110TH CONGRESS
1ST SESSION

S. 484

To amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to improve drug safety and oversight, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2007

Mr. ENZI (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act to improve drug safety and oversight, 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 ''Enhancing Drug Safety and Innovation Act of 2007''.

TITLE I—RISK EVALUATION AND MITIGATION STRATEGIES

SEC. 101. RISK EVALUATION AND MITIGATION STRATEGIES.

Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) is amended by adding at the end the following:

''(o) RISK EVALUATION AND MITIGATION STRATEGY.—

''(1) IN GENERAL.—In the case of any drug subject to subsection (b) or to section 351 of the Public Health Service Act for which a risk evaluation and mitigation strategy is approved as provided for in this subsection, the applicant shall comply with the requirements of such strategy.

''(2) DEFINITIONS.—In this subsection:

''(A) ADVERSE DRUG EXPERIENCE.—The term 'adverse drug experience' means any adverse event associated with the use of a drug in humans, whether or not considered drug related, including—

''(i) an adverse event occurring in the course of the use of the drug in professional practice;

''(ii) an adverse event occurring from an overdose of the drug, whether accidental or intentional;

''(iii) an adverse event occurring from abuse of the drug;

''(iv) an adverse event occurring from withdrawal of the drug; and

''(v) any failure of expected pharmacological action of the drug.

''(B) SERIOUS ADVERSE DRUG EXPERIENCE.—The term 'serious adverse drug experience' is an adverse event that—

''(i) results in—

''(I) death;

''(II) a adverse drug experience that places the patient at immediate risk of death from the adverse drug experience as it occurred (not including an adverse drug experience that might have caused death had it occurred in a more severe form);

''(III) inpatient hospitalization or prolongation of existing hospitalization;

"(IV) a persistent or significant incapacity or substantial disruption of the ability to conduct normal life functions; or

"(V) a congenital anomaly or birth defect; or

"(ii) based on appropriate medical judgment, may jeopardize the patient and may require a medical or surgical intervention to prevent an outcome described under clause (i).

"(C) SERIOUS RISK.—The term 'serious risk' means a risk of a serious adverse drug experience.

"(D) UNEXPECTED SERIOUS RISK.—The term 'unexpected serious risk' means a serious adverse drug experience that is not listed in the labeling of a drug, or that may be symptomatically and pathophysiologically related to an adverse drug experience identified in the labeling, but differs from such adverse drug experience because of greater severity, specificity, or prevalence.

"(E) SIGNAL OF A SERIOUS RISK.—The term 'signal of a serious risk' means informa-

tion related to a serious adverse drug experience associated with use of a drug and derived from—

"(i) a clinical trial;

"(ii) adverse event reports;

"(iii) a post-approval study, including a study under paragraph (4)(D); or

"(iv) peer-reviewed biomedical literature.

"(F) NEW SAFETY INFORMATION.—The term 'new safety information' with respect to a drug means information about—

"(i) a serious risk or an unexpected serious risk associated with use of the drug that the Secretary has become aware of since the last assessment of the approved risk evaluation and mitigation strategy for the drug; or

"(ii) the effectiveness of the approved risk evaluation and mitigation strategy for the drug obtained since the last assessment of such strategy.

"(3) REQUIRED ELEMENTS OF A RISK EVALUATION AND MITIGATION STRATEGY.—The risk evalua-

tion and mitigation strategy for a drug shall require—

"(A) labeling for the drug for use by health care providers as approved under subsection (c);

"(B)(i) submission of reports for the drug as required under subsection (k); and

"(ii) for a drug that is a vaccine—

"(I) analysis of reports to the Vaccine Adverse Event Reporting Systems (VAERS); or

"(II) surveillance using the Vaccine Safety Datalink (VSD) or successor databases;

"(C) a pharmacovigilance statement—

"(i) as to whether the reports under subparagraph (B)(i) or, for a vaccine, the analysis and surveillance under subparagraph (B)(ii), and the periodic assessment under subparagraph (E), are sufficient to assess the serious risks and to identify unexpected serious risks of the drug; and

"(ii) if such reports, such analysis and surveillance, and such periodic assessment are not sufficient to assess the serious

risks and to identify unexpected serious risks of the drug, that describes what study or studies of the drug are required under paragraph (4)(D) or what clinical trial or trials of the drug are required under paragraph (4)(E);

''(D) a justification for the pharmacovigilance statement in subparagraph (C) that takes into consideration—

''(i) the estimated size of the treatment population for the drug;

''(ii) the seriousness of the disease or condition that the drug is used to treat or prevent;

''(iii) the expected or actual duration of treatment with the drug;

''(iv) the availability and safety of a drug or other treatment, if any, for such disease or condition to which the safety of the drug may be compared; and

''(v) the seriousness of the risk at issue and its background incidence in the population; and

''(E) a timetable for submission of assessments of the strategy, that—

''(i) shall be no less frequently than once annually for the first 3 years after the drug is initially approved under subsection (c) or licensed under section 351 of the Public Health Service Act, and at a frequency specified in the strategy for subsequent years;

''(ii) may be increased or reduced in frequency as necessary as provided for in paragraph (6)(B)(iv)(VI) ; and

''(iii) may be eliminated after the first 3 years if the Secretary determines that serious risks of the drug have been adequately identified and assessed and are being adequately managed.

''(4) ADDITIONAL POTENTIAL ELEMENTS OF A RISK EVALUATION AND MITIGATION STRATEGY.—

''(A) IN GENERAL.—The Secretary may require that the risk evaluation and mitigation strategy for a drug include 1 or more of the additional elements described in this paragraph, so long as the Secretary makes the determination required with respect to each additional included element.

"(B) MEDGUIDE; PATIENT PACKAGE INSERT.—The risk evaluation and mitigation strategy for a drug may require that the applicant develop for distribution to each patient when the drug is dispensed—

"(i) a Medication Guide, as provided for under part 208 of title 21, Code of Federal Regulations (or any successor regulations); or

"(ii) a patient package insert, if the Secretary determines that such insert may help mitigate a serious risk of the drug.

"(C) COMMUNICATION PLAN.—The risk evaluation and mitigation strategy for a drug may require that the applicant conduct a communication plan to health care providers, if, with respect to such drug, the Secretary determines that such plan may support implementation of an element of the strategy. Such plan may include—

"(i) sending letters to health care providers;

"(ii) disseminating information about the elements of the risk evaluation and mitigation strategy to encourage implemen-

tation by health care providers of components that apply to such health care providers, or to explain certain safety protocols (such as medical monitoring by periodic laboratory tests); or

"(iii) disseminating information to health care providers through professional societies about any serious risks of the drug and any protocol to assure safe use.

"(D) POST-APPROVAL STUDIES.—The risk evaluation and mitigation strategy for a drug may require that the applicant conduct, or provide that the Secretary will conduct, an appropriate post-approval study, such as a prospective or retrospective observational study (including through the systematic use of established health care networks and databases), of the drug (with a target schedule for completing the study and reporting the results to the Secretary), if the Secretary determines the reports, analysis and surveillance, and periodic assessments referred to in paragraph (3)(C) are not sufficient to—

"(i) assess a signal of a serious risk with use of the drug; or

"(ii) identify unexpected serious risks in domestic populations who use the drug, including populations not included in studies used to approve the drug (such as older people, people with comorbidities, pregnant women, or children).

"(E) POST-APPROVAL CLINICAL TRIALS.—The risk evaluation and mitigation strategy for a drug may require that the applicant for a drug for which there is no effective approved application under subsection (j) of this section as of the date that the requirement is first imposed conduct an appropriate post-approval clinical trial of the drug (with a target schedule for completing the clinical trial and reporting the results to the Secretary) to be included in the clinical trial registry database and clinical trial results database provided for under section 402(i) of the Public Health Service Act, if the Secretary determines that a study or studies under subparagraph (D) will likely be inadequate to assess a signal of a serious risk with use of the drug.

"(F) PRECLEARANCE.—

"(i) IN GENERAL.—The risk evaluation and mitigation strategy for a drug may require that the applicant submit to the Secretary advertisements of the drug for preclearance, if the Secretary determines that such preclearance is necessary to ensure compliance with section 502(n) with respect to the disclosure of information about a serious risk listed in the labeling of the drug. The advertisements required to be submitted under the preceding sentence shall be reviewed and cleared by the Secretary within 45 days of submission.

"(ii) SPECIFICATION OF ADVERTISEMENTS.—The Secretary may specify the advertisements required to be submitted under clause (i).

"(G) SPECIFIC DISCLOSURES.—

"(i) IN GENERAL.—The risk evaluation and mitigation strategy for a drug may require that the applicant include in advertisements of the drug a specific disclosure—

"(I) of the date the drug was approved and that the existing information may not have identified or allowed for full assessment of all serious risks of using the drug, if the Secretary determines that such disclosure is necessary to protect public health and safety; or

"(II) about a serious adverse event listed in the labeling of the drug or a protocol to ensure safe use described in the labeling of the drug, if the Secretary determines that such advertisements lacking such disclosure would be false or misleading.

"(ii) SPECIFICATION OF ADVERTISEMENTS.—The Secretary may specify the advertisements required to include a specific disclosure under clause (i).

"(H) TEMPORARY MORATORIUM.—The risk evaluation and mitigation strategy for a drug may require that for a fixed period after initial approval, not to exceed 2 years, the applicant not issue or cause to be issued direct-to-consumer advertisements of the drug, if the

Secretary determines that disclosure under subparagraph (G) is inadequate to protect public health and safety, and that such prohibition is necessary to protect public health and safety while additional information about serious risks of the drug is collected, considering—

''(i) the number of patients who may be treated with the drug;

''(ii) the seriousness of the condition for which the drug will be used;

''(iii) the serious adverse events listed in the labeling of the drug;

''(iv) the extent to which patients have access to other approved drugs in the pharmacological class of the drug and with the same intended use as the drug; and

''(v) the extent to which clinical trials used to approve the drug may not have identified serious risks that might occur among patients expected to be treated with the drug.

''(5) RESTRICTIONS ON DISTRIBUTION OR USE.—

''(A) IN GENERAL.—If the Secretary determines that a drug shown to be effective can be

safely used only if distribution or use of such drug is restricted, the Secretary may require as elements of the risk evaluation and mitigation strategy such restrictions on distribution or use as are needed to assure safe use of the drug.

''(B) LIMITS ON RESTRICTIONS.—Such restrictions under subparagraph (A) shall—

''(i) be commensurate with the specific risk presented by the drug;

''(ii) not be unduly burdensome on patient access to the drug, particularly for patients with serious or life-threatening diseases or conditions; and

''(iii) to the extent practicable, conform with restrictions on distribution or use for other drugs with similar risks, so as to minimize the burden on the health care delivery system.

