

108TH CONGRESS
1ST SESSION

H. R. 2857

To amend the Federal Food, Drug, and Cosmetic Act to authorize the Food and Drug Administration to require certain research into drugs used in pediatric patients.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. GREENWOOD (for himself, Ms. ESHOO, and Ms. PRYCE of Ohio) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to authorize the Food and Drug Administration to require certain research into drugs used in pediatric patients.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pediatric Research Eq-
3 uity Act of 2003”.

4 **SEC. 2. RESEARCH INTO PEDIATRIC USES FOR DRUGS AND**
5 **BIOLOGICAL PRODUCTS.**

6 (a) IN GENERAL.—Subchapter A of chapter V of the
7 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351
8 et seq.) is amended by inserting after section 505A the
9 following:

10 **“SEC. 505B. RESEARCH INTO PEDIATRIC USES FOR DRUGS**
11 **AND BIOLOGICAL PRODUCTS.**

12 “(a) NEW DRUGS AND BIOLOGICAL PRODUCTS.—

13 “(1) IN GENERAL.—A person that submits an
14 application (or supplement to an application)—

15 “(A) under section 505 for a new active in-
16 gredient, new indication, new dosage form, new
17 dosing regimen, or new route of administration;
18 or

19 “(B) under section 351 of the Public
20 Health Service Act (42 U.S.C. 262) for a new
21 active ingredient, new indication, new dosage
22 form, new dosing regimen, or new route of ad-
23 ministration;

24 shall submit with the application the assessments de-
25 scribed in paragraph (2).

26 “(2) ASSESSMENTS.—

1 “(A) IN GENERAL.—The assessments re-
2 ferred to in paragraph (1) shall contain data,
3 gathered using appropriate formulations for
4 each age group for which the assessment is re-
5 quired, that are adequate—

6 “(i) to assess the safety and effective-
7 ness of the drug or the biological product
8 for the claimed indications in all relevant
9 pediatric subpopulations; and

10 “(ii) to support dosing and adminis-
11 tration for each pediatric subpopulation for
12 which the drug or the biological product is
13 safe and effective.

14 “(B) SIMILAR COURSE OF DISEASE OR
15 SIMILAR EFFECT OF DRUG OR BIOLOGICAL
16 PRODUCT.—

17 “(i) IN GENERAL.—If the course of
18 the disease and the effects of the drug are
19 sufficiently similar in adults and pediatric
20 patients, the Secretary may conclude that
21 pediatric effectiveness can be extrapolated
22 from adequate and well-controlled studies
23 in adults, usually supplemented with other
24 information obtained in pediatric patients,
25 such as pharmacokinetic studies.

1 “(ii) EXTRAPOLATION BETWEEN AGE
2 GROUPS.—A study may not be needed in
3 each pediatric age group if data from 1
4 age group can be extrapolated to another
5 age group.

6 “(3) DEFERRAL.—On the initiative of the Sec-
7 retary or at the request of the applicant, the Sec-
8 retary may defer submission of some or all assess-
9 ments required under paragraph (1) until a specified
10 date after approval of the drug or issuance of the li-
11 cense for a biological product if—

12 “(A) the Secretary finds that—

13 “(i) the drug or biological product is
14 ready for approval for use in adults before
15 pediatric studies are complete;

16 “(ii) pediatric studies should be de-
17 layed until additional safety or effective-
18 ness data have been collected; or

19 “(iii) there is another appropriate rea-
20 son for deferral; and

21 “(B) the applicant submits to the Sec-
22 retary—

23 “(i) certification of the grounds for
24 deferring the assessments;

1 “(ii) a description of the planned or
2 ongoing studies; and

3 “(iii) evidence that the studies are
4 being conducted or will be conducted with
5 due diligence and at the earliest possible
6 time.

