

115TH CONGRESS
1ST SESSION

S. 934

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs, medical devices, generic drugs, and biosimilar biological products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2017

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

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to revise and extend the user-fee programs for prescription drugs, medical devices, generic drugs, and biosimilar biological products, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FDA Reauthorization
5 Act of 2017”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—FEES RELATING TO DRUGS

- Sec. 101. Short title; finding.
- Sec. 102. Authority to assess and use drug fees.
- Sec. 103. Reauthorization; reporting requirements.
- Sec. 104. Sunset dates.
- Sec. 105. Effective date.
- Sec. 106. Savings clause.

TITLE II—FEES RELATING TO DEVICES

- Sec. 201. Short title; findings.
- Sec. 202. Definitions.
- Sec. 203. Authority to assess and use device fees.
- Sec. 204. Reauthorization; reporting requirements.
- Sec. 205. Conformity assessment pilot program.
- Sec. 206. Reauthorization of review.
- Sec. 207. Electronic format for submissions.
- Sec. 208. Savings clause.
- Sec. 209. Effective date.
- Sec. 210. Sunset clause.

TITLE III—FEES RELATING TO GENERIC DRUGS

- Sec. 301. Short title; finding.
- Sec. 302. Definitions.
- Sec. 303. Authority to assess and use human generic drug fees.
- Sec. 304. Reauthorization; reporting requirements.
- Sec. 305. Sunset dates.
- Sec. 306. Effective date.
- Sec. 307. Savings clause.

TITLE IV—FEES RELATING TO BIOSIMILAR BIOLOGICAL PRODUCTS

- Sec. 401. Short title; finding.
- Sec. 402. Definitions.
- Sec. 403. Authority to assess and use biosimilar fees.
- Sec. 404. Reauthorization; reporting requirements.
- Sec. 405. Sunset dates.
- Sec. 406. Effective date.
- Sec. 407. Savings clause.

TITLE V—REAUTHORIZATION OF OTHER PROGRAMS

- Sec. 501. Reauthorization of provision relating to exclusivity of certain drugs containing single enantiomers.
- Sec. 502. Reauthorization of pediatric humanitarian device exceptions.
- Sec. 503. Reauthorization of the critical path public-private partnerships.
- Sec. 504. Reauthorization of pediatric device consortia.
- Sec. 505. Reauthorization of orphan grants program.

1 **TITLE I—FEES RELATING TO**
2 **DRUGS**

3 **SEC. 101. SHORT TITLE; FINDING.**

4 (a) **SHORT TITLE.**—This title may be cited as the
5 “Prescription Drug User Fee Amendments of 2017”.

6 (b) **FINDING.**—The Congress finds that the fees au-
7 thorized by the amendments made in this title will be dedi-
8 cated toward expediting the drug development process and
9 the process for the review of human drug applications, in-
10 cluding postmarket drug safety activities, as set forth in
11 the goals identified for purposes of part 2 of subchapter
12 C of chapter VII of the Federal Food, Drug, and Cosmetic
13 Act, in the letters from the Secretary of Health and
14 Human Services to the Chairman of the Committee on
15 Health, Education, Labor, and Pensions of the Senate and
16 the Chairman of the Committee on Energy and Commerce
17 of the House of Representatives, as set forth in the Con-
18 gressional Record.

19 **SEC. 102. AUTHORITY TO ASSESS AND USE DRUG FEES.**

20 (a) **TYPES OF FEES.**—

21 (1) **IN GENERAL.**—Section 736(a) of the Fed-
22 eral Food, Drug, and Cosmetic Act (21 U.S.C.
23 379h(a)) is amended—

1 (A) in the matter preceding paragraph (1),
2 by striking “fiscal year 2013” and inserting
3 “fiscal year 2018”;

4 (B) in the heading of paragraph (1), by
5 striking “AND SUPPLEMENT”;

6 (C) in paragraph (1), by striking “or a
7 supplement” and “or supplement” each place
8 either appears;

9 (D) in paragraph (1)(A)—

10 (i) in clause (i), by striking “(c)(4)”
11 and inserting “(c)(5)”; and

12 (ii) in clause (ii), by striking “A fee
13 established” and all that follows through
14 “are required.” and inserting the following:
15 “A fee established under subsection (c)(5)
16 for a human drug application for which
17 clinical data (other than bioavailability or
18 bioequivalence studies) with respect to
19 safety or effectiveness are not required for
20 approval.”;

21 (E) in the heading of paragraph (1)(C), by
22 striking “OR SUPPLEMENT”;

23 (F) in paragraph (1)(F)—

24 (i) in the heading, by striking “OR IN-
25 DICATION”; and

1 (ii) by striking the second sentence;

2 (G) by striking paragraph (2) (relating to
3 a prescription drug establishment fee);

4 (H) by redesignating paragraph (3) as
5 paragraph (2);

6 (I) in the heading of paragraph (2), as so
7 redesignated, by striking “PRESCRIPTION DRUG
8 PRODUCT FEE” and inserting “PRESCRIPTION
9 DRUG PROGRAM FEE”;

10 (J) in subparagraph (A) of such paragraph
11 (2), by amending the first sentence to read as
12 follows: “Except as provided in subparagraphs
13 (B) and (C), each person who is named as the
14 applicant in a human drug application, and
15 who, after September 1, 1992, had pending be-
16 fore the Secretary a human drug application or
17 supplement, shall pay the annual prescription
18 drug program fee established for a fiscal year
19 under subsection (c)(5) for each prescription
20 drug product that is identified in such a human
21 drug application approved as of October 1 of
22 such fiscal year.”;

23 (K) in subparagraph (B) of such para-
24 graph (2)—

1 (i) in the heading of subparagraph
2 (B), by inserting after “EXCEPTION” the
3 following: “FOR CERTAIN PRESCRIPTION
4 DRUG PRODUCTS”; and

5 (ii) by striking “A prescription drug
6 product shall not be assessed a fee” and
7 inserting “A prescription drug program fee
8 shall not be assessed for a prescription
9 drug product”; and

10 (L) by adding at the end of such para-
11 graph (2) the following:

12 “(C) LIMITATION.—A person who is
13 named as the applicant in an approved human
14 drug application shall not be assessed more
15 than 5 prescription drug program fees for a fis-
16 cal year for prescription drug products identi-
17 fied in such approved human drug applica-
18 tion.”.

19 (2) CONFORMING AMENDMENT.—Subparagraph
20 (C) of section 740(a)(3) of the Federal Food, Drug,
21 and Cosmetic Act (21 U.S.C. 379j–12(a)(3)) is
22 amended to read as follows:

23 “(C) LIMITATION.—An establishment shall
24 be assessed only one fee per fiscal year under
25 this section.”.

1 (b) FEE REVENUE AMOUNTS.—Subsection (b) of sec-
2 tion 736 of the Federal Food, Drug, and Cosmetic Act
3 (21 U.S.C. 379h) is amended to read as follows:

4 “(b) FEE REVENUE AMOUNTS.—

5 “(1) IN GENERAL.—For each of the fiscal years
6 2018 through 2022, fees under subsection (a) shall,
7 except as provided in subsections (c), (d), (f), and
8 (g), be established to generate a total revenue
9 amount under such subsection that is equal to the
10 sum of—

11 “(A) the annual base revenue for the fiscal
12 year (as determined under paragraph (3));

13 “(B) the dollar amount equal to the infla-
14 tion adjustment for the fiscal year (as deter-
15 mined under subsection (c)(1));

16 “(C) the dollar amount equal to the capac-
17 ity planning adjustment for the fiscal year (as
18 determined under subsection (c)(2));

19 “(D) the dollar amount equal to the oper-
20 ating reserve adjustment for the fiscal year, if
21 applicable (as determined under subsection
22 (c)(3));

23 “(E) the dollar amount equal to the addi-
24 tional direct cost adjustment for the fiscal year
25 (as determined under subsection (c)(4)); and

1 “(F) additional dollar amounts for each
2 fiscal year as follows:

3 “(i) \$20,077,793 for fiscal year 2018;

4 “(ii) \$21,317,472 for fiscal year 2019;

5 “(iii) \$16,953,329 for fiscal year
6 2020;

7 “(iv) \$5,426,896 for fiscal year 2021;

8 and

9 “(v) \$2,769,609 for fiscal year 2022.

10 “(2) TYPES OF FEES.—Of the total revenue
11 amount determined for a fiscal year under para-
12 graph (1)—

13 “(A) 20 percent shall be derived from
14 human drug application fees under subsection
15 (a)(1); and

16 “(B) 80 percent shall be derived from pre-
17 scription drug program fees under subsection
18 (a)(2).

19 “(3) ANNUAL BASE REVENUE.—For purposes
20 of paragraph (1), the dollar amount of the annual
21 base revenue for a fiscal year shall be—

22 “(A) for fiscal year 2018, \$878,590,000;

23 and

24 “(B) for fiscal years 2019 through 2022,
25 the dollar amount of the total revenue amount

1 established under paragraph (1) for the pre-
2 vious fiscal year, not including any adjustments
3 made under subsection (c)(3) or (c)(4).”.

4 (c) ADJUSTMENTS; ANNUAL FEE SETTING.—Sub-
5 section (c) of section 736 of the Federal Food, Drug, and
6 Cosmetic Act (21 U.S.C. 379h) is amended to read as fol-
7 lows:

8 “(c) ADJUSTMENTS; ANNUAL FEE SETTING.—

9 “(1) INFLATION ADJUSTMENT.—

10 “(A) IN GENERAL.—For purposes of sub-
11 section (b)(1)(B), the dollar amount of the in-
12 flation adjustment to the annual base revenue
13 for each fiscal year shall be equal to the prod-
14 uct of—

15 “(i) such annual base revenue for the
16 fiscal year under subsection (b)(1)(A); and

17 “(ii) the inflation adjustment percent-
18 age under subparagraph (B).

19 “(B) INFLATION ADJUSTMENT PERCENT-
20 AGE.—The inflation adjustment percentage
21 under this subparagraph for a fiscal year is
22 equal to the sum of—

23 “(i) the average annual percent
24 change in the cost, per full-time equivalent
25 position of the Food and Drug Administra-

1 tion, of all personnel compensation and
2 benefits paid with respect to such positions
3 for the first 3 years of the preceding 4 fis-
4 cal years, multiplied by the proportion of
5 personnel compensation and benefits costs
6 to total costs of the process for the review
7 of human drug applications (as defined in
8 section 735(6)) for the first 3 years of the
9 preceding 4 fiscal years; and

10 “(ii) the average annual percent
11 change that occurred in the Consumer
12 Price Index for urban consumers (Wash-
13 ington-Baltimore, DC–MD–VA–WV; Not
14 Seasonally Adjusted; All items; Annual
15 Index) for the first 3 years of the pre-
16 ceding 4 years of available data multiplied
17 by the proportion of all costs other than
18 personnel compensation and benefits costs
19 to total costs of the process for the review
20 of human drug applications (as defined in
21 section 735(6)) for the first 3 years of the
22 preceding 4 fiscal years.

23 “(2) CAPACITY PLANNING ADJUSTMENT.—

24 “(A) IN GENERAL.—For each fiscal year,
25 after the annual base revenue established in

1 subsection (b)(1)(A) is adjusted for inflation in
2 accordance with paragraph (1), such revenue
3 shall be adjusted further for such fiscal year, in
4 accordance with this paragraph, to reflect
5 changes in the resource capacity needs of the
6 Secretary for the process for the review of
7 human drug applications.