''(C) ELEMENTS.—The restrictions on distribution or use described under subparagraph (A) shall include 1 or more goals to evaluate or mitigate a serious risk listed in the labeling of the drug and may require that—

"(i) health care providers that prescribe the drug have special training or experience, or are specially certified;

"(ii) pharmacies, practitioners, or health care settings that dispense the drug are specially certified;

"(iii) the drug be dispensed to patients only in certain health care settings, such as hospitals;

"(iv) the drug be dispensed to patients with evidence or other documentation of safe-use conditions, such as laboratory test results;

"(v) each patient using the drug be subject to certain monitoring; or

"(vi) each patient using the drug be enrolled in a registry.

"(D) IMPLEMENTATION SYSTEM.—The restrictions on distribution or use described under subparagraph (A) may require a system through which the applicant is able to—

"(i) monitor and evaluate implementation of the restrictions by health care providers, pharmacists, patients, and other parties in the health care system who are

responsible for implementing the restrictions;

''(ii) work to improve implementation of the restrictions by health care providers, pharmacists, patients, and other parties in the health care system who are responsible for implementing the restrictions; and

''(iii) stop distribution of the drug to those health care providers, pharmacists, and other parties in the health care system—

''(I) who are responsible for implementing the restrictions; and

''(II) whom the applicant knows have failed to meet their responsibilities for implementing the restrictions, after the applicant has informed such party of such failure and such party has not remedied such failure.

''(6) SUBMISSION AND REVIEW OF RISK EVALUATION AND MITIGATION STRATEGY.—

''(A) PROPOSED RISK EVALUATION AND MITIGATION STRATEGY.—

''(i) INITIAL APPROVAL.—An applicant shall include a proposed risk evalua-

tion and mitigation strategy in an application under subsection (b) or section 351 of the Public Health Service Act for initial approval of the drug.

"(ii) APPROVAL OF NEW INDICATION.—If no risk evaluation and mitigation strategy for the drug is in effect under this subsection and the drug may not be dispensed without a prescription, the applicant shall include a proposed risk evaluation and mitigation strategy in an application, including in a supplemental application, seeking a new indication for such drug.

"(iii) CONTENTS.—A proposed risk evaluation and mitigation strategy—

"(I) shall include the minimal elements required under paragraph (3); and

"(II) may also include additional elements as provided for under paragraphs (4) and (5).

"(B) ASSESSMENT AND MODIFICATION OF A RISK EVALUATION AND MITIGATION STRATEGY.—

''(i) VOLUNTARY ASSESSMENTS.—The applicant may submit to the Secretary an assessment of, and propose a modification to, the approved risk evaluation and mitigation strategy for a drug at any time.

''(ii) REQUIRED ASSESSMENTS.—The applicant shall submit an assessment of, and may propose a modification to, the approved risk evaluation and mitigation strategy for a drug—

''(I) when submitting a supplemental application for a new indication under subsection (b) or section 351 of the Public Health Service Act, unless the drug may be dispensed without a prescription and the risk evaluation and mitigation strategy for the drug includes only the elements under paragraph (3);

''(II) when required by the strategy, as provided for in the timetable under paragraph (3)(E);

''(III) within a time specified by the Secretary, not to be less than 45 days, when ordered by the Secretary,

if the Secretary determines that new safety information indicates that an element under paragraph (3) or (4) should be modified or included in the strategy;

''(IV) within 90 days when ordered by the Secretary, if the Secretary determines that new safety information indicates that an element under paragraph (5) should be modified or included in the strategy; or

''(V) within 15 days when ordered by the Secretary, if the Secretary determines that there may be a cause for action by the Secretary under subsection (e).

''(iii) ASSESSMENT.—An assessment of the approved risk evaluation and mitigation strategy for a drug shall include—

''(I) with respect to any goal under paragraph (5), an assessment of how well the restrictions on distribution or use are meeting the goal or whether the goal or such restrictions should be modified;

"(II) with respect to any post-approval study required under paragraph (4)(D), the status of such study, including whether any difficulties completing the study have been encountered; and

"(III) with respect to any post-approval clinical trial required under paragraph (4)(E), the status of such clinical trial, including whether enrollment has begun, the number of participants enrolled, the expected completion date, whether any difficulties completing the clinical trial have been encountered, and registration information with respect to requirements under section 402(i) of the Public Health Service Act.

"(iv) MODIFICATION.—A modification (whether an enhancement or a reduction) to the approved risk evaluation and mitigation strategy for a drug may include the addition or modification of any element under subparagraph (A), (C), or (D) of paragraph (3) or the addition, modifica-

tion, or removal of any element under paragraph (4) or (5), such as—

"(I) a labeling change, including the addition of a boxed warning;

"(II) adding a post-approval study or clinical trial requirement;

"(III) modifying a post-approval study or clinical trial requirement (such as a change in trial design due to legitimate difficulties recruiting participants);

"(IV) adding, modifying, or removing a restriction on advertising under subparagraph (F), (G), or (H) of paragraph (4);

"(V) adding, modifying, or removing a restriction on distribution or use under paragraph (5); or

"(VI) modifying the timetable for assessments of the strategy under paragraph (3)(E), including to eliminate assessments.

"(C) REVIEW.—The Secretary shall promptly review the proposed risk evaluation and mitigation strategy for a drug submitted

under subparagraph (A), or an assessment of the approved risk evaluation and mitigation strategy for a drug submitted under subparagraph (B).

''(D) DISCUSSION.—The Secretary shall initiate discussions of the proposed risk evaluation and mitigation strategy for a drug submitted under subparagraph (A), or of an assessment of the approved risk evaluation and mitigation strategy for a drug submitted under subparagraph (B), with the applicant to determine a strategy—

''(i) if the proposed strategy or assessment is submitted as part of an application or supplemental application under subparagraph (A) or (B)(ii)(I), not less than 60 days before the action deadline for the application that has been agreed to by the Secretary and that has been set forth in goals identified in letters of the Secretary (relating to the use of fees collected under section 736 to expedite the drug development process and the review of human drug applications);

"(ii) if the assessment is submitted under subclause (II) or (III) of subparagraph (B)(ii), not later than 20 days after such submission;

"(iii) if the assessment is submitted under subparagraph (B)(i) or under subparagraph (B)(ii)(IV), not later than 30 days after such submission; or

"(iv) if the assessment is submitted under subparagraph (B)(ii)(V), not later than 10 days after such submission.

"(E) ACTION.—

"(i) IN GENERAL.—Unless the applicant requests the dispute resolution process described under subparagraph (F), the Secretary shall approve and describe the risk evaluation and mitigation strategy for a drug, or any modification to the strategy—

"(I) as part of the action letter on the application, when a proposed strategy is submitted under subparagraph (A) or an assessment of the strategy is submitted under subparagraph (B)(ii)(I); or

"(II) in an order, which shall be made public, issued not later than 50 days after the date discussions of such modification begin under subparagraph (C), when an assessment of the strategy is under subparagraph (B)(i) or under subclause (II), (III), (IV), or (V) of subparagraph (B)(ii).

"(ii) INACTION.—An approved risk evaluation and mitigation strategy shall remain in effect until the Secretary acts, if the Secretary fails to act as provided under clause (i).

"(F) DISPUTE RESOLUTION.—

"(i) REQUEST FOR REVIEW.—Not earlier than 15 days, and not later than 35 days, after discussions under subparagraph (D) have begun, the applicant may request in writing that a dispute about the strategy be reviewed by the Drug Safety Oversight Board.

"(ii) SCHEDULING REVIEW.—If the applicant requests review under clause (i), the Secretary—

''(I) shall schedule the dispute for review at 1 of the next 2 regular meetings of the Drug Safety Oversight Board, whichever meeting date is more practicable; or

''(II) may convene a special meeting of the Drug Safety Oversight Board to review the matter more promptly, including to meet an action deadline on an application (including a supplemental application).

''(iii) AGREEMENT AFTER DISCUSSION OR ADMINISTRATIVE APPEALS.—

''(I) FURTHER DISCUSSION OR ADMINISTRATIVE APPEALS.—A request for review under clause (i) shall not preclude further discussions to reach agreement on the risk evaluation and mitigation strategy, and such a request shall not preclude the use of administrative appeals within the Food and Drug Administration to reach agreement on the strategy, including appeals as described in letters of the Secretary (relating to the use of

fees collected under section 736 to expedite the drug development process and the review of human drug applications) for procedural or scientific matters involving the review of human drug applications and supplemental applications that cannot be resolved at the divisional level.

''(II) AGREEMENT TERMINATES DISPUTE RESOLUTION.—At any time before a decision and order is issued under clause (vi), the Secretary and the applicant may reach an agreement on the risk evaluation and mitigation strategy through further discussion or administrative appeals, terminating the dispute resolution process, and the Secretary shall issue an action letter or order, as appropriate, that describes the strategy.

''(iv) MEETING OF THE BOARD.—At the meeting of the Drug Safety Oversight Board described in clause (ii), the Board shall—

''(I) hear from both parties; and

''(II) review the dispute.

''(v) RECOMMENDATION OF THE BOARD.—Not later than 5 days after such meeting of the Drug Safety Oversight Board, the Board shall provide a written recommendation on resolving the dispute to the Secretary.

''(vi) ACTION BY THE SECRETARY.—

''(I) ACTION LETTER.—With respect to a proposed risk evaluation and mitigation strategy submitted under subparagraph (A) or to an assessment of the strategy submitted under subparagraph (B)(ii)(I), the Secretary shall issue an action letter that resolves the dispute not later than the later of—

''(aa) the action deadline referred to in subparagraph (D)(i); or

''(bb) 7 days after receiving the recommendation of the Drug Safety Oversight Board.

''(II) ORDER.—With respect to an assessment of the risk evaluation

and mitigation strategy under subparagraph (B)(i) or under subclause (II), (III), (IV), or (V) of subparagraph (B)(ii), the Secretary shall issue an order, which shall be made public, that resolves the dispute not later than 7 days after receiving the recommendation of the Drug Safety Oversight Board.

''(vii) INACTION.—An approved risk evaluation and mitigation strategy shall remain in effect until the Secretary acts, if the Secretary fails to act as provided for under clause (vi).

''(viii) EFFECT ON ACTION DEADLINE.—With respect to the application or supplemental application in which a proposed risk evaluation and mitigation strategy is submitted under subparagraph (A) or in which an assessment of the strategy is submitted under subparagraph (B)(ii)(I), the Secretary shall be considered to have met the action deadline referred to in subparagraph (D)(i) with respect to such application if the applicant requests

the dispute resolution process described in this subparagraph and if the Secretary—

"(I) has initiated the discussions described under subparagraph (D) not less than 60 days before such action deadline; and

"(II) has complied with the timing requirements of scheduling review by the Drug Safety Oversight Board, providing a written recommendation, and issuing an action letter under clauses (ii), (v), and (vi), respectively.

