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104TH CONGRESS
1ST SESSION

S. 1477

To amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 1995

Mrs. KASSEBAUM introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

To amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, 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 Performance and Accountability Act of 1995''.

TITLE I—MISSION AND ACCOUNTABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Food and Drug Administration Regulatory Reform Act of 1995''.

SEC. 102. THE MISSION OF THE FOOD AND DRUG ADMINISTRATION.

Section 903(a) (21 U.S.C. 393(a)) is amended by adding at the end thereof the following: ''The mission of the Administration is to promote and protect the health of the American people by—

''(1) facilitating the rapid and efficient development and availability of products subject to its regulation;

''(2) protecting the public from unsafe or ineffective products subject to its regulation; and

''(3) enforcing the applicable statutes and regulations in a timely, fair, consistent, and decisive manner.''.

SEC. 103. PERFORMANCE STANDARDS AND REVIEW.

Section 903(b) (21 U.S.C. 393(b)) is amended by adding at the end thereof the following new paragraph:

''(3) PERFORMANCE STANDARDS AND REVIEW.—Within 180 days after the date of enactment of this paragraph, the Commissioner, after consulta-

tion with representatives of patient advocacy groups, health professionals, and the regulated industries, shall publish in the Federal Register quantifiable performance standards for action by the Administration on applications or submissions (including petitions, notifications, or any other similar form of request) for the review of a product that is a new drug, biological product, new animal drug, device, or food additive and that is subject to premarket review or approval of any kind under this Act. The performance standards shall be reviewed, and after consultation with representatives of patient advocacy groups, health professionals, and the regulated industries, may be revised, annually by the Commissioner. The performance standards shall establish objectives for the Administration that—

''(A) expedite action on applications for new drugs and devices under sections 505(b)(1) and 515, and for biological products under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a))—

''(i) for a serious, life-threatening, or seriously debilitating disease or condition; or

"(ii) for any other condition if a new drug, device, or biological product—

"(I) provides therapy not available from other approved therapy; or

"(II) offers significant improvement over other approved therapy;

"(B) reduce backlogs on all applications with the objective of eliminating all backlogs by January 1, 2000; and

"(C) establish a schedule to bring the Administration into full compliance by July 1, 1998, with the time periods specified in this Act for action on all applications.

For applications for which there is no statutory time period, the applicable time period for action shall be 180 days. The Commissioner shall prepare and publish in the Federal Register for public comment an annual report comparing the performance of the Administration with the applicable performance standards, analyzing any failure to achieve any of the standards, and setting forth a plan to achieve compliance with the standards that have not been met.".

SEC. 104. INFORMATION SYSTEM.

Chapter IX (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

''SEC. 906. INFORMATION SYSTEM.

''The Secretary shall establish and maintain an information system to track the status and progress of each application or submission (including a petition, notification, or other similar form of request) submitted to the Food and Drug Administration requesting agency action. The system shall permit access by the applicant.''.

SEC. 105. POLICY STATEMENTS.

Section 701(a) (21 U.S.C. 371(a)) is amended—

(1) by striking ''(a) The'' and inserting ''(a)(1) The''; and

(2) by adding at the end thereof the following new paragraph:

''(2)(A) The Secretary shall establish a procedure governing the development and use of all policy statements of general applicability (including any guideline, points-to-consider, protocol, recommendation, or similar document regardless of the form or designation) that are not promulgated as regulation. The procedure shall provide an opportunity for affected persons to participate in the development and continued use of the policy by sharing expertise, experience, or providing comment before the policy is adopted and after the policy is implemented.

''(B) The Secretary shall establish a procedure for the formal publication and compilation of all policy statements of general applicability (including any guideline,

points-to-consider, protocol, recommendation, or similar document regardless of the form or designation) that are not promulgated as regulations.''.

SEC. 106. ADVISORY COMMITTEES.

Section 904 (21 U.S.C. 394) is amended—

(1) by striking ''Without'' and inserting ''(a) IN GENERAL.—Without''; and

(2) by adding at the end thereof the following new subsections:

''(b) DELEGATION OF APPOINTMENT AUTHORITY.—The Commissioner may delegate the appointment and oversight authority granted under subsection (a) to a center director. The center director may not authorize any office or division of the center to carry out the appointment and oversight authority granted under this subsection.

''(c) MEMBERSHIP AND MEETING REQUIREMENTS.—

''(1) SCOPE.—A scientific review group may determine the matters that the group will consider and may establish an appropriate agenda with respect to the determination of the matters.

''(2) NONVOTING MEMBERS.—A scientific review group shall include a nonvoting industry representative and a nonvoting public representative.

''(3) NOTIFICATION OF SCOPE OF DISCUSSION.—To the extent feasible, the specific matters and questions to be discussed at a meeting of a scientific review group shall be publicly announced and published in the Federal Register at least 30 days prior to the date of the meeting.

''(4) TERMS.—A member of a scientific review group shall serve for a term of 3 years, which may be renewed for a second term. An individual may serve on more than one scientific review group. The chairperson of a scientific review group shall be a member who has served at least 3 years. The term of the chairperson may be renewed for not more than 3 terms.

''(5) TRAINING.—Prior to service on a scientific review group, a member of the group shall be given adequate education and training relating to the responsibilities of the member.

''(6) FREQUENCY OF MEETINGS.—The Secretary shall take whatever action is necessary to ensure that regular meetings are held by scientific review groups, at appropriate intervals and for a sufficient length of time, so that any matter to be reviewed by any scientific review group shall be presented to the group not more than 90 days after the

matter is ready for review by the group. The meetings shall occur not less than 6 times each year unless there are compelling reasons for fewer meetings.

''(d) PERSONS INVOLVEMENT WITH REVIEW GROUPS.—

''(1) IN GENERAL.—All persons, including employees of the Secretary, shall have the same rights and responsibilities regarding—

''(A) the submission of data and information to, and contact and discussion with, a scientific review group;

''(B) the participation of the persons at meetings of the group; and

''(C) access to data and information submitted to a scientific review group (except for data and information that are not available for public disclosure under section 552 of title 5, United States Code).

''(2) SUBMISSION OF INFORMATION TO FDA.—In a case in which a scientific review group reviews an application (including a petition, notification, or other similar request), all related data and information that are not available for public disclosure under section 552 of title 5, United States Code, shall be exchanged between the applicant and the

Food and Drug Administration at the time the data and information are submitted to the scientific review group but shall not otherwise be publicly disclosed.

''(3) PARTICIPATION IN MEETINGS.—Any meetings of a scientific review group shall provide adequate time for initial presentations and for response to any differing views and shall encourage free and open participation by all interested persons.

''(e) FDA ACTIONS.—Within 60 days after the date a scientific review group makes its conclusions and recommendations on any matter under review of the group, the Food and Drug Administration official responsible for the matter shall review the conclusions and recommendations of the group, shall make a final determination on the matter, and shall notify the affected persons of the determination in writing and, if the determination differs from the conclusions and recommendations of the group, shall include the reasons for the difference.

''(f) DEFINITION.—For purposes of this section, the term 'center director' means a director of a center within the Food and Drug Administration.''.

SEC. 107. APPEALS WITHIN THE FOOD AND DRUG ADMINISTRATION.

Chapter IX (21 U.S.C. 391 et seq.), as amended by section 104, is further amended by adding at the end thereof the following new section:

"SEC. 907. APPEALS WITHIN THE FOOD AND DRUG ADMINISTRATION.

''(a) EMPLOYEE DECISIONS.—The Secretary shall by regulation establish a system for the appeal within the Food and Drug Administration of any decision by an employee of the Food and Drug Administration, except that this subsection shall not apply to decisions involving formal administrative or judicial proceedings. The Secretary shall make publicly known the existence of the internal appeal system and the procedures for an internal appeal.

''(b) REVIEW BY SCIENTIFIC REVIEW GROUP.—

''(1) IN GENERAL.—Any person shall have the right to request an evaluation by an appropriate scientific review group established under section 904 of any significant scientific issue pending before, or significant scientific decision made by, the Secretary under this Act. An appropriate scientific review group shall review the request and determine whether to conduct an evaluation within 30 days after the date the request is received by the Secretary.

''(2) SCOPE.—The issues a scientific review group shall evaluate shall include, but not be limited to, matters involving a decision by the Secretary not to permit a clinical investigation to begin or to continue, a refusal by the Secretary to file an application, a protocol design, and decisions relating to a pending application (including a petition, notification, or other similar request), where the same issue has not previously been reviewed by a scientific review group.

''(3) TIME LIMITATION.—If a scientific review group agrees to conduct an evaluation on an issue under paragraph (1), the evaluation shall be scheduled for the next meeting of the group.

''(c) ADDITIONAL INFORMAL AND FORMAL PROCEDURES.—

''(1) IN GENERAL.—For purposes of obtaining conclusions and recommendations regarding the resolution of any dispute, the Secretary is authorized to use such additional informal and formal procedures as may be considered useful. The procedures may include, but not be limited to, the use of—

''(A) panels of qualified Food and Drug Administration officials;

''(B) panels of qualified government employees who are not employees of the Food and Drug Administration; and

''(C) outside mediators and arbitrators who are not government employees.

