113TH CONGRESS
1ST SESSION

S. 959

To amend the Federal Food, Drug, and Cosmetic Act with respect to compounding drugs.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2013

Mr. HARKIN (for himself, Mr. ALEXANDER, Mr. ROBERTS, Mr. FRANKEN, and Ms. MIKULSKI) 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 Federal Food, Drug, and Cosmetic Act with respect to compounding drugs.

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

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the ''Pharmaceutical Compounding Quality and Accountability Act''.

(b) REFERENCES IN ACT.—Except as otherwise specified, amendments made by this Act to a section or other provision of law are amendments to such section or other

provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 2. REGULATION OF HUMAN AND ANIMAL DRUG COMPOUNDING.

(a) CLARIFICATION OF NEW DRUG AND NEW ANIMAL DRUG STATUS.—For purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the terms ''new drug'' (as defined in section 201(p) of such Act) and ''new animal drug'' (as defined in section 201(v) of such Act) shall include a compounded human drug and a compounded animal drug, respectively.

(b) REGULATION OF HUMAN AND ANIMAL DRUG COMPOUNDING.—Section 503A (21 U.S.C. 353a) is amended to read as follows:

''SEC. 503A. HUMAN AND ANIMAL DRUG COMPOUNDING.

''(a) SCOPE.—

''(1) COMPOUNDING.—In this section, the terms 'compounding' and 'compound'—

''(A) include—

''(i) the combining, admixing, mixing, diluting, reconstituting, or otherwise altering of a marketed drug;

''(ii) compounding a drug from a bulk drug substance; and

''(iii) repackaging, as defined in subsection (b)(5); and

''(B) exclude mixing, reconstituting, or other such acts with respect to a marketed drug that are limited to and performed solely in accordance with specific directions for such acts contained in approved labeling provided by a drug's manufacturer, when performed upon receipt of a prescription order for an identified individual patient.

''(2) DISPENSING NOT A SALE.—In this section, the terms 'sell' or 'resale' do not include dispensing to patients, or, in the case of animal drugs, to the individual responsible for providing care for the animal for which the drug is intended, in accordance with State law, including any fee associated with such dispensing.

''(3) EXEMPTIONS.—This section shall not apply to—

''(A) medical gases;

''(B) animal drugs that are subject to regulation as biological products by the Secretary of Agriculture under the Act commonly known as the Virus-Serum-Toxin Act; or

"(C) human blood and blood components for transfusion.

"(b) DEFINITIONS.—In this section:

"(1) COMPOUNDING MANUFACTURER.—

"(A) IN GENERAL.—The term 'compounding manufacturer' means a facility at one geographic location or address—

"(i) that compounds any sterile drug product without receiving a prescription order for such sterile drug product prior to beginning compounding, and distributes or offers to sell such compounded sterile drug product in interstate commerce; or

"(ii) that repackages any preservative-free sterile drug product or pools any sterile drug products, except as provided in paragraph (7)(B).

"(B) EXCLUDED ACTIVITIES.—Notwithstanding subparagraph (A)(ii), a facility shall not be considered a compounding manufacturer if such facility—

"(i) repackages drugs in accordance with section 506F or the final guidance described in section 506F(d); and

"(ii) does not otherwise meet the definition of compounding manufacturer under subparagraph (A).

"(2) POOLING; POOLS.—The terms 'pooling' and 'pool'—

"(A) mean taking a single drug approved under section 505 or 512, conditionally approved under section 571, included on the index established under section 572(a)(1), or licensed under section 351 of the Public Health Service Act from the container in which it is distributed by the original manufacturer and combining it with the same drug from one or more other containers without or before further manipulating the product (such as by diluting it or mixing it with another, different drug or drugs);

"(B) do not include combining the drug from two or more separate containers of the same drug when a single container of the drug is not sufficient to prepare a single dose for administration to an individual patient; and

"(C) do not include combining the drug from two or more separate containers of component products of a total parenteral nutrition

product, if such pooling, and labeling and use of the finished total parenteral nutrition product, comply with State pharmacy law.

''(3) PRACTITIONER.—The term 'practitioner' includes a physician, veterinarian, or any other person that is authorized to prescribe medication under State law.

''(4) PRESCRIPTION; PRESCRIPTION ORDER.—The term 'prescription' or 'prescription order' means a prescription or prescription order, as defined under applicable State law, that complies with requirements applicable under such State law.

''(5) REPACKAGE OR REPACKAGING.—The term 'repackage' or 'repackaging' means taking a drug approved under section 505 or 512, conditionally approved under section 571, included on the index established under section 572(a)(1), or licensed under section 351 of the Public Health Service Act from the container in which it is distributed by the original manufacturer and placing it in a different container of the same or smaller size without further manipulating the drug (such as by diluting it or mixing it with another, different drug or drugs), unless such repackaging is done pursuant to a prescription for an identified individual patient.

''(6) STERILE DRUG PRODUCT.—The term 'sterile drug product' means a drug that is—

''(A) intended for parenteral administration;

''(B) an ophthalmic or inhalation drug; or

''(C) required to be sterile under Federal or State law.

