, the person convicted—

“(i) if an individual, shall be fined not more than $8,000,000, imprisoned not more than 20 years, or both; and

“(ii) if other than an individual, shall be fined not more than $20,000,000.”.

(c) SENTENCING.—
(1) Directive to Sentencing Commission.—
Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, if appropriate, its guidelines and its policy statements applicable to persons convicted of an offense described in section 2320(b)(2) of title 18, United States Code, as amended by subsection (b), in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by the guidelines and policy statements.

(2) Requirements.—In carrying out this subsection, the Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the intent of Congress that the guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1) and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the extent to which the guidelines may or may not appropriately account for the potential and actual harm to the public resulting from the offense;
(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;
(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;
(E) make any necessary conforming changes to the sentencing guidelines; and
(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 715. 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. 716. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

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

Subtitle B—Pharmaceutical Distribution Integrity

SEC. 721. SHORT TITLE.

This subtitle may be referred to as the “Securing Pharmaceutical Distribution Integrity to Protect the Public Health Act of 2012” or the “Securing Pharmaceutical Distribution Integrity Act of 2012”.

SEC. 722. SECURING THE PHARMACEUTICAL DISTRIBUTION SUPPLY CHAIN.

(a) In General.—Chapter V (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

“Subchapter H—Pharmaceutical Distribution Integrity

SEC. 581. DEFINITIONS.

“In this subchapter:

“(1) DATA CARRIER.—The term ‘data carrier’ means a machine-readable graphic that is intended to be affixed to, or imprinted upon, an individual
saleable unit and a homogeneous case of product.

The data carrier shall comply with a form and format developed by a widely recognized international standards development organization to ensure interoperability among distribution chain participants.

“(2) INDIVIDUAL SALEABLE UNIT.—The term ‘individual saleable unit’ means the smallest container of product put into interstate commerce by the manufacturer that is intended by the manufacturer for individual sale to a pharmacy or other dispenser of such product.

“(3) PRODUCT.—The term ‘product’ means a finished drug subject to section 503(b)(1).

“(4) PRODUCT TRACING.—The term ‘product tracing’ means—

“(A) identifying the immediate previous source and immediate subsequent recipient of a product in wholesale distribution at the lot level where a change of ownership of such product has occurred between non-affiliated entities, except as otherwise described in this subchapter;

“(B) identifying the immediate subsequent recipient of the product at the lot level when a manufacturer or repackager introduces such product into interstate commerce;
“(C) identifying that manufacturer and
dispenser of a product at the lot level when a
manufacturer ships a product at the lot level,
without regard to the change in ownership in-
volving the wholesale distributor; and

“(D) identifying the immediate previous
source of a product at the lot level for dis-

“(5) RxTEC.—The term ‘RxTEC’ means a data
carrier that includes the standardized numerical
identifier (SNI), the lot number, and the expiration
date of a product. The standard data carrier RxTEC
shall be a 2D data matrix barcode affixed to each
individual saleable unit of a product and a linear or
2D data matrix barcode on a homogenous case of a
product. Such information shall be both machine
readable and human readable.

“(6) Suspect Product.—The term ‘suspect
product’ means a product that, based on credible
evidence—

“(A) is potentially counterfeit, diverted, or
stolen;

“(B) is reasonably likely to be intentionally
adulterated such that the product would result
in serious adverse health consequences or death to humans; or

“(C) appears otherwise unfit for distribution such that the product would result in serious adverse health consequence or death to humans.

“(7) Verification.—The term ‘verification’ means the process of determining whether a product has the standardized numerical identifier or lot number, consistent with section 582, and expiration date assigned by the manufacturer, or the repacker as applicable, and identifying whether a product has the appearance of being a counterfeit, diverted, or stolen product, or a product otherwise unfit for distribution. Verification of the RxTEC data may occur by using either a human-readable, machine-readable, or other method such as through purchase records or invoices.

“SEC. 582. ENSURING THE SAFETY OF THE PHARMACEUTICAL DISTRIBUTION SUPPLY CHAIN THROUGH THE ESTABLISHMENT OF AN RXTEC SYSTEM.

“(a) Manufacturer Requirements.—

“(1) Product tracing.—A manufacturer, not later than 4½ years after the date of enactment of
the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, shall—

“(A) apply RxTEC to the individual saleable units and homogeneous case of all products intended to be introduced into interstate commerce;

“(B) maintain change of ownership and transaction information, including RxTEC data that associate unit and lot level data for each individual saleable unit of product and homogenous case introduced in interstate commerce; and

“(C) maintain, where a change of ownership has occurred between non-affiliated entities or, in the case of a return from the immediate previous source, change of ownership and transaction information relating to a product, including—

“(i) RxTEC data;

“(ii) the business name and address of the immediate previous source, if applicable, and the immediate subsequent recipient of the product;
“(iii) the proprietary or established name or names of the product;

“(iv) the National Drug Code number of the product;

“(v) container size;

“(vi) number of containers;

“(vii) the lot number or numbers of the product; and

“(viii) the date of the transaction;

“(D) provide the following change of ownership and transaction information to the immediate subsequent recipient of such product—

“(i) the proprietary or established name or names of the product;

“(ii) the National Drug Code number of the product;

“(iii) container size;

“(iv) number of containers;

“(v) the lot number or numbers of the product; and

“(vi) a signed statement that the manufacturer did not knowingly and intentionally adulterate or knowingly and intentionally counterfeit such product; and
“(E) upon request by the Secretary, other appropriate Federal official, or State official, in the event of a recall or as determined necessary by the Secretary, or such other Federal or State official, to investigate a suspect product, provide in a reasonable time and in a reasonable manner—

“(i) RxTEC data by lot; and

“(ii) change of ownership and transaction information pursuant to subparagraphs (C) and (D) necessary to identify the immediate previous source or immediate subsequent recipient of such product, as applicable.

“(2) Verification requirements.—A manufacturer, not later than 4 1/2 years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, shall—

“(A) utilize RxTEC data at the lot level, as part of ongoing activities to significantly minimize or prevent the incidences of a suspect product in the pharmaceutical distribution supply chain, as applicable and appropriate, which—
“(i) may include responding to an alert regarding a suspect product from a trading partner or the Secretary, routine monitoring of a suspect product at the lot level while such product is in the possession of the manufacturer, and checking inventory for a suspect product at the request of a trading partner or the Secretary in case of returns; and

“(ii) shall take into consideration—

“(I) the likelihood that a particular product has a high potential risk with respect to pharmaceutical distribution supply chain security;

“(II) the history and severity of incidences of counterfeit, diversion, and theft of such product;

“(III) the point in the pharmaceutical distribution supply chain where counterfeit, diversion, or theft has occurred or is most likely to occur;

“(IV) the likelihood that such activities will reduce the possibility of
the counterfeit, diversion, and theft of
such product;

“(V) whether the product could
mitigate or prevent a drug shortage as
defined in section 506C; and

“(VI) any guidance the Secretary
issues regarding high-risk scenarios
that could increase the risk of a sus-
p ect product entering the pharma-
 ceutical distribution supply chain; and

“(B) conduct unit level verification upon
the request of a licensed or registered repack-
 ager, wholesale distributor, dispenser, or the
Secretary, regarding such product.

“(3) NOTIFICATION OF PRODUCT REMOVAL.—

“(A) IN GENERAL.—Not later than 4 1⁄2
years after the date of enactment of the Secur-
ing Pharmaceutical Distribution Integrity Act
of 2012 and in accordance with this section, a
manufacturer, upon confirming that a product
does not have the standardized numerical iden-
tifier or lot number, consistent with this sec-
tion, and expiration date assigned by the manu-
ufacturer, or has the appearance of being a coun-
terfeit, diverted, or stolen product, or a product
otherwise unfit for distribution such that the product would result in serious adverse health consequences or death to humans, shall—

“(i) promptly notify the Secretary and impacted trading partners, as applicable and appropriate; and

“(ii) take steps to remove such product from the pharmaceutical distribution supply chain.

“(B) REDISTRIBUTION.—Any product subject to a notification under this subsection may not be redistributed as a saleable product unless the manufacturer, in consultation with the Secretary, determines such product may reenter the pharmaceutical distribution supply chain.

“(4) LIMITATION.—Nothing in this section shall require a manufacturer to aggregate unit level data to cases or pallets.

“(b) REPACKAGER REQUIREMENTS.—

“(1) PRODUCT TRACING.—A repackager, not later than 5½ years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section,
“(A) apply RxTEC to the individual saleable unit and the homogenous case of all product intended to be introduced into interstate commerce;

“(B) maintain change of ownership and transaction information, including RxTEC data, that associate unit and lot level data for each individual saleable unit of product and each homogenous case of product introduced in interstate commerce, including RxTEC data received for such products and for which a repackager applies a new RxTEC;

“(C) receive only products encoded with RxTEC data from a licensed or registered manufacturer or wholesaler;

“(D) maintain, where a change of ownership has occurred between non-affiliated entities in wholesale distribution, change of ownership and transaction information relating to a product, including—

“(i) RxTEC data;

“(ii) the business name and address of the immediate previous source and the immediate subsequent recipient of the product;
“(iii) the proprietary or established name or names of the product;
“(iv) the National Drug Code number of the product;
“(v) container size;
“(vi) number of containers;
“(vii) the lot number or numbers of the product; and
“(viii) the date of the transaction;
“(E) provide the following change of ownership and transaction information to the immediate subsequent recipient of such product—
“(i) the proprietary or established name or names of the product;
“(ii) the National Drug Code number of the product;
“(iii) container size;
“(iv) number of containers;
“(v) the lot number or numbers of the product; and
“(vi) a signed statement that the repackager—
“(I) is licensed or registered;
“(II) received the product from a manufacturer that is licensed or registered;

“(III) received a signed statement from the manufacturer of such product consistent with subsection (a)(1)(D)(vi); and

“(IV) did not knowingly and intentionally adulterate or knowingly and intentionally counterfeit such product; and

“(F) upon request by the Secretary, other appropriate Federal official, or State official, in the event of a recall, or as determined necessary by the Secretary or such other Federal or State official to investigate a suspect product, provide in a reasonable time and in a reasonable manner—

“(i) RxTEC data by lot; and

“(ii) change of ownership and transaction information pursuant to subparagraph (C) or (E) necessary to identify the immediate previous source or the immediate subsequent recipient of such product, as applicable.
“(2) Verification Requirements.—A repackager, not later than 5½ years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, shall—

“(A) utilize RxTEC data at the lot level, as part of ongoing activities to significantly minimize or prevent the incidences of suspect product in the pharmaceutical distribution supply chain, as applicable and appropriate, which—

“(i) may include—

“(I) responding to alerts regarding a suspect product from a trading partner or the Secretary, routine monitoring of a suspect product at the lot level while such product is in the possession of the repackager; and

“(II) checking inventory for a suspect product at the request of a trading partner or the Secretary in the case of returns; and

“(ii) shall take into consideration—

“(I) the likelihood that a particular product has a high potential
risk with respect to pharmaceutical distribution supply chain security;

“(II) the history and severity of incidences of counterfeit, diversion, and theft of such product;

“(III) the point in the pharmaceutical distribution supply chain where counterfeit, diversion, and theft has occurred or is most likely to occur;

“(IV) the likelihood that such activities will reduce the possibility of counterfeit, diversion, and theft of such product;

“(V) whether the product could mitigate or prevent a drug shortage as defined in section 506C; and

“(VI) any guidance the Secretary issues regarding high-risk scenarios that could increase the risk of a suspect product entering the pharmaceutical distribution supply chain; and

“(B) conduct unit level verification upon the request of a licensed or registered manufac-
turer, wholesale distributor, dispenser, or the Secretary, regarding such product.