"(ix) DISQUALIFICATION.—No individual who is an employee of the Food and Drug Administration and who reviews a drug or who participated in an administrative appeal under clause (iii)(I) with respect to such drug may serve on the Drug Safety Oversight Board at a meeting under clause (iv) to review a dispute about the risk evaluation and mitigation strategy for such drug.

"(x) ADDITIONAL EXPERTISE.—The Drug Safety Oversight Board may add members with relevant expertise from the

Food and Drug Administration, including the Office of Pediatrics, the Office of Women's Health, or the Office of Rare Diseases, or from other Federal public health or health care agencies, for a meeting under clause (iv) of the Drug Safety Oversight Board.

"(G) USE OF ADVISORY COMMITTEES.—The Secretary may convene a meeting of 1 or more advisory committees of the Food and Drug Administration to—

"(i) review a concern about the safety of a drug or class of drugs, including before an assessment of the risk evaluation and mitigation strategy or strategies of such drug or drugs is required to be submitted under subclause (II), (III), (IV), or (V) of subparagraph (B)(ii);

"(ii) review the risk evaluation and mitigation strategy or strategies of a drug or group of drugs; or

"(iii) with the consent of the applicant, review a dispute under subparagraph (F).

"(H) PROCESS FOR ADDRESSING DRUG CLASS EFFECTS.—

"(i) IN GENERAL.—When a concern about a serious risk of a drug may be related to the pharmacological class of the drug, the Secretary may defer assessments of the approved risk evaluation and mitigation strategies for such drugs until the Secretary has convened, after appropriate public notice, 1 or more public meetings to consider possible responses to such concern.

"(ii) PUBLIC MEETINGS.—Such public meetings may include—

"(I) 1 or more meetings of the applicants for such drugs;

"(II) 1 or more meetings of 1 or more advisory committees of the Food and Drug Administration, as provided for under subparagraph (G); or

"(III) 1 or more workshops of scientific experts and other stakeholders.

"(iii) ACTION.—After considering the discussions from any meetings under clause (ii), the Secretary may—

"(I) announce in the Federal Register a planned regulatory action, including a modification to each risk evaluation and mitigation strategy, for drugs in the pharmacological class;

"(II) seek public comment about such action; and

"(III) after seeking such comment, issue an order addressing such regulatory action.

"(I) INTERNATIONAL COORDINATION.—The Secretary may coordinate the timetable for submission of assessments under paragraph (3)(E), a study under paragraph (4)(D), or a clinical trial under paragraph (4)(E), with efforts to identify and assess the serious risks of such drug by the marketing authorities of other countries whose drug approval and risk management processes the Secretary deems comparable to the drug approval and risk management processes of the United States.

''(J) EFFECT.—Use of the processes described in subparagraphs (H) and (I) shall not delay action on an application or a supplement to an application for a drug.

''(K) NO EFFECT ON LABELING CHANGES THAT DO NOT REQUIRE PREAPPROVAL.—In the case of a labeling change to which section 314.70 of title 21, Code of Federal Regulations (or any successor regulation), applies for which the submission of a supplemental application is not required or for which distribution of the drug involved may commence upon the receipt by the Secretary of a supplemental application for the change, the submission of an assessment of the approved risk evaluation and mitigation strategy for the drug under this subsection is not required.

''(7) DRUG SAFETY OVERSIGHT BOARD.—

''(A) IN GENERAL.—There is established a Drug Safety Oversight Board.

''(B) COMPOSITION; MEETINGS.—The Drug Safety Oversight Board shall—

''(i) be composed of scientists and health care practitioners who are appointed by the Secretary;

''(ii) include representatives from offices throughout the Food and Drug Administration;

''(iii) include at least 1 representative from each of the National Institutes of Health, the Department of Health and Human Services (other than the Food and Drug Administration), and the Veterans Health Administration; and

''(iv) meet at least monthly to provide oversight and advice to the Secretary on the management of important drug safety issues.''.

SEC. 102. ENFORCEMENT.

(a) MISBRANDING.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amended by adding at the end the following:

''(x) If it is a drug subject to an approved risk evaluation and mitigation strategy under section 505(o) and the applicant for such drug fails to—

''(1) make a labeling change required by such strategy after the Secretary has completed review of, and acted on, an assessment of such strategy under paragraph (6) of such section; or

''(2) comply with a requirement of such strategy with respect to advertising as provided for under subparagraph (F), (G), or (H) of paragraph (4) of such section.''.

(b) CIVIL PENALTIES.—Section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) is amended—

(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively;

(2) by inserting after paragraph (2) the following:

''(3) An applicant (as such term is used in section 505(o)) who knowingly fails to comply with a requirement of an approved risk evaluation and mitigation strategy under such section 505(o) shall be subject to a civil money penalty of not less than $15,000 and not more than $250,000 per violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding.'';

(3) in paragraph (2)(C), by striking ''paragraph (3)(A)'' and inserting ''paragraph (4)(A)'';

(4) in paragraph (4), as so redesignated, by striking ''paragraph (1) or (2)'' each place it appears and inserting ''paragraph (1), (2), or (3)''; and

(5) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

SEC. 103. REGULATION OF BIOLOGICAL PRODUCTS.

Section 351 of the Public Health Service Act (42 U.S.C. 262) is amended—

(1) in subsection (a)(2), by adding at the end the following:

''(D) RISK EVALUATION AND MITIGATION STRATEGY.—A person that submits an application for a license under this paragraph shall submit to the Secretary as part of the application a proposed risk evaluation and mitigation strategy as described under section 505(o) of the Federal Food, Drug, and Cosmetic Act.''; and

(2) in subsection (j), by inserting '', including the requirements under section 505(o) of such Act,'' after '', and Cosmetic Act''.

SEC. 104. NO EFFECT ON WITHDRAWAL OR SUSPENSION OF APPROVAL.

Section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) is amended by adding at the end the following: ''The Secretary may withdraw the approval of an application submitted under this section, or suspend the approval of such an application, as provided under this subsection, without first ordering the ap-

plicant to submit an assessment of the approved risk evaluation and mitigation strategy for the drug under subsection (o)(6)(B)(ii)(V).''.

SEC. 105. DRUGS SUBJECT TO AN ABBREVIATED NEW DRUG APPLICATION.

Section 505(j)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)) is amended by adding at the end the following:

''(D) RISK EVALUATION AND MITIGATION STRATEGY REQUIREMENT.—

''(i) IN GENERAL.—A drug that is the subject of an abbreviated new drug application under this subsection shall be subject to only the following elements of the risk evaluation and mitigation strategy required under subsection (o) for the applicable listed drug:

''(I) Labeling, as required under subsection (o)(3)(A) for the applicable listed drug.

''(II) Submission of reports, as required under subsection (o)(3)(B)(i) for the applicable listed drug.

''(III) A Medication Guide or patient package insert, if required under subsection (o)(4)(B) for the applicable listed drug.

"(IV) Preclearance of advertising, if required under subsection (o)(4)(F) for the applicable listed drug.

"(V) Specific disclosures in advertising, if required under subsection (o)(4)(G) for the applicable listed drug.

"(VI) A temporary moratorium on direct-to-consumer advertising, if required under subsection (o)(4)(H) for the applicable listed drug.

"(VII) Restrictions on distribution or use, if required under subsection (o)(5) for the applicable listed drug, except that such drug may use a different, comparable aspect of such restrictions on distribution or use as are needed to assure safe use of such drug if —

"(aa) the corresponding aspect of the restrictions on distribution or use for the applicable listed drug is claimed by a patent that has not expired or is a method or process that as a trade secret is entitled to protection; and

"(bb) the applicant certifies that it has sought a license for use of such aspect of the restrictions on distribution or use for the applicable listed drug.

''(ii) ACTION BY SECRETARY.—For an applicable listed drug for which a drug is approved under this subsection, the Secretary—

''(I) shall undertake any communication plan to health care providers required under section (o)(4)(C) for the applicable listed drug;

''(II) shall conduct any post-approval study required under subsection (o)(4)(D) for the applicable listed drug;

''(III) shall inform the applicant for a drug approved under this subsection if the risk evaluation and mitigation strategy for the applicable listed drug is modified; and

''(IV) in order to minimize the burden on the health care delivery system of different restrictions on distribution or use for the drug approved under this subsection and the applicable listed drug, may seek to negotiate a license under which the applicant for such drug may use an aspect of the restrictions on distribution or use, if required under subsection (o)(5) for the applicable listed drug, that is claimed by a patent that has not expired or is a method or process that as a trade secret is entitled to protection.''.

SEC. 106. CONFORMING AMENDMENTS.

(a) PRECLEARANCE OF ADVERTISEMENTS.—Section 502(n)(3)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)(3)(A)) is amended by inserting ''(or when required under section 505(o)(4)(F))'' after ''except in extraordinary circumstances''.

(b) CONTENT OF NEW DRUG APPLICATION.—Section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)) is amended—

(1) in subparagraph (F), by striking ''and''; and

(2) in subparagraph (G), by striking the period and inserting the following: '', and (H) a proposed risk evaluation and mitigation strategy as described under subsection (o).''.

SEC. 107. RESOURCES.

(a) USER FEES.—Subparagraph (F) of section 735(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g(6)) is amended to read as follows:

''(F) Reviewing and implementing risk evaluation and mitigation strategies, and collecting, developing, and reviewing safety information on drugs, including adverse event reports.''.

(b) WORKLOAD ADJUSTMENT.—Subparagraph (A) of section 736(c)(2) of the Federal Food, Drug, and Cos-

metic Act (21 U.S.C. 379h(c)(2)) is amended to read as follows:

''(A) The adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of human drug applications, commercial investigational new drug applications, efficacy supplements, manufacturing supplements, assessments of risk evaluation and mitigation strategies, and uses of dispute resolution under the process for reviewing and assessing risk evaluation and mitigation strategies. The Secretary shall publish in the Federal Register the fee revenues and fees resulting from the adjustment and supporting methodologies.''.

(c) STRATEGIC PLAN FOR INFORMATION TECHNOLOGY.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, a strategic plan on information technology that includes—

(1) an assessment of the information technology infrastructure, including systems for data collection, access to data in external health care databases, data mining capabilities, personnel, and personnel training programs, needed by the Food and Drug Administration to—

(A) comply with the requirements of this title (and the amendments made by this title);

(B) achieve interoperability within and among the Centers of the Food and Drug Administration and between the Food and Drug Administration and product application sponsors; and

(C) utilize electronic health records;

(2) an assessment of the extent to which the current information technology assets of the Food and Drug Administration are sufficient to meet the needs assessments under paragraph (1);

(3) a plan for enhancing the information technology assets of the Food and Drug Administration toward meeting the needs assessments under paragraph (1); and

(4) an assessment of additional resources needed to so enhance the information technology assets of the Food and Drug Administration.

SEC. 108. DRUG LABELING.