''(2) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App) shall not apply to a panel described in paragraph (1).

''(d) REVIEW OF RECOMMENDATIONS.—Within 60 days after any matter that is presented for resolution pursuant to this section has been the subject of conclusions and recommendations, the Food and Drug Administration official responsible for the matter shall personally review the conclusions and recommendations, make a final determination on the matter, and notify the parties of the determination in writing and if the determination differs from the conclusions and recommendations, the reasons for the difference.''.

TITLE II—EXPEDITED ACCESS TO PRODUCTS FOR SERIOUSLY ILL PATIENTS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Patient Rights Regulatory Reform Act of 1995''.

SEC. 202. ACCESS TO UNAPPROVED THERAPIES.

Chapter V (21 U.S.C. 351 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 543. EXPANDED ACCESS TO UNAPPROVED THERAPIES AND DIAGNOSTICS.

"(a) IN GENERAL.—Any person may request from a manufacturer or distributor, and any manufacturer or distributor may provide to a person after compliance with the provisions of this section, an investigational drug (including a biological product) or device for the diagnosis, monitoring, or treatment of a serious disease or condition, life-threatening or seriously debilitating disease or condition, and any other disease or condition designated by the Secretary as appropriate for expanded access under this section by the person if—

"(1) the person has no comparable or satisfactory alternative therapy available to treat, diagnose, or monitor the disease or condition; or

"(2) the risk to the person from the investigational drug or device is not greater than the risk from the disease or condition.

"(b) PROTOCOLS.—A manufacturer or distributor may submit to the Secretary one or more expanded access protocols covering expanded access use of a drug or device described in subsection (a). The protocols shall be subject to the provisions of section 505(i) for a drug and section

520 (g) and (m) for a device and may include any form of use of the drug or device outside a clinical investigation, prior to approval of the drug or device for marketing, including but not limited to protocols for treatment, use, parallel track, single patient protocols, emergency use, and uncontrolled trials.

''(c) FEES.—A manufacturer or distributor may charge for an investigational drug or device under an expanded access protocol, but the price of the drug or device may not be more than that necessary to recover the costs of manufacture, research, development, and handling for the drug or device.

''(d) NOTIFICATION OF AVAILABILITY.—The manufacturer or distributor may inform national, State, and local medical associations and societies, and voluntary health associations, about the availability of an investigational drug or device for expanded access use pursuant to this section but—

''(1) shall state that the drug or device is investigational;

''(2) shall not represent that the drug or device is safe or effective for any use; and

''(3) shall not otherwise promote or advertise the availability of the product for expanded access use.

SEC. 203. EXPANDING HUMANITARIAN USE OF DEVICES.

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

(1) in paragraph (2), by inserting at the end thereof the following flush sentences:

''The request shall be in the form of an application to the Secretary. Within 30 days of the date of the receipt of the application, the Secretary shall issue an order approving or denying the application.'';

(2) by striking paragraph (5); and

(3) by striking paragraph (6).

SEC. 204. EXPEDITING APPROVAL OF NEW DRUGS, BIOLOGICS, AND MEDICAL DEVICES FOR SERIOUS CONDITIONS.

(a) NEW DRUGS.—Section 505(c)(1) (21 U.S.C. 355(c)(1)) is amended by adding at the end thereof the following flush sentence:

''In a case in which an application submitted under section 505(b)(1) for a new drug, or section 351(a) of the Public Health Service Act a biological product, for a life-threatening disease or condition, a seriously debilitating disease or condition, or for any other serious disease or condition that provides therapy or diagnosis not available from another approved drug or biological product or offers significant improvement over another approved drug or biological product, the Secretary shall approve or deny approval

of the application within 120 days after the receipt of the application.''.

TITLE III—REVITALIZING THE INVESTIGATION OF NEW PRODUCTS

SEC. 301. SHORT TITLE.

This title may be cited as the ''Investigational Products Regulatory Reform Act of 1995''.

SEC. 302. TIMELY REVIEW AND REASONABLE DATA REQUIREMENTS FOR CLINICAL RESEARCH ON DRUGS AND BIOLOGICAL PRODUCTS.

Section 505(i) (21 U.S.C. 355(i)) is amended—

(1) by striking ''(i) The'' and inserting ''(i)(1) The'';

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(3) by adding at the end thereof the following new paragraph:

''(2)(A) A clinical investigation of a new drug (including a biological product) may begin 30 days after the date the Secretary receives from the sponsor a notification containing information about the drug and the clinical investigation unless, prior to the 30-day period, the Secretary informs the sponsor in writing that the investigation may

not begin, and specifies the basis for the decision and the information needed in order for the clinical investigation to commence.

''(B) Within 1 year after the date of enactment of the Food and Drug Administration Performance and Accountability Act of 1995, the Secretary, after consultation with representatives of patient advocacy groups and the regulated industries, shall publish in the Federal Register criteria for the type and amount of information relating to the safety of an investigational drug to be included in a notification described in subparagraph (A), taking into account the recommendations of the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use. The Secretary shall periodically review, and may revise, the criteria.

''(C) The Commissioner shall establish a mechanism to ensure the fair and consistent application of safety standards for clinical investigations.''.

SEC. 303. TIMELY REVIEW AND REASONABLE DATA REQUIREMENTS FOR CLINICAL RESEARCH ON DEVICES.

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

''(6) The procedures and conditions prescribed pursuant to paragraph (2)(A) shall be subject to subparagraphs (B) and (C) of section 505(i)(2).

''(7) The Secretary shall, within 120 days of the date of enactment of this paragraph, by regulation amend the content of parts 812 and 813 of title 21 of the Code of Federal Regulations to update the procedures and conditions under which devices intended for human use may upon application be granted an exemption from certain requirements under this Act. The regulation shall—

''(A) permit developmental changes in devices, including manufacturing changes, in response to information collected during an investigation without requiring an additional approval of an application for an investigational device exemption or the approval of a supplement to the application, if the changes do not constitute a significant change in design or a significant change in basic principles of operation; and

''(B) permit, without approval of a supplement to an application for an investigational device exemption, changes or modifications to clinical protocols that do not affect the validity of data or information resulting from the completion of an approved protocol.''.

SEC. 304. COLLABORATIVE RESEARCH DESIGN.

Chapter V (21 U.S.C. 351 et seq.), as amended by section 202, is further amended by adding at the end thereof the following new section:

"SEC. 544. COLLABORATIVE RESEARCH DESIGN.

"(a) REVIEW OF DESIGN.—

"(1) REQUEST.—Any person who intends to sponsor a preclinical or clinical investigation of a drug (including a biological product) or device may request a meeting with the Secretary to review the design of one or more protocols or part or all of a development plan for the drug or device.

"(2) FORM.—A request described in paragraph (1) shall be in writing and shall include a proposal for which the review is requested.

"(3) WRITTEN REVIEW.—The Secretary shall meet with the person within 30 days of the request and shall provide to the person a written review of the proposal, including any deficiencies in the proposal. A written summary shall be made of the meeting. The summary shall include the written review of the proposal and, after agreement by the individuals who attended the meeting, shall be made part of the product review file maintained by the Food and Drug Administration.

''(b) MODIFICATION OF AGREEMENTS.—Agreements reached through meetings under subsection (a) may be changed in writing by mutual consent of the sponsor and the Secretary at any time.

''(c) MODIFICATION OF AGREEMENTS BY THE FDA.—Agreements reached through meetings under subsection (a) may be changed unilaterally only—

''(1) by the director of the office of the Food and Drug Administration responsible for regulating a drug or device subject to review under this section, who may not delegate such responsibility; and

''(2) in writing and specifying the basis therefor and demonstrating the substantial public health reasons that require the change.

''(d) PANEL REVIEW.—

''(1) IN GENERAL.—Any person requesting a meeting under subsection (a) may obtain review from a panel established under subsection 513(b) of a determination of the Secretary to disapprove a protocol or product development plan.

''(2) AGREEMENT MODIFICATIONS.—Any person who has reached an agreement with the Secretary under subsection (b) may obtain review from a panel described in paragraph (1) of a modification of the agreement under subsection (c).''.

TITLE IV—EFFICIENT, ACCOUNTABLE, AND FAIR PRODUCT REVIEW

SEC. 401. REFERENCE.

This title may be cited as the ''Product Review Regulatory Reform Act of 1995''.

SEC. 402. THE CONTENT AND REVIEW OF AN APPLICATION.

Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new subchapter:

''SUBCHAPTER D—REVIEW OF APPLICATIONS

''SEC. 741. CONTENT AND REVIEW OF AN APPLICATION.

''(a) IN GENERAL.—This section applies to any application (including a petition, notification, or other similar request) submitted for a food additive, new drug, biological product, new animal drug, animal feed bearing or containing a new animal drug, device, or color additive.