“(3) Notification and Product Removal.—

“(A) In general.—Not later than 5 1/2 years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, a repackager, upon confirming that a product does not have the standardized numerical identifier or lot number, consistent with this section, and expiration date assigned by the manufacturer, or has the appearance of being a counterfeit, diverted, or stolen product, or a product otherwise unfit for distribution such that it would result in serious adverse health consequences or death to humans, shall—

“(i) promptly notify the Secretary and impacted trading partners, as applicable and appropriate; and

“(ii) take steps to remove such product from the pharmaceutical distribution supply chain.

“(B) Redistribution.—Any product subject to a notification under this subsection may not be redistributed as a saleable product un-
less the repackager, in consultation with the
Secretary, and manufacturer as applicable, de-
determines such product may reenter the pharma-
ceutical distribution supply chain.

“(4) LIMITATION.—Nothing in this section
shall require a repackager to aggregate unit level
data to cases or pallets.

“(c) WHOLESALE DISTRIBUTOR REQUIREMENTS.—

“(1) PRODUCT TRACING REQUIREMENTS.—A
wholesale distributor engaged in wholesale distribu-
tion, not later than 6 1/2 years after the date of en-
actment of the Securing Pharmaceutical Distribu-
tion Integrity Act of 2012 and in accordance with
this section, shall—

“(A) receive only products encoded with
RxTEC from a licensed or registered manufac-
turer, wholesaler, or repackager;

“(B) maintain, in wholesale distribution
where a change of ownership has occurred be-
tween non-affiliated entities, change of owner-
ship and transaction information, including—

“(i) RxTEC data by lot;

“(ii) the business name and address
of the immediate previous source and the
immediate subsequent recipient of the product;

“(iii) the proprietary or established name or names of the product;

“(iv) the National Drug Code number of the product;

“(v) container size;

“(vi) number of containers;

“(vii) the lot number or numbers of the product; and

“(viii) the date of the transaction;

“(C) provide the following change of ownership and transaction information to the immediate subsequent recipient of such product—

“(i) the proprietary or established name or names of the product;

“(ii) the National Drug Code number of the product;

“(iii) container size;

“(iv) number of containers;

“(v) the lot number or numbers of the product;

“(vi) the date of the transaction; and

“(vii) a signed statement that the wholesale distributor—
“(I) is licensed or registered;

“(II) received the product from a registered or licensed manufacturer, repackager, or wholesale distributor, as applicable;

“(III) received a signed statement from the immediate subsequent recipient of such product that such trading partner did not knowingly and intentionally adulterate or knowingly and intentionally counterfeit such product; and

“(IV) did not knowingly and intentionally adulterate or knowingly and intentionally counterfeit such product; and

“(D) upon request by the Secretary, other appropriate Federal official, or State official, in the event of a recall, return, or as determined necessary by the Secretary, or such other Federal or State official, to investigate a suspect product, provide in a reasonable time and in a reasonable manner—

“(i) RxTEC data by lot; and
“(ii) change of ownership and trans-
action information pursuant to subpara-
graphs (B) and (C), as necessary to iden-
tify the immediate previous source or the
immediate subsequent recipient of such
product.

“(2) VERIFICATION REQUIREMENTS.—

“(A) IN GENERAL.—A wholesale dis-
tributor engaged in wholesale distribution, not
later than 6½ years after the date of enact-
ment of the Securing Pharmaceutical Distribu-
tion Integrity Act of 2012 and in accordance
with this section, shall—

“(i) utilize RxTEC data at the lot
level, as part of ongoing activities to sig-
ificantly minimize or prevent the inci-
dence of suspect product in the pharma-
aceutical distribution supply chain, as appli-
cable and appropriate, which—

“(I) may include responding to
an alert regarding a suspect product
from a trading partner or the Sec-
retary, routine monitoring of a sus-
pect product at the lot level while
such product is in the possession of
the wholesale distributor, and checking inventory for a suspect product at the request of a trading partner or the Secretary; and

“(II) shall take into consideration—

“(aa) the likelihood that a particular product has a high potential risk with respect to pharmaceutical distribution supply chain security;

“(bb) the history and severity of incidences of counterfeit, diversion, and theft of such product;

“(cc) the point in the pharmaceutical distribution supply chain where counterfeit, diversion, and theft has occurred or is most likely to occur;

“(dd) the likelihood that such activities will reduce the possibility of counterfeit, diversion, and theft of such product;
“(ee) whether the product could mitigate or prevent a drug shortage as defined in section 506C; and

“(ff) any guidance the Secretary issues regarding high-risk scenarios that could increase the risk of suspect product entering the pharmaceutical distribution supply chain;

“(ii) conduct lot-level verification in the event of a recall, including upon the request of a licensed or registered manufacturer, repackager, dispenser, or the Secretary, regarding such product and recall;

“(iii) conduct verification of a returned product to validate the return at the lot level for a sealed homogenous case of such product or at the individual saleable unit of such product if the unit is not in a sealed homogenous case; and

“(iv) conduct unit level verification of a suspect product—

“(I) upon the request of a licensed or registered manufacturer, re-
packager, wholesaler, dispenser, or the Secretary, regarding such product; or

“(II) upon the determination that a product is a suspect product.

“(B) LIMITATION.—Nothing in this paragraph shall require a wholesale distributor to verify product at the unit level except as required under clauses (iii) and (iv) of subparagraph (A).

“(3) NOTIFICATION AND PRODUCT REMOVAL.—

“(A) IN GENERAL.—Not later than 6 1⁄2 years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, a wholesale distributor, upon confirming that a product does not have the standardized numerical identifier or lot number, consistent with this section, and expiration date assigned by the manufacturer, or has the appearance of being a counterfeit, diverted, or stolen product, or a product otherwise unfit for distribution such that the product would result in serious adverse health consequences or death to humans,
“(i) promptly notify the Secretary and impacted trading partners, as applicable and appropriate; and

“(ii) take steps to remove such product from the pharmaceutical distribution supply chain.

“(B) REDISTRIBUTION.—Any product subject to a notification under this subsection may not be redistributed as a saleable product unless the wholesaler, in consultation with the Secretary, and manufacturer or repackager as applicable, determines such product may reenter the pharmaceutical distribution supply chain.

“(C) CONFIDENTIAL DATA.—A wholesale distributor may confidentially maintain RxTEC data for a direct trading partner and provide access to such information to such trading partner in lieu of data transmission, if mutually agreed upon by such trading partners.

“(d) DISPENSER REQUIREMENTS.—

“(1) PRODUCT TRACING REQUIREMENTS.—A dispenser, not later than 7½ years after the date of enactment of the Securing Pharmaceutical Distribu-
tion Integrity Act of 2012 and in accordance with this section, shall—

“(A) receive product only from a licensed or registered manufacturer, repackager, or wholesale distributor;

“(B) receive only products encoded with RxTEC lot level data from a manufacturer, repackager, or wholesale distributor selling the drug product to the dispenser;

“(C) maintain RxTEC lot level data or allow the wholesale distributor to confidentially maintain and store the RxTEC lot level data sufficient to identify the product provided to the dispenser from the immediate previous source where a change of ownership has occurred between non-affiliated entities (if such arrangement is mutually agreed upon by the dispenser and the wholesale distributor);

“(D) use the RxTEC lot level data maintained by the dispenser or maintained by the wholesale distributor on behalf of the dispenser (if such arrangement is mutually agreed upon by the dispenser and the wholesale distributor), as necessary to respond to a request from the
Secretary in the event of a suspect product or recall;

“(E) maintain lot level data upon change of ownership between non-affiliated entities and for recalled product; and

“(F) for investigation purposes only, and upon request by the Secretary, other appropriate Federal official, or State official, for the purpose of investigating a suspect or recalled product, provide the RxTEC data by lot and the immediate previous source or immediate subsequent receipt of the suspect or recalled product, as applicable.

“(2) VERIFICATION REQUIREMENTS.—Not later than 7 1⁄2 years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, a dispenser shall be required to conduct lot level verification of suspect product only.

“(3) NOTIFICATION AND PRODUCT REMOVAL.—

“(A) IN GENERAL.—Not later than 7 1⁄2 years after the date of enactment of the Securing Pharmaceutical Distribution Integrity Act of 2012 and in accordance with this section, a dispenser, upon confirming that a product is a
suspect product or a product otherwise unfit for distribution, shall—

“(i) promptly notify the Secretary and impacted trading partners, as applicable and appropriate; and

“(ii) take steps to remove such product from the pharmaceutical distribution supply chain.

“(B) REDISTRIBUTION.—Any product subject to a notification under this paragraph may not be redistributed as a saleable product unless the dispenser, in consultation with the Secretary, and manufacturer, repackager, or wholesaler as applicable, determines such product may reenter the pharmaceutical distribution supply chain.

“(C) LIMITATIONS.—Nothing in this section shall—

“(i) require a dispenser to verify product at the unit level; or

“(ii) require a dispenser to adopt specific technologies or business systems for compliance with this section.

“(e) ENSURING FLEXIBILITY.—The requirements under this section shall—
“(1) require the maintenance and transmission only of information that is reasonably available and appropriate;

“(2) be based on current scientific and technological capabilities and shall neither require nor restrict the use of additional data carrier technologies;

“(3) not prescribe or proscribe specific technologies or systems for the maintenance and transmission of data other than the standard data carrier for RxTEC or specific methods of verification;

“(4) not require a record of the complete previous distribution history of the drug from the point of origin of such drug;

“(5) take into consideration whether the public health benefits of imposing any additional regulations outweigh the cost of compliance with such requirements;

“(6) be scale-appropriate and practicable for entities of varying sizes and capabilities;

“(7) with respect to cost and recordkeeping burdens, not require the creation and maintenance of duplicative records where the information is contained in other company records kept in the normal course of business;
“(8) to the extent practicable, not require specific business systems for compliance with such requirements;

“(9) include a process by which the Secretary may issue a waiver of such regulations for an individual entity if the Secretary determines that such requirements would result in an economic hardship or for emergency medical reasons, including a public health emergency declaration pursuant to section 319 of the Public Health Service Act; and

“(10) include a process by which the Secretary may determine exceptions to the standard data carrier RxTEC requirement if a drug is packaged in a container too small or otherwise unable to accommodate a label with sufficient space to bear the information required for compliance with this section.

“(f) REGULATIONS AND GUIDANCE.—

“(1) IN GENERAL.—The Secretary may issue guidance consistent with this section regarding the circumstances surrounding suspect product and verification practices.

“(2) PROCEDURE.—The Secretary, in promulgating any regulation pursuant to this section, 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).

“(g) Standards.—The Secretary shall, in consultation with other appropriate Federal officials, manufacturers, repackagers, wholesale distributors, dispensers, and other supply chain stakeholders, prioritize and develop standards for the interoperable exchange of ownership and transaction information for tracking and tracing prescription drugs.”.

(b) Prohibited Act.—Section 301 (21 U.S.C. 331), as amended by section 712, is further amended by inserting at the end the following:

“(bbb) The violation of any requirement under section 582.”.
(c) Small Entity Compliance Guide.—Not later than 180 days after enactment of this Act, the Secretary of Health and Human Services (referred to in this title as the “Secretary”) shall issue a compliance guide setting forth in plain language the requirements under section 582 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), in order to assist small entities in complying with such section.

(d) Limitations.—

(1) Savings Clause.—Nothing in this subtitle or the amendments made by this subtitle shall preempt any State or local law or regulation.