(a) ACCESSIBLE REPOSITORY OF DRUG LABELING.—Not later than the effective date of this title, the Secretary, through the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall establish a searchable repository of structured, electronic product information, including the approved professional labeling and any required patient labeling of each drug approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) in order to improve patient safety through accessible product information, support initiatives to improve patient care by better management of health care information, and provide standards for drug information. Such repository shall be made publicly accessible on the Internet website of the National Library of Medicine and through a link on the homepage of the Internet website of the Food and Drug Administration.

(b) POSTING UPON APPROVAL.—The Secretary shall post in the repository under subsection (a) the approved professional labeling and any required patient labeling of a drug approved under such section 505 or licensed under such section 351 not later than 21 days after the date the drug is approved, including in a supplemental application with respect to a labeling change.

(c) REPORT.—The Secretary shall report annually to the Committee on Health, Education, Labor and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the status of the repository under subsection (a), and on progress in posting structured electronic product information, including posting of information regarding drugs approved prior to the effective date of this title.

(d) MEDICATION GUIDES.—Not later than the effective date of this title, the Secretary, through the Commissioner of Food and Drugs, shall establish on the Internet website for the repository under subsection (a), a link to a list of each drug, whether approved under such section 505 or licensed under such section 351, for which a Medication Guide, as provided for under part 208 of title 21, Code of Federal Regulations (or any successor regulations), is required.

SEC. 109. EFFECTIVE DATE AND APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) DRUGS DEEMED TO HAVE RISK EVALUATION AND MITIGATION STRATEGIES.—

(1) IN GENERAL.—A drug that was approved before the effective date of this title shall be deemed to have an approved risk evaluation and mitigation

strategy under section 505(o) of the Federal Food, Drug, and Cosmetic Act (as added by this title) if there are in effect on the effective date of this title restrictions on distribution or use—

(A) required under section 314.520 or section 601.42 of title 21, Code of Federal Regulations; or

(B) otherwise agreed to by the applicant and the Secretary for such drug.

(2) RISK EVALUATION AND MITIGATION STRATEGY.—The approved risk evaluation and mitigation strategy deemed in effect for a drug under paragraph (1) shall consist of the elements described in subparagraphs (A) and (B) of paragraph (3) of such section 505(o) and any other additional elements under paragraphs (4) and (5) in effect for such drug on the effective date of this title.

(3) NOTIFICATION.—Not later than 30 days after the effective date of this title, the Secretary shall notify the applicant for each drug described in paragraph (1)—

(A) that such drug is deemed to have an approved risk evaluation and mitigation strategy pursuant to such paragraph; and

(B) of the date, which shall be no earlier than 6 months after the applicant is so notified, by which the applicant shall submit to the Secretary an assessment of such approved strategy under paragraph (6)(B) of such section 505(o).

(4) ENFORCEMENT ONLY AFTER ASSESSMENT AND REVIEW.—Neither the Secretary nor the Attorney General may seek to enforce a requirement of a risk evaluation and mitigation strategy deemed in effect under paragraph (1) before the Secretary has completed review of, and acted on, the first assessment of such strategy under such section 505(o).

(c) OTHER DRUGS APPROVED BEFORE THE EFFECTIVE DATE.—The Secretary, on a case-by-case basis, may require the applicant for a drug approved before the effective date of this title to which subsection (b) does not apply to submit a proposed risk evaluation and mitigation strategy in accordance with the timeframes provided for in subclause (III), (IV), or (V), as applicable, of paragraph (6)(B)(ii) of such section 505(o) if the Secretary determines that—

(1) an element described under paragraph (3)(A) of such section 505(o) may require modification; or

(2) a standard for adding an element described in paragraph (4) or (5) of such section 505(o) that is not in effect with respect to such drug may apply to such drug.

TITLE II—REAGAN-UDALL INSTITUTE FOR APPLIED BIOMEDICAL RESEARCH

SEC. 201. THE REAGAN-UDALL INSTITUTE FOR APPLIED BIOMEDICAL RESEARCH.

(a) IN GENERAL.—Chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 et seq.), as amended by Public Law 109–462, is amended by adding at the end the following:

"Subchapter I—Reagan-Udall Institute for Applied Biomedical Research

"SEC. 770. ESTABLISHMENT AND FUNCTIONS OF THE INSTITUTE.

''(a) IN GENERAL.—The Secretary shall establish a nonprofit corporation to be known as the Reagan-Udall Institute for Applied Biomedical Research (referred to in this subchapter as the 'Institute'). The Institute shall be headed by an Executive Director, appointed by the members of the Board of Directors under subsection (e). The Institute shall not be an agency or instrumentality of the United States Government.

''(b) PURPOSE OF INSTITUTE.—The purpose of the Institute is to advance the Critical Path Initiative of the Food and Drug Administration to modernize medical product development, accelerate innovation, and enhance product safety.

''(c) DUTIES OF THE INSTITUTE.—The Institute shall—

''(1) taking into consideration the 2004 report published by the Food and Drug Administration entitled 'Innovation or Stagnation? Challenge and Opportunity on the Critical Path to New Medical Products', identify unmet needs in the sciences of developing, manufacturing, and evaluating the safety and effectiveness of diagnostics, devices, biologics, and drugs, including—

''(A) the identification and validation of biomarkers for use in diagnostic, device, biologic, and drug development;

''(B) the development and validation of animal models for human disease and medical product safety;

''(C) pharmacogenomics and inter-individual variability in drug, biologic, and device response;

''(D) the development of data analysis technology and methodology for use in device, biologic, drug, and diagnostic development;

''(E) advancing improvements to the design and conduct of clinical trials;

''(F) toxicological quality assessment technologies;

''(G) diagnostic, device, biologic, and drug manufacturing, design, and materials science;

''(H) failure mode assessment for medical product development;

''(I) improving adverse event reporting and analysis;

''(J) bridging engineering data and clinical performance for devices; and

''(K) computer modeling;

''(2) establish goals and priorities in order to meet the unmet needs identified in paragraph (1);

''(3) in consultation with the Secretary, assess existing and proposed Federal intramural and extramural research and development programs relating to the goals and priorities established under paragraph (2) and facilitate and encourage interagency coordination of such programs;

''(4) award grants to, or enter into contracts or cooperative agreements with, scientists and entities to advance the goals and priorities established under paragraph (2);

''(5) recruit meeting participants and hold or sponsor (in whole or in part) meetings as appropriate to further the goals and priorities established under paragraph (2);

''(6) release and publish information and data and, to the extent practicable, license, distribute, and release material, reagents, and techniques to maximize, promote, and coordinate the availability of such material, reagents, and techniques for use by the Food and Drug Administration, nonprofit organizations, and academic and industrial researchers to further the goals and priorities established under paragraph (2);

''(7) ensure that—

''(A) action is taken as necessary to obtain patents for inventions developed by the Institute or with funds from the Institute;

''(B) action is taken as necessary to enable the licensing of inventions developed by the Institute or with funds from the Institute; and

''(C) executed licenses, memoranda of understanding, material transfer agreements, contracts, and other such instruments promote, to the maximum extent practicable, the broadest conversion to commercial and noncommercial applications of licensed and patented inventions of the Institute to further the goals and priorities established under paragraph (2);

''(8) provide objective clinical and scientific information to the Food and Drug Administration and, upon request, to other Federal agencies to assist in agency determinations of how to ensure that regulatory policy accommodates scientific advances;

''(9) conduct annual assessments of the unmet needs identified in paragraph (1); and

''(10) carry out such other activities consistent with the purposes of the Institute as the Board determines appropriate.

''(d) BOARD OF DIRECTORS.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Institute shall have a Board of Directors (referred to in this subchapter as the 'Board'), which shall be composed of ex officio and appointed members in

accordance with this subsection. All appointed members of the Board shall be voting members.

''(B) EX OFFICIO MEMBERS.—The ex officio members of the Board shall be—

''(i) the immediate past Chair of Board of Directors of the Institute;

''(ii) the Commissioner of Food and Drugs;

''(iii) the Director of the National Institutes of Health;

''(iv) the Director of the Centers for Disease Control and Prevention; and

''(v) the Director of the Agency for Healthcare Research and Quality.

''(C) APPOINTED MEMBERS.—

''(i) IN GENERAL.—The ex officio members of the Board under subparagraph (B) shall, by majority vote, appoint to the Board 12 individuals. Of such appointed members—

''(I) 4 shall be representatives of the general pharmaceutical, device, and biotechnology industries;

''(II) 3 shall be representatives of academic research organizations;

''(III) 2 shall be representatives of Government agencies, including the Food and Drug Administration and the National Institutes of Health;

''(IV) 2 shall be representatives of patient advocacy organizations; and

''(V) 1 shall be a representative of health care providers.

''(ii) REQUIREMENT.—The ex officio members shall ensure the Board membership includes individuals with expertise in areas including clinical pharmacology, biomedical informatics, product safety, process improvement and pharmaceutical sciences, and medical device and biomedical engineering.

''(D) INITIAL MEETING.—

''(i) IN GENERAL.—Not later than 30 days after the date of the enactment of the Enhancing Drug Safety and Innovation Act of 2007, the Secretary shall convene a meeting of the ex officio members of the Board to—

''(I) incorporate the Institute; and

"(II) appoint the members of the Board in accordance with subparagraph (C).

"(ii) SERVICE OF EX OFFICIO MEMBERS.—Upon the appointment of the members of the Board under clause (i)(II), the terms of service of the ex officio members of the Board as members of the Board shall terminate.

"(iii) CHAIR.—The ex officio members of the Board under subparagraph (B) shall designate an appointed member of the Board to serve as the Chair of the Board.

"(2) DUTIES OF BOARD.—The Board shall—

"(A) establish by-laws for the Institute that—

"(i) are published in the Federal Register and available for public comment;

"(ii) establish policies for the selection of the officers, employees, agents, and contractors of the Institute;

"(iii) establish policies, including ethical standards, for the acceptance, solicitation, and disposition of donations and

grants to the Institution and for the disposition of the assets of the Institute;

''(iv) establish policies whereby any individual who is an officer, employee, or member of the Board of the Institute may not personally or substantially participate in the consideration or determination by the Institute of any matter that would directly or predictably affect any financial interest of the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act of 1978) of the individual, of any business organization or other entity, or of which the individual is an officer or employee or is negotiating for employment, or in which the individual has any other financial interest;

''(v) establish licensing, distribution, and publication policies that support the widest and least restrictive use by the public of information and inventions developed by the Institute or with Institute funds to carry out the duties described in paragraphs (6) and (7) of subsection (c);

"(vi) specify principles for the review of proposals and awarding of grants and contracts that include peer review and that are substantially consistent with those of the Foundation for the National Institutes of Health;

"(vii) specify a process for annual Board review of the operations of the Institute; and

"(viii) establish specific duties of the Executive Director;

"(B) prioritize and provide overall direction to the activities of the Institute;

"(C) evaluate the performance of the Executive Director; and

"(D) carry out any other necessary activities regarding the functioning of the Institute.