8 “(B) INTERIM METHODOLOGY.—

9 “(i) IN GENERAL.—Until the capacity
10 planning methodology described in sub-
11 paragraph (C) is effective, the adjustment
12 under this paragraph for a fiscal year shall
13 be based on the product of—

14 “(I) the annual base revenue for
15 such year, as adjusted for inflation
16 under paragraph (1); and

17 “(II) the adjustment percentage
18 under clause (ii).

19 “(ii) ADJUSTMENT PERCENTAGE.—
20 The adjustment percentage under this
21 clause for a fiscal year is the weighted
22 change in the 3-year average ending in the
23 most recent year for which data are avail-
24 able, over the 3-year average ending in the
25 previous year, for—

1 “(I) the total number of human
2 drug applications, efficacy supple-
3 ments, and manufacturing supple-
4 ments submitted to the Secretary;

5 “(II) the total number of active
6 commercial investigational new drug
7 applications; and

8 “(III) the total number of formal
9 meetings scheduled by the Secretary,
10 and written responses issued by the
11 Secretary in lieu of such formal meet-
12 ings, as identified in section I.H of
13 the letters described in section 101(b)
14 of the Prescription Drug User Fee
15 Amendments of 2017.

16 “(C) CAPACITY PLANNING METHODOLOGY.—
17

18 “(i) DEVELOPMENT; EVALUATION
19 AND REPORT.—The Secretary shall obtain,
20 through a contract with an independent ac-
21 counting or consulting firm, a report evalu-
22 ating options and recommendations for a
23 new methodology to accurately assess
24 changes in the resource and capacity needs
25 of the process for the review of human

1 drug applications. The capacity planning
2 methodological options and recommenda-
3 tions presented in such report shall utilize
4 and be informed by personnel time report-
5 ing data as an input. The report shall be
6 published for public comment no later than
7 the end of fiscal year 2020.

8 “(ii) ESTABLISHMENT AND IMPLE-
9 MENTATION.—After review of the report
10 described in clause (i) and any public com-
11 ments thereon, the Secretary shall estab-
12 lish a capacity planning methodology for
13 purposes of this paragraph, which shall—

14 “(I) replace the interim method-
15 ology under subparagraph (B);

16 “(II) incorporate such ap-
17 proaches and attributes as the Sec-
18 retary determines appropriate; and

19 “(III) be effective beginning with
20 the first fiscal year for which fees are
21 set after such capacity planning meth-
22 odology is established.

23 “(D) LIMITATION.—Under no cir-
24 cumstances shall an adjustment under this
25 paragraph result in fee revenue for a fiscal year

1 that is less than the sum of the amounts under
2 subsections (b)(1)(A) (the annual base revenue
3 for the fiscal year) and (b)(1)(B) (the dollar
4 amount of the inflation adjustment for the fis-
5 cal year).

6 “(E) PUBLICATION IN FEDERAL REG-
7 ISTER.—The Secretary shall publish in the Fed-
8 eral Register notice under paragraph (5) the fee
9 revenue and fees resulting from the adjustment
10 and the methodologies under this paragraph.

11 “(3) OPERATING RESERVE ADJUSTMENT.—

12 “(A) INCREASE.—For fiscal year 2018 and
13 subsequent fiscal years, the Secretary may, in
14 addition to adjustments under paragraphs (1)
15 and (2), further increase the fee revenue and
16 fees if such an adjustment is necessary to pro-
17 vide for not more than 14 weeks of operating
18 reserves of carryover user fees for the process
19 for the review of human drug applications.

20 “(B) DECREASE.—If the Secretary has
21 carryover balances for such process in excess of
22 14 weeks of such operating reserves, the Sec-
23 retary shall decrease such fee revenue and fees
24 to provide for not more than 14 weeks of such
25 operating reserves.

1 “(C) NOTICE OF RATIONALE.—If an ad-
 2 justment under subparagraph (A) or (B) is
 3 made, the rationale for the amount of the in-
 4 crease or decrease (as applicable) in fee revenue
 5 and fees shall be contained in the annual Fed-
 6 eral Register notice under paragraph (5) estab-
 7 lishing fee revenue and fees for the fiscal year
 8 involved.

9 “(4) ADDITIONAL DIRECT COST ADJUST-
 10 MENT.—

11 “(A) IN GENERAL.—The Secretary shall,
 12 in addition to adjustments under paragraphs
 13 (1), (2), and (3), further increase the fee rev-
 14 enue and fees—

15 “(i) for fiscal year 2018, by
 16 \$8,730,000; and

17 “(ii) for fiscal year 2019 and subse-
 18 quent fiscal years, by the amount deter-
 19 mined under subparagraph (B).

20 “(B) AMOUNT.—The amount determined
 21 under this subparagraph is—

22 “(i) \$8,730,000, multiplied by

23 “(ii) the Consumer Price Index for
 24 urban consumers (Washington-Baltimore,
 25 DC–MD–VA–WV; Not Seasonally Ad-

1 justed; All Items; Annual Index) for the
2 most recent year of available data, divided
3 by such Index for 2016.

4 “(5) ANNUAL FEE SETTING.—The Secretary
5 shall, not later than 60 days before the start of each
6 fiscal year that begins after September 30, 2017—

7 “(A) establish, for the next fiscal year,
8 human drug application fees and prescription
9 drug program fees under subsection (a), based
10 on the revenue amounts established under sub-
11 section (b) and the adjustments provided under
12 this subsection; and

13 “(B) publish such fee revenue and fees in
14 the Federal Register.

15 “(6) LIMIT.—The total amount of fees charged,
16 as adjusted under this subsection, for a fiscal year
17 may not exceed the total costs for such fiscal year
18 for the resources allocated for the process for the re-
19 view of human drug applications.”.

20 (d) FEE WAIVER OR REDUCTION.—Section 736(d) of
21 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
22 379h(d)) is amended—

23 (1) in paragraph (1)—

24 (A) by inserting “or” at the end of sub-
25 paragraph (B);

1 (B) by striking subparagraph (C); and
2 (C) by redesignating subparagraph (D) as
3 subparagraph (C);
4 (2) by striking paragraph (3) (relating to use of
5 standard costs);
6 (3) by redesignating paragraph (4) as para-
7 graph (3); and
8 (4) in paragraph (3), as so redesignated—
9 (A) in subparagraphs (A) and (B), by
10 striking “paragraph (1)(D)” and inserting
11 “paragraph (1)(C)”; and
12 (B) in subparagraph (B)—
13 (i) by striking clause (ii);
14 (ii) by striking “shall pay” through
15 “(i) application fees” and inserting “shall
16 pay application fees”; and
17 (iii) by striking “; and” at the end
18 and inserting a period.

19 (e) EFFECT OF FAILURE TO PAY FEES.—Section
20 736(e) of the Federal Food, Drug, and Cosmetic Act (21
21 U.S.C. 379h(e)) is amended by striking “all fees” and in-
22 serting “all such fees”.

23 (f) LIMITATIONS.—Section 736(f)(2) of the Federal
24 Food, Drug, and Cosmetic Act (21 U.S.C. 379h(f)(2)) is
25 amended by striking “supplements, prescription drug es-

1 tablishments, and prescription drug products” and insert-
2 ing “prescription drug program fees”.

3 (g) CREDITING AND AVAILABILITY OF FEES.—Sec-
4 tion 736(g) of the Federal Food, Drug, and Cosmetic Act
5 (21 U.S.C. 379h(g)) is amended—

6 (1) in paragraph (3)—

7 (A) by striking “2013 through 2017” and
8 inserting “2018 through 2022”; and

9 (B) by striking “and paragraph (4) of this
10 subsection”; and

11 (2) by striking paragraph (4).

12 (h) ORPHAN DRUGS.—Section 736(k) of the Federal
13 Food, Drug, and Cosmetic Act (21 U.S.C. 379h(k)) is
14 amended by striking “product and establishment fees”
15 each place it appears and inserting “prescription drug pro-
16 gram fees”.

17 **SEC. 103. REAUTHORIZATION; REPORTING REQUIREMENTS.**

18 Section 736B of the Federal Food, Drug, and Cos-
19 metic Act (21 U.S.C. 379h–2) is amended—

20 (1) in subsection (a)(1)—

21 (A) in the matter before subparagraph (A),
22 by striking “2013” and inserting “2018”; and

23 (B) in subparagraph (A), by striking “Pre-
24 scription Drug User Fee Amendments of 2012”

1 and inserting “Prescription Drug User Fee
2 Amendments of 2017”;

3 (2) in subsection (b), by striking “2013” and
4 inserting “2018”; and

5 (3) in subsection (d), by striking “2017” each
6 place it appears and inserting “2022”.

7 **SEC. 104. SUNSET DATES.**

8 (a) AUTHORIZATION.—Sections 735 and 736 of the
9 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g;
10 379h) shall cease to be effective October 1, 2022.

11 (b) REPORTING REQUIREMENTS.—Section 736B of
12 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
13 379h–2) shall cease to be effective January 31, 2023.

14 (c) PREVIOUS SUNSET PROVISION.—Effective Octo-
15 ber 1, 2017, subsections (a) and (b) of section 105 of the
16 Food and Drug Administration Safety and Innovation Act
17 (Public Law 112–144) are repealed.

18 **SEC. 105. EFFECTIVE DATE.**

19 The amendments made by this title shall take effect
20 on October 1, 2017, or the date of the enactment of this
21 Act, whichever is later, except that fees under part 2 of
22 subchapter C of chapter VII of the Federal Food, Drug,
23 and Cosmetic Act shall be assessed for all human drug
24 applications received on or after October 1, 2017, regard-
25 less of the date of the enactment of this Act.

1 **SEC. 106. SAVINGS CLAUSE.**

2 Notwithstanding the amendments made by this title,
3 part 2 of subchapter C of chapter VII of the Federal Food,
4 Drug, and Cosmetic Act, as in effect on the day before
5 the date of the enactment of this title, shall continue to
6 be in effect with respect to human drug applications and
7 supplements (as defined in such part as of such day) that
8 on or after October 1, 2012, but before October 1, 2017,
9 were accepted by the Food and Drug Administration for
10 filing with respect to assessing and collecting any fee re-
11 quired by such part for a fiscal year prior to fiscal year
12 2018.

13 **TITLE II—FEES RELATING TO**
14 **DEVICES**

15 **SEC. 201. SHORT TITLE; FINDINGS.**

16 (a) **SHORT TITLE.**—This title may be cited as the
17 “Medical Device User Fee Amendments of 2017”.

18 (b) **FINDINGS.**—The Congress finds that the fees au-
19 thorized under the amendments made by this title will be
20 dedicated toward expediting the process for the review of
21 device applications and for assuring the safety and effec-
22 tiveness of devices, as set forth in the goals identified for
23 purposes of part 3 of subchapter C of chapter VII of the
24 Federal Food, Drug, and Cosmetic Act in the letters from
25 the Secretary of Health and Human Services to the Chair-
26 man of the Committee on Health, Education, Labor, and

1 Pensions of the Senate and the Chairman of the Com-
2 mittee on Energy and Commerce of the House of Rep-
3 resentatives, as set forth in the Congressional Record.