''(7) TRADITIONAL COMPOUNDER.—

''(A) IN GENERAL.—The term 'traditional compounder' means an entity—

''(i) wherein a drug is compounded by—

''(I) a licensed pharmacist, or other pharmacy personnel (to the extent permitted under State law), in a State-licensed pharmacy or a Federal facility; or

''(II) a licensed physician or licensed veterinarian, to the extent permitted under State law;

''(ii) that—

''(I) compounds a drug upon receipt of a prescription order for an identified individual patient; or

"(II) compounds a drug in limited quantities before receipt of a prescription order for an identified individual patient, to the extent permitted under State law, if such compounding is based on a history of the licensed pharmacist, licensed physician, or licensed veterinarian receiving prescription orders for the compounding of the drug, which orders have been generated solely within an established relationship between the licensed pharmacist, licensed physician, or licensed veterinarian and—

"(aa) such individual patient for whom the prescription order will be provided, or, in the case of an animal drug, such individual responsible for providing care for the animal for which the drug is ordered; or

"(bb) the licensed physician, licensed veterinarian, or other licensed practitioner who will write such prescription order; and

"(iii) that does not meet the definition of a compounding manufacturer under paragraph (1).

"(B) EXCEPTIONS.—

"(i) HOSPITALS AND HEALTH SYSTEMS.—

"(I) IN GENERAL.—A pharmacy within a hospital, veterinary hospital, or health system that compounds a drug and dispenses such drug (which may include interstate shipment) within such hospital or health system or ships such drug for dispensing to patients with an established relationship with the hospital or health system (which may include interstate shipment), or that repackages preservative-free sterile drug product or pools sterile drug products, shall be considered a traditional compounder if such pharmacy otherwise meets the definition under subparagraph (A).

"(II) HEALTH SYSTEM DEFINED.—For purposes of this subparagraph, the term 'health system'

means two or more hospitals or veterinary hospitals that are owned and operated by the same entity and that share access to databases with drug order information for patients or animals, as applicable. A health system includes both the inpatient and outpatient facilities of hospitals within the health system.

''(ii) PET AND RADIOPHARMACEUTICALS.—A pharmacy that compounds positron emission tomography drugs or radiopharmaceuticals shall be considered a traditional compounder if it does not compound other drugs that would cause it to be a compounding manufacturer described in paragraph (1)(A).

''(c) EXEMPTIONS FROM CERTAIN REQUIREMENTS.—

''(1) DRUGS COMPOUNDED BY TRADITIONAL COMPOUNDERS.—Sections 501(a)(2)(B), 502(f)(1), 505 (in the case of a human drug), section 512 (in the case of an animal drug), and section 351 of the Public Health Service Act (in the case of a biological

product) shall not apply to a compounded drug if such drug—

"(A) is compounded by a traditional compounder that is in compliance with this section; and

"(B) meets the requirements of this section applicable to drugs compounded by traditional compounders.

"(2) DRUGS COMPOUNDED BY COMPOUNDING MANUFACTURERS.—Sections 502(f)(1), 505 (in the case of a human drug), section 512 (in the case of an animal drug), and section 351 of the Public Health Service Act (in the case of a biological product) shall not apply to a compounded prescription drug if such drug—

"(A) is compounded by a compounding manufacturer—

"(i) that is not licensed as a pharmacy in any State; and

"(ii) that is in compliance with this section; and

"(B) meets the requirements of this section applicable to drugs compounded by compounding manufacturers.

"(d) DRUGS THAT MAY NOT BE COMPOUNDED.—

''(1) IN GENERAL.—The following drugs may not be compounded, except under conditions specified by the Secretary:

''(A) DRUGS THAT ARE DEMONSTRABLY DIFFICULT TO COMPOUND.—A drug or category of drugs that presents demonstrable difficulties for compounding, which may include a complex dosage form or biological product, as designated by the Secretary pursuant to paragraph (2).

''(B) MARKETED DRUGS.—A drug, other than a biological product, that is a copy of a marketed drug approved under 505 or 512, conditionally approved under section 571, or included on the index established under section 572(a)(1), except as provided in paragraph (3).

''(C) BIOLOGICAL PRODUCTS.—A drug that is a biological product, except as provided in paragraph (4).

''(D) DRUGS REMOVED FOR SAFETY AND EFFICACY.—A drug that appears on a list published by the Secretary in the Federal Register of drugs that have been withdrawn or removed from the market because such drug or components of such drug have been found to be unsafe or not effective, subject to paragraph (5).

''(2) DRUGS THAT ARE DEMONSTRABLY DIFFICULT TO COMPOUND.—

''(A) IN GENERAL.—The Secretary may promulgate a regulation that designates drugs or categories of drugs that are demonstrably difficult to compound that may not be compounded, or that may be compounded only under conditions specified by the Secretary. Such regulation—

''(i) may include the designation of drugs or categories of drugs that are complex dosage forms or biological products, such as extended release products, metered dose inhalers, transdermal patches, and sterile liposomal products; and

''(ii) shall specify, for each drug included on the list, whether the prohibition or condition applies to the use of the drug in humans, animals, or both.