(2) Effect on California Law.—Notwithstanding any other provision of Federal or State law, including any provision of this subtitle or of subchapter H of chapter V of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), such subchapter H shall not trigger California Business and Professions Code, section 4034.1.

(3) Effective Date.—Subsection (c) and the amendments made by subsections (a) and (b) shall take effect on January 1, 2022, or on the date on which Congress enacts a law providing for express preemption of any State law regulating the distribution of drugs, whichever is later.
SEC. 723. INDEPENDENT ASSESSMENT.

(a) IN GENERAL.—The Secretary shall contract with a private, independent consulting firm capable of performing the technical analysis, management assessment, and program evaluation tasks required to conduct a comprehensive assessment of the process for the review of drug applications under subsections (b) and (j) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b), (j)) and subsections (a) and (k) of section 351 of the Public Health Service Act (42 U.S.C. 262(a), (k)). The assessment shall address the premarket review process of drugs by the Food and Drug Administration, using an assessment framework that draws from appropriate quality system standards, including management responsibility, documents controls and records management, and corrective and preventive action.

(b) PARTICIPATION.—Representatives of the Food and Drug Administration and manufacturers of drugs subject to user fees under part 2 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g et seq.) shall participate in a comprehensive assessment of the process for the review of drug applications under section 505 of the Federal Food, Drug, and Cosmetic Act and section 351 of the Public Health Service Act. The assessment shall be conducted in phases.
(c) First Contract.—The Secretary shall award the contract for the first assessment under this section not later than March 31, 2013. Such contractor shall evaluate the implementation of recommendations and publish a written assessment not later than February 1, 2016.

(d) Findings and Recommendations.—

(1) In General.—The Secretary shall publish the findings and recommendations under this section that are likely to have a significant impact on review times not later than 6 months after the contract is awarded. Final comprehensive findings and recommendations shall be published not later than 1 year after the contract is awarded.

(2) Implementation Plan.—The Food and Drug Administration shall publish an implementation plan not later than 6 months after the date of receipt of each set of recommendation.

(e) Scope of Assessment.—The assessment under this section shall include the following:

(1) Identification of process improvements and best practices for conducting predictable, efficient, and consistent premarket reviews that meet regulatory review standards.
(2) Analysis of elements of the review process that consume or save time to facilitate a more efficient process. Such analysis shall include—

(A) consideration of root causes for inefficiencies that may affect review performance and total time to decision;

(B) recommended actions to correct any failures to meet user fee program goals; and

(C) consideration of the impact of combination products on the review process.

(3) Assessment of methods and controls of the Food and Drug Administration for collecting and reporting information on premarket review process resource use and performance.

(4) Assessment of effectiveness of the reviewer training program of the Food and Drug Administration.

(5) Recommendations for ongoing periodic assessments and any additional, more detailed or focused assessments.

(f) REQUIREMENTS.—The Secretary shall—

(1) analyze the recommendations for improvement opportunities identified in the assessment, develop and implement a corrective action plan, and ensure it effectiveness;
(2) incorporate the findings and recommendations of the contractors, as appropriate, into the management of the premarket review program of the Food and Drug Administration; and

(3) incorporate the results of the assessment in a Good Review Management Practices guidance document, which shall include initial and ongoing training of Food and Drug Administration staff, and periodic audits of compliance with the guidance.

**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 subsection (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 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, and shall make public the methodology for developing such list.
“(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 and antibiotic resistance, includ-
ing the Centers for Disease Control and Prevention, the Food and Drug Adminis-
tration, medical professionals, and the clinical research community.

“(C) Review.—Every 5 years, or more often as needed, the Secretary shall review, pro-
vide 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 Sec-

tary 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 ap-
proved under section 505(e) of such Act (21 U.S.C. 355(e)) 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 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)), as amended by section 901(b), is amended by inserting “, or if the Secretary designates the drug as a qualified infectious disease product under section 505E(d)” before the period at the end of the first sentence.

SEC. 804. GAO STUDY.

(a) In General.—The Comptroller General of the United States shall—

(1) conduct a study—
(A) on the need for, and public health impact of, 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 prod-
ucts, 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 de-
scribed in section 505E(g) of the Federal Food, 
Drug, and Cosmetic Act, as added by section 801. 

(3) The term “qualified infectious disease prod-
uct” has the meaning given such term in section 
505E(g) of the Federal Food, Drug, and Cosmetic 
Act, as added by section 801.

SEC. 805. CLINICAL TRIALS.

(a) REVIEW AND REVISION OF GUIDANCE DOCU-
MENTS.—

(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 con-
duct of clinical trials with respect to anti-
bacterial and antifungal 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-
quirements for approval of antibacterial and 
antifungal drugs under chapter V of the Fed-

(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 effect 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-
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 person making the request written recommendations for the nonclinical and clinical investigations which the Secretary believes, on the basis of information available 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 revision 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 consis-
tently applying, clinical trial guidance docu-
ments; and

(B) the predictability of related regulatory
pathways and review;

(3) identifying any outstanding regulatory im-
pediments to the clinical development of qualified in-
fected infectious disease products;

(4) reporting on the progress the Food and
Drug Administration has made in addressing the im-
pediments identified under paragraph (3); and

(5) containing recommendations regarding how
to improve the review of, and regulatory pathway
for, such products.

(d) QUALIFIED INFECTIOUS DISEASE PRODUCT.—For purposes of this section, the term “qualified infectious
disease product” has the meaning given such term in sec-
tion 505E(g) of the Federal Food, Drug, and Cosmetic
Act, as added by section 801.

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
(referrered to in this section as the “Secretary”) shall sub-
mit 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 path-
ways, requirements of the Food and Drug Adminis-
tration, guidance documents related to such prod-

ts, 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 li-
censure 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.

(c) Qualified Infectious Disease Product.—
For purposes of this section, 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 801.

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 mechanism, 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 development to treat serious and life-threatening diseases, some applying drug development strategies 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 scientific and medical advances, the FDA should
be encouraged to implement more broadly effective processes for the expedited development and review of innovative new medicines intended to address unmet medical needs for serious 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 population 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 ac-

cess to novel treatments for patients with a
broad range of serious or life-threatening dis-
ees 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 devel-

opment 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.—Sec-

tion 506 (21 U.S.C. 356) is amended to read as follows:

“SEC. 506. EXPEDITED APPROVAL OF DRUGS FOR SERIOUS

OR LIFE-THREATENING DISEASES OR CONDI-

TIONS.

“(a) DESIGNATION OF DRUG AS FAST TRACK PROD-

UCT.—

“(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, 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 described in paragraph (1). If the Secretary finds that the drug meets the criteria, the Secretary shall designate 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 approval of such product.
“(b) Accelerated Approval of a Drug for a Serious or Life-Threatening Disease or Condition, Including a Fast Track Product.—

“(1) In general.—

“(A) Accelerated approval.—The Secretary 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(c) or section 351(a) of the Public Health Service Act upon a determination 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 in-
clude 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 re-
quired post-approval study of the drug with due
diligence;

“(B) a study required to verify and de-
scribe the predicted effect on irreversible mor-
bidity or mortality or other clinical benefit of
the product fails to verify and describe such ef-
fect or benefit;

“(C) other evidence demonstrates that the
product is not safe or effective under the condi-
tions 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 deter-
mines, after preliminary evaluation of clinical data
submitted by the sponsor, that a fast track product
may be effective, the Secretary shall evaluate for fil-
ing, and may commence review of portions of, an ap-
lication for the approval of the product before the
sponsor submits a complete application. The Sec-
retary shall commence such review only if the appli-
cant—
“(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 serious 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 Sec-
retary 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 Sec-
retary 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 para-
graph (1), and after an opportunity for public com-
ment, 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 901, 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 intended, alone or in combination with 1 or more other drugs, to treat a serious or life-threatening disease or condition and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over existing therapies on 1 or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. (In this section, such a drug is referred to as a ‘breakthrough therapy’.)

“(2) Request for designation.—The sponsor 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 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 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 appropriate—

“(i) holding meetings with the sponsor and the review team throughout the development of the drug;

“(ii) providing timely advice to, and interactive communication with, the sponsor 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 be-
tween 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 pa-
tients exposed to a potentially less effica-
cious treatment.”;

(4) in subsection (f)(1), as so redesignated, by
striking “applicable to accelerated approval” and in-
serting “applicable to breakthrough therapies, accel-
erated 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.—

(i) IN GENERAL.—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.

(ii) PROCEDURE.—In amending regulations under clause (i), the Secretary shall—

(I) issue a notice of proposed rulemaking that includes the proposed regulation;

(II) provide a period of not less than 60 days for comments on the proposed regulation; and

(III) publish the final regulation not less than 30 days before the effective date of the regulation.
(iii) RESTRICTIONS.—Notwithstanding any other provision of law, the Secretary shall promulgate regulations implementing the amendments made by section only as described in clause (ii).

(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 avail-
ability 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.), as amended by section 712, is further amended by adding at the end the following:

“SEC. 569. 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 appropriate, for consultations with stakeholders on the topics described in subsection (c).

“(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 disease issues, including topics described in subsection (c). The Secretary may, when appropriate to address a specific regulatory question, consult such external experts on issues related to the review of new drugs and biological products for rare diseases and drugs and biological products that are genetically targeted, including the topics described in subsection (c), when such consultation is necessary because the Secretary lacks specific scientific, medical, or technical expertise necessary for the performance of its regulatory responsibilities and the necessary expertise can be provided by the external experts.

“(b) External experts.—For purposes of subsection (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 benefits and risks of therapies to treat 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 EMP-
LOYEES.—The external experts who are consulted under this section may be considered special government employ-
ees, as defined under section 202 of title 18, United States Code.

“(e) PROTECTION OF PROPRIETARY INFORMA-
TION.—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 ability of the Secretary 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) ESTABLISHMENT OF WORKING GROUP.—

(1) IN GENERAL.—The Architectural and Transportation Barriers Compliance Board (referred
to in this section as the “Access Board”) shall con-
vene 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 websites 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 developed under subparagraph (A) shall not be construed as accessibility guidelines or standards 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 condition 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 communication, 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 labels for blind and visually-impaired individuals continue.

(2) REPORT.—Not later than September 30, 2016, the Comptroller General of the United States shall submit to Congress a report on the review conducted under paragraph (1). Such report shall include 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 website 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.

SEC. 905. RISK-BENEFIT FRAMEWORK.

Section 505(d) (21 U.S.C. 355(d)) is amended by
adding at the end the following: “The Secretary shall im-
plement a structured risk-benefit assessment framework
in the new drug approval process to facilitate the balanced
consideration of benefits and risks, a consistent and sys-
tematic approach to the discussion and regulatory deci-
sionmaking, and the communication of the benefits and
risks of new drugs. Nothing in the preceding sentence
shall alter the criteria for evaluating an application for
premarket approval of a drug.”.
SEC. 906. INDEPENDENT STUDY ON MEDICAL INNOVATION

INDUCEMENT MODEL.

(a) In General.—The Secretary of Health and Human Services shall enter into an agreement with the National Academies to provide expert consultation and conduct a study that evaluates the feasibility and possible consequences of the use of innovation inducement prizes to reward successful medical innovations. Under the agreement, the National Academies shall submit to the Secretary a report on such study not later than 15 months after the date of enactment of this Act.

(b) Requirements.—

(1) In General.—The study conducted under subsection (a) shall model at least 3 separate segments on the medical technologies market as candidate targets for the new incentive system and consider different medical innovation inducement prize design issues, including the challenges presented in the implementation of prizes for end products, open source dividend prizes, and prizes for upstream research.