''(b) FILING REQUIREMENTS.—The Commissioner shall establish a mechanism to ensure the fair and consistent application of filing requirements.

''(c) CLASSIFICATION OF A PRODUCT.—Within 60 days of the receipt of a written request of any person for information respecting the classification of a product as a drug, biological product, or device or the component of the Food and Drug Administration that will regulate the product (including a request respecting a combination

product subject to section 503(g)) the Secretary shall provide the person a written statement of the classification of the product or the component of the Food and Drug Administration that will regulate the product. The Secretary's statement shall be binding and may not be changed by the Secretary except with the written agreement of the person who submitted the request. If the Secretary does not provide the statement within the 60-day period, the classification and component designated by the person submitting the request shall be final and binding and may not be changed by the Secretary except with the written agreement of the person. All radiopharmaceutical products shall be regulated in a separate division under the Center for Devices and Radiological Health.

''(d) REASONABLE DATA REQUIREMENTS.—Within 1 year after the date of enactment of the Food and Drug Administration Performance and Accountability Act of 1995, the Secretary, after consultation with patient advocacy groups and the regulated industries, shall publish in the Federal Register criteria for the type and amount of information relating to safety and effectiveness to be included in an application for the approval of a product, or a new use of an approved product, described in subsection (c). In developing the criteria, the Secretary shall consider any recommendations of the International Conference on

Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use.''.

SEC. 403. CONTRACTS FOR EXPERT REVIEW.

Chapter VII (21 U.S.C. 371 et seq.), as amended by section 402, is further amended by adding at the end thereof the following new section:

''SEC. 742. CONTRACTS FOR EXPERT REVIEW.

''(a) IN GENERAL.—The Secretary may contract with outside organizations and individuals, with expertise in relevant disciplines, to review, evaluate, and make conclusions and recommendations to the Secretary on parts or all of any application (including a petition, notification, or other similar request for Food and Drug Administration action). Any such contract shall be subject to the requirements of section 708. Funds obtained under part 2 of subchapter C may be used for external review of any drug (including a biological product) for which a user fee was paid.

''(b) REVIEW OF EXPERT'S EVALUATION.—

''(1) IN GENERAL.—Subject to paragraph (2), the Food and Drug Administration official responsible for any matter for which expert review is used pursuant to this section shall personally review the conclusions and recommendations of the expert review organization or individual and shall make a

final decision regarding the matter under review within 60 days after receiving the conclusions and recommendation.

''(2) LIMITATION.—A final decision under paragraph (1) shall be made within the applicable prescribed time period for review of an application as set forth in this Act.''.

SEC. 404. PROMPT AND EFFICIENT REVIEW.

Chapter VII (21 U.S.C. 371 et seq.), as amended by section 403, is further amended by adding at the end thereof the following new section:

''SEC. 743. PROMPT AND EFFICIENT REVIEW.

''(a) IN GENERAL.—The provisions of this section shall apply to any of the following applications (including a petition, notification, or other similar request):

''(1) An application for approval of a human food additive or animal feed additive under section 409.

''(2) An application for approval of a new drug under section 505(b)(1).

''(3) An application for approval of a new animal drug or an animal feed bearing or containing a new animal drug under subsection (b)(1) or (m) of section 512, respectively.

''(4) A submission for a determination that a device is substantially equivalent to a predicate device under sections 513(f)(1) and 513(i).

''(5) An application for approval of a device under section 515.

''(6) An application for the listing of a color additive under section 721.

''(b) REVIEW PROCEDURES AND POLICIES.—The Secretary shall establish procedures and policies to facilitate a collaborative review process between the Food and Drug Administration and the applicant with respect to an application or submission described in subsection (a). As part of this collaborative process—

''(1) open, informal, and prompt communications shall be encouraged;

''(2) meetings (except meetings with respect to submissions to determine substantial equivalence of a device to a predicate device) shall be held after the expiration of one-half of the statutory time period for review of the application and after the expiration of three-quarters of such period, or within 15 days after a scientific review group has convened and made recommendations on an application, unless the Food and Drug Administration and the applicant determine that a meeting is unnecessary; and

''(3) the Secretary shall, prior to the meetings described in paragraph (2), present to the applicant in writing a description of any deficiencies of the application and the information necessary to bring the application into a form that would require approval.

''(c) APPROVAL, DISAPPROVAL, AND CLASSIFICATION.—

''(1) APPROVAL BASED ON FAILURE TO ACT.—Beginning 1 year after the date of publication of an applicable performance standard under section 903(b), or 18 months after the date of enactment of the Food and Drug Administration Performance and Accountability Act of 1995, whichever occurs first, if the Secretary fails to meet a time period for action on an application established in the standard and the product that is a new drug, biological product, new animal drug, device, or food additive that is the subject of the application has met the marketing requirements of the European Union or the United Kingdom, at the request of the applicant the application shall be deemed to be approved unless, within 30 days after the expiration of the time period established in the standard, the Secretary notifies the applicant in writing that the application is disapproved, setting forth the reasons for disapproval,

and, with the consent of the applicant, publishes a notice, within 30 days of notifying the applicant, in the Federal Register disapproving the application under paragraph (2) and setting forth the reasons for the disapproval.

''(2) APPEAL.—A person whose application has been disapproved under this subsection may appeal using one of the following procedures:

''(A) PROCEDURES UNDER THE ACT.—The procedures established for the product under other provisions of this Act.

''(B) APPEAL.—An appeal to a United States District Court to determine whether the Secretary's decision is supported by substantial evidence in the administrative record.

''(d) CONTRACTS FOR EXPERT REVIEW.—

''(1) IN GENERAL.—Beginning July 1, 1998, if the Secretary in any fiscal year fails to meet the statutory time period for action on an application for at least 95 percent of the applications in a particular category, the Secretary shall in the following fiscal year, with the consent of the applicant, contract with expert individuals and organizations under section 742 to review new applications and applications for which the Secretary has failed to

meet the statutory time period for action for the particular product category.

''(2) APPROVAL.—If an individual or organization selected to conduct a review under paragraph (1) determines that an application described in paragraph (1) should be approved, the application shall be considered to be approved unless, within 30 days after the date the Secretary receives the determination of the individual or organization, the Secretary publishes a notice in the Federal Register disapproving the application and setting forth the reasons for disapproval. An applicant may appeal the disapproval under subsection (c)(2).''.

SEC. 405. GOOD MANUFACTURING PRACTICE INSPECTION.

Chapter VII is (21 U.S.C. 371 et seq.), as amended by section 404, is further amended by adding at the end thereof the following new section:

''SEC. 744. GOOD MANUFACTURING PRACTICE INSPECTION.

''(a) IN GENERAL.—In order to comply with inspection requirements of this Act, the Secretary may accredit organizations to conduct inspections under section 704 to evaluate compliance of a manufacturer with applicable requirements for good manufacturing practice.

''(b) ELIGIBILITY REQUIREMENTS.—The Secretary shall by regulation establish the requirements that an or-

ganization shall meet to be eligible to be accredited to participate as a qualified organization to conduct inspections under subsection (a).

''(c) ACCREDITATION.—Within 90 days after the date the Secretary receives an application for accreditation under this section, the Secretary shall review the application and determine whether an applicant is in compliance with the requirements established under this section. Within the 90-day period, the Secretary shall grant accreditation or shall deny accreditation and specify in writing the reasons for the denial and the requirements that shall be met to obtain accreditation.

''(d) REVOCATION OF ACCREDITATION.—The Secretary may at any time revoke accreditation granted under subsection (c) for failure to comply with the requirements established under this section after specifying in writing the reasons for the revocation and the requirements that shall be met to retain accreditation and after an informal hearing on the revocation.

''(e) INSPECTIONS.—Any organization accredited under this subsection that conducts an inspection under this subsection at the request of the Secretary shall—

''(1) apply all relevant principles of good manufacturing practice established in this Act and in regulations promulgated by the Secretary; and

''(2) provide to the Secretary and the manufacturer within 30 days after the completion of the inspection an adequate report of the findings of the inspection.

''(f) LIMITATION.—When an accredited organization has conducted a good manufacturing practice inspection under section 704, the Secretary may not perform such an inspection for a period of 2 years after the date of the receipt of the report required under subsection (e)(2), unless justified by good cause.''.

SEC. 406. ENVIRONMENTAL IMPACT REVIEW.

Chapter VII (21 U.S.C. 371 et seq.), as amended by section 405, is further amended by adding at the end thereof the following new section:

''SEC. 745. ENVIRONMENTAL IMPACT REVIEW.

''Notwithstanding any provision of other law, no action by the Secretary pursuant to this Act shall be subject to an environmental assessment, an environmental impact statement, or other environmental consideration unless the director of the office responsible for the action demonstrates, in writing and specifying the basis therefor—

''(1) that there is a reasonable probability that the environmental impact of the action is sufficiently substantial and within the factors that the Secretary is authorized to consider under this Act; and

''(2) that consideration of the environmental impact will directly affect the decision on the action.''.

SEC. 407. INFORMATION EXCHANGE.