4 **SEC. 202. DEFINITIONS.**

5 Section 737 of the Federal Food, Drug, and Cosmetic
6 Act (21 U.S.C. 379i) is amended—

7 (1) by redesignating paragraphs (8) through
8 (13) as paragraphs (9) through (14), respectively;

9 (2) by inserting after paragraph (7) the fol-
10 lowing new paragraph:

11 “(8) The term ‘de novo classification request’
12 means a request made under section 513(f)(2)(A)
13 with respect to the classification of a device.”;

14 (3) in subparagraph (D) of paragraph (10) (as
15 redesignated by paragraph (1)), by striking “and
16 submissions” and inserting “submissions, and de
17 novo classification requests”; and

18 (4) in paragraph (11) (as redesignated by para-
19 graph (1)), by striking “2011” and inserting
20 “2016”.

21 **SEC. 203. AUTHORITY TO ASSESS AND USE DEVICE FEES.**

22 (a) TYPES OF FEES.—Section 738(a) of the Federal
23 Food, Drug, and Cosmetic Act (21 U.S.C. 379j(a)) is
24 amended—

1 (1) in paragraph (1), by striking “fiscal year
2 2013” and inserting “fiscal year 2018”; and

3 (2) in paragraph (2)—

4 (A) in subparagraph (A)—

5 (i) in the matter preceding clause (i),
6 by striking “October 1, 2012” and insert-
7 ing “October 1, 2017”;

8 (ii) in clause (viii), by striking “2”
9 and inserting “3.4”; and

10 (iii) by adding at the end the fol-
11 lowing new clause:

12 “(xi) For a de novo classification re-
13 quest, a fee equal to 30 percent of the fee
14 that applies under clause (i).”; and

15 (B) in subparagraph (B)(v)(I), by striking
16 “or premarket notification submission” and in-
17 serting “premarket notification submission, or
18 de novo classification request”.

19 (b) FEE AMOUNTS.—Section 738(b) of the Federal
20 Food, Drug, and Cosmetic Act (21 U.S.C. 379j(b)) is
21 amended to read as follows:

22 “(b) FEE AMOUNTS.—

23 “(1) IN GENERAL.—Subject to subsections (c),
24 (d), (e), and (h), for each of fiscal years 2018
25 through 2022, fees under subsection (a) shall be de-

1 rived from the base fee amounts specified in para-
 2 graph (2), to generate the total revenue amounts
 3 specified in paragraph (3).

4 “(2) BASE FEE AMOUNTS SPECIFIED.—For
 5 purposes of paragraph (1), the base fee amounts
 6 specified in this paragraph are as follows:

“Fee Type	Fiscal Year 2018	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022
Premarket Application	\$294,000	\$300,000	\$310,000	\$328,000	\$329,000
Establishment Registration	\$4,375	\$4,548	\$4,760	\$4,975	\$4,978

7 “(3) TOTAL REVENUE AMOUNTS SPECIFIED.—
 8 For purposes of paragraph (1), the total revenue
 9 amounts specified in this paragraph are as follows:

10 “(A) \$183,280,756 for fiscal year 2018.

11 “(B) \$190,654,875 for fiscal year 2019.

12 “(C) \$200,132,014 for fiscal year 2020.

13 “(D) \$211,748,789 for fiscal year 2021.

14 “(E) \$213,687,660 for fiscal year 2022.”.

15 (c) ANNUAL FEE SETTING; ADJUSTMENTS.—Section
 16 738(c) of the Federal Food, Drug, and Cosmetic Act (21
 17 U.S.C. 379j(c)) is amended—

18 (1) in paragraph (1), by striking “2012” and
 19 inserting “2017”;

20 (2) in paragraph (2)—

21 (A) in subparagraph (A), by striking
 22 “2014” and inserting “2018”;

1 (B) by striking subparagraph (B) and in-
2 serting the following new subparagraph:

3 “(B) APPLICABLE INFLATION ADJUST-
4 MENT.—The applicable inflation adjustment for
5 fiscal year 2018 and each subsequent fiscal
6 year is the product of—

7 “(i) the base inflation adjustment
8 under subparagraph (C) for such fiscal
9 year; and

10 “(ii) the product of the base inflation
11 adjustment under subparagraph (C) for
12 each of the fiscal years preceding such fis-
13 cal year, beginning with fiscal year 2016.”;

14 (C) in subparagraph (C), in the heading,
15 by striking “TO TOTAL REVENUE AMOUNTS”;
16 and

17 (D) by amending subparagraph (D) to
18 read as follows:

19 “(D) ADJUSTMENT TO BASE FEE
20 AMOUNTS.—For each of fiscal years 2018
21 through 2022, the Secretary shall—

22 “(i) adjust the base fee amounts spec-
23 ified in subsection (b)(2) for such fiscal
24 year by multiplying such amounts by the

1 applicable inflation adjustment under sub-
2 paragraph (B) for such year; and

3 “(ii) if the Secretary determines nec-
4 essary, increase (in addition to the adjust-
5 ment under clause (i)) such base fee
6 amounts, on a uniform proportionate basis,
7 to generate the total revenue amounts
8 under subsection (b)(3), as adjusted for in-
9 flation under subparagraph (A).”; and

10 (3) in paragraph (3)—

11 (A) by striking “2014 through 2017” and
12 inserting “2018 through 2022”; and

13 (B) by striking “further adjusted” and in-
14 serting “increased”.

15 (d) SMALL BUSINESSES; FEE WAIVER AND FEE RE-
16 Duction REGARDING PREMARKET APPROVAL FEES.—
17 Section 738(d) of the Federal Food, Drug, and Cosmetic
18 Act (21 U.S.C. 379j(d)) is amended—

19 (1) in paragraph (1), by striking “specified in
20 clauses (i) through (v) and clauses (vii), (ix), and
21 (x)” and inserting “specified in clauses (i) through
22 (vii) and clauses (ix), (x), and (xi)”; and

23 (2) in paragraph (2)(C)—

24 (A) by striking “supplement, or” and in-
25 serting “supplement,”; and

1 (B) by inserting “, or a de novo classifica-
2 tion request” after “class III device”.

3 (e) SMALL BUSINESSES; FEE REDUCTION REGARD-
4 ING PREMARKET NOTIFICATION SUBMISSIONS.—Section
5 738(e)(2)(C) of the Federal Food, Drug, and Cosmetic
6 Act (21 U.S.C. 379j(e)(2)(C)) is amended by striking
7 “50” and inserting “25”.

8 (f) FEE WAIVER OR REDUCTION.—

9 (1) REPEAL.—Section 738 of the Federal Food,
10 Drug, and Cosmetic Act (21 U.S.C. 379j) is amend-
11 ed by striking subsection (f).

12 (2) CONFORMING CHANGES.—

13 (A) Section 515(c)(4)(A) of the Federal
14 Food, Drug, and Cosmetic Act (21 U.S.C.
15 360e(c)(4)(A)) is amended by striking “738(h)”
16 and inserting “738(g)”.

17 (B) Section 738 of the Federal Food,
18 Drug, and Cosmetic Act (21 U.S.C. 379j), as
19 amended by paragraph (1), is further amend-
20 ed—

21 (i) by redesignating subsections (g)
22 through (l) as subsections (f) through (k);

23 (ii) in subsection (a)(2)(A), by strik-
24 ing “(d), (e), and (f)” and inserting “(d)
25 and (e)”; and

1 (iii) in subsection (a)(3)(A), by strik-
2 ing “and subsection (f)”.

3 (g) EFFECT OF FAILURE TO PAY FEES.—Subsection
4 (f)(1), as redesignated, of section 738 of the Federal
5 Food, Drug, and Cosmetic Act (21 U.S.C. 379j) is amend-
6 ed—

7 (1) by striking “or periodic reporting con-
8 cerning a class III device” and inserting “periodic
9 reporting concerning a class III device, or de novo
10 classification request”; and

11 (2) by striking “all fees” and inserting “all
12 such fees”.

13 (h) CONDITIONS.—Subsection (g)(1)(A), as redesign-
14 nated, of section 738 of the Federal Food, Drug, and Cos-
15 metic Act (21 U.S.C. 379j) is amended by striking
16 “\$280,587,000” and inserting “\$320,825,000”.

17 (i) CREDITING AND AVAILABILITY OF FEES.—Sub-
18 section (h), as redesignated, of section 738 of the Federal
19 Food, Drug, and Cosmetic Act (21 U.S.C. 379j) is amend-
20 ed—

21 (1) in paragraph (3)—

22 (A) by striking “2013 through 2017” and
23 inserting “2018 through 2022”; and

1 (B) by striking “subsection (c)” and all
2 that follows through the period at the end and
3 inserting “subsection (c).”; and
4 (2) by striking paragraph (4).

5 **SEC. 204. REAUTHORIZATION; REPORTING REQUIREMENTS.**

6 (a) PERFORMANCE REPORTS.—Section 738A(a) of
7 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
8 379j–1(a)) is amended—

9 (1) in paragraph (1)—

10 (A) in subparagraph (A)—

11 (i) by striking “2013” and inserting
12 “2018”; and

13 (ii) by striking “the Medical Device
14 User Fee Amendments of 2012” and in-
15 sserting “Medical Device User Fee Amend-
16 ments of 2017”; and

17 (B) in subparagraph (B), by striking “the
18 Medical Device User Fee Amendments of
19 2012” and inserting “Medical Device User Fee
20 Amendments of 2017”; and

21 (2) in paragraph (2), by striking “2013
22 through 2017” and inserting “2018 through 2022”.

23 (b) REAUTHORIZATION.—Section 738A(b) of the
24 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j–
25 1(b)) is amended—

1 (1) in paragraph (1), by striking “2017” and
2 inserting “2022”; and

3 (2) in paragraph (5), by striking “2017” and
4 inserting “2022”.

5 **SEC. 205. CONFORMITY ASSESSMENT PILOT PROGRAM.**

6 (a) IN GENERAL.—Section 514 of the Federal Food,
7 Drug, and Cosmetic Act (21 U.S.C. 360d) is amended by
8 adding at the end the following:

9 “(d) PILOT ACCREDITATION SCHEME FOR CON-
10 FORMITY ASSESSMENT.—

11 “(1) IN GENERAL.—The Secretary shall estab-
12 lish a pilot program under which—

13 “(A) testing laboratories may be accred-
14 ited, by accreditation bodies meeting criteria
15 specified by the Secretary, to assess the con-
16 formance of a device with certain standards rec-
17 ognized under this section; and

18 “(B) subject to paragraph (2), determina-
19 tions by testing laboratories so accredited that
20 a device conforms with such standard or stand-
21 ards shall be accepted by the Secretary for pur-
22 poses of demonstrating such conformity under
23 this section unless the Secretary finds that a
24 particular such determination shall not be so
25 accepted.

1 “(2) SECRETARIAL REVIEW OF ACCREDITED
2 LABORATORY DETERMINATIONS.—The Secretary
3 may—

4 “(A) review determinations by testing lab-
5 oratories accredited pursuant to this subsection,
6 including by conducting periodic audits of such
7 determinations or processes of accredited bodies
8 or testing laboratories and, following such re-
9 view, taking additional measures under this
10 Act, such as suspension or withdrawal of ac-
11 creditation of such testing laboratory under
12 paragraph (1)(A) or requesting additional infor-
13 mation with respect to such device, as the Sec-
14 retary determines appropriate; and

15 “(B) if the Secretary becomes aware of in-
16 formation materially bearing on safety or effec-
17 tiveness of a device assessed for conformity by
18 a testing laboratory so accredited, take such ad-
19 ditional measures under this Act as the Sec-
20 retary determines appropriate, such as suspen-
21 sion or withdrawal of accreditation of such test-
22 ing laboratory under paragraph (1)(A), or re-
23 questing additional information with regard to
24 such device.