"(3) ADDITIONAL BOARD FUNCTIONS.—The Board may coordinate and collaborate with other entities to conduct research, education, and outreach, and to modernize the sciences of developing, manufacturing, and evaluating the safety and effectiveness of diagnostics, devices, biologics, and drugs.

"(4) TERMS AND VACANCIES.—

''(A) TERM.—The term of office of each member of the Board appointed under paragraph (1)(C) shall be 4 years, except that the terms of offices for the initial appointed members of the Board shall expire on a staggered basis as determined by the ex officio members.

''(B) VACANCY.—Any vacancy in the membership of the Board—

''(i) shall not affect the power of the remaining members to execute the duties of the Board; and

''(ii) shall be filled by appointment by the individuals described in clauses (i) through (v) of paragraph (1)(B) by majority vote.

''(C) PARTIAL TERM.—If a member of the Board does not serve the full term applicable under subparagraph (A), the individual appointed under subparagraph (B) to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

''(D) SERVING PAST TERM.—A member of the Board may continue to serve after the expi-

ration of the term of the member until a successor is appointed.

''(5) COMPENSATION.—Members of the Board may not receive compensation for service on the Board. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in the bylaws issued by the Board.

''(e) INCORPORATION.—The ex officio members of the Board shall serve as incorporators and shall take whatever actions necessary to incorporate the Institute.

''(f) NONPROFIT STATUS.—The Institute shall be considered to be a corporation under section 501(c) of the Internal Revenue Code of 1986, and shall be subject to the provisions of such section.

''(g) EXECUTIVE DIRECTOR.—

''(1) IN GENERAL.—The Board shall appoint an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall be responsible for the day-to-day operations of the Institute and shall have such specific duties and responsibilities as the Board shall prescribe.

''(2) COMPENSATION.—The compensation of the Executive Director shall be fixed by the Board

but shall not be greater than the compensation of the Commissioner of Food and Drugs.

''(h) ADMINISTRATIVE POWERS.—In carrying out this subchapter, the Board, acting through the Executive Director, may—

''(1) adopt, alter, and use a corporate seal, which shall be judicially noticed;

''(2) hire, promote, compensate, and discharge 1 or more officers, employees, and agents, as may be necessary, and define their duties;

''(3) prescribe the manner in which—

''(A) real or personal property of the Institute is acquired, held, and transferred;

''(B) general operations of the Institute are to be conducted; and

''(C) the privileges granted to the Board by law are exercised and enjoyed;

''(4) with the consent of the applicable executive department or independent agency, use the information, services, and facilities of such department or agencies in carrying out this section;

''(5) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

''(6) hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Institute under subsection (i);

''(7) enter into such other contracts, leases, cooperative agreements, and other transactions as the Board considers appropriate to conduct the activities of the Institute;

''(8) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this subchapter;

''(9) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Institute and its employees;

''(10) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

''(11) appoint other groups of advisors as may be determined necessary to carry out the functions of the Institute; and

''(12) exercise other powers as set forth in this section, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this subchapter.

''(i) ACCEPTANCE OF FUNDS FROM OTHER SOURCES.—The Executive Director may solicit and accept

on behalf of the Institute, any funds, gifts, grants, devises, or bequests of real or personal property made to the Institute, including from private entities, for the purposes of carrying out the duties of the Institute.

''(j) SERVICE OF FEDERAL EMPLOYEES.—Federal Government employees may serve on committees advisory to the Institute and otherwise cooperate with and assist the Institute in carrying out its functions, so long as such employees do not direct or control Institute activities.

''(k) DETAIL OF GOVERNMENT EMPLOYEES.—Federal Government employees may be detailed from Federal agencies with or without reimbursement to those agencies to the Institute at any time, and such detail shall be without interruption or loss of civil service status or privilege. Each such employee shall abide by the statutory, regulatory, ethical, and procedural standards applicable to the employees of the agency from which such employee is detailed and those of the Institute.

''(l) ANNUAL REPORTS.—

''(1) REPORTS TO INSTITUTE.—Any recipient of a grant, contract, or cooperative agreement from the Institute under this section shall submit to the Institute a report on an annual basis for the duration of such grant, contract, or cooperative agreement, that

describes the activities carried out under such grant, contract, or cooperative agreement.

''(2) REPORT TO FDA.—Beginning with fiscal year 2009, the Executive Director shall submit to the Commissioner an annual report that—

''(A) details the progress of the Institute in furthering the goals and priorities established under subsection (c)(2); and

''(B) provides recommendations for incorporating such progress into regulatory and product review activities of the Food and Drug Administration.

''(3) REPORT TO CONGRESS.—Beginning with fiscal year 2009, the Executive Director shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives an annual report that—

''(A) describes the activities of the Institute and of the recipients of a grant, contract, or cooperative agreement under this section, including the practical impact of the Institute on medical product development;

''(B) provides a specific accounting of the source of all funds used by the Institute to carry out such activities; and

''(C) describes how such funds were used by the Institute.

''(m) SEPARATION OF FUNDS.—The Executive Director shall ensure that the funds received from the Treasury are held in separate accounts from funds received from entities under subsection (i).

''(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2013 to carry out subsections (a), (b), and (d) through (m).''.

(b) OTHER INSTITUTE PROVISIONS.—Chapter VII (21 U.S.C. 371 et seq.) (as amended by subsection (a)) is amended by adding at the end the following:

''SEC. 771. LOCATION OF INSTITUTE.

''(a) IN GENERAL.—The Institute shall, if practicable, be located not more than 20 miles from the District of Columbia.

''(b) USE OF SPACE.—The Secretary shall consult with the Administrator of General Services to ensure the most cost-efficient arrangement for the leasing or purchase of real property for adequate facilities which, if practicable, shall be located at the Food and Drug Admin-

istration, to meet the needs of the Institute in carrying out this subchapter.

''SEC. 772. ACTIVITIES OF THE FOOD AND DRUG ADMINISTRATION.

''(a) IN GENERAL.—The Commissioner shall receive and assess the report submitted to the Commissioner by the Executive Director of the Institute under section 770(l)(2).

''(b) REPORT TO CONGRESS.—The Commissioner shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives an annual report that describes the implementation of any recommendations included in the report described under subsection (a).''.

TITLE III—CLINICAL TRIALS

SEC. 301. CLINICAL TRIAL REGISTRY DATABASE AND CLINICAL TRIAL RESULTS DATABASE.

(a) IN GENERAL.—Subsection (i) of section 402 of the Public Health Service Act (42 U.S.C. 282), as amended by Public Law 109–482, is amended to read as follows:

''(i) CLINICAL TRIAL REGISTRY DATABASE; CLINICAL TRIAL RESULTS DATABASE.—

''(1) DEFINITIONS; REQUIREMENT.—

"(A) DEFINITIONS.—In this subsection:

"(i) CLINICAL TRIAL INFORMATION.—The term 'clinical trial information' means those data elements that are necessary to complete an entry in the clinical trial registry database under paragraph (2) or the clinical trial results database under paragraph (3), as applicable.

"(ii) COMPLETION DATE.—The term 'completion date' means, with respect to a clinical trial, the date on which the last patient enrolled in the clinical trial has completed his or her last medical visit of the clinical trial, whether the clinical trial concluded according to the prespecified protocol plan or was terminated.

"(iii) DRUG.—The term 'drug' means a drug as defined in section 201(g) of the Federal Food, Drug, and Cosmetic Act or a biological product as defined in section 351 of this Act.

"(iv) RESPONSIBLE PARTY.—The term 'responsible party', with respect to a clinical trial of a drug, means the sponsor of the clinical trial or the principal investi-

gator of such clinical trial if so designated by such sponsor.

''(B) REQUIREMENT.—The Secretary shall develop a mechanism by which—

''(i) the responsible party for each applicable clinical trial shall submit the identity and contact information of such responsible party to the Secretary at the time of submission of clinical trial information under paragraph (2); and

''(ii) other Federal agencies may identify the responsible party for an applicable clinical trial.

''(2) CLINICAL TRIAL REGISTRY DATABASE.—

''(A) APPLICABLE CLINICAL TRIAL.—

''(i) IN GENERAL.—For purposes of this paragraph the term 'applicable clinical trial' means—

''(I) a therapeutic or chemopreventive clinical trial to verify the efficacy and establish appropriate doses for the drug conducted before the drug is approved under section 505 of the Federal Food, Drug, and

Cosmetic Act or licensed under section 351 of this Act;

''(II) a therapeutic or chemopreventive confirmatory clinical trial;

''(III) a clinical trial conducted after the drug is approved under such section 505 or licensed under such section 351; or

''(IV) a pharmacokinetic study to support a pediatric indication for the drug.

''(ii) EXCEPTIONS.—

''(I) CERTAIN EXPLORATORY TRIALS.—A clinical trial under clause (i)(I) does not include an exploratory clinical trial that is intended solely to assess safety, solely to evaluate pharmacokinetics, or solely to verify efficacy.

''(II) OBSERVATIONAL STUDIES.—A clinical trial under clause (i) does not include an observational study.

''(B) ESTABLISHMENT.—

''(i) IN GENERAL.—To enhance patient enrollment and provide a mechanism to track subsequent progress of clinical trials, the Secretary, acting through the Director of NIH, shall establish and administer a clinical trial registry database in accordance with this subsection (referred to in this subsection as the 'registry database'). The Director of NIH shall ensure that the registry database is made publicly available through the Internet.

''(ii) CONTENT.—The Secretary shall promulgate regulations for the submission to the registry database of clinical trial information that—

''(I) conforms to the International Clinical Trials Registry Platform trial registration data set of the World Health Organization;

''(II) includes the city, State, and zip code for each clinical trial location;

''(III) if the drug is not approved under section 505 of the Federal Food, Drug, and Cosmetic Act or licensed under section 351 of this Act,

specifies whether or not there is expanded access to the drug under section 561 of the Federal Food, Drug, and Cosmetic Act for those who do not qualify for enrollment in the clinical trial and how to obtain information about such access; and

''(IV) requires the inclusion of such other data elements to the registry database as appropriate.

''(C) FORMAT AND STRUCTURE.—

''(i) SEARCHABLE CATEGORIES.—The Director of NIH shall ensure that the public may search the entries in the registry database by 1 or more of the following criteria:

''(I) The indication being studied in the clinical trial, using Medical Subject Headers (MeSH) descriptors.

''(II) The safety issue being studied in the clinical trial.

''(III) The enrollment status of the clinical trial.

''(IV) The sponsor of the clinical trial.

"(ii) FORMAT.—The Director of the NIH shall ensure that the registry database is easily used by patients, and that entries are easily compared.

"(D) DATA SUBMISSION.—The responsible party for an applicable clinical trial shall submit to the Director of NIH for inclusion in the registry database the clinical trial information described in subparagraph (B)(ii).

"(E) TRUTHFUL CLINICAL TRIAL INFORMATION.—

"(i) IN GENERAL.—The clinical trial information submitted by a responsible party under this paragraph shall not be false or misleading in any particular.