Chapter VII (21 U.S.C. 371 et seq.), as amended by section 406, is further amended by adding at the end thereof the following new sections:

''SEC. 746. DISSEMINATION OF INFORMATION ON DRUGS.

''(a) DISSEMINATION.—

''(1) IN GENERAL.—Notwithstanding sections 301(d) and 502(f), and subject to the requirements of paragraph (2) and subsection (b), a person may disseminate to any person that is a health care practitioner or other provider of health care goods or services, a pharmacy benefit manager, a health maintenance organization or other managed health care organization, or a health care insurer or governmental agency, written information, or an oral or written summary of the written information, concerning—

''(A) a treatment use for an investigational new drug (including a biological product) approved by the Secretary for such treatment use; or

''(B) a use (whether or not such use is contained in the official labeling) of a new drug for which an approval of an application filed under section 505(b) is in effect.

''(2) REQUIREMENTS.—A person may disseminate information under paragraph (1)(B) only if—

''(A) the information is an unabridged—

''(i) reprint or copy of a peer-reviewed article from a scientific or medical journal that is published by an organization that is independent of the pharmaceutical industry; or

''(ii) chapter, authored by an expert or experts in the disease to which the use relates, from a recognized reference textbook that is published by an organization that is independent of the pharmaceutical industry;

''(B) the text of the information has been approved by a continuing medical education accrediting agency that is independent of the pharmaceutical industry as part of a scientific or medical educational program approved by the agency;

''(C) the information relates to a use that is recognized under Federal law for purposes of third-party coverage or reimbursement, and—

''(i) the text of the information has been approved by an organization referred to in such Federal law; and

''(ii) the information is part of a disease management program or treatment guideline with respect to the use; or

''(D) the information is an accurate and truthful summary of the information described in subparagraph (A), (B), or (C).

''(b) DISCLOSURE STATEMENT.—In order to afford a full and fair evaluation of the information described in subsection (a), a person disseminating the information shall include a statement that discloses—

''(1) if applicable, that the use of a new drug described in subparagraph (A) or (B) of subsection (a)(1) and the information with respect to the use have not been approved by the Food and Drug Administration;

''(2) if applicable, that the information is being disseminated at the expense of the sponsor of the new drug;

''(3) if applicable, that one or more authors of the information being disseminated are employees of or consultants to the sponsor of the new drug; and

''(4) the official labeling for the drug and biological product, or in the case of a treatment use of an investigational new drug, the investigator brochure and all updates thereof.

''(c) DEFINITION.—As used in this section, the term 'expense' includes financial, in-kind, and other contributions provided for the purpose of disseminating the information described in subsection (a).

''(d) SPECIAL RULE.—In the case of a professional disagreement between the Secretary and other qualified experts with respect to the application of section 502(a), the Secretary may not use section 502 to prohibit the dissemination of information in the types of circumstances and under the conditions set forth in subsections (a) and (b).

''SEC. 747. DISSEMINATION OF INFORMATION ON DEVICES.

''(a) IN GENERAL.—Notwithstanding sections 301, 501(f), 501(i), 502(a), 502(f), and 502(o), or any other provision of law, and subject to subsections (b) and (c), a person may disseminate to any person that is a health care practitioner or other provider of health care goods or services, a pharmacy benefit manager, a health mainte-

nance organization or other managed health care organization, or a health care insurer or governmental agency, written or oral information (including information exchanged at scientific and educational meetings, workshops, or demonstrations) relating to a use, whether or not the use is described in the official labeling, of a device produced by a manufacturer registered pursuant to section 510.

''(b) DISCLOSURE STATEMENTS AND REQUIREMENTS.—

''(1) DISCLOSURE STATEMENTS.—To the extent practicable, the requirement with respect to a statement of disclosure under subsection (b) of section 746 shall apply to the dissemination of written and oral information under this section, except that this paragraph shall not apply to the dissemination of written or oral information with respect to the intended use described in the labeling of a device.

''(2) ADDITIONAL REQUIREMENTS.—A person may disseminate information under subsection (a) only if—

''(A) the information is an unabridged—

''(i) reprint or copy of a peer-reviewed article from a scientific or medical journal that is published by an organization that is

independent of the medical device industry; or

''(ii) chapter, authored by an expert or experts in the medical specialty to which the use relates, from a recognized reference textbook that is published by an organization that is independent of the medical device industry;

''(B) the information has been approved by a continuing medical education accrediting agency that is independent of the medical device industry as part of a scientific or medical educational program approved by the agency;

''(C) the information relates to a use that is recognized under Federal law for purposes of third-party reimbursement, and—

''(i) the text of the information has been approved by an organization referred to in such Federal law; and

''(ii) the information is part of a disease management program or treatment guideline with respect to such use; or

''(D) the oral or written information is—

''(i) part of an exchange of information solely among health care practitioners,

health care reimbursement officials, and the industry;

''(ii) exchanged for educational or scientific purposes; or

''(iii) presented at continuing medical education programs, seminars, workshops, or demonstrations.

''(3) APPLICABILITY.—The requirements under subsection (a)(1)(A) and (B) of section 746 shall not apply with respect to devices.

''SEC. 748. POLICY ON INFORMATION DISSEMINATION.

''(a) CONSTRUCTION.—Notwithstanding section 502 (a), (f), and (o), or any other provision of law, the written or oral dissemination of information relating to a new use of a new drug or device, in accordance with sections 746 and 747, shall not be construed as evidence of a new intended use of the new drug or device that is different from the intended use of the new drug or device set forth in the official labeling. The dissemination shall not be considered as labeling, adulteration, or misbranding of the new drug or device.

''(b) RESPOND TO UNSOLICITED QUESTIONS.—Nothing in this Act shall affect the ability of manufacturers to respond fully to unsolicited questions from health care

practitioners and other persons about drugs (including biological products) or devices.

''SEC. 749. APPROVAL OF NEW USES.

''(a) IN GENERAL.—As an alternative to the procedures established in section 505(c)(1) for a new drug (including a biological product) and section 515(d)(1)(A) for a device, the Secretary shall approve an application under this section for a new use of a previously approved new drug or device if experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs or devices conclude that a new use that has not been reviewed or approved by the Secretary represents sound medical practice based upon reliable clinical experience and other confirmatory information, unless the Secretary demonstrates that there are other compelling public health reasons related to the safety or effectiveness of the drug or device why approval would harm the health of individual patients.

''(b) PETITION.—The holder of an approved application may submit a petition to the Secretary presenting information that new use of a previously approved new drug or device meets the criteria for approval established in this subsection. The petition shall include data and information relating to the new use and shall demonstrate that the new use—

''(1) has existed in clinical practice for at least five years;

''(2) is common among clinicians experienced in the field; and

''(3) represents reasonable medical practice based upon reliable clinical experience and other confirmatory information.

''(c) ACTION ON PETITION.—Upon receipt of the petition, the Secretary shall obtain the conclusions and recommendations of a scientific review group established under section 904 and grant or deny the petition within 180 days of the receipt of the petition.''.

SEC. 408. EFFECTIVENESS, OUTCOME, AND COST-EFFECTIVENESS STANDARDS.

Section 741, as added by section 402, is amended by adding at the end thereof the following new subsection:

''(e) In reviewing an application for a product that is a new drug, biological product, new animal drug, animal feed bearing or containing a new animal drug, or device the determination of effectiveness shall not include the evaluation of—

''(1) relative effectiveness, unless the effectiveness of the product is explicitly compared to the effectiveness of another product in the labeling;

''(2) any potential use not explicitly included in the labeling;

''(3) the cost-effectiveness of the product described in this subsection as compared to the cost-effectiveness of a similar product, unless the labeling explicitly includes a representation about cost-effectiveness; and

''(4) the clinical outcome resulting from use of a device, unless the labeling explicitly includes a representation regarding clinical outcome.''.

SEC. 409. DEFINITION OF A DAY FOR PURPOSES OF PRODUCT REVIEW.

Section 201 (21 U.S.C. 321) is amended by adding at the end thereof the following:

''(gg) For purposes of reviewing any application, notification or petition, or any document, with respect to a product that is a new drug, biological product, new animal drug, device, or food additive that is submitted to the Secretary to obtain approval of marketing, or to establish or clarify the regulatory status of the product, the term 'day' means a calendar day (excluding any calendar day between the date of receipt by the submitter of a written communication from the Secretary setting forth the action of the Secretary on a submission and the date of receipt by the Secretary of the written response of the submitter

to the action) in which the Secretary has responsibility to review such a submission.''.

TITLE V—DRUG, BIOLOGICAL PRODUCTS, DEVICES EXPORT REFORM

SEC. 501. SHORT TITLE.

This title may be cited as the ''Drug, Biological Products, Devices Export Reform Act of 1995''.

SEC. 502. EXPORT OF DRUGS AND DEVICES.