25 “(3) IMPLEMENTATION AND REPORTING.—

1 “(A) PUBLIC MEETING.—The Secretary
2 shall publish in the Federal Register a notice of
3 a public meeting to be held no later than Sep-
4 tember 30, 2018, to discuss and obtain input
5 and recommendations from stakeholders regard-
6 ing the goals and scope of, and a suitable
7 framework and procedures and requirements
8 for, the pilot program under this subsection.

9 “(B) PILOT PROGRAM GUIDANCE.—The
10 Secretary shall—

11 “(i) not later than September 30,
12 2019, issue draft guidance regarding the
13 goals and implementation of the pilot pro-
14 gram under this subsection; and

15 “(ii) not later than September 30,
16 2021, issue final guidance with respect to
17 the implementation of such program.

18 “(C) PILOT PROGRAM INITIATION.—Not
19 later than September 30, 2020, the Secretary
20 shall initiate the pilot program under this sub-
21 section.

22 “(D) REPORT.—The Secretary shall make
23 available on the website of the Food and Drug
24 Administration an annual report on the

1 progress of the pilot program under this sub-
2 section.

3 “(4) SUNSET.—As of October 1, 2022—

4 “(A) the authority for accreditation bodies
5 to accredit testing laboratories pursuant to
6 paragraph (1)(A) shall cease to have force or
7 effect;

8 “(B) the Secretary—

9 “(i) may not accept a determination
10 pursuant to paragraph (1)(B) made by a
11 testing laboratory after such date; and

12 “(ii) may accept such a determination
13 made prior to such date;

14 “(C) except for purposes of accepting a de-
15 termination described in subparagraph (B)(ii),
16 the Secretary shall not continue to recognize
17 the accreditation of testing laboratories accred-
18 ited under paragraph (1)(A); and

19 “(D) the Secretary may take actions in ac-
20 cordance with paragraph (2) with respect to the
21 determinations made prior to such date and
22 recognition of the accreditation of testing lab-
23 oratories pursuant to determinations made
24 prior to such date.”.

1 **SEC. 206. REAUTHORIZATION OF REVIEW.**

2 Section 523 of the Federal Food, Drug, and Cosmetic
3 Act (21 U.S.C. 360m) is amended—

4 (1) in subsection (a)(3)—

5 (A) in subparagraph (A), by striking
6 clauses (ii) and (iii) and inserting the following:

7 “(ii) a device classified under section
8 513(f)(2) or designated under section
9 515C(d); or

10 “(iii) a device that is of a type, or
11 subset of a type, listed as not eligible for
12 review under subparagraph (B)(iii).”;

13 (B) by striking subparagraph (B) and in-
14 serting the following:

15 “(B) DESIGNATION FOR REVIEW.—The
16 Secretary shall—

17 “(i) issue draft guidance on the fac-
18 tors the Secretary will use in determining
19 whether a class I or class II device type, or
20 subset of such device types, is eligible for
21 review by an accredited person, includ-
22 ing—

23 “(I) the risk of the device type,
24 or subset of such device type; and

25 “(II) whether the device type, or
26 subset of such device type, is perma-

1 nently implantable, life sustaining, or
2 life supporting;

3 “(ii) not later than 24 months after
4 the date on which the Secretary issues
5 such draft guidance, finalize such guid-
6 ance; and

7 “(iii) beginning on the date such guid-
8 ance is finalized, designate and post on the
9 Internet website of the Food and Drug Ad-
10 ministration, an updated list of class I and
11 class II device types, or subsets of such de-
12 vice types, and the Secretary’s determina-
13 tion with respect to whether each such de-
14 vice type, or subset of a device type, is eli-
15 gible or not eligible for review by an ac-
16 credited person under this section based on
17 the factors described in clause (i).”; and

18 (C) by adding at the end the following:

19 “(C) INTERIM RULE.—Until the date on
20 which the updated list is designated and posted
21 in accordance with subparagraph (B)(iii), the
22 list in effect on the date of enactment the Med-
23 ical Device User Fee Amendments of 2017 shall
24 be in effect.”;

25 (2) in subsection (b)—

1 (A) in paragraph (2)—

2 (i) by striking subparagraph (D); and

3 (ii) by redesignating subparagraph

4 (E) as subparagraph (D); and

5 (B) in paragraph (3)—

6 (i) by redesignating subparagraph (E)

7 as subparagraph (F);

8 (ii) in subparagraph (F) (as so redес-

9 igned), by striking “The operations of”

10 and all that follows through “it will—”

11 and inserting “Such person shall agree, at

12 a minimum, to include in its request for

13 accreditation a commitment to, at the time

14 of accreditation, and at any time it is per-

15 forming any review pursuant to this sec-

16 tion—”; and

17 (iii) by inserting after subparagraph

18 (D) the following new subparagraph:

19 “(E) The operations of such person shall

20 be in accordance with generally accepted profes-

21 sional and ethical business practices.”; and

22 (3) in subsection (c), by striking “2017” and

23 inserting “2022”.

1 **SEC. 207. ELECTRONIC FORMAT FOR SUBMISSIONS.**

2 Section 745A(b) of the Federal Food, Drug, and Cos-
3 metic Act (21 U.S.C. 379k–1(b)) is amended by adding
4 at the end the following new paragraph:

5 “(3) PRESUBMISSIONS AND SUBMISSIONS SOLE-
6 LY IN ELECTRONIC FORMAT.—

7 “(A) IN GENERAL.—Beginning on October
8 1, 2021 (or such later date as may be specified
9 by the Secretary under subparagraph (B)),
10 presubmissions and submissions for devices de-
11 scribed in paragraph (1) (and any appeals of
12 action taken by the Secretary with respect to
13 such presubmissions or submissions) shall be
14 submitted solely in such electronic format as
15 specified by the Secretary in guidance issued
16 under subparagraph (C).

17 “(B) EXTENSION.—The Secretary may, if
18 the Secretary determines an extension of the
19 date specified in subparagraph (A) is necessary
20 for the development and adoption of the elec-
21 tronic format referred to in such paragraph, ex-
22 tend such date until such later date as the Sec-
23 retary may specify, but in no event later than
24 April 1, 2023.

25 “(C) GUIDANCE.—The Secretary shall, not
26 later than January 1, 2021, or such later date

1 as may be specified by the Secretary under sub-
2 paragraph (B), issue guidance providing for—

3 “(i) any further standards for the
4 submission by electronic format required
5 under subparagraph (A);

6 “(ii) a timetable for the establishment
7 by the Secretary of such further standards;
8 and

9 “(iii) set forth criteria for waivers of
10 and exemptions from the requirements of
11 this subsection.”.

12 **SEC. 208. SAVINGS CLAUSE.**

13 Notwithstanding the amendments made by this title,
14 part 3 of subchapter C of chapter VII of the Federal Food,
15 Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in
16 effect on the day before the date of the enactment of this
17 title, shall continue to be in effect with respect to the sub-
18 missions listed in section 738(a)(2)(A) of such Act (as de-
19 fined in such part as of such day) that on or after October
20 1, 2012, but before October 1, 2017, were accepted by
21 the Food and Drug Administration for filing with respect
22 to assessing and collecting any fee required by such part
23 for a fiscal year prior to fiscal year 2018.

1 **SEC. 209. EFFECTIVE DATE.**

2 The amendments made by this title shall take effect
3 on October 1, 2017, or the date of the enactment of this
4 Act, whichever is later, except that fees under part 3 of
5 subchapter C of chapter VII of the Federal Food, Drug,
6 and Cosmetic Act shall be assessed for all submissions list-
7 ed in section 738(a)(2)(A) of such Act received on or after
8 October 1, 2017, regardless of the date of the enactment
9 of this Act.

10 **SEC. 210. SUNSET CLAUSE.**

11 (a) AUTHORIZATION.—Sections 737 and 738 of the
12 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 739i;
13 739j) shall cease to be effective October 1, 2022.

14 (b) REPORTING REQUIREMENTS.—Section 738A (21
15 U.S.C. 739j–1) of the Federal Food, Drug, and Cosmetic
16 Act (regarding reauthorization and reporting require-
17 ments) shall cease to be effective January 31, 2023.

18 (c) PREVIOUS SUNSET PROVISION.—

19 (1) IN GENERAL.—Effective October 1, 2017,
20 section 207(a) of the Medical Device User Fee
21 Amendments of 2012 (Public Law 112–144) is re-
22 pealed.

23 (2) CONFORMING AMENDMENT.—The Food and
24 Drug Administration Safety and Innovation Act
25 (Public Law 112–144) is amended in the table of

1 contents in section 2 by striking the item relating to
2 section 207.

3 **TITLE III—FEES RELATING TO**
4 **GENERIC DRUGS**

5 **SEC. 301. SHORT TITLE; FINDING.**

6 (a) **SHORT TITLE.**—This title may be cited as the
7 “Generic Drug User Fee Amendments of 2017”.

8 (b) **FINDING.**—The Congress finds that the fees au-
9 thorized by the amendments made in this title will be dedi-
10 cated to human generic drug activities, as set forth in the
11 goals identified for purposes of part 7 of subchapter C
12 of chapter VII of the Federal Food, Drug, and Cosmetic
13 Act, in the letters from the Secretary of Health and
14 Human Services to the Chairman of the Committee on
15 Health, Education, Labor, and Pensions of the Senate and
16 the Chairman of the Committee on Energy and Commerce
17 of the House of Representatives, as set forth in the Con-
18 gressional Record.

19 **SEC. 302. DEFINITIONS.**

20 Section 744A of the Federal Food, Drug, and Cos-
21 metic Act (21 U.S.C. 379j–41) is amended—

22 (1) in paragraph (1)(B), by striking “applica-
23 tion for a positron emission tomography drug.” and
24 inserting “application—

1 “(i) for a positron emission tomog-
2 raphy drug; or

3 “(ii) submitted by a State or Federal
4 governmental entity for a drug that is not
5 distributed commercially.”;

6 (2) by redesignating paragraphs (5) through
7 (12) as paragraphs (6) through (13), respectively;
8 and

9 (3) by inserting after paragraph (4) the fol-
10 lowing:

11 “(5) The term ‘contract manufacturing organi-
12 zation facility’ means a manufacturing facility of a
13 finished dosage form of a drug approved pursuant to
14 an abbreviated new drug application, where such
15 manufacturing facility is not identified in an ap-
16 proved abbreviated new drug application held by the
17 owner of such facility or an affiliate of such owner
18 or facility.”.