"(ii) EFFECT.—Clause (i) shall not have the effect of requiring clinical trial information with respect to an applicable clinical trial to include information from any source other than such clinical trial.

"(F) CHANGES IN CLINICAL TRIAL STATUS.—

"(i) ENROLLMENT.—The responsible party for an applicable clinical trial shall update the enrollment status not later than

30 days after the enrollment status of such clinical trial changes.

''(ii) COMPLETION.—The responsible party for an applicable clinical trial shall report to the Director of NIH that such clinical trial is complete not later than 30 days after the completion date of the clinical trial.

''(G) TIMING OF SUBMISSION.—The clinical trial information for an applicable clinical trial required to be submitted under this paragraph shall be submitted not later than 14 days after the first patient is enrolled in such clinical trial.

''(3) CLINICAL TRIALS RESULTS DATABASE.—

''(A) APPLICABLE CLINICAL TRIAL.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'applicable clinical trial' means—

''(I) a clinical trial conducted before the drug is approved under section 505 of the Federal Food, Drug, and Cosmetic Act or licensed under section 351 of this Act that is—

"(aa) a therapeutic or chemopreventive confirmatory clinical trial;

"(bb) a clinical trial for a drug approved as a fast-track product under section 506 of the Federal Food, Drug, and Cosmetic Act, if such clinical trial is used to form the primary basis of an efficacy claim for such drug; or

"(cc) if required by the Secretary under subparagraph (G)(i), a clinical trial described in paragraph (2)(A)(i)(I);

"(II) a clinical trial completed after the drug is approved under such section 505 or licensed under such section 351; or

"(III) a pharmacokinetic study to support a pediatric indication for the drug.

"(ii) EXCEPTIONS.—

"(I) CERTAIN EXPLORATORY TRIALS.—A clinical trial under clause

(i)(I) does not include an exploratory clinical trial that is intended solely to assess safety, solely to evaluate pharmacokinetics, or solely to verify efficacy.

''(II) OBSERVATION STUDIES.—A clinical trial under clause (i) does not include an observational study.

''(B) ESTABLISHMENT.—To ensure that results of clinical trials are made public and that patients and providers have current information regarding the results of clinical trials, the Secretary, acting through the Director of NIH, shall establish and administer a clinical trial results database in accordance with this subsection (referred to in this subsection as the 'results database').

''(C) SEARCHABLE CATEGORIES.—The Director of NIH shall ensure that the public may search the entries in the results database by 1 or more of the following:

''(i) The indication studied in the clinical trial, using Medical Subject Headers (MeSH) descriptors.

''(ii) The safety issue studied in the clinical trial.

''(iii) Whether an application for the tested indication is approved, pending approval, withdrawn, or not submitted.

''(iv) The phase of the clinical trial.

''(v) The name of the drug that is the subject of the clinical trial.

''(vi) Within the documents described in subclauses (II) and (III) of subparagraph (D)(ii), the following information, as applicable:

''(I) The sponsor of the clinical trial.

''(II) Each financial sponsor of the clinical trial.

''(D) CONTENTS.—

''(i) IN GENERAL.—The responsible party for an applicable clinical trial shall submit to the Director of NIH for inclusion in the results database the clinical trial information described in clause (ii).

''(ii) REQUIRED ELEMENTS.—In submitting clinical trial information for an applicable clinical trial to the Director of

NIH for inclusion in the results database, the responsible party shall include, with respect to such clinical trial, the following information:

"(I) The information described in clauses (i) through (v) of subparagraph (C).

"(II) A non-promotional summary document that is written in non-technical, understandable language for patients that includes the following:

"(aa) The purpose of the clinical trial.

"(bb) The sponsor of the clinical trial.

"(cc) A point of contact for information about the clinical trial.

"(dd) A description of the patient population tested in the clinical trial.

"(ee) A general description of the clinical trial and results, including a description of and the reasons for any changes in the

clinical trial design that occurred since the date of submission of clinical trial information for inclusion in the registry database established under paragraph (2) and a description of any significant safety information.

''(III) A non-promotional summary document that is technical in nature that includes the following:

''(aa) The purpose of the clinical trial.

''(bb) The sponsor of the clinical trial.

''(cc) Each financial sponsor of the clinical trial.

''(dd) A point of contact for scientific information about the clinical trial.

''(ee) A description of the patient population tested in the clinical trial.

''(ff) A general description of the clinical trial and results, including a description of and the

reasons for any changes in the clinical trial design that occurred since the date of submission of clinical trial information for the clinical trial in the registry database established under paragraph (2).

''(gg) Summary data describing the results, including—

''(AA) whether the primary endpoint was achieved, including relevant statistics;

''(BB) an assessment of any secondary endpoints, if applicable, including relevant statistics; and

''(CC) any significant safety information, including a summary of the incidence of serious adverse events observed in the clinical trial and a summary of the most common adverse events observed in the clinical trial

and the frequencies of such events.

''(IV) A link to available peer-reviewed publications based on the results of the clinical trial.

''(V) The completion date of the clinical trial.

''(VI) A link to the Internet web posting of any adverse regulatory actions taken by the Food and Drug Administration, such as a warning letter, that was substantively based on the clinical trial design, outcome, or representation made by the applicant about the design or outcome of the clinical trial.

''(E) TIMING.—A responsible party shall submit to the Director of NIH for inclusion in the results database clinical trial information for an applicable clinical trial not later than 1 year after the completion date of the clinical trial as reported under paragraph (2)(F)(ii).

''(F) TRUTHFUL CLINICAL TRIAL INFORMATION.—

"(i) IN GENERAL.—The clinical trial information submitted by a responsible party under this paragraph shall not be false or misleading in any particular.

"(ii) EFFECT.—Clause (i) shall not have the effect of requiring clinical trial information with respect to an applicable clinical trial to include information from any source other than such clinical trial.

"(G) INCLUSION OF EARLIER-STAGE CLINICAL TRIALS.—

"(i) IN GENERAL.—The Secretary may, subject to clause (ii), require through rulemaking the submission of clinical trial information for the clinical trials described in paragraph (2)(A)(i)(I) to the Director of NIH for inclusion in the results database.

"(ii) CONDITIONS FOR REQUIRING INCLUSION OF EARLIER-STAGE TRIALS.—The Secretary may promulgate regulations pursuant to clause (i) if—

"(I) the Comptroller General of the United States has submitted to the Secretary the report described under clause (iii); and

''(II) such report recommends the inclusion in the results database of clinical trial information for the clinical trials described under paragraph (2)(A)(i)(I).

''(iii) STUDY BY GAO.—Not earlier than 2 years after the results database has been established, the Comptroller General of the United States shall initiate a report that—

''(I) evaluates the operation of the database, including with respect to cost, burden on drug sponsors and agencies, and the value to patients and health care providers of inclusion in the results database of clinical trial information with respect to clinical trials described in paragraph (2)(A)(i)(I);

''(II) recommends whether or not clinical trial information for such clinical trials should be included in the results database;

''(III) if the recommendation under subclause (II) is to include the

clinical trial information for such clinical trials in the results database, recommends whether such information should be included in the same format as the clinical trial information of other applicable clinical trials, or if modifications are necessary;

''(IV) provides recommendations for any modifications described under subclause (III); and

''(V) is submitted to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Secretary.

''(H) CHANGE IN REGULATORY STATUS.—The responsible party for an applicable clinical trial shall inform the Director of NIH of a change in the regulatory status submitted under subparagraph (C)(ii) of a drug that is the subject of an applicable clinical trial within 30 days of such change, so that the Director can update the results database accordingly.

''(I) PUBLIC AVAILABILITY OF RESULTS.—

"(i) PRE-APPROVAL STUDIES.—Except as provided in clause (iv), with respect to an applicable clinical trial that is completed before the drug is initially approved under section 505 of the Federal Food, Drug, and Cosmetic Act or initially licensed under section 351 of this Act, the Director of NIH shall make publicly available on the results database the clinical trial information submitted for such clinical trial not later than 30 days after—

"(I) the drug is approved under such section 505 or licensed under such section 351; or

"(II) the Secretary issues a not approvable letter for the drug under such section 505 or such section 351.

"(ii) POST-APPROVAL STUDIES.—Except as provided in clauses (iii) and (iv), with respect to an applicable clinical trial that is completed after the drug is initially approved under such section 505 or initially licensed under such section 351, the Director of NIH shall make publicly available on the results database the clinical

trial information submitted for such clinical trial not later than 30 days after the date of such submission.

"(iii) SEEKING APPROVAL OF A NEW USE FOR THE DRUG.—

"(I) IN GENERAL.—If the manufacturer of the drug is the sponsor or a financial sponsor of the applicable clinical trial, and such manufacturer certifies to the Director of NIH that such manufacturer has filed, or will file within 1 year, an application seeking approval under such section 505 or licensing under such section 351 for the use studied in such clinical trial (which use is not included in the labeling of the approved drug), then the Director of NIH shall make publicly available on the results database the clinical trial information submitted for such clinical trial on the earlier of the date that is 30 days after the date—

"(aa) the application is approved under such section 505 or licensed such section 351;

"(bb) the Secretary issues a not approvable letter for the application under such section 505 or such section 351; or

"(cc) the application under such section 505 or such section 351 is withdrawn.

"(II) LIMITATION ON CERTIFICATION.—A manufacturer shall not make a certification under subclause (I) with respect to an applicable clinical trial unless the manufacturer makes such a certification with respect to each applicable clinical trial that is required to be submitted in an application for approval of the use studied in the clinical trial involved.

"(III) 2-YEAR LIMITATION.—The clinical trial information subject to subclause (I) shall be made publicly available on the results database on the date that is 2 years after the date

the certification referred to in subclause (I) was made to the Director of NIH, if a regulatory action referred to in item (aa), (bb), or (cc) of subclause (I) has not occurred by such date.

''(iv) SEEKING PUBLICATION.—

''(I) IN GENERAL.—If the principal investigator of the applicable clinical trial is seeking publication in a peer-reviewed biomedical journal of a manuscript based on the results of the clinical trial and the responsible party so certifies to the Director of NIH—

''(aa) the responsible party shall notify the Director of NIH of the publication date of such manuscript not later than 15 days after such date; and

''(bb) the Director of NIH shall make publicly available on the results database the clinical trial information submitted for such clinical trial on the date

that is 30 days after the publication date of such manuscript.

''(II) LIMITATION.—The clinical trial information subject to subclause (I) shall be made publicly available on the results database on the date that is 2 years after the date that the clinical trial information was required to be submitted to the Director of NIH if the manuscript referred to in such subclause has not been published by such date.