''(B) INTERIM LIST.—

''(i) IN GENERAL.—Before the effective date of the regulation promulgated under subparagraph (A), the Secretary may designate drugs that are complex dos-

age forms or biological products that cannot be compounded by—

"(I) publishing a notice of such drugs proposed for designation, including the rationale for such designation, in the Federal Register;

"(II) providing a period of not less than 60 days for comment on the notice; and

"(III) publishing a notice in the Federal Register designating the drugs that are complex dosage forms and biological products that cannot be compounded.

"(ii) SUNSET.—Any notice provided under clause (i) shall cease to have force or effect on the date that is 5 years after the date of enactment of the Pharmaceutical Compounding Quality and Accountability Act or on the effective date of the final regulation under subparagraph (A), whichever is earlier.

"(3) EXCEPTIONS REGARDING MARKETED DRUGS.—

"(A) IN GENERAL.—A drug (other than a biological product) that is a copy of a marketed drug approved under 505 or 512, conditionally approved under section 571, or included on the index established under section 572(a)(1), including variations of such drug compounded from bulk substances, may be compounded only if—

"(i)(I) the compounded variation produces for the patient a clinical difference between the compounded drug and such marketed drug, as determined by the prescribing practitioner, and, prior to beginning compounding a variation of such drug, the facility compounding the variation receives a prescription order specifying that the variation may be compounded; or

"(II)(aa) such marketed drug, at the time of compounding a copy of such drug and at the time of distribution of the compounded drug, is on the drug shortage list under section 506E (in the case of a human drug), on the Current Drug Shortages list for veterinary products main-

tained on the Internet Web site of the Food and Drug Administration (in the case of an animal drug), or in the Secretary's sole discretion, has otherwise been identified by the Secretary as in shortage such as in a specific region or on a drug shortage list maintained by a private party; and

''(bb) the traditional compounder or the compounding manufacturer notifies the Secretary not later than 3 calendar days after beginning the compounding, unless the Secretary waives the notice requirement; and

''(ii) in the case of a marketed drug approved under section 505 that is subject to a risk evaluation and mitigation strategy approved with elements to assure safe use pursuant to section 505–1, the entity compounding the drug demonstrates to the Secretary that the entity will utilize controls that are comparable to the controls applicable under the relevant risk evaluation and mitigation strategy.

"(B) EXCLUSION.—For purposes of this paragraph, repackaging a marketed drug approved under section 505, 512, conditionally approved under section 571, or included on the index established under section 572(a)(1), does not make the repackaged drug a copy of such marketed drug.

"(4) EXCEPTIONS REGARDING BIOLOGICAL PRODUCTS.—A drug that is a biological product may be compounded only if—

"(A) such drug is compounded from a licensed biological product and the compounding does not involve combining or mixing the licensed biological product with—

"(i) a bulk drug substance; or

"(ii) another, different drug or drugs approved under 505 or 512, conditionally approved under section 571, included on the index established under section 572(a)(1), or licensed under section 351 of the Public Health Service Act, unless the compounding is limited to the combining, mixing, or diluting of licensed allergenic products; and

"(B)(i) with respect to a traditional compounder, the compounded biological product produces for the patient a clinical difference between the compounded drug and the licensed biological product, as determined by the prescribing practitioner, and, prior to beginning compounding such drug, the facility compounding the variation receives a prescription order specifying that the biological product may be compounded;

"(ii) with respect to a compounding manufacturer, the compounded variation biological product produces for the patient a clinical difference between the compounded drug and the licensed biological product, as determined by a licensed practitioner responsible for the patient's care in a health care entity that provides medical services through licensed prescribers directly to patients, and, prior to beginning compounding such drug, the compounding manufacturer receives a duly authorized medical order from a hospital or health system specifying that the biological product may be compounded; or

''(iii) the compounded biological product is an allergenic product.

''(5) REQUIREMENT REGARDING DRUGS REMOVED FOR SAFETY OR EFFICACY.—The list published by the Secretary in the Federal Register of drugs that have been withdrawn or removed from the market, as described in paragraph (1)(D), shall specify whether a human drug on such list may, notwithstanding the inclusion on such list, be compounded for use in animals. The Secretary shall update the lists described in subparagraphs (D) and (E) of subsection (e)(2), as appropriate, to conform with the list described in paragraph (1)(D).

''(e) QUALITY OF DRUG INGREDIENTS.—

''(1) HUMAN DRUGS.—A traditional compounder or a compounding manufacturer shall—

''(A) compound a human drug using only bulk drug substances (as defined in regulations of the Secretary published at section 207.3(a)(4) of title 21, Code of Federal Regulations (or any successor regulations))—

''(i) that—

''(I) comply with the standards of an applicable United States Pharmacopoeia or National Formulary mono-

graph, if a monograph exists and has not been identified under paragraph (6), and the United States Pharmacopoeia chapters on pharmacy compounding;

''(II) if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary; or

''(III) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, that appear on a list developed by the Secretary through regulations issued by the Secretary;

''(ii) that are manufactured by an establishment that is registered under section 510 (including a foreign establishment that is registered under section 510(i)); and

''(iii) that are accompanied by valid certificates of analysis for each specific lot of bulk drug substance; and

''(B) use ingredients (other than bulk drug substances) that comply with the standards of

an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists and has not been identified under paragraph (6), and with the United States Pharmacopoeia chapter on pharmacy compounding.