(2) Market segments.—The segments on the medical technologies market that shall be considered under paragraph (1) include—

(A) all pharmaceutical and biologic drugs and vaccines;
(B) drugs and vaccines used solely for the treatment of HIV/AIDS; and

(C) antibiotics.

c) ELEMENTS.—The study conducted under subsection (a) shall include consideration of each of the following:

(1) Whether a system of large innovation inducement prizes could work as a replacement for the existing product monopoly/patent-based system, as in effect on the date of enactment of this Act.

(2) How large the innovation prize funds would have to be in order to induce at least as much research and development investment in innovation as is induced under the current system of time-limited market exclusivity, as in effect on the date of enactment of this Act.

(3) Whether a system of large innovation inducement prizes would be more or less expensive than the current system of time-limited market exclusivity, as in effect on the date of enactment of this Act, calculated over different time periods.

(4) Whether a system of large innovation inducement prizes would expand access to new products and improve health outcomes.
(5) The type of information and decisionmaking skills that would be necessary to manage end product prizes.

(6) Whether there would there be major advantages in rewarding the incremental impact of innovations, as benchmarked against existing products.

(7) How open-source dividend prizes could be managed, and whether such prizes would increase access to knowledge, materials, data and technologies.

(8) Whether a system of competitive intermediaries for interim research prizes would provide an acceptable solution to the valuation challenges for interim prizes.

SEC. 907. ORPHAN PRODUCT GRANTS PROGRAM.

(a) Reauthorization of Program.—Section 5(c) of the Orphan Drug Act (21 U.S.C. 360ee(c)) is amended by striking “2008 through 2012” and inserting “2013 through 2017”.

(b) Human Clinical Testing.—Section 5(b)(1)(A)(ii) of the Orphan Drug Act (21 U.S.C. 360ee(b)(1)(A)(ii)) is amended by striking “after the date such drug is designated under section 526 of such Act and”.

†S 3187 ES
SEC. 908. REPORTING OF INCLUSION OF DEMOGRAPHIC SUBGROUPS IN CLINICAL TRIALS AND DATA ANALYSIS IN APPLICATIONS FOR DRUGS, BIOLOGICS, AND DEVICES.

(a) Report.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Commissioner, shall publish on the Internet website of the Food and Drug Administration a report, consistent with the regulations of the Food and Drug Administration pertaining to the protection of sponsors’ confidential commercial information as of the date of enactment of this Act, addressing the extent to which clinical trial participation and the inclusion of safety and effectiveness data by demographic subgroups including sex, age, race, and ethnicity, is included in applications submitted to the Food and Drug Administration, and shall provide such publication to Congress.

(2) Contents of report.—The report described in paragraph (1) shall contain the following:

(A) A description of existing tools to ensure that data to support demographic analyses are submitted in applications for drugs, biological products, and devices, and that these analyses are conducted by applicants consistent
with applicable Food and Drug Administration requirements and Guidance for Industry. The report shall address how the Food and Drug Administration makes available information about differences in safety and effectiveness of medical products according to demographic subgroups, such as sex, age, racial, and ethnic subgroups, to healthcare providers, researchers, and patients.

(B) An analysis of the extent to which demographic data subset analyses on sex, age, race, and ethnicity is presented in applications for new drug applications for new molecular entities under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), in biologics license applications under section 351 of the Public Health Service Act (42 U.S.C. 262), and in premarket approval applications under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e) for products approved or licensed by the Food and Drug Administration, consistent with applicable requirements and Guidance for Industry, and consistent with the regulations of the Food and Drug Administration pertaining to the protec-
tion of sponsors’ confidential commercial information as of the date of enactment of this Act.

(C) An analysis of the extent to which demographic subgroups, including sex, age, racial,
and ethnic subgroups, are represented in clinical studies to support applications for approved
or licensed new molecular entities, biological products, and devices.

(D) An analysis of the extent to which a summary of product safety and effectiveness data by demographic subgroups including sex, age, race, and ethnicity is readily available to the public in a timely manner by means of the product labeling or the Food and Drug Administration’s Internet website.

(b) Action Plan.—

(1) In general.—Not later than 1 year after the publication of the report described in subsection (a), the Secretary, acting through the Commissioner, shall publish an action plan on the Internet website of the Food and Drug Administration, and provide such publication to Congress.

(2) Content of action plan.—The plan described in paragraph (1) shall include—
(A) recommendations, as appropriate, to improve the completeness and quality of analyses of data on demographic subgroups in summaries of product safety and effectiveness data and in labeling;

(B) recommendations, as appropriate, on the inclusion of such data, or the lack of availability of such data in labeling;

(C) recommendations, as appropriate, to otherwise improve the public availability of such data to patients, healthcare providers, and researchers; and

(D) a determination with respect to each recommendation identified in subparagraphs (A) through (C) that distinguishes between product types referenced in subsection (a)(2)(B) insofar as the applicability of each such recommendation to each type of product.

(c) DEFINITIONS.—In this section:

(1) The term “Commissioner” means the Commissioner of Food and Drugs.

(2) The term “device” has the meaning given such term in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).
(3) The term “drug” has the meaning given such term in section 201(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)).

(4) The term “biological product” has the meaning given such term in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i)).

(5) The term “Secretary” means the Secretary of Health and Human Services.

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 not possible, 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 practicable after the date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary shall establish a Task Force to develop and implement 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 interagency 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 described 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 determines 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 action 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 associated with the violation involved before taking such action or issuing such letter, unless there is immi-
(4) Reporting by other entities.—The Secretary shall identify or establish a mechanism by which healthcare providers and other third-party organizations may report to the Secretary evidence of a drug shortage.

(5) Review and construction.—No determination, finding, action, or omission of the Secretary 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, including 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 contributing to the drug shortages described in subparagraph (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 establishment inspections or reinspections that the Secretary expedited under subsection (c)(2) in each calendar year.

“(E) The number of notifications submitted 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 exac-
erbate 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 sum-
mary 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 miti-
gate drug shortages.

“(2) Trend analysis.—The Secretary is au-
thorized 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 En-
ergy and Commerce of the House of Representatives
a report summarizing, with respect to the 1-year pe-
period preceding such report, the information de-
scribed in paragraph (1). Such report shall not in-
clude any information that is exempt from disclosure
under subsection (a) of 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 the proposed regulation;

“(B) provide a period of not less than 60 days for comments on the proposed regulation;
“(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 promul-
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 practices by market participants (including manufacturers, distributors, group purchasing 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 actions are necessary.

(3) TRADE SECRET AND CONFIDENTIAL INFORMATION.—Nothing in this subsection alters or amends section 1905 of title 18, United States Code, or section 552(b)(4) of title 5, United States Code.

(e) GUIDANCE REGARDING REPACKAGING.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue guidance that clarifies the policy of the Food and Drug Administration regarding hospital pharmacies repackaging and safely transferring repackaged drugs among hospitals within a common health system during a drug shortage, as identified by the Secretary.
TITLE XI—OTHER PROVISIONS

Subtitle A—Reauthorizations

SEC. 1101. REAUTHORIZATION OF PROVISION RELATING TO EXCLUSIVITY OF CERTAIN DRUGS CONTAINING SINGLE ENANTIOMERS.

(a) In General.—Section 505(u)(4) (21 U.S.C. 355(u)(4)) is amended by striking “2012” and inserting “2017”.


SEC. 1102. REAUTHORIZATION OF THE CRITICAL PATH PUBLIC-PRIVATE PARTNERSHIPS.

Section 566(f) (21 U.S.C. 360bbb–5(f)) is amended by striking “2012” and inserting “2017”.

Subtitle B—Medical Gas Product Regulation

SEC. 1111. REGULATION OF MEDICAL GAS PRODUCTS.

(a) Regulation.—Chapter V (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

“Subchapter G—Medical Gas Products

“SEC. 575. DEFINITIONS.

“(1) The term ‘designated medical gas product’

means any of the following:
“(A) Oxygen, that meets the standards set forth in an official compendium.

“(B) Nitrogen, that meets the standards set forth in an official compendium.

“(C) Nitrous oxide, that meets the standards set forth in an official compendium.

“(D) Carbon dioxide, that meets the standards set forth in an official compendium.

“(E) Helium, that meets the standards set forth in an official compendium.

“(F) Carbon monoxide, that meets the standards set forth in an official compendium.

“(G) Medical air, that meets the standards set forth in an official compendium.

“(H) Any other medical gas product deemed appropriate by the Secretary, unless any period of exclusivity under section 505(c)(3)(E)(ii) or 505(j)(5)(F)(ii), or the extension of any such period under section 505A, applicable to such medical gas product has not expired.

“(2) The term ‘medical gas product’ means a drug that—

“(A) is manufactured or stored in a liquefied, nonliquefied, or cryogenic state; and
“(B) is administered as a gas.

SEC. 576. REGULATION OF MEDICAL GAS PRODUCTS.

“(a) Certification of Designated Medical Gas Products.—

“(1) Submission.—

“(A) In general.—Beginning on the date of enactment of this section, any person may file with the Secretary a request for a certification of a designated medical gas product.

“(B) Content.—A request under subparagraph (A) shall contain—

“(i) a description of the medical gas product;

“(ii) the name and address of the sponsor;

“(iii) the name and address of the facility or facilities where the gas product is or will be manufactured; and

“(iv) any other information deemed appropriate by the Secretary to determine whether the medical gas product is a designated medical gas product.

“(2) Grant of Certification.—A certification described under paragraph (1)(A) shall be determined to have been granted unless, not later than
60 days after the filing of a request under paragraph (1), the Secretary finds that—

“(A) the medical gas product subject to the certification is not a designated medical gas product;

“(B) the request does not contain the information required under paragraph (1) or otherwise lacks sufficient information to permit the Secretary to determine that the gas product is a designated medical gas product; or

“(C) granting the request would be contrary to public health.

“(3) EFFECT OF CERTIFICATION.—

“(A) IN GENERAL.—

“(i) APPROVED USES.—A designated medical gas product for which a certification is granted under paragraph (2) is deemed, alone or in combination with another designated gas product or products as medically appropriate, to have in effect an approved application under section 505 or 512, subject to all applicable post-approval requirements, for the following indications for use:
“(I) Oxygen for the treatment or prevention of hypoxemia or hypoxia.

“(II) Nitrogen for use in hypoxic challenge testing.

“(III) Nitrous oxide for analgesia.

“(IV) Carbon dioxide for use in extracorporeal membrane oxygenation therapy or respiratory stimulation.

“(V) Helium for the treatment of upper airway obstruction or increased airway resistance.

“(VI) Medical air to reduce the risk of hyperoxia.

“(VII) Carbon monoxide for use in lung diffusion testing.

“(VIII) Any other indication for use for a designated medical gas product or combination of designated medical gas products deemed appropriate by the Secretary, unless any period of exclusivity under clause (iii) or (iv) of section 505(c)(3)(E), under clause (iii) or (iv) of section 505(j)(5)(F), or under section 527, or the extension of
any such period under section 505A,
applicable to such indication for use
for such gas product or combination
of products has not expired.

“(ii) LABELING.—The requirements
established in sections 503(b)(4) and
502(f) shall be deemed to have been met
for a designated medical gas product if the
labeling on final use containers of such gas
product bears the information required by
section 503(b)(4) and a warning statement
concerning the use of the gas product, as
determined by the Secretary by regulation,
as well as appropriate directions and warn-
ings concerning storage and handling.