(a) EXPORTS AND IMPORTS.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (d), by adding at the end thereof the following new paragraph:

''(3) No component, part or accessory of a drug, biological product, or device, including a drug in bulk form, shall be excluded from importation into the United States under paragraph (a), if the component, part, or accessory will be incorporated into a device, drug, or biological product that will be exported from the United States in accordance with subsection (e) of section 802 or section 351(h) of the Public Health Service Act.'';

(2) in subsection (e)(1), by striking the second sentence; and

(3) in subsection (e)(2), by inserting before the period at the end thereof the following: ''or that the device is eligible for export under section 802''.

(b) EXPORT OF CERTAIN UNAPPROVED DRUGS AND DEVICES.—Section 802 (21 U.S.C. 382) is amended to read as follows:

''SEC. 802. EXPORTS OF CERTAIN UNAPPROVED PRODUCTS.

''(a) IN GENERAL.—A drug (including a biological product) intended for human or animal use or a device for human use—

''(1)(A) which, in the case of a drug—

''(i) requires approval by the Secretary under section 505 or section 512; or

''(ii) requires licensing by the Secretary under section 351 of the Public Health Service Act or by the Secretary of Agriculture under the Act of March 4, 1913 (known as the Virus-Serum Toxin Act),

before the drug may be introduced or delivered for introduction into interstate commerce to a country; and

''(B) which—

''(i) does not have such approval or license;

''(ii) is not exempt from such sections or Act; and

"(iii) is introduced or delivered for introduction into interstate commerce to a country; or

"(2) which, in the case of a device—

"(A) does not comply with an applicable requirement under section 514 or 515;

"(B) is exempt under section 520(g) from section 514 or 515; or

"(C) is a banned device under section 516, is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug or device is authorized under subsection (b), (c), (e), or (f) or under section 801(e)(2).

"(b) EXPORTATION TO ANY COUNTRY OR A SPECIFIC COUNTRY.—

"(1) EXPORTATIONS TO ANY COUNTRY.—Except as otherwise provided in this section, a drug (including a biological product) or device may be exported to any country, if the drug or device complies with the laws of that country and has valid marketing authorization by the appropriate approval authority—

"(A) in Australia, Canada, Israel, Japan, New Zealand, or Switzerland; or

''(B) in the European Union or a country in the European Economic Area (the countries in the European Union and the European Free Trade Association) if the drug or device is marketed in that country or the drug or device is authorized for general marketing in the European Economic Area.

''(2) EXPORTATION TO A CERTAIN COUNTRY.—A drug or device may be exported to the countries described in paragraph (1) if the drug or device complies with the laws of any such country and has a valid marketing authorization by the appropriate approval authority in that country.

''(c) EXPORTATION TO A COUNTRY WITH A REGULATORY SYSTEM.—

''(1) IN GENERAL.—A drug or device may be exported under this section to any other country that has an adequate regulatory system to protect the health of the citizens of such a country. The Comptroller General, in consultation with the Secretary and other appropriate parties, shall develop a list of countries to which a drug or device may be exported under this paragraph and a list of recommended criteria for additions or deletions of countries to the list of countries.

''(2) REQUEST DESIGNATION.—An appropriate country official, manufacturer, or exporter, may request the Secretary to designate a country to receive drugs or devices exported under this section that meets the requirements of paragraph (1) by submitting documentation in support of such designation to the Secretary. Any person other than an appropriate country official requesting such designation shall provide a letter from the country indicating the desire of the country to be designated.

''(3) TIME LIMITATION FOR DESIGNATION.—If the Secretary fails to, within 90 days of the date of the receipt of a request under paragraph (2), respond to the request with a denial of the requested designation, the request shall be considered granted and the country that is the subject of the request shall be designated as eligible to receive drugs or devices exported under this subsection.

''(4) WITHDRAWAL OF DESIGNATION.—If information is provided to the Secretary that indicates that, due to a public health emergency or systematic patterns of abuse of the regulatory system in a country designated under paragraph (3), the country is no longer able to carry out the functions described in paragraph (1), or if the country no longer meets

the requirements for designation under this subsection, the Secretary may withdraw the designation of the country.

''(d) LIMITATIONS.—A drug or device may not be exported under this section if—

''(1) the drug or device is not manufactured, processed, packaged, and held in conformity with current good manufacturing practice or is adulterated under paragraph (1), (2)(A), or (3) of section 501(a) or subsection (c) or (d) of section 501;

''(2) the drug or device is not labeled and advertised in accordance with the requirements and conditions for use of any country in which the drug or device is approved, either in English or the predominant language of the country to which the drug or device is being exported, except that with respect to advertising alternative methods of communication that are consistent with the requirements of the approving country shall be allowed if authorized by the receiving country;

''(3) the requirements of subparagraphs (A) through (D) of section 801(e)(1) have not been met;

''(4) the drug or device has been the subject of a finding by the Secretary under section 505, 512 or 515 or under section 351 of the Public Health

Service Act (42 U.S.C. 262), or by the Secretary of Agriculture under the Act of March 4, 1913 (37 Stat. 832–833) (commonly known as the 'Virus Serum Toxin Act') that the drug or device has not been shown to be safe or effective for labeled indication of the drug or device;

''(5) the Secretary finds that the drug or device poses an unreasonable and substantial risk to public health in the receiving country;

''(6) the drug or device is the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the possibility of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States and the only means of limiting the hazard is to prohibit the export of the drug or device; or

''(7) the drug or device will be re-exported or transshipped to a country not authorized to receive an exported drug or device under this section.

In making a finding under paragraph (5), the Secretary, to the maximum extent possible, shall consult with the affected country.

''(e) EXPORTATION OF DRUG FOR INVESTIGATIONAL USE.—A drug intended for investigational use in any

country described in subsection (b) or designated under subsection (c) may be exported in accordance with the laws of that country and still be exempt from regulation under section 505(i) or section 512(j).

''(f) EXPORTATION OF A DRUG FOR TROPICAL DISEASE.—

''(1) IN GENERAL.—A drug (including a biological product) that is to be used in the prevention or treatment of a tropical disease may, upon approval of an application submitted under paragraph (2), be exported if—

''(A) the Secretary finds, based on credible scientific evidence, including clinical investigations, that the drug is safe and effective in the country to which the drug is to be exported in the prevention or treatment of a tropical disease in such country;

''(B) the drug is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and is not adulterated under paragraphs (1), (2)(A), and (3) of subsection (a), and subsection (c) or (d), of section 501;

''(C) the outside of the shipping package is labeled with the following statement: 'This drug

may be sold or offered for sale only in the following countries:', the blank space being filled with a list of the countries to which export of the drug is authorized under this subsection;

''(D) the drug is not the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the manufacture of the drug in the United States for export to a country is contrary to the public health and safety of the United States; and

''(E) the requirements of subparagraphs (A) through (D) of section 801(d)(1) have been met.

''(2) APPLICATION.—Any person may apply to have a drug exported under paragraph (1). The application shall—

''(A) describe the drug to be exported;

''(B) list each country to which the drug is to be exported;

''(C) contain a certification by the applicant that the drug will not be exported to a country for which the Secretary cannot make a finding described in paragraph (1)(A);

''(D) identify the establishments in which the drug is manufactured; and

"(E) demonstrate to the Secretary that the drug meets the requirements of paragraph (1).

"(3) REQUIRED REPORTING.—The holder of an approved application for the export of a drug under this subsection shall report to the Secretary—

"(A) the receipt of any information indicating that the drug is being or may have been exported from a country for which the Secretary made a finding under paragraph (1)(A) to a country for which the Secretary cannot make such a finding; and

"(B) the receipt of any information indicating any adverse reactions to such drug.

"(4) ADDITIONAL LIMITATIONS.—

"(A) FAILURE TO MEET CERTAIN REQUIREMENTS.—If the Secretary determines that—

"(i) a drug for which an application is approved under paragraph (2) does not continue to meet the requirements of paragraph (1);

"(ii) the holder of the application has not made the report required by paragraph (3); or

"(iii) the manufacture of the drug in the United States for export is contrary to the public health and safety of the United States and an application for the export of the drug has been approved under paragraph (2),

then before taking action against the holder of an application for which a determination was made under clause (i), (ii), or (iii), the Secretary shall notify the holder in writing of the determination and provide the holder 30 days to take such corrective actions as may be required by the Secretary to prevent the Secretary from taking action against the holder. If the Secretary takes action against the holder because of the determination, the Secretary shall provide the holder a written statement specifying the reasons for the determination and provide the holder, on request, an opportunity for an informal hearing with respect to the determination.

"(B) LIMITATION ON THE EXPORTATION OF A HAZARDOUS DRUG BY AN IMPORTER.—If at any time the Secretary, or in the absence of the Secretary, the official designated to act on behalf of the Secretary determines that—

"(i) the holder of an approved application under paragraph (2) is exporting a drug from the United States to an importer;

"(ii) the importer is exporting the drug to a country for which the Secretary cannot make a finding under paragraph (1)(A); and

"(iii) the export presents an imminent hazard to the public health in the country,

the Secretary shall immediately prohibit the export of the drug to the importer, provide the person exporting the drug from the United States prompt notice of the determination, and afford the person an opportunity for an expedited hearing. A determination by the Secretary under this subparagraph may not be stayed pending final action by a reviewing court. The authority conferred by this subparagraph may not be delegated by the Secretary.