''(2) ANIMAL DRUGS.—A traditional compounder or a compounding manufacturer shall—

''(A) compound an animal drug using only bulk drug substances (as defined in regulations of the Secretary published at section 207.3(a)(4) of title 21, Code of Federal Regulations (or any successor regulations)) that—

''(i) are manufactured by an establishment that is registered under section 510 (including a foreign establishment that is registered under section 510(i)); and

''(ii) are accompanied by valid certificates of analysis for each specific lot of bulk drug substance;

''(B) use ingredients (other than bulk drug substances) that comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists and has not been identified under

paragraph (6), and with the United States Pharmacopoeia chapters on pharmacy compounding;

"(C) in the case of a compounded animal drug for use in non-food-producing minor species, use bulk substances that—

"(i) comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists and has not been identified under paragraph (6), and with the United States Pharmacopoeia chapters on pharmacy compounding;

"(ii) if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary; or

"(iii) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, that appear on a list developed by the Secretary through regulations issued by the Secretary;

"(D) in the case of a compounded animal drug for use in non-food-producing major spe-

cies, beginning on the date of publication of the list established in accordance with paragraph (3)(A), shall use bulk substances that are included on such list, subject to paragraph (3)(C); and

''(E) in the case of a compounded animal drug for use in food-producing major and minor species, shall use bulk substances that are included on a list established by the Secretary of bulk substances acceptable for use in compounding a drug for one or more such species, in accordance with paragraph (4).

''(3) NON-FOOD-PRODUCING MAJOR SPECIES LISTING PROCEDURE.—

''(A) IN GENERAL.—Not later than 30 days after the effective date of the Pharmaceutical Compounding Quality and Accountability Act, the Secretary shall establish a list of bulk substances acceptable for compounding a drug for use in non-food-producing major species, and any conditions applicable to such use, and may also identify bulk substances that the Secretary has determined not acceptable for compounding with respect to a drug for use in such species.

''(B) PROCEDURE.—In developing and updating the list under subparagraph (A), the Secretary shall—

''(i) publish a notice in the Federal Register identifying bulk substances proposed as acceptable and any bulk substance determine to be unacceptable, and the rationale for such proposed designations;

''(ii) provide a period of not less than 30 days for comment on the notice; and

''(iii) publish a notice in the Federal Register designating the bulk substances acceptable, and any bulk substances determined to be unacceptable, and the rationale for such designations and determinations.

''(C) NOTIFICATION.—Upon initial publication of the list under subparagraph (B)(iii), any traditional compounder or compounding manufacturer that has received and filled a prescription in the 60 days prior to such publication for a compounded drug for a non-food-producing major species from a bulk substance not addressed in the notice (either as acceptable or

unacceptable), and that reasonably expect to receive and fill another prescription for such a drug for such species within 60 days after such publication, may notify the Secretary of such bulk substance within 30 days of such publication, in a manner to be determined by the Secretary and published in the Federal Register on or before publication of the list under subparagraph (B)(iii). A traditional compounder or compounding manufacturer that provides such notice shall not be subject to the restriction in paragraph (2)(D) until such time as the Secretary designates such bulk substance as acceptable or determines it to be unacceptable pursuant to the process described in subparagraph (B)(iii).

''(D) MODIFICATION OF LIST.—The Secretary may amend the list at any time, in accordance with process described in subparagraph (B).

''(E) CRITERIA.—In evaluating bulk substances for purposes of subparagraph (B), the Secretary shall consider, among other factors—

''(i) the safety of the bulk substance;

"(ii) historical use of the substance in pharmacy compounding;

"(iii) evidence of the effectiveness of the bulk substance or lack of effectiveness;

"(iv) whether any drug approved under section 505 or 512, conditionally approved under section 571, or included on the index established under section 572(a)(1), can be used on label, or any drug approved under section 505 or 512 can be used in an extralabel manner in accordance with section paragraphs (4) and (5) of section 512(a), to treat the applicable condition in the identified species; and

"(v) whether a compounded drug appropriate to treat the applicable condition in the identified species could be obtained by manipulating a drug approved under 505 or 512, conditionally approved under section 571, or included on the index established under section 572(a)(1).

"(4) FOOD-PRODUCING ANIMALS LISTING PROCEDURE.—In establishing a list of designated bulk substances acceptable for use in compounding a drug for use in food-producing major and minor spe-

cies under paragraph (2), and any conditions applicable to such use, the Secretary shall—

"(A) publish a notice in the Federal Register identifying bulk substances proposed as acceptable and any bulk substance determine to be unacceptable, and the rationale for such designations;

"(B) provide a period of not less than 30 days for comment on the notice; and

"(C) publish a notice in the Federal Register designating the bulk substances acceptable for use in compounding a drug for use in food-producing major and minor species, and the rationale for such designations.