7 “(4) WAIVERS.—

8 “(A) FULL WAIVER.—On the initiative of
9 the Secretary or at the request of an applicant,
10 the Secretary shall grant a full waiver, as ap-
11 propriate, of the requirement to submit assess-
12 ments for a drug or biological product under
13 this subsection if the applicant certifies and the
14 Secretary finds that—

15 “(i) necessary studies are impossible
16 or highly impracticable (because, for exam-
17 ple, the number of patients is so small or
18 the patients are geographically dispersed);

19 “(ii) there is evidence strongly sug-
20 gesting that the drug or biological product
21 would be ineffective or unsafe in all pedi-
22 atric age groups; or

23 “(iii) the drug or biological product—

1 “(I) does not represent a mean-
2 ingful therapeutic benefit over existing
3 therapies for pediatric patients; and

4 “(II) is not likely to be used in a
5 substantial number of pediatric pa-
6 tients.

7 “(B) PARTIAL WAIVER.—On the initiative
8 of the Secretary or at the request of an appli-
9 cant, the Secretary shall grant a partial waiver,
10 as appropriate, of the requirement to submit as-
11 sessments for a drug or biological product
12 under this subsection with respect to a specific
13 pediatric age group if the applicant certifies
14 and the Secretary finds that—

15 “(i) necessary studies are impossible
16 or highly impracticable (because, for exam-
17 ple, the number of patients in that age
18 group is so small or patients in that age
19 group are geographically dispersed);

20 “(ii) there is evidence strongly sug-
21 gesting that the drug or biological product
22 would be ineffective or unsafe in that age
23 group;

24 “(iii) the drug or biological product—

1 “(I) does not represent a mean-
2 ingful therapeutic benefit over existing
3 therapies for pediatric patients in that
4 age group; and

5 “(II) is not likely to be used by
6 a substantial number of pediatric pa-
7 tients in that age group; or

8 “(iv) the applicant can demonstrate
9 that reasonable attempts to produce a pe-
10 diatric formulation necessary for that age
11 group have failed.

12 “(C) PEDIATRIC FORMULATION NOT POS-
13 SIBLE.—If a waiver is granted on the ground
14 that it is not possible to develop a pediatric for-
15 mulation, the waiver shall cover only the pedi-
16 atric groups requiring that formulation.

17 “(D) LABELING REQUIREMENT.—If the
18 Secretary grants a full or partial waiver because
19 there is evidence that a drug or biological prod-
20 uct would be ineffective or unsafe in pediatric
21 populations, the information shall be included
22 in the labeling for the drug or biological prod-
23 uct.

24 “(b) MARKETED DRUGS AND BIOLOGICAL PROD-
25 UCTS.—

1 “(1) IN GENERAL.—After providing notice in
2 the form of a letter and an opportunity for written
3 response and a meeting, which may include an advisory
4 committee meeting, the Secretary may (by
5 order in the form of a letter) require the holder of
6 an approved application for a drug under section
7 505 or the holder of a license for a biological product
8 under section 351 of the Public Health Service
9 Act (42 U.S.C. 262) to submit by a specified date
10 the assessments described in subsection (a)(2) if the
11 Secretary finds that—

12 “(A)(i) the drug or biological product is
13 used for a substantial number of pediatric patients
14 for the labeled indications; and

15 “(ii) the absence of adequate labeling could
16 pose significant risks to pediatric patients; or

17 “(B)(i) there is reason to believe that the
18 drug or biological product would represent a
19 meaningful therapeutic benefit over existing
20 therapies for pediatric patients for 1 or more of
21 the claimed indications; and

22 “(ii) the absence of adequate labeling could
23 pose significant risks to pediatric patients.

24 “(2) WAIVERS.—

1 “(A) FULL WAIVER.—At the request of an
2 applicant, the Secretary shall grant a full waiv-
3 er, as appropriate, of the requirement to submit
4 assessments under this subsection if the appli-
5 cant certifies and the Secretary finds that—

6 “(i) necessary studies are impossible
7 or highly impracticable (because, for exam-
8 ple, the number of patients in that age
9 group is so small or patients in that age
10 group are geographically dispersed); or

11 “(ii) there is evidence strongly sug-
12 gesting that the drug or biological product
13 would be ineffective or unsafe in all pedi-
14 atric age groups.