"(C) LIMITATION ON THE EXPORTATION OF A HAZARD DRUG BY A HOLDER.—If the Secretary, or in the absence of the Secretary, the official designated to act on behalf of the Secretary determines that the holder of an ap-

proved application under paragraph (2) is exporting a drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), and that the export of the drug presents an imminent hazard, the Secretary shall immediately prohibit the export of the drug to such country, provide the holder prompt notice of the determination, and afford the holder an opportunity for an expedited hearing. A determination by the Secretary under this subparagraph may not be stayed pending final action by a reviewing court. The authority conferred by this subparagraph shall not be delegated by the Secretary.

''(D) LIMITATION ON THE EXPORTATION OF OTHER DRUGS BY A HOLDER.—If the Secretary receives credible evidence that the holder of an application approved under paragraph (2) is exporting a drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), the Secretary shall give the holder 60 days to provide information to the Secretary respecting such evidence and shall provide the holder an opportunity for an informal hearing on such evidence. Upon the expiration

of such 60 days, the Secretary shall prohibit the export of such drug to such country if the Secretary determines the holder is exporting the drug to a country for which the Secretary cannot make a finding under paragraph (1)(A).

''(E) LIMITATION OF THE EXPORTATION OF OTHER DRUGS BY AN IMPORTER.—If the Secretary receives credible evidence that an importer is exporting a drug to a country for which the Secretary cannot make a finding under paragraph (1)(A), the Secretary shall notify the holder of the application authorizing the export of such drug of such evidence and shall require the holder to investigate the export by such importer and to report to the Secretary within 14 days of the receipt of such notice the findings of the holder. If the Secretary determines that the importer has exported a drug to such a country, the Secretary shall prohibit such holder from exporting such drug to the importer unless the Secretary determines that the export by the importer was unintentional.''.

SEC. 503. PARTIALLY PROCESSED BIOLOGICAL PRODUCTS.

Subsection (h) of section 351 of the Public Health Service Act (42 U.S.C. 262) is amended to read as follows:

''(h) A partially processed biological product that—

''(1) is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

''(2) is not intended for sale in the United States; and

''(3) is intended for further manufacture into final dosage form outside the United States,

shall be subject to no restriction on the export of the product under this Act or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) if the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and meets the requirements of section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e)(1)).''.

TITLE VI—DRUG AND BIOLOGICAL PRODUCTS REGULATORY REFORM

SEC. 601. SHORT TITLE.

This title may be cited as the ''Drug and Biological Product Regulatory Reform Act of 1995''.

SEC. 602. NEW DRUG APPROVAL STANDARD.

Section 505(d) (21 U.S.C. 355(d)) is amended by adding at the end thereof the following new sentence: ''Substantial evidence may consist of data from one well-

controlled clinical investigation (which may be waived by the Secretary) and confirmatory evidence (obtained either before or after such investigation).''.

SEC. 603. PILOT AND SMALL SCALE MANUFACTURE.

Section 505(c) (21 U.S.C. 355(c)) is amended by adding at the end thereof the following new paragraph:

''(4) A new drug or biological product manufactured in a pilot or other small facility may be used to demonstrate the safety and effectiveness of the drug or product and to obtain approval prior to scaling up to a larger facility, unless the Secretary demonstrates in writing and specifying in detail the reasons, after an informal hearing, that a full scale production facility is necessary to ensure the safety or effectiveness of the drug or product.''.

SEC. 604. MANUFACTURING CHANGES.

Chapter VII (21 U.S.C. 371 et seq.), as amended by section 407, is further amended by adding at the end thereof the following new section:

''SEC. 750. MANUFACTURING CHANGES.

''(a) IN GENERAL.—A change in the manufacture of a new drug, biological product, or new animal drug, may be made in accordance with this section.

''(b) DRUG AND BIOLOGICAL PRODUCT.—A change in the manufacture of a new drug, a biological product that is the subject of a monograph in an official compen-

dium, a biological product that can be adequately characterized by chemical, physical, or biological means, or a new animal drug shall require—

''(1) validation; and

''(2)(A) if there is no change in the approved qualitative and quantitative formulation or in the approved release specifications, or if there is a change in the approved qualitative or quantitative formula or in the approved release specifications of a type permitted by the Secretary by regulation, may be made at any time and shall be reported annually to the Secretary; and

''(B) for any other change, shall require completion of an appropriate study demonstrating equivalence according to criteria established by the Secretary (unless such requirement is waived by the Secretary), may be made at any time, and shall be reported to the Secretary through a supplement or amendment submitted at the time the change is made.

''(c) BIOLOGICAL PRODUCT NOT SUBJECT TO A MONOGRAPH.—A change in the manufacture of a biological product that is not the subject of a monograph in an official compendium and cannot be adequately character-

ized by chemical, physical, or biological means shall require validation and—

"(1) if the change relates solely to a modification of the manufacturing facility or change in personnel, with no change in the approved manufacturing process or release specifications, may be made at any time and shall be reported annually to the Secretary; and

"(2) for any other change, shall require completion of a bioassay or other appropriate study demonstrating equivalence according to criteria established by the Secretary (unless such requirement is waived by the Secretary), may be made at any time, and shall be reported to the Secretary through an amendment submitted at the time the change is made.

"(d) SPECIAL DETERMINATION FOR A BIOLOGICAL PRODUCT.—A determination shall be made prior to approval of a biological product under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)) whether the product can be adequately characterized for purposes of this subsection. With respect to biological products approved prior to the date of enactment of the Food and Drug Administration Performance and Accountability Act of 1995, the determination shall be made within 90 days

after the date of enactment of such Act. Any determination under this subsection is subject to change based upon new scientific information.''.

SEC. 605. INSULIN AND ANTIBIOTICS.

(a) CERTIFICATION OF DRUGS CONTAINING INSULIN.—Section 506 (21 U.S.C. 356) is repealed.

(b) CERTIFICATION OF ANTIBIOTICS.—Section 507 (21 U.S.C. 357) is repealed.

(c) EXPORTATION.—Section 802 (21 U.S.C. 382), as amended by section 502(b), is further amended by adding at the end thereof the following new subsection:

''(g) EXPORTATION OF UNAPPROVED PRODUCTS.—Insulin and antibiotics may be exported without regard to the requirements in this section if the insulin and antibiotics meet the requirements in subsection (e)(1).''.

SEC. 606. BIOLOGICAL PRODUCTS.

(a) MODERNIZATION OF REGULATION OF BIOLOGICAL PRODUCTS.—

(1) IN GENERAL.—Section 351 of the Public Health Service Act (42 U.S.C. 262) is amended by striking ''SEC. 351. (a)'' and all that follows through ''exchange the same.'' and inserting the following:

''SEC. 351. (a)(1) Except as provided in paragraph (4), no person shall introduce or deliver for introduction into interstate commerce any biological product unless—

''(A) a product license has been issued for the biological product;

''(B) the biological product has been propagated, manufactured, or prepared in accordance with good manufacturing practices established by the Secretary under section 501(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)); and

''(C) each package of the biological product is plainly marked with the proper name of the biological product contained therein, the name, address and license number of the manufacturer of the biological product, and the expiration date of the biological product.

''(2) The Secretary shall establish, by regulation, requirements for product license applications for biological products. A product license application for a biological product, other than blood, blood components, and blood products, shall be approved based upon a demonstration that the product that is the subject of the application is safe and effective in accordance with section 505(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(d)). A license application for blood, a blood component, or a blood product shall be approved based upon a demonstration that the product that is the subject of the application is safe, pure, and, where appropriate, potent.

''(3)(A) If the Secretary determines that grounds for a suspension or revocation of a license for a biological product exist that constitute a danger to health, the Secretary shall suspend the license, notify the licensee of the suspension, and require notification of the suspension to any consignee. Within 30 days after the date of the receipt by the licensee of a notification of suspension, the Secretary shall afford the licensee an opportunity for a hearing in accordance with section 554 of title 5, United States Code.

''(B) If at any time before the Secretary has taken final action to suspend or revoke a license the licensee requests an inspection by the Secretary to determine whether the licensee is in compliance with applicable standards, the Secretary shall conduct an inspection within 30 days of the date of the request. If the Secretary fails to conduct the inspection within the 30 days, the action to suspend or revoke the license shall become null and void. If the inspection confirms that the licensee is in compliance with all applicable requirements, the Secretary shall withdraw any proposed action within 30 days of the inspection.

''(4) The requirements of paragraph (1) do not apply to a biological product for which there is in effect an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act.''.

(2) LABELING.—Section 351(b) of the Public Health Service Act (42 U.S.C. 262(b)) is amended to read as follows:

''(b) No person shall falsely label or mark any package or container of any biological product or alter any label or mark on the package so as to falsify the label or mark.''.