"(5) WITHDRAWAL PERIODS.—The requirements for establishing substantially extended withdrawal periods in accordance with section 530.20 of title 21, Code of Federal Regulations (or any successor regulations) shall apply to compounded animal drugs for use in food-producing animals that are compounded using bulk substances.

"(6) IDENTIFICATION BY SECRETARY.—

"(A) IN GENERAL.—Notwithstanding the existence of an applicable monograph under subparagraph (A)(i)(I) or (B) of paragraph (1)

or subparagraph (B) or (C)(i) of paragraph (2), the Secretary may identify bulk substances that the Secretary determines, based on public health concerns, may not be used in compounding a drug.

''(B) PROCEDURE.—In identifying the bulk substances that may not be used in compounding, the Secretary shall—

''(i) publish a notice of such bulk substances proposed for identification in the Federal Register;

''(ii) provide a period of not less than 60 days for comment on the notice;

''(iii) publish a notice in the Federal Register identifying the bulk substances that may not be used in compounding a drug; and

''(iv) state whether the bulk is not suitable for compounding of human drugs, animal drugs, or both.

''(f) REQUIREMENTS REGARDING WHOLESALING AND LABELING APPLICABLE TO TRADITIONAL COMPOUNDERS AND COMPOUNDING MANUFACTURERS.—

''(1) IN GENERAL.—A compounded drug—

"(A) may not be sold by an entity other than the compounding manufacturer or traditional compounder that compounded the drug;

"(B) compounded by a compounding manufacturer may not be sold to an entity other than a health care entity that provides medical services through licensed prescribers directly to patients or animals, or a network of such providers, except that a compounding manufacturer may transfer without profit a compounded sterile drug to a licensed pharmacy if—

"(i) the licensed pharmacy falls under the same corporate ownership as the compounding manufacturer;

"(ii) the transfer of such compounded sterile drug is solely for the purpose of dispensing the compounded sterile drug to the end user, who has been instructed by the prescribing physician to self-administer such compounded sterile drug;

"(iii) as of the date of enactment of the Pharmaceutical Compounding Quality and Accountability Act, the compounding manufacturer is an entity that provides

pharmacy benefits management services on behalf of a health benefits plan;

''(iv) the compounding manufacturer identifies itself to the Secretary upon registering under subsection (g)(2) as an entity that qualifies for the exemption under this subparagraph, and provides documentation of the compounding of such drugs as of the date of enactment of the Pharmaceutical Compounding Quality and Accountability Act, in a manner described by the Secretary; and

''(v) the compounding manufacturer receives confirmation from the Secretary that the compounding manufacturer qualifies for the exemption under this subparagraph and the sterile drug or drugs for which the exemption applies; and

''(C) in the case of a compounded drug sold to a health care entity described in subparagraph (B), shall be labeled 'not for resale'.

''(2) ADVERTISING AND PROMOTION.—The advertising and promotion of compounded drugs shall not be false or misleading in any particular.

''(g) OTHER REQUIREMENTS APPLICABLE TO COMPOUNDING MANUFACTURERS.—

''(1) LICENSED PHARMACIST OVERSIGHT.—A compounding manufacturer shall ensure that a pharmacist licensed in the State where the compounding manufacturer is located exercises direct supervision over the operations of the compounding manufacturer.

''(2) REGISTRATION OF COMPOUNDING MANUFACTURERS AND REPORTING OF DRUGS.—

''(A) REGISTRATION OF COMPOUNDING MANUFACTURERS.—

''(i) ANNUAL REGISTRATION.—During the period beginning on October 1 and ending on December 31 each year, each compounding manufacturer shall register with the Secretary its name, place of business, and unique facility identifier (which shall conform to the requirements for the unique facility identifier established under section 510), and a point of contact e-mail address.

''(ii) NEW COMPOUNDING MANUFACTURERS.—Each compounding manufacturer, upon first engaging in the oper-

ations described in subsection (b)(1), shall immediately register with the Secretary and provide the information described under clause (i). The Secretary shall establish a timeline for registration for the first year following the effective date of the Pharmaceutical Compounding Quality and Accountability Act. In no case may registration be required until at least 60 days following publication of the timeline in the Federal Register.

''(iii) ADDITIONAL FACILITIES.—Each compounding manufacturer duly registered in accordance with clauses (i) and (ii) shall immediately identify to the Secretary any additional facility that engages in the activities described in subsection (b)(1) and that is owned or operated in any State by the person that owns or operates the compounding manufacturer.

''(iv) AVAILABILITY OF REGISTRATION FOR INSPECTION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed pursuant to this subparagraph, except that

any drug reporting information submitted pursuant to this subparagraph and the information accompanying such reporting shall be exempt from such inspection, unless the Secretary finds that such an exemption would be inconsistent with the protection of the public health.

''(B) DRUG REPORTING BY COMPOUNDING MANUFACTURERS.—

''(i) IN GENERAL.—Each compounding manufacturer who registers with the Secretary under subparagraph (A) shall submit to the Secretary, once during the month of June of each year and once during the month of December of each year, a report—

''(I) identifying the drugs compounded by such compounding manufacturer during the previous 6-month period; and

''(II) with respect to each drug identified under subclause (I), providing the active ingredient, the source of such active ingredient, the National Drug Code number of the

source drug or bulk active ingredient, the strength of the active ingredient per unit, the dosage form and route of administration, the package description, the number of individual units produced, the National Drug Code number of the final product, and which conforms to other applicable requirements identified by the Secretary in accordance with clause (ii).