“(B) INAPPLICABILITY OF EXCLUSIVITY
PROVISIONS.—

“(i) EFFECT ON INELIGIBILITY.—No
designated medical gas product deemed
under paragraph (3)(A)(i) to have in effect
an approved application shall be eligible for
any periods of exclusivity under sections
505(c), 505(j), or 527, or the extension of
any such period under section 505A, on
the basis of such deemed approval.
“(ii) Effect on certification.—

No period of exclusivity under sections 505(c), 505(j), or section 527, or the extension of any such period under section 505A, with respect to an application for a drug shall prohibit, limit, or otherwise affect the submission, grant, or effect of a certification under this section, except as provided in paragraph (3)(A)(i)(VIII).

“(4) Withdrawal, suspension, or revocation of approval.—

“(A) In general.—Nothing in this subchapter limits the authority of the Secretary to withdraw or suspend approval of a drug, including a designated medical gas product deemed under this section to have in effect an approved application, under section 505 or section 512.

“(B) Revocation.—The Secretary may revoke the grant of a certification under this section if the Secretary determines that the request for certification contains any material omission or falsification.

“(b) Prescription requirement.—

“(1) In general.—A designated medical gas product shall be subject to section 503(b)(1) unless
the Secretary exercises the authority provided in section 503(b)(3) to remove such gas product from the requirements of section 503(b)(1) or the use in question is authorized pursuant to another provision of this Act relating to use of medical products in emergencies.

“(2) Exception for oxygen.—

“(A) In general.—Notwithstanding paragraph (1), oxygen may be provided without a prescription for the following uses:

“(i) The use in the event of depressurization or other environmental oxygen deficiency.

“(ii) The use in the event of oxygen deficiency or use in emergency resuscitation, when administered by properly trained personnel.

“(B) Labeling.—For oxygen provided pursuant to subparagraph (A), the requirements established in section 503(b)(4) shall be deemed to have been met if the labeling of the oxygen bears a warning that the medical gas product can be used for emergency use only and for all other medical applications a prescription is required.
“(c) Inapplicability of Drugs Fees to Designated Medical Gas Products.—A designated medical gas product deemed under this section to have in effect an approved application shall not be assessed fees under section 736(a) on the basis of such deemed approval.”.

SEC. 1112. REGULATIONS.

(a) Review of Regulations.—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, after obtaining input from medical gas product manufacturers, and any other interested members of the public, submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding any changes to the Federal drug regulations in title 21, Code of Federal Regulations that the Secretary determines to be necessary.

(b) Amended Regulations.—If the Secretary determines that changes to the Federal drug regulations in title 21, Code of Federal Regulations are necessary under subsection (a), the Secretary shall issue final regulations implementing such changes not later than 4 years after the date of enactment of this Act.
SEC. 1113. APPLICABILITY.

Nothing in this subtitle or the amendments made by this subtitle shall apply to—

(1) a drug that is covered by an application under section 505 or 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 360b) approved prior to May 1, 2012; or

(2) any of the gases listed in subparagraphs (A) through (G) of section 575(1) of such Act (as added by section 1111), or any mixture of any such gases, for an indication that—

(A) is not included in, or is different from, those specified in subclauses (I) through (VII) of section 576(a)(3)(i) of such Act (as added by section 1111); and

(B) is approved on or after May 1, 2012, pursuant to an application submitted under section 505 or 512 of such Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. 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) and moving such paragraph, as so redesignated, 2 ems to the left;

(ii) in subparagraph (A), by redesignating clauses (i) through (iii) as subparagraphs (A) through (C), respectively, and moving such subparagraphs, as so redesignated, 2 ems to the left;

(iii) in subparagraph (A), as so redesignated, by inserting “, including strategies to increase the number of special Government employees across medical and scientific specialties in areas where the Secretary would benefit from specific scientific, medical, or technical expertise necessary for the performance of its regulatory responsibilities” before the semicolon at the end;

(iv) by striking “(1) RECRUITMENT.—” and inserting “(1) RECRUITMENT IN GENERAL.—The Secretary shall—”;

(v) by striking “(A) IN GENERAL.—The Secretary shall—”;

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(vi) by redesignating clauses (i) through (iii) of paragraph (2) (as so redesignated) as subparagraphs (A) through (C), respectively, and moving such subparagraphs, as so redesignated, 2 ems to the left;

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

(viii) by adding at the end the following:

“(3) Recruitment through referrals.—In carrying out paragraph (1), the Secretary shall, in order to further the goal of including in advisory committees highly qualified and specialized experts in the specific diseases to be considered by such advisory committees, at least every 180 days, request referrals from a variety of stakeholders, such as the Institute of Medicine, the National Institutes of Health, product developers, patient groups, disease advocacy organizations, professional societies, medical societies, including the American Academy of
Medical Colleges, and other governmental organizations.”;

(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 Representatves”; 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.”.
SEC. 1122. 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 guidance that describes Food and Drug Administration policy regarding the promotion, using the Internet (including social media), of medical products that are regulated by such Administration.

SEC. 1123. ELECTRONIC SUBMISSION OF APPLICATIONS.

Subchapter D of chapter VII (21 U.S.C. 379k et seq.) is amended by inserting after section 745 the following:

"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 comment, 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 elec-
tronic submission as required by such para-
graph; and

“(B) set forth criteria for waivers of and
exemptions from the requirements of this sub-
section.

“(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 para-
graph, pre-submissions and submissions for devices
under section 510(k), 513(f)(2)(A), 515(e), 515(d),
515(f), 520(g), 520(m), or 564 of this Act or section
351 of the Public Health Service Act, and any sup-
plements to such pre-submissions or submissions,
shall include an electronic copy of such pre-submis-
sions 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 sub-
section.”.
SEC. 1124. COMBATING PRESCRIPTION DRUG ABUSE.

(a) IN GENERAL.—To combat the significant rise in prescription drug abuse and the consequences of such abuse, the Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Commissioner of Food and Drugs (referred to in this section as the “Commissioner”) and in coordination with other Federal agencies, as appropriate, shall review current Federal initiatives and identify gaps and opportunities with respect to ensuring the safe use and disposal of prescription drugs with the potential for abuse.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall post a report on the Internet website of the Food and Drug Administration on the findings of the review under subsection (a). Such report shall include findings and recommendations on—

(1) how best to leverage and build upon existing Federal and federally funded data sources, such as prescription drug monitoring program data and the sentinel initiative of the Food and Drug Administration under section 505(k)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(k)(3)), as it relates to collection of information relevant to adverse events, patient safety, and patient outcomes, to

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create a centralized data clearinghouse and early
warning tool;

(2) how best to develop and disseminate widely
best practices models and suggested standard re-
quirements to States for achieving greater interoper-
ability and effectiveness of prescription drug moni-
toring programs, especially with respect to provider
participation, producing standardized data on ad-
verse events, patient safety, and patient outcomes;
and

(3) how best to develop provider, pharmacist,
and patient education tools and a strategy to widely
disseminate such tools and assess the efficacy of
such tools.

(c) GUIDANCE ON ABUSE-DETERRENT PRODUCTS.—
Not later than 6 months after the date of enactment of
this Act, the Secretary, acting through the Commissioner,
shall promulgate guidance on the development of abuse-
deterrent drug products.

(d) STUDY AND REPORT ON PRESCRIPTION DRUG
ABUSE.—Not later than 1 year after the date of enact-
ment of this Act, the Secretary shall seek to enter into
an agreement with the Institute of Medicine to conduct
a study and report on prescription drug abuse. Such re-
port shall evaluate trends in prescription drug abuse, as-
assess opportunities to inform and educate the public, patients, and health care providers on issues related to prescription drug abuse and misuse, and identify potential barriers, if any, to prescription drug monitoring program participation and implementation.

SEC. 1125. TANNING BED LABELING.

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall determine whether to amend the warning label requirements for sunlamp products to include specific requirements to more clearly and effectively convey the risks that such products pose for the development of irreversible damage to the eyes and skin, including skin cancer.

SEC. 1126. OPTIMIZING GLOBAL CLINICAL TRIALS.

Subchapter E of chapter V (21 U.S.C. 360bbb et seq.), as amended by section 903, is further amended by adding at the end the following:

“SEC. 569A. OPTIMIZING GLOBAL CLINICAL TRIALS.

“(a) IN GENERAL.—The Secretary shall—

“(1) work with other regulatory authorities of similar standing, medical research companies, and international organizations to foster and encourage uniform, scientifically-driven clinical trial standards with respect to medical products around the world; and

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“(2) enhance the commitment to provide consistent parallel scientific advice to manufacturers seeking simultaneous global development of new medical products in order to—

“(A) enhance medical product development;

“(B) facilitate the use of foreign data; and

“(C) minimize the need to conduct duplicative clinical studies, preclinical studies, or non-clinical studies.

“(b) MEDICAL PRODUCT.—In this section, the term ‘medical product’ means a drug, as defined in subsection (g) of section 201, a device, as defined in subsection (h) of such section, or a biological product, as defined in section 351(i) of the Public Health Service Act.

“(c) SAVINGS CLAUSE.—Nothing in this section shall alter the criteria for evaluating the safety or effectiveness of a medical product under this Act.

“SEC. 569B. USE OF CLINICAL INVESTIGATION DATA FROM OUTSIDE THE UNITED STATES.

“(a) IN GENERAL.—In determining whether to approve, license, or clear a drug or device pursuant to an application submitted under this chapter, the Secretary shall accept data from clinical investigations conducted outside of the United States, including the European
Union, if the applicant demonstrates that such data are adequate under applicable standards to support approval, licensure, or clearance of the drug or device in the United States.

“(b) NOTICE TO SPONSOR.—If the Secretary finds under subsection (a) that the data from clinical investigations conducted outside the United States, including in the European Union, are inadequate for the purpose of making a determination on approval, clearance, or licensure of a drug or device pursuant to an application submitted under this chapter, the Secretary shall provide written notice to the sponsor of the application of such finding and include the rationale for such finding.”.

SEC. 1127. ADVANCING REGULATORY SCIENCE TO PROMOTE PUBLIC HEALTH INNOVATION.

(a) IN GENERAL.—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 develop a strategy and implementation plan for advancing regulatory science for medical products in order to promote the public health and advance innovation in regulatory decisionmaking.