15 “(B) PARTIAL WAIVER.—At the request of
16 an applicant, the Secretary shall grant a partial
17 waiver, as appropriate, of the requirement to
18 submit assessments under this subsection with
19 respect to a specific pediatric age group if the
20 applicant certifies and the Secretary finds
21 that—

22 “(i) necessary studies are impossible
23 or highly impracticable (because, for exam-
24 ple, the number of patients in that age

1 group is so small or patients in that age
2 group are geographically dispersed);

3 “(ii) there is evidence strongly sug-
4 gesting that the drug or biological product
5 would be ineffective or unsafe in that age
6 group;

7 “(iii)(I) the drug or biological prod-
8 uct—

9 “(aa) does not represent a mean-
10 ingful therapeutic benefit over existing
11 therapies for pediatric patients in that
12 age group; and

13 “(bb) is not likely to be used in
14 a substantial number of pediatric pa-
15 tients in that age group; and

16 “(II) the absence of adequate labeling
17 could not pose significant risks to pediatric
18 patients; or

19 “(iv) the applicant can demonstrate
20 that reasonable attempts to produce a pe-
21 diatric formulation necessary for that age
22 group have failed.

23 “(C) PEDIATRIC FORMULATION NOT POS-
24 SIBLE.—If a waiver is granted on the ground
25 that it is not possible to develop a pediatric for-

1 mulation, the waiver shall cover only the pedi-
2 atric groups requiring that formulation.

3 “(D) LABELING REQUIREMENT.—If the
4 Secretary grants a full or partial waiver because
5 there is evidence that a drug or biological prod-
6 uct would be ineffective or unsafe in pediatric
7 populations, the information shall be included
8 in the labeling for the drug or biological prod-
9 uct.

10 “(3) RELATIONSHIP TO OTHER PEDIATRIC PRO-
11 VISIONS.—

12 “(A) NO ASSESSMENT WITHOUT WRITTEN
13 REQUEST.—No assessment may be required
14 under paragraph (1) for a drug subject to an
15 approved application under section 505 un-
16 less—

17 “(i) the Secretary has issued a written
18 request for a related pediatric study under
19 section 505A(e) of this Act or section 409I
20 of the Public Health Service Act (42
21 U.S.C. 284m);

22 “(ii)(I) if the request was made under
23 section 505A(e)—

1 “(aa) the recipient of the written
2 request does not agree to the request;
3 or

4 “(bb) the Secretary does not re-
5 ceive a response as specified under
6 section 505A(d)(4)(A); or

7 “(II) if the request was made under
8 section 409I of the Public Health Service
9 Act (42 U.S.C. 284m)—

10 “(aa) the recipient of the written
11 request does not agree to the request;
12 or

13 “(bb) the Secretary does not re-
14 ceive a response as specified under
15 section 409I(c)(2) of that Act; and

16 “(iii)(I) the Secretary certifies under
17 subparagraph (B) that there are insuffi-
18 cient funds under sections 409I and 499 of
19 the Public Health Service Act (42 U.S.C.
20 284m, 290b) to conduct the study; or

21 “(II) the Secretary publishes in the
22 Federal Register a certification that cer-
23 tifies that—

24 “(aa) no contract or grant has
25 been awarded under section 409I or

1 499 of the Public Health Service Act
2 (42 U.S.C. 284m, 290b); and

3 “(bb) not less than 270 days
4 have passed since the date of a certifi-
5 cation under subparagraph (B) that
6 there are sufficient funds to conduct
7 the study.

8 “(B) NO AGREEMENT TO REQUEST.—Not
9 later than 60 days after determining that no
10 holder will agree to the written request (includ-
11 ing a determination that the Secretary has not
12 received a response specified under section
13 505A(d) of this Act or section 409I of the Pub-
14 lic Health Service Act (42 U.S.C. 284m), the
15 Secretary shall certify whether the Secretary
16 has sufficient funds to conduct the study under
17 section 409I or 499 of the Public Health Serv-
18 ice Act (42 U.S.C. 284m, 290b), taking into ac-
19 count the prioritization under section 409I.

20 “(c) MEANINGFUL THERAPEUTIC BENEFIT.—For
21 the purposes of paragraph (4)(A)(iii)(I) and (4)(B)(iii)(I)
22 of subsection (a) and paragraphs (1)(B)(i) and
23 (2)(B)(iii)(I)(aa) of subsection (b), a drug or biological
24 product shall be considered to represent a meaningful

1 therapeutic benefit over existing therapies if the Secretary
2 estimates that—

3 “(1) if approved, the drug or biological product
4 would represent a significant improvement in the
5 treatment, diagnosis, or prevention of a disease,
6 compared with marketed products adequately labeled
7 for that use in the relevant pediatric population; or

8 “(2) the drug or biological product is in a class
9 of products or for an indication for which there is
10 a need for additional options.