''(ii) FORM.—Each report under clause (i) shall be prepared in such form and manner as the Secretary may prescribe by regulation or guidance.

''(C) ELECTRONIC REGISTRATION AND REPORTING.—Registrations and drug reporting under this paragraph (including the submission of updated information) shall be submitted to the Secretary by electronic means unless the Secretary grants a request for waiver of such requirement because use of electronic means is not reasonable for the person requesting waiver.

''(D) RISK-BASED INSPECTION FREQUENCY.—

"(i) IN GENERAL.—Compounding manufacturers shall be subject to inspection pursuant to section 704.

"(ii) RISK-BASED SCHEDULE.—The Secretary, acting through one or more officers or employees duly designated by the Secretary, shall inspect compounding manufacturers described in clause (i) in accordance with a risk-based schedule established by the Secretary.

"(iii) RISK FACTORS.—In establishing the risk-based schedule under clause (ii), the Secretary shall inspect compounding manufacturers according to the known safety risks of such compounding manufacturers, which shall be based on the following factors:

"(I) The compliance history of the compounding manufacturer.

"(II) The record, history, and nature of recalls linked to the compounding manufacturer.

"(III) The inherent risk of the drug compounded at the compounding manufacturer.

''(IV) The inspection frequency and history of the compounding manufacturer, including whether the compounding manufacturer has been inspected pursuant to section 704 within the last 4 years.

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

''(3) ADVERSE EVENT REPORTING.—

''(A) DEFINITIONS.—In this paragraph:

''(i) ADVERSE EVENT.—The term 'adverse event' means any health-related event associated with the use of a compounded drug that is adverse, including—

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

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

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

"(IV) an event occurring from withdrawal of the drug; and

"(V) any failure of expected pharmacological action of the drug.

"(ii) SERIOUS ADVERSE EVENT.—The term 'serious adverse event' means an adverse event that—

"(I) results in—

"(aa) death;

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

"(cc) inpatient hospitalization or prolongation of existing hospitalization;

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

"(ee) 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 in subclause (I).

"(B) REPORTS.—

"(i) ADVERSE EVENT REPORTING REQUIREMENT.—

"(I) 15-DAY REPORT.—If a compounding manufacturer becomes aware of any serious adverse event, such manufacturer shall submit reports of each instance to the Secretary as soon as practicable, but in no case later than 15 calendar days after the initial receipt of the applicable information. Such manufacturer shall investigate and submit to the Secretary followup reports for each such instance not later than 15 calendar days after receipt of new information or as requested by the Secretary. Unless and until the Secretary

establishes the content and format of adverse event reports by guidance or regulation, reports shall be submitted in accordance with the content and format requirements under section 310.305 of title 21, Code of Federal Regulations (or any successor regulations) (in the case of human drugs), section 600.80 of title 21, Code of Federal Regulations (or any successor regulations) (in the case of biological products), or section 514.80 of title 21, Code of Federal Regulations (or any successor regulations) (in the case of animal drugs).

''(II) ANNUAL REPORT.—Compounding manufacturers that report serious adverse events shall submit in December of each year a narrative summary of any analysis of each report submitted under subclause (I), including a history of actions taken during the year because of each report, using the content, format, and manner established by the Secretary

by guidance or regulation. Until such time as the Secretary publishes such guidance or regulation, each compounding manufacturer shall retain such summaries as part of the records to be maintained in accordance with subparagraph (C).

''(ii) PRODUCT QUALITY REPORTING REQUIREMENT.—Not later than 3 calendar days after the compounding manufacturer becomes aware of information pertaining to sterility, stability, or other product quality concerns that could result in serious adverse events, the compounding manufacturer shall submit to the Secretary a product quality report, in a form and manner established by the Secretary by guidance or regulation.

''(C) MAINTENANCE OF RECORDS.—A compounding manufacturer shall maintain for a period of 10 years records of all serious adverse drug events known to the compound manufacturer in accordance with section 314.80(i) of title 21, Code of Federal Regulations (or any

successor regulation), or as otherwise directed by the Secretary in regulations.

''(4) LABELING OF DRUGS.—

''(A) LABEL.—The label of a drug compounded by a compounding manufacturer shall include—

''(i) the statement 'This is a compounded drug.' or a reasonable comparable alternative statement (as specified by the Secretary) that identifies the drug as a compounded drug;

''(ii) the name, address, and phone number of the applicable compounding manufacturer; and

''(iii) with respect to the compounded drug—

''(I) the lot or batch number;

''(II) the established name of the medication;

''(III) the dosage form and strength;

''(IV) the statement of quantity or volume, as appropriate;

''(V) in the case of a drug intended for use in a food-producing

animal, the withdrawal period established pursuant to subsection (e)(5) to ensure that no residues from the compounded drug can be detected in edible tissues of the treated animal;

''(VI) the date that the drug was compounded;

''(VII) the expiration date;

''(VIII) storage and handling instructions;

''(IX) the National Drug Code number, if available;

''(X) the 'not for resale' statement required as required by subsection (f)(1)(C); and

''(XI) subject to subparagraph (B)(i), a list of active and inactive ingredients, identified by established name and the quantity or proportion of each ingredient.