(b) REQUIREMENTS.—The strategy and implementation plan developed under subsection (a) shall be consistent with the user fee performance goals in the Pre-
scription Drug User Fee Agreement commitment letter,
the Generic Drug User Fee Agreement commitment letter,
and the Biosimilar User Fee Agreement commitment let-
ter transmitted by the Secretary to Congress on January
13, 2012, and the Medical Device User Fee Agreement
commitment letter transmitted by the Secretary to Con-
gress on April 20, 2012, and shall—

(1) identify a clear vision of the fundamental
role of efficient, consistent, and predictable, science-
based decisions throughout regulatory decision-
making of the Food and Drug Administration with
respect to medical products;

(2) identify the regulatory science priorities of
the Food and Drug Administration directly related
to fulfilling the mission of the agency with respect
to decisionmaking concerning medical products and
allocation of resources towards such regulatory
science priorities;

(3) identify regulatory and scientific gaps that
impede the timely development and review of, and
regulatory certainty with respect to, the approval, li-
censure, or clearance of medical products, including
with respect to companion products and new tech-
nologies, and facilitating the timely introduction and
adoption of new technologies and methodologies in a
safe and effective manner;

(4) identify clear, measurable metrics by which
progress on the priorities identified under paragraph
(2) and gaps identified under paragraph (3) will be
measured by the Food and Drug Administration, in-
cluding metrics specific to the integration and adop-
tion of advances in regulatory science described in
paragraph (5) and improving medical product deci-
sionmaking, in a predictable and science-based man-
ner; and

(5) set forth how the Food and Drug Adminis-
tration will ensure that advances in regulatory
science for medical products are adopted, as appro-
priate, on an ongoing basis and in a manner inte-
grated across centers, divisions, and branches of the
Food and Drug Administration, including by senior
managers and reviewers, including through the—

(A) development, updating, and consistent
application of guidance documents that support
medical product decisionmaking; and

(B) the adoption of the tools, methods, and
processes under section 566 of the Federal
Food, Drug, and Cosmetic Act (21 U.S.C.
360bbb–5).
(c) **Annual Performance Reports.**—As part of the annual performance reports submitted to Congress under sections 736B(a) (as amended by section 104), 738A(a) (as amended by section 204), 744C(a) (as added by section 303), and 744I(a) (as added by section 403) of the Federal Food, Drug, and Cosmetic Act for each of fiscal years 2013 through 2017, the Secretary shall annually report on the progress made with respect to—

1. advancing the regulatory science priorities identified under paragraph (2) of subsection (b) and resolving the gaps identified under paragraph (3) of such subsection, including reporting on specific metrics identified under paragraph (4) of such subsection;

2. the integration and adoption of advances in regulatory science as set forth in paragraph (5) of such subsection; and

3. the progress made in advancing the regulatory science goals outlined in the Prescription Drug User Fee Agreement commitment letter, the Generic Drug User Fee Agreement commitment letter, and the Biosimilar User Fee Agreement commitment letter transmitted by the Secretary to Congress on January 13, 2012, and the Medical Device User
Fee Agreement transmitted by the Secretary to Congress on April 20, 2012.

(d) INDEPENDENT ASSESSMENT.—Not later than January 1, 2016, the Comptroller General of the United States shall submit to Congress a report—

(1) detailing the progress made by the Food and Drug Administration in meeting the priorities and addressing the gaps identified in subsection (b), including any outstanding gaps; and

(2) containing recommendations, as appropriate, on how regulatory science initiatives for medical products can be strengthened and improved to promote the public health and advance innovation in regulatory decisionmaking.

(e) MEDICAL PRODUCT.—In this section, the term “medical product” means a drug, as defined in subsection (g) of section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), a device, as defined in subsection (h) of such section, or a biological product, as defined in section 351(i) of the Public Health Service Act.

SEC. 1128. INFORMATION TECHNOLOGY.

(a) HHS REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall—

(1) report to Congress on—
(A) the milestones and a completion date
for developing and implementing a comprehen-
sive information technology strategic plan to
align the information technology systems mod-
ernization projects with the strategic goals of
the Food and Drug Administration, including
results-oriented goals, strategies, milestones,
performance measures;

(B) efforts to finalize and approve a com-
prehensive inventory of the information tech-
nology systems of the Food and Drug Adminis-
tration that includes information describing
each system, such as costs, system function or
purpose, and status information, and incor-
porate use of the system portfolio into the in-
formation investment management process of
the Food and Drug Administration;

(C) the ways in which the Food and Drug
Administration uses the plan described in sub-
paragraph (A) to guide and coordinate the
modernization projects and activities of the
Food and Drug Administration, including the
interdependencies among projects and activities;
(D) the extent to which the Food and Drug Administration has fulfilled or is imple-
menting recommendations of the Government Accountability Office with respect to the Food and Drug Administration and information tech-
nology; and

(2) develop—

(A) a documented enterprise architecture program management plan that includes the tasks, activities, and timeframes associated with developing and using the architecture and ad-
dresses how the enterprise architecture program management will be performed in coordination with other management disciplines, such as or-
organizational strategic planning, capital planning and investment control, and performance man-
agement; and

(B) a skills inventory, needs assessment, gap analysis, and initiatives to address skills gaps as part of a strategic approach to informa-
tion technology human capital planning.

(b) GAO REPORT.—Not later than January 1, 2016, the Comptroller General of the United States shall issue a report regarding the strategic plan described in sub-
section (a)(1)(A) and related actions carried out by the
Food and Drug Administration. Such report shall assess the progress the Food and Drug Administration has made on—

(1) the development and implementation of a comprehensive information technology strategic plan, including the results-oriented goals, strategies, milestones, and performance measures identified in subsection (a)(1)(A);

(2) the effectiveness of the comprehensive information technology strategic plan described in subsection (a)(1)(A), including the results-oriented goals and performance measures; and

(3) the extent to which the Food and Drug Administration has fulfilled recommendations of the Government Accountability Office with respect to such agency and information technology.

SEC. 1129. REPORTING REQUIREMENTS.

Subchapter A of chapter VII (21 U.S.C. 371 et seq.), as amended by section 208, is further amended by adding at the end the following:

"SEC. 715. REPORTING REQUIREMENTS.

“(a) NEW DRUGS.—Beginning with fiscal year 2013 and ending with fiscal year 2017, not later than 120 days after the end of each fiscal year for which fees are collected under part 2 of subchapter C, the Secretary shall
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 a report concerning, for all applications for approval of a new drug under section 505(b) of this Act or a new biological product under section 351(a) of the Public Health Service Act filed in the previous fiscal year—

“(1) the number of such applications that met the goals identified for purposes of part 2 of subchapter C 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;

“(2) the percentage of such applications that were approved;

“(3) the percentage of such applications that were issued complete response letters;

“(4) the percentage of such applications that were subject to a refuse-to-file action;

“(5) the percentage of such applications that were withdrawn; and
“(6) the average total time to decision by the Secretary for all applications for approval of a new drug under section 505(b) of this Act or a new biological product under section 351(a) of the Public Health Service Act filed in the previous fiscal year, including the number of calendar days spent during the review by the Food and Drug Administration and the number of calendar days spent by the sponsor responding to a complete response letter.”.

“(b) GENERIC DRUGS.—Beginning with fiscal year 2013 and ending after fiscal year 2017, not later than 120 days after the end of each fiscal year for which fees are collected under part 7 of subchapter C, the Secretary shall 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 a report concerning, for all applications for approval of a generic drug under section 505(j), amendments to such applications, and prior approval supplements with respect to such applications filed in the previous fiscal year—

“(1) the number of such applications that met the goals identified for purposes of part 7 of subchapter C, 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;

“(2) the average total time to decision by the Secretary for applications for approval of a generic drug under section 505(j), amendments to such applications, and prior approval supplements with respect to such applications filed in the previous fiscal year, including the number of calendar days spent during the review by the Food and Drug Administration and the number of calendar days spent by the sponsor responding to a complete response letter;

“(3) the total number of applications under section 505(j), amendments to such applications, and prior approval supplements with respect to such applications that were pending with the Secretary for more than 10 months on the date of enactment of the Food and Drug Administration Safety and Innovation Act; and

“(4) the number of applications described in paragraph (3) on which the Food and Drug Admin-
istration took final regulatory action in the previous fiscal year.

“(c) BIOSIMILAR BIOLOGICAL PRODUCTS.—

“(1) IN GENERAL.—Beginning with fiscal year 2014, not later than 120 days after the end of each fiscal year for which fees are collected under part 8 of subchapter C, the Secretary shall 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 a report concerning—

“(A) the number of applications for approval filed under section 351(k) of the Public Health Service Act; and

“(B) the percentage of applications described in subparagraph (A) that were approved by the Secretary.

“(2) ADDITIONAL INFORMATION.—As part of the performance report described in paragraph (1), the Secretary shall include an explanation of how the Food and Drug Administration is managing the biological product review program to ensure that the user fees collected under part 2 are not used to review an application under section 351(k) of the Public Health Service Act.”.
SEC. 1130. STRATEGIC INTEGRATED MANAGEMENT PLAN.

(a) Strategic Integrated Management 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 strategic integrated management plan for the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health. Such strategic management plan shall—

(1) identify strategic institutional goals and priorities for the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health;

(2) describe the actions the Secretary will take to recruit, retain, train, and continue to develop the workforce at the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health to fulfill the public health mission of the Food and Drug Administration; and

(3) identify results-oriented, outcome-based measures that the Secretary will use to measure the progress of achieving the strategic goals and priorities identified under paragraph (1) and the effec-
tiveness of the actions identified under paragraph (2), including metrics to ensure that managers and reviewers of the Center for Drug Evaluation and Research, the Center for Biologies Evaluation and Research, and the Center for Devices and Radiological Health are familiar with and appropriately and consistently apply the requirements under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), including new requirements under parts 2, 3, 7, and 8 of subchapter C of title VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379f et seq.).

(b) REPORT.—Not later than January 1, 2016, the Comptroller General of the United States shall issue a report regarding the strategic management plan described in subsection (a) and related actions carried out by the Food and Drug Administration. Such report shall—

(1) assess the effectiveness of the actions described in subsection (a)(2) in recruiting, retaining, training, and developing the workforce at the Center for Drug Evaluation and Research, the Center for Biologies Evaluation and Research, and the Center for Devices and Radiological Health in fulfilling the public health mission of the Food and Drug Administration;
(2) assess the effectiveness of the measures identified under subsection (a)(3) in gauging progress against the strategic goals and priorities identified under subsection (a)(1);

(3) assess the extent to which the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health are using the identified results-oriented set of performance measures in tracking their workload by strategic goals and the effectiveness of such measures;

(4) assess the extent to which performance information is collected, analyzed, and acted on by managers; and

(5) make recommendations, as appropriate, regarding how the strategic management plan and related actions of the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health could be improved to fulfill the public health mission of the Food and Drug Administration in as efficient and effective manner as possible.

SEC. 1131. DRUG DEVELOPMENT AND TESTING.

(a) In General.—Section 505–1 (21 U.S.C. 355–1) is amended by adding at the end the following:
“(k) Drug Development and Testing.—

“(1) In general.—Notwithstanding any other provision of law, if a drug is a covered drug, no elements to ensure safe use shall prohibit, or be construed or applied to prohibit, supply of such drug to any eligible drug developer for the purpose of conducting testing necessary to support an application under subsection (b)(2) or (j) of section 505 of this Act or section 351(k) of the Public Health Service Act, if the Secretary has issued a written notice described in paragraph (2), and the eligible drug developer has agreed to comply with the terms of the notice.

“(2) Written notice.—For purposes of this subsection, the Secretary shall, within a reasonable period of time, consider and respond to a request by an eligible drug developer for a written notice authorizing the supply of a covered drug for purposes of testing as described in paragraph (1), and the Secretary shall issue a written notice to such eligible drug developer and the holder of an application for a covered drug authorizing the supply of such drug to such eligible drug developer for purposes of testing if—
“(A) the eligible drug developer has agreed to comply with any conditions the Secretary considers necessary;

“(B) in the event the eligible drug developer is conducting bioequivalence or other clinical testing, the eligible drug developer has submitted, and the Secretary has approved, a protocol that includes protections that the Secretary finds will provide assurance of safety comparable to the assurance of safety provided by the elements to ensure safe use in the risk evaluation and mitigation strategy for the covered drug as applicable to such testing; and

“(C) the eligible drug developer is in compliance with applicable laws and regulations related to such testing, including any applicable requirements related to Investigational New Drug Applications or informed consent.

“(3) ADDITIONAL REQUIRED ELEMENT.—The Secretary shall require as an element of each risk evaluation and mitigation strategy with elements to ensure safe use approved by the Secretary that the holder of an application for a covered drug shall not restrict the resale of the covered drug to an eligible drug developer that receives a written notice from
the Secretary under paragraph (2) unless, at any
time, the Secretary provides written notice to the
holder of the application directing otherwise based
on a shortage of such drug for patients, national se-
curity concerns related to access to such drug, or
such other reason as the Secretary may specify.