19 **SEC. 303. AUTHORITY TO ASSESS AND USE HUMAN GE-**
20 **NERIC DRUG FEES.**

21 (a) TYPES OF FEES.—Section 744B(a) of the Fed-
22 eral Food, Drug, and Cosmetic Act (21 U.S.C. 379j-
23 42(a)) is amended—

1 (1) in the matter preceding paragraph (1), by
2 striking “fiscal year 2013” and inserting “fiscal year
3 2018”;

4 (2) in paragraph (1), by adding at the end the
5 following:

6 “(E) SUNSET.—This paragraph shall cease
7 to be effective October 1, 2022.”;

8 (3) in paragraph (2)—

9 (A) by amending subparagraph (C) to read
10 as follows:

11 “(C) NOTICE.—Not later than 60 days be-
12 fore the start of each of fiscal years 2018
13 through 2022, the Secretary shall publish in the
14 Federal Register the amount of the drug mas-
15 ter file fee established by this paragraph for
16 such fiscal year.”; and

17 (B) in subparagraph (E)—

18 (i) in clause (i)—

19 (I) by striking “no later than the
20 date” and inserting “on the earlier
21 of—

22 “(I) the date”;

23 (II) by striking the period and
24 inserting “; or”; and

1 (III) by adding at the end the
2 following:

3 “(II) the date on which the drug
4 master file holder requests the initial
5 completeness assessment.”; and

6 (ii) in clause (ii), by striking “notice
7 provided for in clause (i) or (ii) of subpara-
8 graph (C), as applicable” and inserting
9 “notice provided for in subparagraph (C)”;
10 (4) in paragraph (3)—

11 (A) in the heading, by striking “AND
12 PRIOR APPROVAL SUPPLEMENT”;

13 (B) in subparagraph (A), by striking “or a
14 prior approval supplement to an abbreviated
15 new drug application”;

16 (C) by amending subparagraphs (B) and
17 (C) to read as follows:

18 “(B) NOTICE.—Not later than 60 days be-
19 fore the start of each of fiscal years 2018
20 through 2022, the Secretary shall publish in the
21 Federal Register the amount of the fees under
22 subparagraph (A) for such fiscal year.

23 “(C) FEE DUE DATE.—The fees required
24 by subparagraphs (A) and (F) shall be due no
25 later than the date of submission of the abbre-

1 viated new drug application or prior approval
2 supplement for which such fee applies.”;

3 (D) in subparagraph (D)—

4 (i) in the heading, by inserting “, IS
5 WITHDRAWN PRIOR TO BEING RECEIVED,
6 OR IS NO LONGER RECEIVED” after “RE-
7 CEIVED”; and

8 (ii) by striking “The Secretary shall”
9 and all that follows through the period and
10 inserting the following:

11 “(i) APPLICATIONS NOT CONSIDERED
12 TO HAVE BEEN RECEIVED AND APPLICA-
13 TIONS WITHDRAWN PRIOR TO BEING RE-
14 CEIVED.—The Secretary shall refund 75
15 percent of the fee paid under subparagraph
16 (A) for any abbreviated new drug applica-
17 tion that the Secretary considers not to
18 have been received within the meaning of
19 section 505(j)(5)(A) for a cause other than
20 failure to pay fees, or that has been with-
21 drawn prior to being received within the
22 meaning of section 505(j)(5)(A).

23 “(ii) APPLICATIONS NO LONGER RE-
24 CEIVED.—The Secretary shall refund 100
25 percent of the fee paid under subparagraph

1 (A) for any abbreviated new drug applica-
2 tion if the Secretary initially receives the
3 application under section 505(j)(5)(A) and
4 subsequently determines that an exclusivity
5 period for a listed drug should have pre-
6 vented the Secretary from receiving such
7 application, such that the abbreviated new
8 drug application is no longer received with-
9 in the meaning of section 505(j)(5)(A).”;

10 (E) in subparagraph (E), by striking “or
11 prior approval supplement”; and

12 (F) in the matter preceding clause (i) of
13 subparagraph (F)—

14 (i) by striking “2012” and inserting
15 “2017”; and

16 (ii) by striking “subsection (d)(3)”
17 and inserting “subsection (d)(2)”;

18 (5) in paragraph (4)—

19 (A) in subparagraph (A)—

20 (i) in the matter preceding clause (i)
21 and in clause (iii), by striking “, or in-
22 tended to be identified, in at least one ge-
23 neric drug submission that is pending or”
24 and inserting “in at least one generic drug
25 submission that is”;

1 (ii) in clause (i), by striking “or in-
2 tended to be identified in at least one ge-
3 neric drug submission that is pending or”
4 and inserting “in at least one generic drug
5 submission that is”;

6 (iii) in clause (ii), by striking “pro-
7 duces,” and all that follows through “such
8 a” and inserting “is identified in at least
9 one generic drug submission in which the
10 facility is approved to produce one or more
11 active pharmaceutical ingredients or in a
12 Type II active pharmaceutical ingredient
13 drug master file referenced in at least one
14 such”; and

15 (iv) in clause (iii), by striking “to fees
16 under both such clauses” and inserting
17 “only to the fee attributable to the manu-
18 facture of the finished dosage forms”; and

19 (B) by amending subparagraphs (C) and
20 (D) to read as follows:

21 “(C) NOTICE.—Within the timeframe spec-
22 ified in subsection (d)(1), the Secretary shall
23 publish in the Federal Register the amount of
24 the fees under subparagraph (A) for such fiscal
25 year.”.

1 “(D) FEE DUE DATE.—For each of fiscal
2 years 2018 through 2022, the fees under sub-
3 paragraph (A) for such fiscal year shall be due
4 on the later of—

5 “(i) the first business day on or after
6 October 1 of each such year; or

7 “(ii) the first business day after the
8 enactment of an appropriations Act pro-
9 viding for the collection and obligation of
10 fees for such year under this section for
11 such year.”;

12 (6) by redesignating paragraph (5) as para-
13 graph (6); and

14 (7) by inserting after paragraph (4) the fol-
15 lowing:

16 “(5) GENERIC DRUG APPLICANT PROGRAM
17 FEE.—

18 “(A) IN GENERAL.—A generic drug appli-
19 cant program fee shall be assessed annually as
20 described in subsection (b)(2)(E).

21 “(B) AMOUNT.—The amount of fees estab-
22 lished under subparagraph (A) shall be estab-
23 lished under subsection (d).

24 “(C) NOTICE.—Within the timeframe spec-
25 ified in subsection (d)(1), the Secretary shall

1 publish in the Federal Register the amount of
2 the fees under subparagraph (A) for such fiscal
3 year.

4 “(D) FEE DUE DATE.—For each of fiscal
5 years 2018 through 2022, the fees under sub-
6 paragraph (A) for such fiscal year shall be due
7 on the later of—

8 “(i) the first business day on or after
9 October 1 of each such fiscal year; or

10 “(ii) the first business day after the
11 date of enactment of an appropriations Act
12 providing for the collection and obligation
13 of fees for such fiscal year under this sec-
14 tion for such fiscal year.”.

15 (b) FEE REVENUE AMOUNTS.—Section 744B(b) of
16 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
17 379j–42(b)) is amended—

18 (1) in paragraph (1)—

19 (A) in subparagraph (A)—

20 (i) in the heading, by striking “2013”
21 and inserting “2018”;

22 (ii) by striking “2013” and inserting
23 “2018”;

24 (iii) by striking “\$299,000,000” and
25 inserting “\$493,600,000”; and

1 (iv) by striking “Of that amount” and
2 all that follows through the end of clause
3 (ii); and

4 (B) in subparagraph (B)—

5 (i) in the heading, by striking “2014
6 THROUGH 2017” and inserting “2019
7 THROUGH 2022”;

8 (ii) by striking “2014 through 2017”
9 and inserting “2019 through 2022”;

10 (iii) by striking “paragraphs (2)
11 through (4)” and inserting “paragraphs
12 (2) through (5)”;

13 (iv) by striking “\$299,000,000” and
14 inserting “\$493,600,000”; and

15 (2) in paragraph (2)—

16 (A) in the matter preceding subparagraph
17 (A)—

18 (i) by striking “paragraph (1)(A)(ii)
19 for fiscal year 2013 and paragraph (1)(B)
20 for each of fiscal years 2014 through
21 2017” and inserting “such paragraph for a
22 fiscal year”; and

23 (ii) by striking “through (4)” and in-
24 serting “through (5)”;

1 (B) in subparagraph (A), by striking “Six
2 percent” and inserting “Five percent”;

3 (C) by amending subparagraphs (B) and
4 (C) to read as follows:

5 “(B) Thirty-three percent shall be derived
6 from fees under subsection (a)(3) (relating to
7 abbreviated new drug applications).

8 “(C) Twenty percent shall be derived from
9 fees under subsection (a)(4)(A)(i) (relating to
10 generic drug facilities). The amount of the fee
11 for a contract manufacturing organization facil-
12 ity shall be equal to one-third the amount of the
13 fee for a facility that is not a contract manufac-
14 turing organization facility. The amount of the
15 fee for a facility located outside the United
16 States and its territories and possessions shall
17 be \$15,000 higher than the amount of the fee
18 for a facility located in the United States and
19 its territories and possessions.”;

20 (D) in subparagraph (D)—

21 (i) by striking “Fourteen percent”
22 and inserting “Seven percent”;

23 (ii) by striking “not less than \$15,000
24 and not more than \$30,000” and inserting
25 “\$15,000”; and

1 (iii) by striking “, as determined” and
2 all that follows through the period at the
3 end and inserting a period; and

4 (E) by adding at the end the following:

5 “(E)(i) Thirty-five percent shall be derived
6 from fees under subsection (a)(5) (relating to
7 generic drug applicant program fees). For pur-
8 poses of this subparagraph, if a person has af-
9 filiates, a single program fee shall be assessed
10 with respect to that person, including its affili-
11 ates, and may be paid by that person or any
12 one of its affiliates. The Secretary shall deter-
13 mine the fees as follows:

14 “(I) If a person (including its affili-
15 ates) owns at least one but not more than
16 5 approved abbreviated new drug applica-
17 tions on the due date for the fee under this
18 subsection, the person (including its affili-
19 ates) shall be assessed a small business ge-
20 neric drug applicant program fee equal to
21 one-tenth of the large size operation ge-
22 neric drug applicant program fee.

23 “(II) If a person (including its affili-
24 ates) owns at least 6 but not more than 19
25 approved abbreviated new drug applica-

1 tions on the due date for the fee under this
2 subsection, the person (including its affili-
3 ates) shall be assessed a medium size oper-
4 ation generic drug applicant program fee
5 equal to two-fifths of the large size oper-
6 ation generic drug applicant program fee.

7 “(III) If a person (including its affili-
8 ates) owns 20 or more approved abbrevi-
9 ated new drug applications on the due
10 date for the fee under this subsection, the
11 person (including its affiliates) shall be as-
12 sessed a large size operation generic drug
13 applicant program fee.

14 “(ii) For purposes of this subparagraph,
15 an abbreviated new drug application shall be
16 deemed not to be approved if the applicant has
17 submitted a written request for withdrawal of
18 approval of such abbreviated new drug applica-
19 tion by April 1 of the previous fiscal year.”.

20 (c) ADJUSTMENTS.—Section 744B(c) of the Federal
21 Food, Drug, and Cosmetic Act (21 U.S.C. 379j–42(c)) is
22 amended—

23 (1) in paragraph (1)—

24 (A) by striking “2014” and inserting
25 “2019”;

1 (B) by inserting “to equal the product of
2 the total revenues established in such notice for
3 the prior fiscal year multiplied” after “a fiscal
4 year,”; and

5 (C) by striking the flush text following
6 subparagraph (C); and

7 (2) in paragraph (2)—

8 (A) by striking “2017” each place it ap-
9 pears and inserting “2022”; and

10 (B) by striking “2018” and inserting
11 “2023”.

12 (d) ANNUAL FEE SETTING.—Section 744B of the
13 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j–
14 42) is amended—

15 (1) in subsection (c)(2), by striking “Such fees
16 may only be used in fiscal year 2018.”; and

17 (2) in subsection (d)—

18 (A) by striking paragraphs (1) and (2) and
19 inserting the following:

20 “(1) FISCAL YEARS 2018 THROUGH 2022.—Not
21 more than 60 days before the first day of each of
22 fiscal years 2018 through 2022, the Secretary shall
23 establish the fees described in paragraphs (2)
24 through (5) of subsection (a), based on the revenue

1 amounts established under subsection (b) and the
2 adjustments provided under subsection (c).”;

3 (B) by redesignating paragraph (3) as
4 paragraph (2); and

5 (C) in paragraph (2) (as so redesignated),
6 in the matter preceding subparagraph (A), by
7 striking “fees under paragraphs (1) and (2)”
8 and inserting “fee under paragraph (1)”.