''(B) CONTAINER.—The container from which the individual units of a drug compounded by a compounding manufacturer are removed for dispensing or for administration

(such as a plastic bag containing individual product syringes) shall include—

"(i) the information described under subparagraph (A)(iii)(XI), if there is not space on the label for such information;

"(ii) the following information to facilitate adverse event reporting: www.fda.gov/medwatch and 1–800–FDA–1088; and

"(iii) the directions for use, including dosage and administration, as appropriate.

"(C) ADDITIONAL INFORMATION.—The label and labeling of a drug compounded by a compounding manufacturer shall include any other information as determined necessary and specified in regulations promulgated by the Secretary.

"(h) COMPOUNDING MANUFACTURER ESTABLISHMENT AND REINSPECTION FEES.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'affiliate' has the meaning given such term in section 735(11);

"(B) the term 'gross annual sales' means the total worldwide gross annual sales, in United States dollars, for a compounding man-

ufacturer, including the sales of all the affiliates of the compounding manufacturer; and

"(C) the term 'reinspection' means, with respect to a compounding manufacturer, one or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to an applicable requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.

"(2) ESTABLISHMENT AND REINSPECTION FEES.—For fiscal year 2015 and each subsequent fiscal year, the Secretary shall, in accordance with this subsection, assess and collect—

"(A) an annual establishment fee from each compounding manufacturer to cover inspection-related costs relating to inspections of drug compounders for such year; and

"(B) a reinspection fee from each compounding manufacturer subject to a reinspection in such fiscal year.

"(3) ESTABLISHMENT AND REINSPECTION FEE SETTING.—The Secretary shall establish the establishment and reinspection fee to be collected under

this subsection for each fiscal year, based on the methodology described in paragraph (4) and shall publish such fee in a Federal Register notice not later than 60 days before the start of each such year.

''(4) AMOUNT OF ESTABLISHMENT AND REINSPECTION FEE.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), the amount of the annual establishment fee and the reinspection fee (if applicable) under paragraph (2) for each compounding manufacturer in a fiscal year shall be equal to the sum of—

''(i)(I) $15,000 per compounding manufacturer, multiplied by

''(II) the inflation adjustment factor described in subparagraph (B); plus

''(ii) the small business adjustment factor described in subparagraph (C).

''(B) INFLATION ADJUSTMENT FACTOR.—

''(i) IN GENERAL.—For fiscal year 2015 and subsequent fiscal years, the revenues established in subparagraph (A) shall be adjusted by the Secretary by notice, published in the Federal Register, for a

fiscal year by the amount equal to the sum of—

"(I) one;

"(II) the average annual percent change in the cost, per full-time equivalent position of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions for the first 3 years of the preceding 4 fiscal years, multiplied by the proportion of personnel compensation and benefits costs to total costs of an average full-time equivalent position of the Food and Drug Administration for the first 3 years of the preceding 4 fiscal years, and

"(III) the average annual percent change that occurred in the Consumer Price Index for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than

personnel compensation and benefits costs to total costs of an average full-time equivalent position of the Food and Drug Administration for the first 3 years of the preceding 4 fiscal years.

''(ii) COMPOUNDED BASIS.—The adjustment made each fiscal year under clause (i) shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2014 under clause (i).

''(C) SMALL BUSINESS ADJUSTMENT FACTOR.—The small business adjustment factor described in subparagraph (A)(ii) shall be an amount established by the Secretary for each fiscal year based on the Secretary's estimate of—

''(i) the number of small businesses that will pay a reduced establishment fee for such fiscal year; and

''(ii) the adjustment to the establishment fee necessary to achieve total fees equaling the total fees that the Secretary would have collected if no entity qualified

for the small business exception in subparagraph (D).

''(D) EXCEPTION FOR SMALL BUSINESSES.—

''(i) IN GENERAL.—In the case of a compounding manufacturer with gross annual sales of $1,000,000 or less in the 12 months ending June 1 of the fiscal year immediately preceding the fiscal year in which the fees under this subsection are assessed, the amount of the establishment fee and reinspection fee under paragraph (2) for a fiscal year shall be equal to ⅓ of the amount calculated under subparagraph (A)(i) in such fiscal year.

''(ii) APPLICATION.—The Secretary may require a small business to apply for the exception under this subparagraph by certifying its gross annual sales for the 12 months ending June 1 of the fiscal year immediately preceding the fiscal year in which fees under this subsection are assessed. Any such application must be submitted to the Secretary prior to August 1 for the following fiscal year. Any statement

or representation made to the Secretary shall be subject to section 1001 of title 18, United States Code.

''(E) CREDITING OF FEES.—In establishing the small business adjustment factor under subparagraph (C) for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of the small business adjustment factor for such previous fiscal year, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

''(5) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to subparagraph (A) and (B) of paragraph (2) available solely to pay for the inspection-related costs (including re-inspection) for the oversight of drug compounding.

