109TH CONGRESS
1ST SESSION

S. _____

To amend the Federal Food, Drug, and Cosmetic Act with respect to drug safety, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. GRASSLEY (for himself and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on

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A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to drug safety, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Food and Drug Administration Safety Act of 2005''.

SEC. 2. CENTER FOR POSTMARKET DRUG EVALUATION AND RESEARCH.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 506C the following:

"SEC. 507. DRUG SAFETY.

"(a) ESTABLISHMENT OF THE CENTER FOR POSTMARKET DRUG EVALUATION AND RESEARCH.—There is established within the Food and Drug Administration a Center for Postmarket Drug Evaluation and Research (referred to in the section as the 'Center'). The Director of the Center shall report directly to the Commissioner of Food and Drugs.

"(b) DUTIES OF THE CENTER FOR POSTMARKET DRUG EVALUATION AND RESEARCH.—

"(1) RESPONSIBILITIES OF DIRECTOR.—The Director of the Center shall—

"(A) conduct postmarket risk assessment of drugs approved under section 505 of this Act and of biological products licensed under section 351 of the Public Health Service Act;

"(B) conduct and improve postmarket surveillance of approved drugs and licensed biological products using postmarket surveillance programs and activities (including MedWatch), risk-benefit analyses, adverse event reports, the scientific literature, any clinical or observational studies (including studies required under subsection (d) or (e)), and any other resources that the Director of the Center determines appropriate;

"(C) determine whether a study is required under subsection (d) or (e) and consult with the sponsors of drugs and biological products to ensure that such studies are completed by the date, and according to the terms, specified by the Director of the Center;

"(D) contract, or require the sponsor of an application or the holder of an approved application or license to contract, with the holders of domestic and international surveillance databases to conduct epidemiologic and other observational studies;

"(E) determine, based on postmarket surveillance programs and activities (including MedWatch), risk-benefit analyses, adverse event reports, the scientific literature, and any clinical or observational studies (including studies required under subsection (d) or (e)), and any other resources that the Director of the Center determines appropriate, whether a drug or biological product may present an unreasonable risk to the health of patients or the general public, and take corrective action if such an unreasonable risk may exist;

''(F) make information about the safety and effectiveness of approved drugs and licensed biological products available to the public and healthcare providers in a timely manner; and

''(G) conduct other activities as the Director of the Center determines appropriate to ensure the safety and effectiveness of all drugs approved under section 505 and all biological products licensed under section 351 of the Public Health Service Act.

''(2) DETERMINATION OF UNREASONABLE RISK.—In determining whether a drug or biological product may present an unreasonable risk to the health of patients or the general public, the Director of the Center shall consider the risk in relation to the known benefits of such drug or biological product.

''(c) SECRETARIAL AUTHORITY.—

''(1) IN GENERAL.—Approval of a drug under section 505 of this Act or issuance of a license for a biological product under section 351 of the Public Health Service Act may be subject to the requirement that the sponsor conduct 1 or more postmarket studies as described in subsection (d) or (e) of this

section, or other postmarket studies as required by the Secretary, to validate the safety and effectiveness of the drug or biological product.

''(2) DEFINITION.—For purposes of this section, the term 'postmarket' means—

''(A) with respect to a drug, after approval of an application under section 505; and

''(B) with respect to a biological product, after licensure under section 351 of the Public Health Service Act.

''(d) PREAPPROVAL REVIEW.—

''(1) REVIEW OF APPLICATION.—

''(A) IN GENERAL.—

''(i) REVIEW.—At any time before a drug is approved under section 505 of this Act or a biological product is licensed under section 351 of the Public Health Service Act, the Director of the Center shall review the application (or supplement to the application), and any analyses associated with the application, of such drug or biological product.

''(ii) EFFECT OF APPROVAL OR LICENSURE.—The approval of a drug under section 505 or the licensure of a biological

product under such section 351 shall not affect the continuation and completion of a review under clause (i).

''(B) LIMITATION.—In no case shall the review under subparagraph (A) delay a decision with respect to an application for a drug under section 505 of this Act or for a biological product under section 351 of the Public Health Service Act.

''(2) RESULT OF REVIEW.—The Director of the Center may, based on the review under paragraph (1)—

''(A) require that the sponsor of the application agree to conduct 1 or more postmarket studies to determine the safety or effectiveness of a drug or biological product, including such safety or effectiveness as compared to other drugs or biological products, to be completed by a date, and according to the terms, specified by the Director of the Center; or

''(B) contract, or require the sponsor of the application to contract, with a holder of a domestic or an international patient database to conduct 1 or more epidemiologic or other observational studies.

''(e) POSTMARKETING STUDIES OF DRUG SAFETY.—

''(1) IN GENERAL.—At any time after a drug is approved under section 505 of this Act or a biological product is licensed under section 351 of the Public Health Service Act, the Director of the Center, may—

''(A) require that the holder of an approved application or license conduct 1 or more studies to determine the safety or effectiveness of such drug or biological product, including such safety and effectiveness as compared to other drugs or biological products, to be completed by a date, and according to the terms, specified by such Director; or

''(B) contract, or require the holder of the approved application or license to contract, with a holder of a domestic or an international patient database to conduct 1 or more epidemiologic or other observational studies.