9 (e) IDENTIFICATION OF FACILITIES.—Section
10 744B(f) of the Federal Food, Drug, and Cosmetic Act (21
11 U.S.C. 379j–42(f)) is amended—

12 (1) by striking paragraph (1);

13 (2) by redesignating paragraphs (2) through
14 (4) as paragraphs (1) through (3), respectively;

15 (3) in paragraph (1) (as so redesignated)—

16 (A) by striking “paragraph (4)” and in-
17 serting “paragraph (3)”; and

18 (B) by striking “Such information shall”
19 and all that follows through the end of subpara-
20 graph (B) and inserting “Such information
21 shall, for each fiscal year, be submitted, up-
22 dated, or reconfirmed on or before June 1 of
23 the previous fiscal year.”; and

24 (4) in paragraph (2), as so redesignated—

1 (A) in the heading, by striking “CONTENTS
2 OF NOTICE” and inserting “INFORMATION RE-
3 QUIRED TO BE SUBMITTED”;

4 (B) in the matter preceding subparagraph
5 (A), by striking “paragraph (2)” and inserting
6 “paragraph (1)”;

7 (C) in subparagraph (A), by striking “or
8 intended to be identified”;

9 (D) in subparagraph (D), by striking
10 “and” at the end;

11 (E) in subparagraph (E), by striking the
12 period and inserting “; and”; and

13 (F) by adding at the end the following:

14 “(F) whether the facility is a contract
15 manufacturing organization facility.”.

16 (f) EFFECT OF FAILURE TO PAY FEES.—Section
17 744B(g) of the Federal Food, Drug, and Cosmetic Act
18 (21 U.S.C. 379–42(g)) is amended—

19 (1) in paragraph (1), by adding at the end the
20 following: “This paragraph shall cease to be effective
21 on October 1, 2022.”;

22 (2) in paragraph (2)(C)(ii), by striking “of
23 505(j)(5)(A)” and inserting “of section
24 505(j)(5)(A)”;

25 (3) by adding at the end the following:

1 “(5) GENERIC DRUG APPLICANT PROGRAM
2 FEE.—

3 “(A) IN GENERAL.—A person who fails to
4 pay a fee as required under subsection (a)(5) by
5 the date that is 20 calendar days after the due
6 date, as specified in subparagraph (D) of such
7 subsection, shall be subject to the following:

8 “(i) The Secretary shall place the per-
9 son on a publicly available arrears list.

10 “(ii) Any abbreviated new drug appli-
11 cation submitted by the generic drug appli-
12 cant or an affiliate of such applicant shall
13 not be received, within the meaning of sec-
14 tion 505(j)(5)(A).

15 “(iii) All drugs marketed pursuant to
16 any abbreviated new drug application held
17 by such applicant or an affiliate of such
18 applicant shall be deemed misbranded
19 under section 502(aa).

20 “(B) APPLICATION OF PENALTIES.—The
21 penalties under subparagraph (A) shall apply
22 until the fee required under subsection (a)(5) is
23 paid.”.

24 (g) LIMITATIONS.—Section 744B(h)(2) of the Fed-
25 eral Food, Drug, and Cosmetic Act (21 U.S.C. 379–

1 42(h)(2)) is amended by striking “for Type II active phar-
2 maceutical ingredient drug master files, abbreviated new
3 drug applications and prior approval supplements, and ge-
4 neric drug facilities and active pharmaceutical ingredient
5 facilities”.

6 (h) CREDITING AND AVAILABILITY OF FEES.—Sec-
7 tion 744B(i) of the Federal Food, Drug, and Cosmetic Act
8 (21 U.S.C. 379–42(i)) is amended—

9 (1) in paragraph (2)—

10 (A) by striking subparagraph (C) (relating
11 to fee collection during first program year);

12 (B) in subparagraph (D)—

13 (i) in the heading, by striking “IN
14 SUBSEQUENT YEARS”; and

15 (ii) by striking “(after fiscal year
16 2013)”; and

17 (C) by redesignating subparagraph (D) as
18 subparagraph (C); and

19 (2) in paragraph (3), by striking “fiscal years
20 2013 through 2017” and inserting “fiscal years
21 2018 through 2022”.

22 (i) INFORMATION ON ABBREVIATED NEW DRUG AP-
23 PPLICATIONS HELD BY APPLICANTS AND THEIR AFFILI-
24 ATES.—Section 744B of the Federal Food, Drug, and

1 Cosmetic Act (21 U.S.C. 379–42) is amended by adding
2 at the end the following:

3 “(o) INFORMATION ON ABBREVIATED NEW DRUG
4 APPLICATIONS OWNED BY APPLICANTS AND THEIR AF-
5 FILIATES.—

6 “(1) IN GENERAL.—By April 1 of each year,
7 each person that owns an abbreviated new drug ap-
8 plication, or any affiliate of such person, shall sub-
9 mit to the Secretary a list of—

10 “(A) all approved abbreviated new drug
11 applications owned by such person; and

12 “(B) if any affiliate of such person also
13 owns an abbreviated new drug application, all
14 approved abbreviated new drug applications
15 owned by any such affiliate.

16 “(2) FORMAT AND METHOD.—The Secretary
17 shall specify in guidance the format and method for
18 submission of lists under this subsection.”.

19 **SEC. 304. REAUTHORIZATION; REPORTING REQUIREMENTS.**

20 Section 744C of the Federal Food, Drug, and Cos-
21 metic Act (21 U.S.C. 379j–43) is amended—

22 (1) in subsection (a)—

23 (A) by striking “2013” and inserting
24 “2018”; and

1 (B) by striking “Generic Drug User Fee
2 Amendments of 2012” and inserting “Generic
3 Drug User Fee Amendments of 2017”;

4 (2) in subsection (b), by striking “2013” and
5 inserting “2018”; and

6 (3) in subsection (d), by striking “2017” each
7 place it appears and inserting “2022”.

8 **SEC. 305. SUNSET DATES.**

9 (a) AUTHORIZATION.—Sections 744A and 744B of
10 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
11 379j–41; 379j–42) shall cease to be effective October 1,
12 2022.

13 (b) REPORTING REQUIREMENTS.—Section 744C of
14 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
15 379j–43) shall cease to be effective January 31, 2023.

16 (c) PREVIOUS SUNSET PROVISION.—Effective Octo-
17 ber 1, 2017, subsections (a) and (b) of section 304 of the
18 Food and Drug Administration Safety and Innovation Act
19 (Public Law 112–144) are repealed.

20 **SEC. 306. EFFECTIVE DATE.**

21 The amendments made by this title shall take effect
22 on October 1, 2017, or the date of the enactment of this
23 Act, whichever is later, except that fees under part 7 of
24 subchapter C of chapter VII of the Federal Food, Drug,
25 and Cosmetic Act shall be assessed for all abbreviated new

1 drug applications received on or after October 1, 2017,
2 regardless of the date of the enactment of this Act.

3 **SEC. 307. SAVINGS CLAUSE.**

4 Notwithstanding the amendments made by this title,
5 part 7 of subchapter C of chapter VII of the Federal Food,
6 Drug, and Cosmetic Act, as in effect on the day before
7 the date of the enactment of this title, shall continue to
8 be in effect with respect to abbreviated new drug applica-
9 tions (as defined in such part as of such day) that on or
10 after October 1, 2012, but before October 1, 2017, were
11 received by the Food and Drug Administration within the
12 meaning of 505(j)(5)(A) of such Act (21 U.S.C.
13 355(j)(5)(A)), prior approval supplements that were sub-
14 mitted, and drug master files for Type II active pharma-
15 ceutical ingredients that were first referenced with respect
16 to assessing and collecting any fee required by such part
17 for a fiscal year prior to fiscal year 2018.

18 **TITLE IV—FEES RELATING TO**
19 **BIOSIMILAR BIOLOGICAL**
20 **PRODUCTS**

21 **SEC. 401. SHORT TITLE; FINDING.**

22 (a) **SHORT TITLE.**—This title may be cited as the
23 “Biosimilar User Fee Amendments of 2017”.

24 (b) **FINDING.**—The Congress finds that the fees au-
25 thorized by the amendments made in this title will be dedi-

1 cated to expediting the process for the review of biosimilar
2 biological product applications, including postmarket safe-
3 ty activities, as set forth in the goals identified for pur-
4 poses of part 8 of subchapter C of chapter VII of the Fed-
5 eral Food, Drug, and Cosmetic Act, in the letters from
6 the Secretary of Health and Human Services to the Chair-
7 man of the Committee on Health, Education, Labor, and
8 Pensions of the Senate and the Chairman of the Com-
9 mittee on Energy and Commerce of the House of Rep-
10 resentatives, as set forth in the Congressional Record.

11 **SEC. 402. DEFINITIONS.**

12 (a) **ADJUSTMENT FACTOR.**—Section 744G(1) of the
13 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j–
14 51(1)) is amended to read as follows:

15 “(1) The term ‘adjustment factor’ applicable to
16 a fiscal year is the Consumer Price Index for all
17 urban consumers (all items; United States city aver-
18 age) for October of the preceding fiscal year divided
19 by such Index for October 2011.”.

20 (b) **BIOSIMILAR BIOLOGICAL PRODUCT.**—Section
21 744G(3) of the Federal Food, Drug, and Cosmetic Act
22 (21 U.S.C. 379j–51(3)) is amended by striking “means
23 a product” and inserting “means a specific strength of
24 a biological product in final dosage form”.