11 “(d) SUBMISSION OF ASSESSMENTS.—If a person
12 fails to submit an assessment described in subsection
13 (a)(2), or a request for approval of a pediatric formulation
14 described in subsection (a) or (b), in accordance with ap-
15 plicable provisions of subsections (a) and (b)—

16 “(1) the drug or biological product that is the
17 subject of the assessment or request may be consid-
18 ered misbranded solely because of that failure and
19 subject to relevant enforcement action (except that
20 the drug or biological product shall not be subject to
21 action under section 303); but

22 “(2) the failure to submit the assessment or re-
23 quest shall not be the basis for a proceeding—

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

1 “(B) to revoke the license for a biological
2 product under section 351 of the Public Health
3 Service Act (42 U.S.C. 262).

4 “(e) MEETINGS.—Before and during the investiga-
5 tional process for a new drug or biological product, the
6 Secretary shall meet at appropriate times with the sponsor
7 of the new drug or biological product to discuss—

8 “(1) information that the sponsor submits on
9 plans and timelines for pediatric studies; or

10 “(2) any planned request by the sponsor for
11 waiver or deferral of pediatric studies.

12 “(f) SCOPE OF AUTHORITY.—Nothing in this section
13 provides to the Secretary any authority to require a pedi-
14 atric assessment of any drug or biological product, or any
15 assessment regarding other populations or uses of a drug
16 or biological product, other than the pediatric assessments
17 described in this section.

18 “(g) ORPHAN DRUGS.—Unless the Secretary requires
19 otherwise by regulation, this section does not apply to any
20 drug for an indication for which orphan designation has
21 been granted under section 526.

22 “(h) INTEGRATION WITH OTHER PEDIATRIC STUD-
23 IES.—The authority under this section shall remain in ef-
24 fect so long as an application subject to this section may

1 be accepted for filing by the Secretary on or before the
2 date specified in section 505A(n).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 505(b)(1) of the Federal Food,
5 Drug, and Cosmetic Act (21 U.S.C. 355(b)(1)) is
6 amended in the second sentence—

7 (A) by striking “and (F)” and inserting
8 “(F)”; and

9 (B) by striking the period at the end and
10 inserting “, and (G) any assessments required
11 under section 505B.”.

12 (2) Section 505A(h) of the Federal Food, Drug,
13 and Cosmetic Act (21 U.S.C. 355a(h)) is amended—

14 (A) in the subsection heading, by striking
15 “REGULATIONS” and inserting “PEDIATRIC RE-
16 SEARCH REQUIREMENTS”; and

17 (B) by striking “pursuant to regulations
18 promulgated by the Secretary” and inserting
19 “by a provision of law (including a regulation)
20 other than this section”.

21 (3) Section 351(a)(2) of the Public Health
22 Service Act (42 U.S.C. 262(a)(2)) is amended—

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

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

3 “(B) PEDIATRIC STUDIES.—A person that
4 submits an application for a license under this
5 paragraph shall submit to the Secretary as part
6 of the application any assessments required
7 under section 505B of the Federal Food, Drug,
8 and Cosmetic Act.”.

9 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (a) ABBREVIATED NEW DRUG APPLICATION.—Sec-
11 tion 505A of the Federal Food, Drug, and Cosmetic Act
12 (21 U.S.C. 355a) is amended in subparagraphs (A) and
13 (B) of subsection (b)(2) and subparagraphs (A) and (B)
14 of subsection (c)(2) by striking “505(j)(4)(B)” and insert-
15 ing “505(j)(5)(B)”.

16 (b) PEDIATRIC ADVISORY COMMITTEE.—

17 (1) Section 505A(i)(2) of the Federal Food,
18 Drug, and Cosmetic Act (21 U.S.C. 355a(i)(2)) is
19 amended by striking “Advisory Subcommittee of the
20 Anti-Infective Drugs” each place it appears.