“(4) VIOLATION AND PENALTIES.—For pur-
poses of subsection (f)(8) and sections 301,
303(f)(4), 502(y), and 505(p), it shall be a violation
of the risk evaluation and mitigation strategy for the
holder of the application for a covered drug to vio-
late the element described in paragraph (3), or in
the case of a holder of an application that is a sole
distributor or supplier of a covered drug, to prevent
the sale thereof after receipt of a written notice by
the Secretary issued under paragraph (2). The Sec-
retary shall provide written notice to the Committee
on Health, Education, Labor, and Pensions of the
Senate and the Committee on Energy and Com-
merce of the House of Representatives within 30
days of the Secretary becoming aware that a holder
of an application of a covered drug has restricted
the sale of such a covered drug to any eligible drug
developer after receipt of written notice as provided
in paragraph (2).
“(5) LIABILITY.—Unless the holder of the application for a covered drug and the eligible developer are the same entity, the holder of an application for a covered drug shall not be liable for any claim arising out of the eligible drug developer’s testing necessary to support an application under subsection (b)(2) or (j) of section 505 of this Act or section 351(k) of the Public Health Service Act for a drug obtained under this subsection. Nothing in this subsection shall be construed to expand or limit the liability of the eligible drug developer or the holder of an application for a covered drug for any other claim.

“(6) CERTIFICATION.—In any request for supply of a covered drug for purposes of testing as described in paragraph (1), an eligible drug developer shall certify to the Secretary that—

“(A) the eligible drug developer will comply with all conditions the Secretary considers necessary, any protocol approved by the Secretary, and all applicable laws and regulations pertaining to such testing; and

“(B) the eligible drug developer intends to submit an application under subsection (b)(2) or (j) of section 505 of this Act or section
351(k) of the Public Health Service Act for the
drug for which it is requesting written notice
pursuant to paragraph (2), and will use the
covered drug only for the purpose of conducting
testing to support such an application.

“(7) DEFINITIONS.—

“(A) COVERED DRUG.—Notwithstanding
subsection (b)(2), for purposes of this sub-
section, the term ‘covered drug’ means a drug,
including a biological product licensed under
section 351(a) of the Public Health Service Act,
that is subject to a risk evaluation and mitiga-
tion strategy with elements to ensure safe use
under subsection (f), or a drug, including a bio-
logical product licensed under section 351(a) of
the Public Health Service Act, required to have
a risk evaluation and mitigation strategy with
elements to ensure safe use under section
909(b) of the Food and Drug Administration

“(B) ELIGIBLE DRUG DEVELOPER.—For
purposes of this subsection, the term ‘eligible
drug developer’ means a sponsor that has sub-
mitted, or intends to submit, an application
under subsection (b)(2) or (j) of section 505 of
this Act or section 351(k) of the Public Health
Service Act to market a version of the covered
drug in the United States.

“(8) EFFECT ON OTHER LAW.—Notwith-
standing the provisions of this subsection, the anti-
trust statutes enforced by the Federal Trade Com-
mission, including the Federal Trade Commission
1–7), and any other statute properly under such
Commission’s jurisdiction, shall apply to the conduct
described in this subsection to the same extent as
such statutes did on the day before the date of en-
actment of this subsection.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 505–1(c)(2) (21 U.S.C. 355–
1(c)(2)) is amended by striking “(e) and (f)” and in-
serting “(e), (f), and (k)(3)”.

(2) Section 502(y) (21 U.S.C. 352(y)) is
amended by striking “”(d), (e), or (f) of section
505–1” and inserting “(d), (e), (f), or (k)(3) of sec-
tion 505–1”.

†S 3187 ES
SEC. 1132. PATIENT PARTICIPATION IN MEDICAL PRODUCT DISCUSSIONS.

Subchapter E of chapter V (21 U.S.C. 360bbb et seq.), as amended by section 1126, is further amended by adding at the end the following:

"SEC. 569C. PATIENT PARTICIPATION IN MEDICAL PRODUCT DISCUSSION.

“(a) In General.—The Secretary shall develop and implement strategies to solicit the views of patients during the medical product development process and consider the perspectives of patients during regulatory discussions, including by—

“(1) fostering participation of a patient representative who may serve as a special government employee in appropriate agency meetings with medical product sponsors and investigators; and

“(2) exploring means to provide for identification of patient representatives who do not have any, or have minimal, financial interests in the medical products industry.

“(b) Financial Interest.—In this section, the term ‘financial interest’ means a financial interest under section 208(a) of title 18, United States Code.”.
SEC. 1133. NANOTECHNOLOGY REGULATORY SCIENCE PROGRAM.

(a) In General.—Chapter X (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

"SEC. 1013. NANOTECHNOLOGY REGULATORY SCIENCE PROGRAM.

“(a) In General.—Not later than 180 days after the date of enactment of the Food and Drug Administration Safety and Innovation Act, the Secretary, in consultation as appropriate with the Secretary of Agriculture, shall establish within the Food and Drug Administration a Nanotechnology Regulatory Science Program (referred to in this section as the ‘program’) to enhance scientific knowledge regarding nanomaterials included or intended for inclusion in products regulated under this Act or other statutes administered by the Food and Drug Administration, to address issues relevant to the regulation of those products, including the potential toxicology of such materials, the effects of such materials on biological systems, and interaction of such materials with biological systems.

“(b) Program Purposes.—The purposes of the program established under subsection (a) may include—

“(1) assessing scientific literature and data on general nanomaterials interactions with biological systems and on specific nanomaterials of concern to the Food and Drug Administration;"
“(2) in cooperation with other Federal agencies, developing and organizing information using databases and models that will facilitate the identification of generalized principles and characteristics regarding the behavior of classes of nanomaterials with biological systems;

“(3) promoting Food and Drug Administration programs and participate in collaborative efforts, to further the understanding of the science of novel properties of nanomaterials that might contribute to toxicity;

“(4) promoting and participating in collaborative efforts to further the understanding of measurement and detection methods for nanomaterials;

“(5) collecting, synthesizing, interpreting, and disseminating scientific information and data related to the interactions of nanomaterials with biological systems;

“(6) building scientific expertise on nanomaterials within the Food and Drug Administration, including field and laboratory expertise, for monitoring the production and presence of nanomaterials in domestic and imported products regulated under this Act;
“(7) ensuring ongoing training, as well as dis-
semination of new information within the centers of
the Food and Drug Administration, and more broad-
ly across the Food and Drug Administration, to en-
sure timely, informed consideration of the most cur-
rent science pertaining to nanomaterials;
“(8) encouraging the Food and Drug Adminis-
tration to participate in international and national
consensus standards activities pertaining to nano-
materials; and
“(9) carrying out other activities that the Sec-
retary determines are necessary and consistent with
the purposes described in paragraphs (1) through
(8).
“(c) PROGRAM ADMINISTRATION.—
“(1) Designated Individual.—In carrying
out the program under this section, the Secretary,
acting through the Commissioner of Food and
Drugs, may designate an appropriately qualified in-
dividual who shall supervise the planning, manage-
ment, and coordination of the program.
“(2) Duties.—The duties of the individual des-
ignated under paragraph (1) may include—
“(A) developing a detailed strategic plan for achieving specific short- and long-term technical goals for the program;

“(B) coordinating and integrating the strategic plan with activities by the Food and Drug Administration and other departments and agencies participating in the National Nanotechnology Initiative; and

“(C) developing Food and Drug Administration programs, contracts, memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals of the program.

“(d) REPORT.—Not later than March 15, 2015, the Secretary shall publish on the Internet Web site of the Food and Drug Administration a report on the program carried out under this section. Such report shall include—

“(1) a review of the specific short- and long-term goals of the program;

“(2) an assessment of current and proposed funding levels for the program, including an assessment of the adequacy of such funding levels to support program activities; and
“(3) a review of the coordination of activities under the program with other departments and agencies participating in the National Nanotechnology Initiative.

“(e) EFFECT OF SECTION.—Nothing in this section shall affect the authority of the Secretary under any other provision of this Act or other statutes administered by the Food and Drug Administration.”.

(b) EFFECTIVE DATE; SUNSET.—The Nanotechnology Regulatory Science Program authorized under section 1013 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)) shall take effect on October 1, 2012, or the date of the enactment of this Act, whichever is later. Such Program shall cease to be effective October 1, 2017.

SEC. 1134. ONLINE PHARMACY REPORT TO CONGRESS.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States 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 that describes any problems posed by pharmacy Internet websites that violate Federal or State law, including—
(1) the methods by which Internet websites are used to sell prescription drugs in violation of Federal or State law or established industry standards;

(2) the harmful health effects that patients experience when they consume prescription drugs purchased through such pharmacy Internet websites;

(3) efforts by the Federal Government and State and local governments to investigate and prosecute the owners or operators of pharmacy Internet websites, to address the threats such websites pose, and to protect patients;

(4) the level of success that Federal, State, and local governments have experienced in investigating and prosecuting such cases;

(5) whether the law, as in effect on the date of the report, provides sufficient authorities to Federal, State, and local governments to investigate and prosecute the owners and operators of pharmacy Internet websites;

(6) additional authorities that could assist Federal, State, and local governments in investigating and prosecuting the owners and operators of pharmacy Internet websites;

(7) laws, policies, and activities that would educate consumers about how to distinguish pharmacy
Internet websites that comply with Federal and State laws and established industry standards from those pharmacy Internet websites that do not comply with such laws and standards; and

(8) laws, policies, and activities that would encourage private sector actors to take steps to address the prevalence of illegitimate pharmacy Internet websites.

SEC. 1135. MEDICATION AND DEVICE ERRORS.

The Secretary of Health and Human Services shall continue and further coordinate activities of the Department of Health and Human Services related to the prevention of medication and device errors, including consideration of medication and device errors that affect the pediatric patient population. In developing initiatives to address medication and device errors, the Secretary shall consider the root causes of medication and device errors, including pediatric medication and device errors, in the clinical setting and consult with relevant stakeholders on effective strategies to reduce and prevent medication and device errors in the clinical setting.

SEC. 1136. COMPLIANCE PROVISION.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement.
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titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SEC. 1137. ENSURING ADEQUATE INFORMATION REGARDING PHARMACEUTICALS FOR ALL POPULATIONS, PARTICULARLY UNDERREPRESENTED SUBPOPULATIONS, INCLUDING RACIAL SUBGROUPS.

(a) COMMUNICATION PLAN.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”), acting through the Commissioner of Food and Drugs, shall review and modify, as necessary, the Food and Drug Administration’s communication plan to inform and educate health care providers, patients, and payors on the benefits and risks of medical products, with particular focus on underrepresented subpopulations, including racial subgroups.

(b) CONTENT.—The communication plan described under subsection (a)—

(1) shall take into account—

(A) the goals and principles set forth in the Strategic Action Plan to Reduce Racial and
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Ethnic Health Disparities issued by the Department of Health and Human Services;

(B) the nature of the medical product; and

(C) health and disease information available from other agencies within such Department, as well as any new means of communicating health and safety benefits and risks related to medical products;

(2) taking into account the nature of the medical product, shall address the best strategy for communicating safety alerts, labeled indications for the medical products, changes to the label or labeling of medical products (including black box warnings, health advisories, health and safety benefits and risks), particular actions to be taken by healthcare professionals and patients, any information identifying particular subpopulations, and any other relevant information as determined appropriate to enhance communication, including varied means of electronic communication; and

(3) shall include a process for implementation of any improvements or other modifications determined to be necessary.