(3) INSPECTION.—Section 351(c) of the Public Health Service Act (42 U.S.C. 262(c)) is amended by striking ''virus, serum, toxin, antitoxin, vaccine, blood, blood component, or blood product, or derivative allergenic product or other product aforesaid'' and inserting ''biological product''.

(4) DEFINITION; APPLICATION.—Part F of title III of the Public Health Service Act (42 U.S.C. 262 et seq.) is amended by adding at the end thereof the following new subsections:

''(i) For purposes of this section, the term 'biological product' means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic biologic product, or arsphenamine or its derivative (or any other analogous biological product) applicable to the prevention, treatment, or cure of diseases or conditions of human beings.

''(j)(1) Sections 505(i), 903, and 904 of the Federal Food, Drug, and Cosmetic Act shall apply to all biological products and references in those sections to new drug applications shall be deemed to include product license applications.

''(2) Requirements involving labeling or advertising for biological products shall be established in accordance with sections 201(m) and 502(n) of the Federal Food, Drug, and Cosmetic Act.

(b) HARMONIZATION OF REGULATION OF BIOLOGICAL PRODUCTS AND NEW DRUGS.—Not later than 2 years after the date of enactment of this section, the Secretary of Health and Human Services shall harmonize regulations governing product license applications required under section 351 of the Public Health Service Act (42 U.S.C. 262) with the regulations governing new drug applications required under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355).

SEC. 607. REQUIREMENTS FOR EMERGING BIOTECHNOLOGY PRODUCTS.

Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall establish proposed regulations governing products of human tissue and cell therapy that shall—

(1) ensure the safety and effectiveness of the products under section 351 of the Public Health Service Act (42 U.S.C. 262 et seq.); and

(2) take in account whether regulation of facilities in which the products are manufactured or processed is sufficient to ensure safety and effectiveness of the products.

TITLE VII—DEVICE REGULATORY REFORM

SEC. 701. SHORT TITLE.

This title may be cited as the ''Medical Device Reform Act of 1995''.

SEC. 702. PREMARKET NOTIFICATION.

(a) EXEMPTION OF CERTAIN DEVICES.—Section 510 (21 U.S.C. 360) is amended—

(1) in subsection (k), by striking ''intended for human use'' and inserting '' intended for human use (except a device that is classified into class I under section 513 or 520 or a device that is classified into class II under section 513 or 520, and is exempt from the requirements of this subsection under subsection (l))'';

(2) by adding at the end of subsection (k) (as amended by paragraph (1)) the following:

''The Secretary shall review the notification required by this subsection and make a determination under section 513(f)(1)(A) within 90 days of receiving the notification.'';

and

(3) by adding at the end thereof the following new subsections:

''(l) Within 30 days of the date of enactment of this subsection, the Secretary shall publish in the Federal Register a list of each type of class II device that does not require a report under subsection (k) to provide reasonable assurance of safety and effectiveness. Each type of class II device so identified by the Secretary not to require the report shall be exempt from the requirement to file a report under subsection (k) as of the date of the publication of the list in the Federal Register. Beginning on the date that is 1 day after the date of the publication of a list under this subsection, any person may petition the Secretary to exempt a type of class II device from subsection (k). The Secretary shall respond to the petition within 120 days of the receipt of the petition and determine whether or not to grant the petition in whole or in part.

''(m) The Secretary may not withhold a determination of the initial classification of a device under subsection 513(f)(1) because of a failure to comply with any provision of this Act unrelated to a substantial equivalence

decision, including a finding that the facility in which a device is manufactured is not in compliance with good manufacturing practice requirements as set forth in regulations promulgated under the authority of subsection 520(f).''.

(b) INITIAL CLASSIFICATION.—Section 513(f)(1) (21 U.S.C. 360c(f)(1)) is amended in the second sentence, by striking the period at the end thereof and inserting the following: '', unless within 30 days of receiving an order classifying the device into class III, the individual who submits a notification under section 510(k) requests an advisory committee review and recommendation with respect to the classification of the device and a final order of classification from the Secretary. After the request, a device classified into class III under this paragraph shall not be deemed to be finally classified until an advisory committee established under subsection (b) reviews the request with respect to the classification of the device and, within 60 days of the date of receiving the request, recommends to the Secretary a classification for the device based on the classification criteria set forth in subparagraphs (A) through (C) of subsection(a)(1). Thereafter, the Secretary shall have 10 days to determine by order the final classification of the device by applying the classi-

fication criteria set forth in subparagraphs (A) through (C) of subsection(a)(1).

(c) SUBSTANTIAL EQUIVALENCE.—Section 513(i)(1) (21 U.S.C. 360c(i)(1)) is amended by adding at the end thereof the following new subparagraph:

''(C) For the purpose of determining the intended use of a predicate device under paragraph (A), each use included within a general use for the predicate device shall be deemed a legally marketed use of the predicate device for purposes of premarket notifications required under subsection 510(k).''.

(d) DEVICE MODIFICATION.—Section 513(i) (21 U.S.C. 360c(i)) is amended by adding at the end thereof the following new paragraph:

''(4) Any change or modification to a device initially classified under section 513(f), other than a major change (including any major modification) in the intended use, shall not require an additional submission under section 510(k) if such change or modification is supported by appropriate data or information, and the change or modification can be shown to not adversely affect the safety or effectiveness of the device. All data or information relied upon to document that a change to (including any modification of) the device does not require an additional notification under section 510(k) shall be made available to the

Secretary upon request and shall be maintained, at least for a period of time equal to the commercial life of the device.''.

SEC. 703. MEDICAL DEVICE APPROVAL STANDARDS.

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

(1) by striking ''well-controlled investigations'' and inserting ''a scientific investigation'';

(2) by striking ''clinical investigations'' and inserting ''a clinical investigation'';

(3) by striking ''investigations it'' and inserting ''investigation it''; and

(4) by adding the following to the end thereof the following new sentence: ''The Secretary may require a well-controlled clinical investigation to demonstrate effectiveness if the director of the Office of Device Evaluation explains in writing the basis therefor.''.

SEC. 704. TRACKING.

Section 519(e) (21 U.S.C. 360i(e)) is amended to read as follows:

''DEVICE TRACKING

''(e) The Secretary may by regulation require a manufacturer to adopt a method of tracking a class II or class III device—

''(1) the failure of which would be life-threatening or have permanently debilitating effects; and

''(2) which is—

''(A) permanently implanted; or

''(B) life sustaining or life supporting and used outside a device user facility.''.

SEC. 705. POSTMARKET SURVEILLANCE.

Section 522(1) (21 U.S.C. 360*l*) is amended to read as follows:

''SEC. 522. POSTMARKET SURVEILLANCE.

''(a) IN GENERAL.—The Secretary may require a manufacturer to conduct postmarket surveillance for any device of the manufacturer first introduced or delivered for introduction into interstate commerce after January 1, 1991, that—

''(1) is a permanent implant the failure of which may cause serious, adverse health consequences or death;

''(2) is intended for a use in supporting or sustaining human life; or

''(3) potentially presents a serious risk to human health.

''(b) SURVEILLANCE APPROVAL.—Each manufacturer required to conduct a surveillance of a device under subsection (a) shall, within 30 days of receiving notice

from the Secretary that the manufacturer is required under this section to conduct the surveillance, submit for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the date of the receipt of the protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct the surveillance and if the protocol will result in collection of useful data or other information necessary to protect the public health and to provide safety and effectiveness information for the device. The Secretary may not approve the protocol until the protocol has been reviewed by a qualified scientific and technical review committee established by the Secretary.''.

SEC. 706. DEVICE DISTRIBUTOR REPORTING.

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

(1) by striking '', importer, or distributor'' each place it appears and inserting ''or importer'';

(2) in subsection (a)—

(A) in paragraph (8), by striking ''; and'' and inserting a period; and

(B) by striking paragraph (9); and

(3) by striking subsection (f).

SEC. 707. PREMARKET APPROVAL.

(a) ACTION ON APPLICATION.—Section 515(d) (21 U.S.C. 360e(d)) is amended—

(1) in paragraph (1)(A), by striking ''paragraph (2) of this subsection'' each place it appears and inserting ''paragraph (4)'';

(2) in paragraph (1)(B), by adding at the end thereof the following new clause:

''(iii) The Secretary shall accept and review data and any other information from investigations conducted under the authority of regulations required by section 520(g) to make a determination of whether there is a reasonable assurance of safety and effectiveness of a device subject to a pending application under this section if—

''(I) the data or information is derived from investigations of an earlier version of the device, the device has been modified during or after the investigations, and the modification of the device does not constitute a significant change in the design or in the basic principles of operation of the device that would invalidate the data or information; or

''(II) the data or information on a device approved under this section is available for use under this Act and is relevant to the design and intended use of the device subject to the pending application.'';

(3) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively; and

(4) by inserting after paragraph (1) the following new paragraph:

''(2) Each application received under section 515(c) shall be reviewed in the following manner to achieve final action on the application within 180 days of the receipt of the application:

''(A) The Secretary shall meet with an applicant within 90 days of the receipt of the application to discuss the review status of the application. If the application does not appear in a form that would require an approval under subsection (d), the Secretary shall in writing, and prior to the meeting, present to the applicant a description of any deficiencies in the application and what information is required to bring the application into a form that would require an approval.