21 (2) Section 14 of the Best Pharmaceuticals for
22 Children Act (42 U.S.C. 284m note; Public Law
23 107–109) is amended—

24 (A) in the section heading, by striking
25 “**PHARMACOLOGY**”;

1 (B) in subsection (a), by striking “(42
2 U.S.C. 217a),” and inserting (42 U.S.C. 217a)
3 or other appropriate authority,”;

4 (C) in subsection (b)—

5 (i) in paragraph (1), by striking “and
6 in consultation with the Director of the
7 National Institutes of Health”; and

8 (ii) in paragraph (2), by striking “and
9 505A” and inserting “505A, and 505B”;
10 and

11 (D) by striking “pharmacology” each place
12 it appears and inserting “therapeutics”.

13 (3) Section 15(a)(2)(A) of the Best Pharma-
14 ceuticals for Children Act (115 Stat. 1419) is
15 amended by striking “Pharmacology”.

16 (4) Section 16(1)(C) of the Best Pharma-
17 ceuticals for Children Act (21 U.S.C. 355a note;
18 Public Law 107–109) is amended by striking “Advi-
19 sory Subcommittee of the Anti-Infective Drugs”.

20 (5) Section 17(b)(1) of the Best Pharma-
21 ceuticals for Children Act (21 U.S.C. 355b(b)(1)) is
22 amended in the second sentence by striking “Advi-
23 sory Subcommittee of the Anti-Infective Drugs”.

24 (6) Paragraphs (8), (9), and (11) of section
25 409I(c) of the Public Health Service Act (42 U.S.C.

1 284m(c)) are amended by striking “Advisory Sub-
2 committee of the Anti-Infective Drugs” each place it
3 appears.

4 **SEC. 4. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Subject to subsection (b), this Act
6 and the amendments made by this Act take effect on the
7 date of enactment of this Act.

8 (b) APPLICABILITY TO NEW DRUGS AND BIOLOGICAL
9 PRODUCTS.—

10 (1) IN GENERAL.—Subsection (a) of section
11 505B of the Federal Food, Drug, and Cosmetic Act
12 (as added by section 2) shall apply to an application
13 described in paragraph (1) of that subsection sub-
14 mitted to the Secretary of Health and Human Serv-
15 ices on or after April 1, 1999.

16 (2) WAIVERS AND DEFERRALS.—

17 (A) WAIVER OR DEFERRAL GRANTED.—If,
18 with respect to an application submitted to the
19 Secretary of Health and Human Services be-
20 tween April 1, 1999, and the date of enactment
21 of this Act, a waiver or deferral of pediatric as-
22 sessments was granted under regulations of the
23 Secretary then in effect, the waiver or deferral
24 shall be a waiver or deferral under subsection
25 (a) of section 505B of the Federal Food, Drug,

1 and Cosmetic Act, except that any date speci-
2 fied in such a deferral shall be extended by the
3 number of days that is equal to the number of
4 days between October 17, 2002, and the date of
5 enactment of this Act.

6 (B) WAIVER OR DEFERRAL NOT GRANT-
7 ED.—If, with respect to an application sub-
8 mitted to the Secretary of Health and Human
9 Services between April 1, 1999, and the date of
10 enactment of this Act, neither a waiver nor de-
11 ferral of pediatric assessments was granted
12 under regulations of the Secretary then in ef-
13 fect, the person that submitted the application
14 shall be required to submit assessments under
15 subsection (a)(2) of section 505B of the Fed-
16 eral Food, Drug, and Cosmetic Act on the date
17 that is the later of—

18 (i) the date that is 1 year after the
19 date of enactment of this Act; or

20 (ii) such date as the Secretary may
21 specify under subsection (a)(3) of that sec-
22 tion;

23 unless the Secretary grants a waiver under sub-
24 section (a)(4) of that section.

1 (c) NO LIMITATION OF AUTHORITY.—Neither the
2 lack of guidance or regulations to implement this Act or
3 the amendments made by this Act nor the pendency of
4 the process for issuing guidance or regulations shall limit
5 the authority of the Secretary of Health and Human Serv-
6 ices under, or defer any requirement under, this Act or
7 those amendments.

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