''(J) VERIFICATION OF SUBMISSION PRIOR TO PUBLIC AVAILABILITY.—In the case of clinical trial information that is submitted under this paragraph, but is not made publicly available pending either regulatory action or publication under clause (iii) or (iv) of subparagraph (I), as applicable, the Director of NIH shall respond to inquiries from other Federal agencies and peer-reviewed journals to confirm that such clinical trial information has been submitted but has not yet been made publicly available on the results database.

''(4) COORDINATION AND COMPLIANCE.—

''(A) CLINICAL TRIALS SUPPORTED BY GRANTS FROM FEDERAL AGENCIES.—

''(i) IN GENERAL.—No Federal agency may release funds under a research grant to a person who has not complied with paragraphs (2) and (3) for any applicable clinical trial for which such person is the responsible party.

''(ii) GRANTS FROM CERTAIN FEDERAL AGENCIES.—If an applicable clinical trial is funded in whole or in part by a grant from the National Institutes of Health, the Agency for Healthcare Research and Quality, or the Department of Veterans Affairs, any grant or progress report forms required under such grant shall include a certification that the responsible party has made all required submissions to the Director of NIH under paragraphs (2) and (3).

''(iii) VERIFICATION BY FEDERAL AGENCIES.—The heads of the agencies referred to in clause (ii), as applicable, shall verify that the clinical trial information for each applicable clinical trial for which a

grantee is the responsible party has been submitted under paragraph (2) and (3), as applicable, before releasing funding for a grant to such grantee.

''(iv) NOTICE AND OPPORTUNITY TO REMEDY.—If the head of an agency referred to in clause (ii), as applicable, verifies that a grantee has not submitted clinical trial information as described in clause (iii), such agency head shall provide notice to such grantee of such non-compliance and allow such grantee 30 days to correct such non-compliance and submit the required clinical trial information.

''(v) CONSULTATION WITH OTHER FEDERAL AGENCIES.—The Secretary shall—

''(I) consult with other agencies that conduct human studies in accordance with part 46 of title 45, Code of Federal Regulations (or any successor regulations), to determine if any such studies are applicable clinical trials under paragraph (2) or (3); and

"(II) develop with such agencies procedures comparable to those described in clauses (ii), (iii), and (iv) to ensure that clinical trial information for such applicable clinical trials is submitted under paragraphs (2) and (3).

"(B) COORDINATION OF REGISTRY DATABASE AND RESULTS DATABASE.—

"(i) IN GENERAL.—Each entry in the registry database under paragraph (2) shall include a link to the corresponding entry in the results database under paragraph (3).

"(ii) MISSING ENTRIES.—

"(I) IN GENERAL.—If, based on a review of the entries in the registry database under paragraph (2), the Director of NIH determines that a responsible party has failed to submit required clinical trial information to the results database under paragraph (3), the Director of NIH shall inform the responsible party involved of such failure and permit the responsible

party to correct the failure within 30 days.

''(II) FAILURE TO CORRECT.—If the responsible party does not correct a failure to submit required clinical trial information within the 30-day period described under subclause (I), the Director of NIH shall report such non-compliance to the scientific peer review committees of the Federal research agencies and to the Office of Human Research Protections.

''(III) PUBLIC NOTICE OF FAILURE TO CORRECT.—The Director of NIH shall include in the clinical trial registry database entry and the clinical trial results database entry for each such clinical trial a notice of any uncorrected failure to submit required clinical trial information and shall provide that the public may easily search for such entries.

''(C) ACTION ON APPLICATIONS.—

''(i) VERIFICATION PRIOR TO FILING.—The Secretary, acting through the

Commissioner of Food and Drugs, shall verify that the clinical trial information required under paragraphs (2) and (3) for an applicable clinical trial is submitted pursuant to such applicable paragraph—

"(I) when considering a drug for an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act, including as the drug progresses through the clinical trials described under paragraph (2)(A)(i); and

"(II) prior to filing an application under section 505 of the Federal Food, Drug, and Cosmetic Act or under section 351 of this Act that includes information from such clinical trial.

"(ii) NOTIFICATION.—If the responsible party has not submitted such clinical trial information, the Secretary shall notify the applicant and the responsible party of such non-compliance and require submission of such results within 30 days.

''(iii) REFUSAL TO FILE.—If the responsible party does not remedy such noncompliance within 30 days of receipt of notification under clause (ii), the Secretary shall refuse to file such application.

''(D) CONTENT REVIEW.—

''(i) IN GENERAL.—To assure that the summary documents described in paragraph (3)(D) are non-promotional, and are not false or misleading in any particular under paragraph (3)(F), the Secretary shall compare such documents to the results data of the clinical trial for a representative sample of applicable clinical trials by—

''(I) acting through the Commissioner of Food and Drugs to examine the results data for such clinical trials submitted to Secretary when such data are submitted—

''(aa) for review as part of an application under section 505 of the Federal Food, Drug, and Cosmetic Act or under section 351 of this Act; or

"(bb) in an annual status report on the drug under such application;

"(II) acting with the Federal agency that funds such clinical trial in whole or in part by a grant to examine the results data for such clinical trials; and

"(III) acting through inspections under section 704 of the Federal Food, Drug, and Cosmetic Act to examine results data for such clinical trials not described in subclause (I) or (II).

"(ii) NOTICE OF NON-COMPLIANCE.—If the Secretary determines that the clinical trial information submitted in such a summary document is promotional, or false or misleading in any particular, the Secretary shall notify the responsible party and give such party an opportunity to remedy such non-compliance by submitting the required revised clinical trial information within 30 days of such notification.

''(E) PENALTY FOR NON-COMPLIANCE.—In determining whether to apply a penalty under section 301(jj) of the Federal Food, Drug, and Cosmetic Act, the Secretary, acting through the Commissioner of Food and Drugs, shall consider—

''(i) whether the responsible party promptly corrects the non-compliance when provided notice;

''(ii) whether the responsible party has engaged in a pattern or practice of non-compliance; and

''(iii) the extent to which the non-compliance involved may have significantly misled healthcare providers or patients concerning the safety or effectiveness of the drug involved.

''(5) LIMITATION ON DISCLOSURE OF CLINICAL TRIAL INFORMATION.—Disclosure to the public of clinical trial information submitted to the Director of NIH under this subsection and requested under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act) shall be made only as provided for under paragraphs (2) and (3).

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $10,000,000 for each fiscal year.''.

(b) CONFORMING AMENDMENTS.—

(1) PROHIBITED ACTS.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331), as amended by Public Law 109–462, is amended by adding at the end the following:

''(jj)(1) The failure to submit clinical trial information as required by section 402(i) of the Public Health Service Act.

''(2) The submission of clinical trial information under section 402(i) of the Public Health Service Act that is promotional or false or misleading in any particular under paragraph (2)(E) or (3)(F) of such section 402(i).''.

(2) NEW DRUGS.—

(A) INVESTIGATIONAL NEW DRUGS.—Section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) is amended—

(i) in paragraph (1)—

(I) in subparagraph (C), by striking ''and'' after the semicolon;

(II) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(III) by adding at the end the following:

''(E) the submission to the Director of NIH of clinical trial information for the clinical investigation at issue required under section 402(i) of the Public Health Service Act for inclusion in the registry database and the results database described in such section.'';

(ii) in paragraph (3)(B)—

(I) in clause (i), by striking ''or'' after the semicolon;

(II) in clause (ii), by striking the period at the end and inserting ''; or''; and

(III) by adding at the end the following:

''(iii) clinical trial information for the clinical investigation at issue was not submitted in compliance with section 402(i) of the Public Health Service Act.''; and

(iii) in paragraph (4), by adding at the end the following: ''The Secretary shall update such regulations to require inclusion in the informed consent form a statement that clinical trial information for

such clinical investigation will be submitted for inclusion in the registry database and results database, as applicable, described in section 402(i) of the Public Health Service Act.''.

(B) REFUSAL TO APPROVE APPLICATION.—Section 505(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(d)) is amended—

(i) in the first sentence, by inserting after ''or any particular;'' the following: ''or (8) the applicant failed to submit the clinical trial information for any applicable clinical trial submitted as part of the application to the Director of the National Institutes of Health in compliance with section 402(i) of the Public Health Service Act;''; and

(ii) in the second sentence, by striking ''clauses (1) through (6)'' and inserting ''paragraphs (1) through (8)''.

(c) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Commissioner of Food and Drugs, in consultation with the Director of the National Institutes of Health, shall issue guidance to clarify

which clinical trials are applicable clinical trials (as defined in section 402(i)(2) of the Public Health Service Act, as amended by this section) and are required to be submitted for inclusion in the clinical trial registry database described in such section 402(i)(2).

(d) PREEMPTION.—

(1) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect any requirement for the registration of clinical trials or for the inclusion of information relating to the results of clinical trials in a database.

(2) RULE OF CONSTRUCTION.—The fact of submission of clinical trial information, if submitted in compliance with section 402(i) of the Public Health Service Act (as amended by this section), that relates to a use of a drug not included in the official labeling of the approved drug shall not be construed by the Secretary or in any administrative or judicial proceeding, as evidence of a new intended use of the drug that is different from the intended use of the drug set forth in the official labeling of the drug. The availability of clinical trial information through the databases under paragraphs (2) and (3) of such section 402(i), if submitted in compliance with such section 402(i), shall not be considered as labeling,

adulteration, or misbranding of the drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(e) EFFECTIVE DATES.—

(1) ESTABLISHMENT OF REGISTRY DATABASE AND RESULTS DATABASE.—Not later than 1 year after the date of enactment of this Act, the Director of NIH shall establish the registry database and the results database of clinical trials of drugs in accordance with section 402(i) of the Public Health Service Act (as amended by subsection (a)).

(2) CLINICAL TRIALS INITIATED PRIOR TO OPERATION OF REGISTRY DATABASE.—The responsible party (as defined in such section 402(i)) for an applicable clinical trial under paragraph (2) of such section 402(i) that is initiated after the date of enactment of this Act and before the date such registry database is established under paragraph (1) of this subsection, shall submit required clinical trial information not later than 120 days after the date such registry database is established.

(3) CLINICAL TRIALS INITIATED AFTER OPERATION OF REGISTRY DATABASE.—The responsible party (as defined in such section 402(i)) for an applicable clinical trial under paragraph (2) of such

section 402(i) that is initiated after the date such registry database is established under paragraph (1) of this subsection shall submit required clinical trial information in accordance with such paragraph (2).

(4) TRIALS COMPLETED BEFORE OPERATION OF RESULTS DATABASE.—

(A) IN GENERAL.—Paragraph (3) of such section 402(i) shall take effect 90 days after the date the results database is established under paragraph (1) of this subsection with respect to any applicable clinical trial (as defined in such section 402(i)(3)) that—

(i) involves a drug to treat a serious or life-threatening condition; and

(ii) is completed between the date of enactment of this section and such date of establishment under paragraph (1) of this subsection.