''(B) The Secretary shall refer an application to a panel established under section 513 for review and an approval recommendation, unless a panel is not required under subsection (c)(2), within 30 days of the date of the meeting referred to in subparagraph (A) or at the next scheduled panel meeting following

the meeting referred to in subparagraph (A), whichever occurs later.

''(C) The Secretary shall meet with the applicant within 15 days of the date of the panel review to discuss the status of the application, including a discussion on what action is necessary to bring the application into a form that would require approval under this subsection. Prior to the meeting, the Secretary shall in writing shall set forth an agenda for the meeting (including a complete description of the subject matter to the discussed at the meeting), and a full description of the additional information necessary to bring the application into a form that would require an approval under subsection (d). Participation of the applicant at such a meeting shall be at the discretion of the applicant.

''(D) The Secretary shall meet with the applicant not later than 135 days after the receipt of an application under subsection (c), if an advisory panel is not required under subsection (c)(2), and inform the applicant whether or not the application is in a form that would require approval under subsection (d). If the application is in such form, the Secretary shall, at or prior to the meeting, present in writing to the applicant a description of all additional infor-

mation necessary to require an approval of the application under subsection (d). If the application is not in such form, the Secretary shall deny approval of the application and prior to the meeting, present in writing to the applicant each basis for denying approval of the application and the additional information required to bring the application into a form that would require approval.

''(E) The Secretary shall issue an order approving or denying an application within 180 days of the receipt of the application under subsection (c).

''(3)(A) Except as provided in subparagraph (B), the time for the review of an application by the Secretary under this subsection shall take not more than 180 days and may not be extended if the application is amended.

''(B) The Secretary may not take more than 120 days for the review of an application subject to an expedited review under paragraph (1)(A) and may not extend the 120-day period if the application is amended.''.

(b) REGULATIONS.—The Secretary shall revise through notice and comment procedures the regulations set forth in part 814 of title 21 of the Code of Federal Regulations, to conform to the amendment made by paragraph (1) and to eliminate premarket approval of supple-

ments that relate to manufacturing changes and other changes that do not affect device safety or effectiveness.

SEC. 708. DEVICE PERFORMANCE STANDARDS.

(a) ALTERNATIVE PROCEDURE.—Section 514 (21 U.S.C. 360d) is amended by adding at the end thereof the following new subsection:

''PRODUCT REVIEW

''(c)(1) For the purpose of facilitating a review of a device under sections 510(k), 515, and 520, any person may submit a petition under this subsection for the recognition by the Secretary of an existing performance standard for a device.

''(2) A petition under this subsection shall be made following the adoption of a voluntary performance standard by any qualified governmental or nongovernmental organization established to develop performance standards.

''(3) The petition shall identify the specific standard, the organization that adopted the standard, and the date on which the standard was adopted by the organization.

''(4) Upon the receipt of a petition under this subsection, the Secretary shall place the petition on public display and within 30 days after the date of the receipt of the petition, the Secretary shall publish a notice in the Federal Register setting forth the proposed standard, stating that the entire application is publicly available for review, and providing 60 days for public comment.

''(5) Within 150 days after the receipt by the Secretary of the application, the Secretary shall—

''(A)(i) grant the petition in whole or in part; or

''(ii) deny the petition in whole or in part if the Secretary demonstrates that the standard does not establish an adequate performance standard for the functions of a device for which the standard is represented to apply; and

''(B) publish a notice of the determination in the Federal Register.

''(6) Upon the approval of the petition, the Secretary shall publish in the Federal Register the order listing the name of the recognized standard and shall provide any person who requests the recognized standard a copy of the standard.

''(7) Following the publication of a final regulation listing a recognized standard, any premarket notification for a device submitted under sections 510(k), 513(f)(1), and 513(i) and any premarket approval application submitted under section 515 may include a certification of compliance with the standard, which shall constitute full and complete satisfaction of the requirements for safety and effectiveness for the functions of the device for which the standard is represented to apply.

''(8) Any modification of a recognized standard shall be subject to review under the procedure established in this subsection for the modified standard to become a recognized standard.''.

(b) ADULTERATED DEVICE.—Section 501(e) (21 U.S.C. 351(e)) is amended by striking ''section 514'' and inserting ''section 514(b)''.

TITLE VIII—ANIMAL DRUG REGULATORY REFORM

SEC. 801. SHORT TITLE.

This title may be cited as the ''Animal Drug Regulatory Reform Act of 1995''.

SEC. 802. NEW ANIMAL DRUG APPROVAL STANDARDS.

(a) SUBSTANTIAL EVIDENCE.—Section 512(d)(3) (21 U.S.C. 360b(d)(3)) is amended by adding at the end thereof the following new sentences: ''Substantial evidence shall consist of at least data from one scientifically sound study (designed and conducted in a manner that is consistent with generally recognized scientific procedures and principles), which may be waived by the Secretary, and confirmatory evidence obtained before or after the study. The Director of the Center for Veterinary Medicine may require a field trial as part of substantial evidence if the Director of the Center for Veterinary Medicine demonstrates, in writing and specifying the basis therefor, that

no other form of scientifically sound study is adequate to show the effectiveness of the drug.''.

(b) COMBINATION OF DRUGS.—Section 512(d) (21 U.S.C. 360b(d)) is amended by adding at the end thereof the following new paragraph:

''(4) If a new animal drug contains more than one active ingredient or the labeling provides for the drug's use in combination with one or more other animal drugs, in evaluating such combination the Secretary shall consider whether—

''(A) the combination affects the safety of any active ingredient;

''(B) the combination interferes with a method of analysis for any active ingredient;

''(C) if the active ingredients have the same intended effect, each of the active ingredients makes a significant contribution to the labeled effectiveness; and

''(D) if the active ingredients do not have the same intended effect, the active ingredients provide appropriate concurrent therapy for a labeled target population.''.

(c) APPROVAL.—Section 512(c)(2)(F)(iii) (21 U.S.C. 360b(c)(2)(F)(iii)) is amended—

(1) by striking ''reports of new clinical or field investigations (other than bioequivalence or residue studies) and'' and inserting ''substantial evidence of effectiveness as defined in subsection (d)(4), any study of animal safety, or''; and

(2) by striking ''essential to'' and inserting '', required for''.

SEC. 803. RESIDUE LIMITATION.

Section 512(d)(1)(F) (21 U.S.C. 360b(d)(1)(F)) is amended to read as follows:

''(F) on the basis of information in the application or otherwise available to the Secretary, any labeled use of the drug will result in an unsafe residue of the drug;''.

SEC. 804. ADULTERATED DRUGS.

Section 501(a)(2) (21 U.S.C. 351(a)(2)) is amended—

(1) in subparagraph (A), by striking ''health; or'' and inserting ''health''; and

(2) in subparagraph (B), by striking ''possess;'' and inserting the following: ''possess; or (C) if it is a drug intended for use by animals other than man and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or ad-

ministered in conformity with current good manufacturing practice requirements (appropriate for animal drugs) adopted pursuant to regulations issued by the Secretary to ensure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess for use in animals other than man;''.

TITLE IX—FOOD REGULATORY REFORM

SEC. 901. SHORT TITLE.

This title may be cited as the ''Food Regulatory Reform Act of 1995''.

SEC. 902. INDIRECT FOOD ADDITIVES.

(a) APPROVAL.—Section 409 (21 U.S.C. 348) is amended by adding at the end thereof the following new subsection:

''ALTERNATIVE APPROVAL PROCEDURE

''(j)(1) As an alternative to the approval procedure established under subsection (b), any person may submit a notification for an indirect food additive under this subsection.

''(2) Any person who proposes to begin the introduction or delivery for introduction into interstate commerce of a product intended for use as an indirect food additive may submit to the Secretary, at least 90 days prior to

making such introduction or delivery, a notification containing information demonstrating that the labeled use of the product is safe.

''(3)(A) Within 90 days after the receipt of the notification by the Secretary, the Secretary shall either—

''(A)(i) approve the notification if the product is safe for its intended use; or

''(ii) disapprove the notification if there is a reasonable possibility that the article is not safe for its intended use; and

''(B) publish a notice of this determination in the Federal Register and, if the notification is approved, promulgate an appropriate regulation pursuant to subsection (c).

If the Secretary does not publish such a notice in the Federal Register within the 90-day period, the notification shall be deemed to be approved and the Secretary shall immediately approve the notification and promulgate an appropriate regulation in the Federal Register pursuant to subsection (c).''.

(b) DEFINITION.—Section 201 (21 U.S.C. 321), as amended by section 606(c), is further amended by adding at the end thereof the following new subsection:

''(ii) The term 'indirect food additive' means a food additive that is intended to contact food but that is not intended for consumption as a food ingredient.''.

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