''(6) SUPPLEMENT NOT SUPPLANT.—Funds received by the Secretary pursuant to this subsection shall be used to supplement and not supplant any other Federal funds available to carry out the activities described in this subsection.

''(7) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under this subsection shall be col-

lected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the inspection-related costs (including reinspection) for the oversight of drug compounding.

''(8) COLLECTION OF FEES.—

''(A) ESTABLISHMENT FEE.—A compounding manufacturer shall remit the establishment fee due under this subsection in a fiscal year when submitting a registration pursuant to subsection (g) for such fiscal year.

''(B) REINSPECTION FEE.—The Secretary shall specify in the Federal Register notice described in paragraph (3) the manner in which reinspection fees assessed under this subsection shall be collected and the timeline for payment of such fees. Such a fee shall be collected after

the Secretary has conducted a reinspection of the compounding manufacturer involved.

"(C) EFFECT OF FAILURE TO PAY FEES.—

"(i) REGISTRATION.—A compounding manufacturer shall not be considered registered under subsection (g) in a fiscal year until the date that the compounding manufacturer remits the establishment fee under this subsection for such fiscal year.

"(ii) MISBRANDING.—All drugs compounded by a compounding manufacturer for which any establishment fee or reinspection fee has not been paid as required by this subsection shall be deemed misbranded under section 502(cc) until the fees owed for such compounding manufacturer under this subsection have been paid.

"(D) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this subsection within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

''(9) ANNUAL REPORT TO CONGRESS.—Not later than 120 days after each fiscal year in which fees are assessed and collected under this subsection, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, to include a description of fees assessed and collected for each year, a summary description of entities paying the fees, and the number of inspections and reinspections of such entities performed each year.

''(10) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2015 and each subsequent fiscal year, there is authorized to be appropriated for fees under this subsection an amount equivalent to the total amount of fees assessed for such fiscal year under this subsection.

''(i) ACTION BY SECRETARY REGARDING COMPLAINTS FROM STATE BOARDS OF PHARMACY.—

''(1) DESIGNATION.—The Secretary shall designate a point of contact and establish a format and procedure for a State Board of Pharmacy to notify the Secretary if it appears to a State Board of Pharmacy that an entity licensed by a State as a phar-

macy is required to be registered with the Secretary as a compounding manufacturer.

''(2) DETERMINATION.—If the Secretary determines that such an entity described in paragraph (1) is required to be registered with the Secretary as a compounding manufacturer, the Secretary shall transmit such determination to the State Board of Pharmacy in the State in which the entity is located, and to the State Board of Pharmacy in the notifying State, if different, within 15 days of such determination.

''(3) EFFECT.—The Secretary shall encourage direct communications between States regarding traditional compounders. Nothing in this subsection shall expand the Secretary's authority over or responsibility for traditional compounding.

''(j) PRESCRIPTION ORDER REFERENCE.—For purposes of this section, reference to a prescription order for an identified individual patient includes, in the case of animal drugs, a prescription order for a specific herd or flock (or other identified group) of animals.''.

(c) PROHIBITED ACT.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (e), by striking ''417, 416, 504'' and inserting ''417, 416, 503A(g), 504''; and

(2) by adding at the end the following:

''(ccc) The resale of a compounded drug that is labeled 'not for resale' as required by section 503A.''.

(d) REPORT BY GAO.—Not later than November 1, 2016, the Comptroller General of the United States shall conduct study and submit to Congress a report regarding the impact of this Act (and the amendments made by this Act) on the safety of animal drug compounding and the availability of safe and effective drugs for animals.

SEC. 3. OTHER REQUIREMENTS RELATING TO COMPOUNDING MANUFACTURERS.

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

''(bb) If it is a compounded drug and the labeling does not include the information as required by subsections (f)(1)(C) and (g)(4) of section 503A, as applicable.

''(cc) If it is a drug, and it was compounded by a compounding manufacturer for which fees have not been paid as required by section 503A(g).''.

(b) APPLICATION OF INSPECTION REQUIREMENTS TO COMPOUNDING MANUFACTURERS.—Section 704(a)(2) (21 U.S.C. 374(a)(2)) is amended by adding at the end the following flush text:

''The exemption in subparagraph (A) does not apply with respect to compounding manufacturers (as such term is defined in section 503A).''.

(c) ADULTERATION OF COMPOUNDED ANIMAL DRUGS CONTAINING DRUG RESIDUES.—Section 402(a)(2)(C) is amended by striking ''512;'' and inserting ''512; or (iii) any residue from a compounded animal drug;''.

SEC. 4. IMPLEMENTATION.

In promulgating any regulations to implement this Act (and the amendments made by this Act), the Secretary of Health and Human Services shall—

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

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

(3) publish the final regulation not more than 18 months following publication of the proposed rule and not less than 30 days before the effective date of such final regulation.

SEC. 5. EFFECTIVE DATE.

This Act (and the amendments made by this Act) shall take effect on the date that is 1 year after the date of enactment of this Act.

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