1 **SEC. 403. AUTHORITY TO ASSESS AND USE BIOSIMILAR**
2 **FEEES.**

3 (a) TYPES OF FEEES.—Section 744H(a) of the Fed-
4 eral Food, Drug, and Cosmetic Act (21 U.S.C. 379j-
5 52(a)) is amended—

6 (1) in the matter preceding paragraph (1), by
7 striking “fiscal year 2013” and inserting “fiscal year
8 2018”;

9 (2) in the heading of paragraph (1), by striking
10 “BIOSIMILAR” and inserting “BIOSIMILAR BIOLOGI-
11 CAL PRODUCT”;

12 (3) in paragraph (1)(A)(i), by striking
13 “(b)(1)(A)” and inserting “(c)(5)”;

14 (4) in paragraph (1)(B)(i), by striking
15 “(b)(1)(B) for biosimilar biological product develop-
16 ment” and inserting “(c)(5) for the biosimilar bio-
17 logical product development program”;

18 (5) in paragraph (1)(B)(ii), by striking “annual
19 biosimilar biological product development program
20 fee” and inserting “annual biosimilar biological
21 product development fee”;

22 (6) in paragraph (1)(B)(iii), by striking “an-
23 nual biosimilar development program fee” and in-
24 serting “annual biosimilar biological product devel-
25 opment fee”;

1 (7) in paragraph (1)(B), by adding at the end
2 the following:

3 “(iv) REFUND.—If a person submits a
4 marketing application for a biosimilar bio-
5 logical product before October 1 of a fiscal
6 year and such application is accepted for
7 filing on or after October 1 of such fiscal
8 year, the person may request a refund
9 equal to the annual biosimilar development
10 fee paid by the person for the product for
11 such fiscal year. To qualify for consider-
12 ation for a refund under this clause, a per-
13 son shall submit to the Secretary a written
14 request for such refund not later than 180
15 days after the marketing application is ac-
16 cepted for filing.”;

17 (8) in paragraph (1)(C), by striking “for a
18 product effective October 1 of a fiscal year by,” and
19 inserting “for a product, effective October 1 of a fis-
20 cal year, by,”;

21 (9) in paragraph (1)(D)—

22 (A) in clause (i) in the matter preceding
23 subclause (I), by inserting “, if the person seeks
24 to resume participation in such program,” be-
25 fore “pay a fee”;

1 (B) in clause (i)(I), by inserting after
2 “grants a request” the following: “by such per-
3 son”; and

4 (C) in clause (i)(II), by inserting after
5 “discontinued)” the following: “by such per-
6 son”;

7 (10) in the heading of paragraph (1)(E), by
8 striking “BIOSIMILAR DEVELOPMENT PROGRAM”;

9 (11) in the heading of subparagraph (F) of
10 paragraph (1), by striking “BIOSIMILAR DEVELOP-
11 MENT PROGRAM FEES” and inserting “BIOSIMILAR
12 BIOLOGICAL PRODUCT DEVELOPMENT FEES”;

13 (12) in paragraph (1)(F)—

14 (A) in the heading of subparagraph (F), by
15 striking “BIOSIMILAR DEVELOPMENT PRO-
16 GRAM” before “FEES”; and

17 (B) by amending clause (i) to read as fol-
18 lows:

19 “(i) REFUNDS.—Except as provided
20 in subparagraph (B)(iv), the Secretary
21 shall not refund any initial or annual bio-
22 similar biological product development fee
23 paid under subparagraph (A) or (B), or
24 any reactivation fee paid under subpara-
25 graph (D).”;

1 (13) in paragraph (2)—

2 (A) in the heading of paragraph (2), by
3 striking “AND SUPPLEMENT”;

4 (B) by amending subparagraphs (A) and
5 (B) to read as follows:

6 “(A) IN GENERAL.—Each person that sub-
7 mits, on or after October 1, 2017, a biosimilar
8 biological product application shall be subject to
9 the following fees:

10 “(i) A fee established under sub-
11 section (c)(5) for a biosimilar biological
12 product application for which clinical data
13 (other than comparative bioavailability
14 studies) with respect to safety or effective-
15 ness are required for approval.

16 “(ii) A fee established under sub-
17 section (c)(5) for a biosimilar biological
18 product application for which clinical data
19 (other than comparative bioavailability
20 studies) with respect to safety or effective-
21 ness are not required for approval. Such
22 fee shall be equal to half of the amount of
23 the fee described in clause (i).

24 “(B) RULE OF APPLICABILITY; TREAT-
25 MENT OF CERTAIN PREVIOUSLY PAID FEES.—

1 Any person who pays a fee under subparagraph
2 (A), (B), or (D) of paragraph (1) for a product
3 before October 1, 2017, but submits a bio-
4 similar biological product application for that
5 product after such date, shall—

6 “(i) be subject to any biosimilar bio-
7 logical product application fees that may
8 be assessed at the time when such bio-
9 similar biological product application is
10 submitted; and

11 “(ii) be entitled to no reduction of
12 such application fees based on the amount
13 of fees paid for that product before Octo-
14 ber 1, 2017, under such subparagraph (A),
15 (B), or (D).”;

16 (C) in the heading of subparagraph (D),
17 by striking “OR SUPPLEMENT”; and

18 (D) in subparagraphs (C) through (F)—

19 (i) by striking “or supplement” each
20 place it appears; and

21 (ii) in subparagraph (D), by striking
22 “or a supplement”; and

23 (14) by amending paragraph (3) to read as fol-
24 lows:

1 “(3) BIOSIMILAR BIOLOGICAL PRODUCT PRO-
2 GRAM FEE.—

3 “(A) IN GENERAL.—Each person who is
4 named as the applicant in a biosimilar biologi-
5 cal product application shall pay the annual bio-
6 similar biological product program fee estab-
7 lished for a fiscal year under subsection (c)(5)
8 for each biosimilar biological product that—

9 “(i) is identified in such a biosimilar
10 biological product application approved as
11 of October 1 of such fiscal year; and

12 “(ii) as of October 1 of such fiscal
13 year, does not appear on a list, developed
14 and maintained by the Secretary, of dis-
15 continued biosimilar biological products.

16 “(B) DUE DATE.—The biosimilar biologi-
17 cal product program fee for a fiscal year shall
18 be due on the later of—

19 “(i) the first business day on or after
20 October 1 of each such year; or

21 “(ii) the first business day after the
22 enactment of an appropriations Act pro-
23 viding for the collection and obligation of
24 fees for such year under this section.

1 “(C) ONE FEE PER PRODUCT PER YEAR.—
2 The biosimilar biological product program fee
3 shall be paid only once for each product for
4 each fiscal year.

5 “(D) LIMITATION.—A person who is
6 named as the applicant in a biosimilar biologi-
7 cal product application shall not be assessed
8 more than 5 biosimilar biological product pro-
9 gram fees for a fiscal year for biosimilar bio-
10 logical products identified in such biosimilar bi-
11 ological product application.”.

12 (b) FEE REVENUE AMOUNTS.—Subsection (b) of sec-
13 tion 744H of the Federal Food, Drug, and Cosmetic Act
14 (21 U.S.C. 379j–52) is amended to read as follows:

15 “(b) FEE REVENUE AMOUNTS.—

16 “(1) FISCAL YEAR 2018.—For fiscal year 2018,
17 fees under subsection (a) shall be established to gen-
18 erate a total revenue amount equal to the sum of—

19 “(A) \$45,000,000; and

20 “(B) the dollar amount equal to the fiscal
21 year 2018 adjustment (as determined under
22 subsection (c)(4)).

23 “(2) SUBSEQUENT FISCAL YEARS.—For each of
24 the fiscal years 2019 through 2022, fees under sub-
25 section (a) shall, except as provided in subsection

1 (c), be established to generate a total revenue
2 amount equal to the sum of—

3 “(A) the annual base revenue for the fiscal
4 year (as determined under paragraph (4));

5 “(B) the dollar amount equal to the infla-
6 tion adjustment for the fiscal year (as deter-
7 mined under subsection (c)(1));

8 “(C) the dollar amount equal to the capac-
9 ity planning adjustment for the fiscal year (as
10 determined under subsection (c)(2)); and

11 “(D) the dollar amount equal to the oper-
12 ating reserve adjustment for the fiscal year, if
13 applicable (as determined under subsection
14 (c)(3)).

15 “(3) ALLOCATION OF REVENUE AMOUNT
16 AMONG FEES; LIMITATIONS ON FEE AMOUNTS.—

17 “(A) ALLOCATION.—The Secretary shall
18 determine the percentage of the total revenue
19 amount for a fiscal year to be derived from, re-
20 spectively—

21 “(i) initial and annual biosimilar de-
22 velopment fees and reactivation fees under
23 subsection (a)(1);

24 “(ii) biosimilar biological product ap-
25 plication fees under subsection (a)(2); and

1 “(iii) biosimilar biological product pro-
2 gram fees under subsection (a)(3).

3 “(B) LIMITATIONS ON FEE AMOUNTS.—
4 Until the first fiscal year for which the capacity
5 planning adjustment under subsection (c)(2) is
6 effective, the amount of any fee under sub-
7 section (a) for a fiscal year after fiscal year
8 2018 shall not exceed 125 percent of the
9 amount of such fee for fiscal year 2018.

10 “(C) BIOSIMILAR BIOLOGICAL PRODUCT
11 DEVELOPMENT FEES.—The initial biosimilar bi-
12 ological product development fee under sub-
13 section (a)(1)(A) for a fiscal year shall be equal
14 to the annual biosimilar biological product de-
15 velopment fee under subsection (a)(1)(B) for
16 that fiscal year.

17 “(D) REACTIVATION FEE.—The reactiva-
18 tion fee under subsection (a)(1)(D) for a fiscal
19 year shall be equal to twice the amount of the
20 annual biosimilar biological product develop-
21 ment fee under subsection (a)(1)(B) for that
22 fiscal year.

23 “(4) ANNUAL BASE REVENUE.—For purposes
24 of paragraph (2), the dollar amount of the annual
25 base revenue for a fiscal year shall be the dollar

1 amount of the total revenue amount for the previous
2 fiscal year, excluding any adjustments to such rev-
3 enue amount under subsection (c)(3).”.

4 (c) ADJUSTMENTS; ANNUAL FEE SETTING.—Section
5 744H of the Federal Food, Drug, and Cosmetic Act (21
6 U.S.C. 379j–52) is amended—

7 (1) by redesignating subsections (c) through (h)
8 as subsections (d) through (i), respectively;

9 (2) in subsections (a)(2)(F) and (g), by striking
10 “subsection (c)” and inserting “subsection (d)”;

11 (3) in subsection (a)(4)(A), by striking “sub-
12 section (b)(1)(F)” and inserting “subsection (c)(5)”;
13 and

14 (4) by inserting after subsection (b) the fol-
15 lowing:

16 “(c) ADJUSTMENTS; ANNUAL FEE SETTING.—

17 “(1) INFLATION ADJUSTMENT.—

18 “(A) IN GENERAL.—For purposes of sub-
19 section (b)(2)(B), the dollar amount of the in-
20 flation adjustment to the annual base revenue
21 for each fiscal year shall be equal to the prod-
22 uct of—

23 “(i) such annual base revenue for the
24 fiscal year under subsection (b); and

1 “(ii) the inflation adjustment percent-
2 age under subparagraph (B).

3 “(B) INFLATION ADJUSTMENT PERCENT-
4 AGE.—The inflation adjustment percentage
5 under this subparagraph for a fiscal year is
6 equal to the sum of—

7 “(i) the average annual percent
8 change in the cost, per full-time equivalent
9 position of the Food and Drug Administra-
10 tion, of all personnel compensation and
11 benefits paid with respect to such positions
12 for the first 3 years of the preceding 4 fis-
13 cal years, multiplied by the proportion of
14 personnel compensation and benefits costs
15 to total costs of the process for the review
16 of biosimilar biological product applications
17 (as defined in section 744G(13)) for the
18 first 3 years of the preceding 4 fiscal
19 years; and

20 “(ii) the average annual percent
21 change that occurred in the Consumer
22 Price Index for urban consumers (Wash-
23 ington-Baltimore, DC–MD–VA–WV; Not
24 Seasonally Adjusted; All items; Annual
25 Index) for the first 3 years of the pre-

1 ceding 4 years of available data multiplied
2 by the proportion of all costs other than
3 personnel compensation and benefits costs
4 to total costs of the process for the review
5 of biosimilar biological product applications
6 (as defined in section 744G(13)) for the
7 first 3 years of the preceding 4 fiscal
8 years.

9 “(2) CAPACITY PLANNING ADJUSTMENT.—

10 “(A) IN GENERAL.—Beginning with the
11 fiscal year described in subparagraph
12 (B)(ii)(II), the Secretary shall, in addition to
13 the adjustment under paragraph (1), further in-
14 crease the fee revenue and fees under this sec-
15 tion for a fiscal year to reflect changes in the
16 resource capacity needs of the Secretary for the
17 process for the review of biosimilar biological
18 product applications.