(e) ISSUANCE AND POSTING OF COMMUNICATION PLAN.—
(1) COMMUNICATION PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Commissioner of Food and Drugs, shall issue the communication plan described under this section.

(2) POSTING OF COMMUNICATION PLAN ON THE OFFICE OF MINORITY HEALTH WEBSITE.—The Secretary, acting through the Commissioner of Food and Drugs, shall publicly post the communication plan on the Internet website of the Office of Minority Health of the Food and Drug Administration, and provide links to any other appropriate webpage, and seek public comment on the communication plan.

SEC. 1138. REPORT ON SMALL BUSINESSES.

Not later than 1 year after the date of enactment of this Act, the Commissioner of Food and Drugs shall submit a report to Congress that includes—

(1) a listing of and staffing levels of all small business offices at the Food and Drug Administration, including the small business liaison program;

(2) the status of partnership efforts between the Food and Drug Administration and the Small Business Administration;
(3) a summary of outreach efforts to small businesses and small business associations, including availability of toll-free telephone help lines;

(4) with respect to the program under the Orphan Drug Act (Public Law 97–414), the number of applications made by small businesses and number of applications approved for research grants, the amount of tax credits issued for clinical research, and the number of companies receiving protocol assistance for the development of drugs for rare diseases and disorders;

(5) with respect to waivers and reductions for small business under the Prescription Drug User Fee Act, the number of small businesses applying for and receiving waivers and reductions from drug user fees under subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379f et seq.);

(6) the number of small businesses submitting applications and receiving approval for unsolicited grant applications from the Food and Drug Administration;

(7) the number of small businesses submitting applications and receiving approval for solicited
grant applications from the Food and Drug Admin-
istration;

(8) barriers small businesses encounter in the
drug and medical device approval process; and

(9) recommendations for changes in the user
fee structure to help alleviate generic drug short-
ages.

SEC. 1139. PROTECTIONS FOR THE COMMISSIONED CORPS
OF THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—Section 221(a) of the Public
Health Service Act (42 U.S.C. 213a(a)) is amended by
adding at the end the following:

“(18) Section 1034, Protected Communications;
Prohibition of Retaliatory Personnel Actions.”.

(b) CONFORMING AMENDMENT.—Section 221(b) of
the Public Health Service Act (42 U.S.C. 213a(b)) is
amended by adding at the end the following: “For pur-
poses of paragraph (18) of subsection (a), the term ‘In-
spector General’ in section 1034 of such title 10 shall
mean the Inspector General of the Department of Health
and Human Services.”.

SEC. 1140. REGULATIONS ON CLINICAL TRIAL REGIS-
TRATION; GAO STUDY OF CLINICAL TRIAL REG-
ISTRATION AND REPORTING REQUIREMENTS.

(a) DEFINITIONS.—In this section—
(1) the term “applicable clinical trial” has the meaning given such term under section 402(j) of the Public Health Service Act (42 U.S.C. 282(j));

(2) the term “Director” means the Director of the National Institutes of Health;

(3) the term “responsible party” has the meaning given such term under such section 402(j); and

(4) the term “Secretary” means the Secretary of Health and Human Services.

(b) REQUIRED REGULATIONS.—

(1) PROPOSED RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Secretary, acting through the Director, shall issue a notice of proposed rulemaking for a proposed rule on the registration of applicable clinical trials by responsible parties under section 402(j) of the Public Health Service Act (42 U.S.C. 282(j)) (as amended by section 801 of the Food and Drug Administration Amendments Act of 2007).

(2) FINAL RULE.—Not later than 180 days after the issuance of the notice of proposed rulemaking under paragraph (1), the Secretary, acting through the Director, shall issue the final rule on the registration of applicable clinical trials by responsible parties under such section 402(j).
(3) Letter to Congress.—If the final rule described in paragraph (2) is not issued by the date required under such paragraph, the Secretary shall submit to Congress a letter that describes the reasons why such final rule has not been issued.

(c) Report by GAO.—

(1) In General.—Not later than 2 years after the issuance of the final rule under subsection (b), the Comptroller General of the United States 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 on the implementation of the registration and reporting requirements for applicable drug and device clinical trials under section 402(j) the Public Health Service Act (42 U.S.C. 282(j)) (as amended by section 801 of the Food and Drug Administration Amendments Act of 2007).

(2) Content.—The report under paragraph (1) shall include—

(A) information on the rate of compliance and non-compliance (by category of sponsor, category of trial (phase II, III, or IV), whether the applicable clinical trial is conducted domestically, in foreign sites, or a combination of
sites, and such other categories as the Comptroller General determines useful) with the requirements of—

(i) registering applicable clinical trials under such section 402(j);

(ii) reporting the results of such trials under such section; and

(iii) the completeness of the reporting of the required data under such section;

and

(B) information on the promulgation of regulations for the registration of applicable clinical trials by the responsible parties under such section 402(j).

(3) Recommendations.—If the Comptroller General finds problems with timely compliance or completeness of the data being reported under such section 402(j), or finds that the implementation of registration and reporting requirements under such section 402(j) for applicable drug and device clinical trials could be improved, the Comptroller General shall, after consulting with the Commissioner of Food and Drugs, applicable stakeholders, and experts in the conduct of clinical trials, make recommendations for administrative or legislative ac-
tions to increase the compliance with the require-
ments of such section 402(j).

SEC. 1141. HYDROCODONE AMENDMENT.

The Controlled Substances Act is amended—

(1) in schedule III(d) in section 202(c) (21
U.S.C. 812(c)), by—

(A) striking paragraphs (3) and (4); and

(B) redesignating paragraphs (5), (6), (7),
and (8) as paragraphs (3), (4), (5), and (6), re-
spectively; and

(2) in section 401(b)(1) (21 U.S.C. 841(b)(1)),
by adding at the end the following:

“(F) In the case of any material, compound,
mixture, or preparation containing—

“(i) not more than 300 milligrams of
dihydrocodeine per 100 milliliters or not
more than 15 milligrams per dosage unit, with
a fourfold or greater quantity of an isoquinoline
alkaloid of opium; or

“(ii) not more than 300 milligrams of
dihydrocodeine per 100 milliliters or not
more than 15 milligrams per dosage unit, with
one or more active, nonnarcotic ingredients in
recognized therapeutic amounts,
subparagraph (C) shall not apply and such case shall be subject to subparagraph (E).”.

**SEC. 1142. COMPLIANCE DATE FOR RULE RELATING TO SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE.**

In accordance with the final rule issued by the Commissioner of Food and Drug entitled “Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use; Delay of Compliance Dates” (77 Fed. Reg. 27591 (May 11, 2012)), a product subject to the final rule issued by the Commissioner entitled “Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use” (76 Fed. Reg. 35620 (June 17, 2011)), shall comply with such rule not later than—

1. December 17, 2013, for products subject to such rule with annual sales of less than $25,000 and
2. December 17, 2012, for all other products subject to such rule.

**SEC. 1143. RECOMMENDATIONS ON INTEROPERABILITY STANDARDS.**

(a) In General.—The Attorney General and the Secretary of Health and Human Services may collaborate to facilitate the development of recommendations on interoperability standards to inform and facilitate the exchange
of prescription information across State lines by States receiving grant funds under—

(1) the Harold Rogers Prescription Drug Monitoring Program established under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Public Law 107–77; 115 Stat. 748); and

(2) the Controlled Substance Monitoring Program established under section 399O of the Public Health Service Act (42 U.S.C. 280g–3).

(b) REQUIREMENTS.—The Attorney General and the Secretary of Health and Human Services shall consider the following in facilitating the development of recommendations on interoperability of prescription drug monitoring programs under subsection (a)—

(1) open standards that are freely available, without cost and without restriction, in order to promote broad implementation;

(2) the use of exchange intermediaries, or hubs, as necessary to facilitate interstate interoperability by accommodating State-to-hub and direct State-to-State communication;

(3) the support of transmissions that are fully secured as required, using industry standard methods of encryption, to ensure that Protected Health
Information and Personally Identifiable Information are not compromised at any point during such transmission; and

(4) access control methodologies to share protected information solely in accordance with State laws and regulations.

(c) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services, shall submit to the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on the Judiciary and the Committee on Energy and Commerce of the House of Representatives a report on enhancing the interoperability of State prescription monitoring programs with other technologies and databases used for detecting and reducing fraud, diversion, and abuse of prescription drugs.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an assessment of legal, technical, fiscal, privacy, or security challenges that have an impact on interoperability;
(B) a discussion of how State prescription monitoring programs could increase the production and distribution of unsolicited reports to prescribers and dispensers of prescription drugs, law enforcement officials, and health professional licensing agencies, including the enhancement of such reporting through interoperability with other States and relevant technology and databases; and

(C) any recommendations for addressing challenges that impact interoperability of State prescription monitoring programs in order to reduce fraud, diversion, and abuse of prescription drugs.

Subtitle D—Synthetic Drugs

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the “Synthetic Drug Abuse Prevention Act of 2012”.

SEC. 1152. ADDITION OF SYNTHETIC DRUGS TO SCHEDULE I OF THE CONTROLLED SUBSTANCES ACT.

(a) CANNABIMIMETIC AGENTS.—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by adding at the end the following:
“(d)(1) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

“(2) In paragraph (1):

“(A) The term ‘cannabimimetic agents’ means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

“(i) 2-(3-hydroxy)cyclohexylphenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

“(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

“(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring,
whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

“(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

“(v) 3-phenylacetyllindole or 3-benzoyllindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

“(B) Such term includes—

“(i) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP–47,497);

“(ii) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47,497 C8-homolog);

“(iii) 1-pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678);

“(iv) 1-butyl-3-(1-naphthoyl)indole (JWH–073);
“(v) 1-hexyl-3-(1-naphthoyl)indole (JWH–019);
“(vi) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200);
“(vii) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250);
“(viii) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081);
“(ix) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122);
“(x) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398);
“(xi) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);
“(xii) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);
“(xiii) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19 and RCS–4);
“(xiv) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8); and
“(xv) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH–203).”.

(b) OTHER DRUGS.—Schedule I of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is
amended in subsection (e) by adding at the end the following:

“(18) 4-methylmethcathinone (Mephedrone).
“(19) 3,4-methylenedioxypyrovalerone (MDPV).
“(20) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E).
“(21) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D).
“(22) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C).
“(23) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I).
“(26) 2-(2,5-Dimethoxyphenyl)ethanamine (2C–H).
“(27) 2-(2,5-Dimethoxy-4-nitrophennyl)ethanamine (2C–N).
“(28) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P).”.
SEC. 1153. TEMPORARY SCHEDULING TO AVOID IMMINENT HAZARDS TO PUBLIC SAFETY EXPANSION.

Section 201(h)(2) of the Controlled Substances Act (21 U.S.C. 811(h)(2)) is amended—

(1) by striking "one year" and inserting "2 years"; and

(2) by striking "six months" and inserting "1 year".

SEC. 1154. PROHIBITION ON IMPOSING MANDATORY MINIMUM SENTENCES.

Section 401(b)(1)(C) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(C)) is amended by adding at the end the following: "Any mandatory minimum term of imprisonment required to be imposed under this subparagraph shall not apply with respect to any controlled substance added to schedule I by the Synthetic Drug Abuse Prevention Act of 2012."

Passed the Senate May 24, 2012.

Attest:

Secretary.
112TH CONGRESS
2D SESSION
S. 3187
AN ACT
To amend the Federal Food, Drug, and Cosmetic Act to establish user-fee programs for generic drugs and biosimilars, and to extend the user-fee programs for prescription drugs and medical devices, to extend the user-fee programs for prescription drugs and medical devices, and for other purposes.