(B) OTHER TRIALS.—Except as provided in subparagraph (A), paragraph (3) of such section 402(i) shall take effect 180 days after the date that the results database is established under paragraph (1) of this subsection with respect to any applicable clinical trial (as defined in such section 402(i)(3)) that is completed be-

tween the date of enactment of this Act and such date of establishment under paragraph (1).

(C) TRIALS SUBMITTED IN AN APPLICATION.—Except as provided in subparagraph (A), paragraph (3) of such section 402(i) shall take effect for any clinical trial if—

(i) data from such clinical trial is submitted in an application or supplement to an application under section 505 of the Food, Drug, and Cosmetic Act or under section 351 of the Public Health Service Act that—

(I) is submitted 180 days or more after the date that the results database is established under paragraph (1) of this subsection; and

(II) contains data from an applicable clinical trial; and

(ii) such clinical trial would otherwise be an applicable clinical trial under such paragraph (3) except for its date of completion.

(5) TRIALS COMPLETED AFTER ESTABLISHMENT OF RESULTS DATABASE.—Paragraph (3) of

such section 402(i) shall apply to any applicable clinical trial that is completed after the date that the results database is established under paragraph (1) of this subsection.

(6) FUNDING RESTRICTIONS.—Subparagraph (A) of paragraph (4) of such section 402(i) shall take effect 210 days after the date that the clinical trial registry database and the clinical trial results database are established under paragraph (1) of this subsection.

(7) STATUS OF CLINICALTRIALS.GOV WEBSITE.—

(A) IN GENERAL.—After receiving public comment and not later than 90 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register a notice determining the more efficient approach to establishing the registry database described in paragraph (2) of such section 402(i) and whether such approach is—

(i) that such registry database should expand and build upon the database described in section 402(i) of the Public Health Service Act (as in effect on the day

before the date of enactment of this Act); or

(ii) that such registry database should supplant the database described in such section 402(i) (as in effect on the day before the date of enactment of this Act).

(B) CLINICALTRIALS.GOV SUPPLANTED.—If the Secretary determines to apply the approach described under subparagraph (A)(ii), the Secretary shall maintain an archive of the database described in such section 402(i) (as in effect on the day before the date of enactment of this Act) on the Internet website of the National Library of Medicine.

TITLE IV—CONFLICTS OF INTEREST

SEC. 401. CONFLICTS OF INTEREST.

(a) IN GENERAL.—Subchapter A of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 et seq.) is amended by inserting at the end the following:

"SEC. 712. CONFLICTS OF INTEREST.

"(a) DEFINITIONS.—For purposes of this section:

"(1) ADVISORY COMMITTEE.—The term 'advisory committee' means an advisory committee under the Federal Advisory Committee Act that provides

advice or recommendations to the Secretary regarding activities of the Food and Drug Administration.

''(2) FINANCIAL INTEREST.—The term 'financial interest' means a financial interest under section 208(a) of title 18, United States Code.

''(3) INDUSTRY FINANCIAL INTEREST.—The term 'industry financial interest', with respect to appointment for a term to an advisory committee, means an interest in a company that is a member of the relevant industry that would be a financial interest were an advisory committee to consider a particular matter involving such company.

''(4) RELEVANT INDUSTRY.—The term 'relevant industry' means—

''(A) with respect to an advisory committee that advises the Secretary on human drugs, biologics, or devices, the pharmaceutical, biotechnology, and device industries;

''(B) with respect to an advisory committee that advises the Secretary on animal drugs or devices, the animal drug and the animal device industries; and

''(C) with respect to an advisory committee that advises the Secretary on foods, the food industry.

''(b) APPOINTMENTS TO ADVISORY COMMITTEES.—

''(1) DISCLOSURE OF INDUSTRY FINANCIAL INTERESTS.—Each individual under consideration for a term appointment to an advisory committee shall disclose to the Secretary all industry financial interests.

''(2) DISCLOSURES NOT PUBLICLY AVAILABLE.—No disclosure required under paragraph (1) shall be made available to the public.

''(3) EVALUATION AND CRITERIA.—When considering a term appointment to an advisory committee, the Secretary—

''(A) shall review the expertise and the industry financial interests, as disclosed under paragraph (1), of each individual under consideration for the appointment, so as to appoint the individuals, from among those individuals under consideration for appointment, who are the most qualified relative to their industry financial interests that could require a written determination as referred to in section 208(b)(1) of title 18, United States Code, a written certification as referred to in section 208(b)(3) of title 18, United States Code, or a waiver as referred to in subsection (c)(3) for

service on the committee at a meeting of the committee; and

''(B) may appoint 2 or more qualified individuals with similar expertise and whose industry financial interests are nonoverlapping or minimally overlapping, so as to minimize the likelihood that an advisory committee will need the expertise of an appointed individual who requires a written determination as referred to in section 208(b)(1) of title 18, United States Code, a written certification as referred to in section 208(b)(3) of title 18, United States Code, or a waiver as referred to in subsection (c)(3) for service on the committee at a meeting of the committee.

''(c) GRANTING AND DISCLOSURE OF WAIVERS.—

''(1) IN GENERAL.—Not later then 45 days before a meeting of an advisory committee, each member of the committee shall disclose to the Secretary all financial interests in accordance with section 208(b) of title 18, United States Code.

''(2) FINANCIAL GAIN OF ADVISORY COMMITTEE MEMBER OR FAMILY MEMBER.—No member of an advisory committee may vote with respect to any matter considered by the advisory committee if such

member or an immediate family member of such member could gain financially from the advice given to the Secretary with respect to such matter.

''(3) WAIVER.—In addition to considerations under section 208(b) of title 18, United States Code, the Secretary may grant a waiver of a conflict of interest requirement if such waiver is necessary to afford the advisory committee essential expertise.

''(4) LIMITATION.—In no case may the Secretary grant a waiver under paragraph (3) for a member of an advisory committee if the scientific work of such member is under consideration by the committee.

''(5) DISCLOSURE OF WAIVER.—

''(A) MORE THAN 15 DAYS IN ADVANCE.—As soon as practicable, but in no case later than 15 days prior to a meeting of an advisory committee to which a written determination as referred to in section 208(b)(1) of title 18, United States Code, a written certification as referred to in section 208(b)(3) of title 18, United States Code, or a waiver as referred to in paragraph (3) applies, the Secretary shall disclose (other than information exempted from disclosure under section 552 of title 5, United

States Code, and section 552a of title 5, United States Code (popularly known as the Freedom of Information Act and the Privacy Act of 1974, respectively)) on the Internet website of the Food and Drug Administration—

"(i) the financial interests of the advisory committee member to which such determination, certification, or waiver applies; and

"(ii) the reasons of the Secretary for such determination, certification, or waiver.

"(B) LESS THAN 15 DAYS IN ADVANCE.—In the case of a financial interest that becomes known to the Secretary less than 30 days prior to a meeting of an advisory committee to which a written determination as referred to in section 208(b)(1) of title 18, United States Code, a written certification as referred to in section 208(b)(3) of title 18, United States Code, or a waiver as referred to in paragraph (3) applies, the Secretary shall disclose (other than information exempted from disclosure under section 552 of title 5, United States Code, and section 552a of title 5, United States Code) on the

Internet website of the Food and Drug Administration, the information described in clauses (i) and (ii) of subparagraph (A) as soon as the Secretary makes such determination, certification, or waiver, but in no event later than the date of such meeting.

''(d) PUBLIC RECORD.—The Secretary shall ensure that the public record and transcript of each meeting of an advisory committee includes the disclosure required under subsection (c)(5) (other than information exempted from disclosure under section 552 of title 5, United States Code, and section 552a of title 5, United States Code).

''(e) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary shall submit a report to the Inspector General of the Department of Health and Human Services, the Committee on Appropriations and the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives—

''(1) with respect to the fiscal year that ended on September 30 of the previous year, the number of vacancies on each advisory committee, the number of nominees received for each committee, and the number of such nominees willing to serve;

''(2) with respect to such year, the aggregate number of disclosures required under subsection (c)(5) for each meeting of each advisory committee and the percentage of individuals to whom such disclosures did not apply who served on such committee for each such meeting;

''(3) with respect to such year, the number of times the disclosures required under subsection (c)(5) occurred under subparagraph (B) of such subsection; and

''(4) how the Secretary plans to reduce the number of vacancies reported under paragraph (1) during the fiscal year following such year.''.

(b) GUIDANCE.—

(1) NOMINATIONS.—Not later than 270 days after the date of enactment of this Act, and after seeking input from professional medical and scientific societies, the Secretary shall publish in the Federal Register for public comment a proposed mechanism for encouraging the nomination of individuals who are classified by the Food and Drug Administration as academicians or practitioners for service on an advisory committee.

(2) WAIVER DETERMINATIONS.—Not later than 270 days after the date of enactment of this Act the Secretary shall issue or revise guidance—

(A) that clarifies the circumstances in which the Secretary may make a written determination as referred to in section 208(b)(1) of title 18, United States Code, make a written certification as referred to in section 208(b)(3) of title 18, United States Code, or grant a waiver as referred to section 712(c)(3) of the Federal Food, Drug, and Cosmetic Act (as added by this section), including those circumstances that—

(i) favor the inclusion of an individual on an advisory committee;

(ii) favor making such a determination, certification, or waiver for an individual on an advisory committee;

(iii) favor limitations on an individual's ability to act when making such a determination, certification, or waiver for the individual on an advisory committee; and

(iv) disfavor the inclusion of an individual on an advisory committee;

(B) that defines how financial interests imputed to an individual bear upon his or her eligibility for service on an advisory committee or for service at a meeting of an advisory committee; and

(C) to ensure consistency within and among the centers of the Food and Drug Administration in applying section 208(b) of title 18, United States Code, and such section 712(c)(3).

(3) PERIODIC REVIEW.—At least once every 5 years, the Secretary shall review the guidance described under paragraph (2) and update such guidance as necessary.

(c) REVIEW BY INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct a review, which may include surveys of past or current members of advisory committees, of the processes of the Food and Drug Administration for—

(A) evaluating the financial interests of a member of such an advisory committee while the member serves on such a committee and

after the member has served on such a committee; and

(B) assuring the completeness and accuracy of information contained in the disclosures described in subsections (b)(1) and (c)(1) of such section 712 of the Federal Food, Drug, and Cosmetic Act (as added by this section).

(2) SUBMISSION OF REPORT.—Not later than 18 months after the effective date of this section, the Inspector General of the Department of Health and Human Services shall submit to Congress a report based on the review required under paragraph (1), and include any recommendations for the improvement of such processes.

(d) DEFINITIONS.—For purposes of this section, the terms ''advisory committee'' and ''financial interest'' have the meaning given such terms in section 712 of the Federal Food, Drug, and Cosmetic Act (as added by this section).

(e) CONFORMING AMENDMENT.—Section 505(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(n)) is amended by—

(1) striking paragraph (4); and

(2) redesignating paragraphs (5), (6), (7), and (8) as paragraphs (4), (5), (6), and (7), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2007.

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