19 “(B) CAPACITY PLANNING METHOD-
20 OLOGY.—

21 “(i) DEVELOPMENT; EVALUATION
22 AND REPORT.—The Secretary shall obtain,
23 through a contract with an independent ac-
24 counting or consulting firm, a report evalu-
25 ating options and recommendations for a

1 new methodology to accurately assess
2 changes in the resource and capacity needs
3 of the process for the review of biosimilar
4 biological product applications. The capac-
5 ity planning methodological options and
6 recommendations presented in such report
7 shall utilize and be informed by personnel
8 time reporting data as an input. The re-
9 port shall be published for public comment
10 not later than September 30, 2020.

11 “(ii) ESTABLISHMENT AND IMPLE-
12 MENTATION.—After review of the report
13 described in clause (i) and receipt and re-
14 view of public comments thereon, the Sec-
15 retary shall establish a capacity planning
16 methodology for purposes of this para-
17 graph, which shall—

18 “(I) incorporate such approaches
19 and attributes as the Secretary deter-
20 mines appropriate; and

21 “(II) be effective beginning with
22 the first fiscal year for which fees are
23 set after such capacity planning meth-
24 odology is established.

1 “(C) LIMITATION.—Under no cir-
2 cumstances shall an adjustment under this
3 paragraph result in fee revenue for a fiscal year
4 that is less than the sum of the amounts under
5 subsections (b)(2)(A) (the annual base revenue
6 for the fiscal year) and (b)(2)(B) (the dollar
7 amount of the inflation adjustment for the fis-
8 cal year).

9 “(D) PUBLICATION IN FEDERAL REG-
10 ISTER.—The Secretary shall publish in the Fed-
11 eral Register notice under paragraph (5) the fee
12 revenue and fees resulting from the adjustment
13 and the methodologies under this paragraph.

14 “(3) OPERATING RESERVE ADJUSTMENT.—

15 “(A) INTERIM APPLICATION; FEE REDUC-
16 TION.—Until the first fiscal year for which the
17 capacity planning adjustment under paragraph
18 (2) is effective, the Secretary may, in addition
19 to the adjustment under paragraph (1), reduce
20 the fee revenue and fees under this section for
21 a fiscal year as the Secretary determines appro-
22 priate for long-term financial planning pur-
23 poses.

24 “(B) GENERAL APPLICATION AND METH-
25 ODOLOGY.—Beginning with the first fiscal year

1 for which the capacity planning adjustment
2 under paragraph (2) is effective, the Secretary
3 may, in addition to the adjustments under
4 paragraphs (1) and (2)—

5 “(i) reduce the fee revenue and fees
6 under this section as the Secretary deter-
7 mines appropriate for long-term financial
8 planning purposes; or

9 “(ii) increase the fee revenue and fees
10 under this section if such an adjustment is
11 necessary to provide for not more than 21
12 weeks of operating reserves of carryover
13 user fees for the process for the review of
14 biosimilar biological product applications.

15 “(C) FEDERAL REGISTER NOTICE.—If an
16 adjustment under subparagraph (A) or (B) is
17 made, the rationale for the amount of the in-
18 crease or decrease (as applicable) in fee revenue
19 and fees shall be contained in the annual Fed-
20 eral Register notice under paragraph (5) estab-
21 lishing fee revenue and fees for the fiscal year
22 involved.

23 “(4) FISCAL YEAR 2018 ADJUSTMENT.—

24 “(A) IN GENERAL.—For fiscal year 2018,
25 the Secretary shall adjust the fee revenue and

1 fees under this section in such amount (if any)
2 as needed to reflect an updated assessment of
3 the workload for the process for the review of
4 biosimilar biological product applications.

5 “(B) METHODOLOGY.—The Secretary shall
6 publish under paragraph (5) a description of
7 the methodology used to calculate the fiscal
8 year 2018 adjustment under this paragraph in
9 the Federal Register notice establishing fee rev-
10 enue and fees for fiscal year 2018.

11 “(C) LIMITATION.—No adjustment under
12 this paragraph shall result in an increase in fee
13 revenue and fees under this section in excess of
14 \$9,000,000.

15 “(5) ANNUAL FEE SETTING.—For fiscal year
16 2018 and each subsequent fiscal year, the Secretary
17 shall, not later than 60 days before the start of each
18 such fiscal year—

19 “(A) establish, for the fiscal year, initial
20 and annual biosimilar biological product devel-
21 opment fees and reactivation fees under sub-
22 section (a)(1), biosimilar biological product ap-
23 plication fees under subsection (a)(2), and bio-
24 similar biological product program fees under
25 subsection (a)(3), based on the revenue

1 amounts established under subsection (b) and
2 the adjustments provided under this subsection;
3 and

4 “(B) publish such fee revenue and fees in
5 the Federal Register.

6 “(6) LIMIT.—The total amount of fees assessed
7 for a fiscal year under this section may not exceed
8 the total costs for such fiscal year for the resources
9 allocated for the process for the review of biosimilar
10 biological product applications.”.

11 (d) APPLICATION FEE WAIVER FOR SMALL BUSI-
12 NESS.—Subsection (d)(1) of section 744H of the Federal
13 Food, Drug, and Cosmetic Act (21 U.S.C. 379j–52), as
14 redesignated by subsection (c)(1), is amended—

15 (1) by striking subparagraph (B);

16 (2) by striking “shall pay—” and all that fol-
17 lows through “application fees” and inserting “shall
18 pay application fees”; and

19 (3) by striking “; and” at the end and inserting
20 a period.

21 (e) EFFECT OF FAILURE TO PAY FEES.—Subsection
22 (e) of section 744H of the Federal Food, Drug, and Cos-
23 metic Act (21 U.S.C. 379j–52), as redesignated by sub-
24 section (c)(1), is amended by striking “all fees” and in-
25 serting “all such fees”.

1 (f) CREDITING AND AVAILABILITY OF FEES.—Sub-
2 section (f) of section 744H of the Federal Food, Drug,
3 and Cosmetic Act (21 U.S.C. 379j–52), as redesignated
4 by subsection (c)(1), is amended—

5 (1) in paragraph (2)—

6 (A) by striking subparagraph (C) (relating
7 to fee collection during first program year) and
8 inserting the following:

9 “(C) COMPLIANCE.—The Secretary shall
10 be considered to have met the requirements of
11 subparagraph (B) in any fiscal year if the costs
12 described in such subparagraph are not more
13 than 15 percent below the level specified in
14 such subparagraph.”; and

15 (B) in subparagraph (D)—

16 (i) in the heading, by striking “IN
17 SUBSEQUENT YEARS”; and

18 (ii) by striking “(after fiscal year
19 2013)”; and

20 (2) in paragraph (3), by striking “2013
21 through 2017” and inserting “2018 through 2022”.

22 **SEC. 404. REAUTHORIZATION; REPORTING REQUIREMENTS.**

23 Section 744I of the Federal Food, Drug, and Cos-
24 metic Act (21 U.S.C. 379j–53) is amended—

25 (1) in subsection (a)—

1 (A) by striking “2013” and inserting
2 “2018”; and

3 (B) by striking “Biosimilar User Fee Act
4 of 2012” and inserting “Biosimilar User Fee
5 Amendments of 2017”;

6 (2) in subsection (b), by striking “2013” and
7 inserting “2018”;

8 (3) by striking subsection (d);

9 (4) by redesignating subsection (e) as sub-
10 section (d); and

11 (5) in subsection (d), as so redesignated, by
12 striking “2017” each place it appears and inserting
13 “2022”.

14 **SEC. 405. SUNSET DATES.**

15 (a) AUTHORIZATION.—Sections 744G and 744H of
16 the Federal Food, Drug, and Cosmetic Act, as amended
17 by section 403 of this Act, shall cease to be effective Octo-
18 ber 1, 2022.

19 (b) REPORTING REQUIREMENTS.—Section 744I of
20 the Federal Food, Drug, and Cosmetic Act, as amended
21 by section 404 of this Act, shall cease to be effective Janu-
22 ary 31, 2023.

23 (c) PREVIOUS SUNSET PROVISION.—

24 (1) IN GENERAL.—Effective October 1, 2017,
25 section 404 of the Food and Drug Administration

1 Safety and Innovation Act (Public Law 112–144) is
2 repealed.

3 (2) CONFORMING AMENDMENT.—The Food and
4 Drug Administration Safety and Innovation Act
5 (Public Law 112–144) is amended in the table of
6 contents in section 2 by striking the item relating to
7 section 404.

8 **SEC. 406. EFFECTIVE DATE.**

9 The amendments made by this title shall take effect
10 on October 1, 2017, or the date of the enactment of this
11 Act, whichever is later, except that fees under part 8 of
12 subchapter C of chapter VII of the Federal Food, Drug,
13 and Cosmetic Act shall be assessed for all biosimilar bio-
14 logical product applications received on or after October
15 1, 2017, regardless of the date of the enactment of this
16 Act.

17 **SEC. 407. SAVINGS CLAUSE.**

18 Notwithstanding the amendments made by this title,
19 part 8 of subchapter C of chapter VII of the Federal Food,
20 Drug, and Cosmetic Act, as in effect on the day before
21 the date of the enactment of this title, shall continue to
22 be in effect with respect to biosimilar biological product
23 applications and supplements (as defined in such part as
24 of such day) that were accepted by the Food and Drug
25 Administration for filing on or after October 1, 2012, but

1 before October 1, 2017, with respect to assessing and col-
2 lecting any fee required by such part for a fiscal year prior
3 to fiscal year 2018.

4 **TITLE V—REAUTHORIZATION OF** 5 **OTHER PROGRAMS**

6 **SEC. 501. REAUTHORIZATION OF PROVISION RELATING TO** 7 **EXCLUSIVITY OF CERTAIN DRUGS CON-** 8 **TAINING SINGLE ENANTIOMERS.**

9 Section 505(u)(4) of the Federal Food, Drug, and
10 Cosmetic Act (21 U.S.C. 355(u)(4)) is amended by strik-
11 ing “2017” and inserting “2022”.

12 **SEC. 502. REAUTHORIZATION OF PEDIATRIC HUMANI-** 13 **TARIAN DEVICE EXCEPTIONS.**

14 Section 520(m)(6)(A)(iv) of the Federal Food, Drug,
15 and Cosmetic Act (21 U.S.C. 360j(m)(6)(A)(iv)) is
16 amended by striking “2017” and inserting “2022”.

17 **SEC. 503. REAUTHORIZATION OF THE CRITICAL PATH PUB-** 18 **LIC-PRIVATE PARTNERSHIPS.**

19 Section 566(f) of the Federal Food, Drug, and Cos-
20 metic Act (21 U.S.C. 360bbb–5(f)) is amended by striking
21 “2013 through 2017” and inserting “2018 through
22 2022”.

1 **SEC. 504. REAUTHORIZATION OF PEDIATRIC DEVICE CON-**
2 **SORTIA.**

3 Section 305(e) of Pediatric Medical Device Safety
4 and Improvement Act of 2007 (Public Law 110–85; 42
5 U.S.C. 282 note) is amended by striking “2013 through
6 2017” and inserting “2018 through 2022”.

7 **SEC. 505. REAUTHORIZATION OF ORPHAN GRANTS PRO-**
8 **GRAM.**

9 Section 5(c) of the Orphan Drug Act (21 U.S.C.
10 360ee(c)) is amended by striking “2013 through 2017”
11 and inserting “2018 through 2022”.

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