''(2) REVIEW OF OUTSTANDING STUDIES.—Not later than 90 days after the date of enactment of the Food and Drug Administration Safety Act of 2005, the Director of the Center shall—

''(A) review and publish a list in the Federal Register of any postmarketing studies out-

standing on the date of enactment of the Food and Drug Administration Safety Act of 2005; and

''(B) as the Director determines appropriate, require the sponsor of a study described in subparagraph (A) to conduct such study under this subsection.

''(f) PUBLICATION OF PROGRESS REPORTS AND COMPLETED STUDIES.—

''(1) IN GENERAL.—The Director of the Center shall require that the sponsor of a study under subsection (d) or (e) submit to the Secretary—

''(A) not less frequently than every 90 days, an up-to-date report describing the progress of such study; and

''(B) upon the completion date of such study, the results of such study.

''(2) COMPLETION DATE.—For purposes of this section, the completion date of such study shall be determined by the Director of the Center.

''(g) DETERMINATIONS BY DIRECTOR.—

''(1) RESULTS OF STUDY.—The Director of the Center shall determine, upon receipt of the results of a study required under subsection (d) or (e)—

''(A) whether the drug or biological product studied may present an unreasonable risk to the health of patients or the general public; and

''(B) what, if any, corrective action under subsection (k) shall be taken to protect patients and the public health.

''(2) RESULTS OF EVIDENCE.—The Director of the Center may, at any time, based on the empirical evidence from postmarket surveillance programs and activities (including MedWatch), risk-benefit analyses, adverse event reports, the scientific literature, any clinical or observational studies (including studies required under subsection (d) or (e)), or any other resources that the Director of the Center determines appropriate—

''(A) make a determination that a drug or biological product may present an unreasonable risk to the health of patients or the general public; and

''(B) order a corrective action under subsection (k) be taken to protect patients and the public health.

''(3) REQUIRED CONSULTATION AND CONSIDERATIONS.—Before making a determination under paragraph (2), ordering a study under subsection

(d) or (e), or taking a corrective action under subsection (k), the Director of the Center shall—

''(A) consult with the Director of the Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, as appropriate; and

''(B) consider—

''(i) the benefit-to-risk profile of the drug or biological product;

''(ii) the effect that a corrective action, or failure to take corrective action, will have on the patient population that relies on the drug or biological product; and

''(iii) the extent to which the drug or biological product presents a meaningful therapeutic benefit as compared to other available treatments.

''(h) PUBLIC INFORMATION.—Periodically, but not less often than every 90 days, the Secretary shall make available to the public, by publication in the Federal Register and posting on an Internet website, the following information:

''(1) Studies required under subsection (d) or (e) including—

''(A) the type of study;

"(B) the nature of the study;

"(C) the primary and secondary outcomes of the study;

"(D) the date the study was required under subsection (d) or (e) or was agreed to by the sponsor;

"(E) the deadline for completion of the study; and

"(F) if the study has not been completed by the deadline under subparagraph (E), a statement that explains why.

"(2) The periodic progress reports and results of completed studies described under subsection (f).

"(3) Any determinations made by the Director of the Center under subsection (g), including—

"(A) reasons for the determination, including factual basis for such determination;

"(B) reference to supporting empirical data; and

"(C) an explanation that describes why contrary data is insufficient.

"(i) DRUG ADVISORY COMMITTEE.—The Drug Safety and Risk Management Drugs Advisory Committee within the Center of the Food and Drug Administration shall—

''(1) meet not less frequently than every 180 days; and

''(2) make recommendations to the Director of the Center with respect to—

''(A) which drugs and biological products should be the subject of a study under subsection (d) or (e);

''(B) the design and duration for studies under subsection (d) or (e);

''(C) which drugs and biological products may present an unreasonable risk to the health of patients or the general public; and

''(D) appropriate corrective actions under subsection (k).

''(j) PENALTIES.—

''(1) IN GENERAL.—If the Secretary determines, after notice and opportunity for an informal hearing, that a sponsor of a drug or biological product or other entity has failed to complete a study required under subsection (d) or (e) by the date or to the terms specified by the Secretary under such subsection, the Secretary may order such sponsor or other entity to—

''(A) complete the study in a specified time;

"(B) revise the study to comply with the terms specified by the Secretary under subsection (d) or (e); or

"(C) pay a civil penalty.

"(2) AMOUNT OF PENALTIES.—

"(A) IN GENERAL.—The civil penalty ordered under paragraph (1) shall be $250,000 for the first 30-day period after the date specified by the Secretary that the study is not completed, and shall double in amount for every 30-day period thereafter that the study is not completed.

"(B) LIMITATION.—In no case shall a penalty under subparagraph (A) exceed $2,000,000 for any 30-day period.

"(3) NOTIFICATION OF PENALTY.—The Secretary shall publish in the Federal Register any civil penalty ordered under this subsection.

"(k) RESULT OF DETERMINATION.—

"(1) IN GENERAL.—If the Director of the Center makes a determination that a drug or biological product may present an unreasonable risk to the health of patients or the general public under subsection (g), such Director shall order a corrective action, as described under paragraph (2).

''(2) CORRECTIVE ACTIONS.—The corrective action described under subsection (g)—

''(A) may include—

''(i) requiring a change to the drug or biological product label by a date specified by the Director of the Center;

''(ii) modifying the approved indication of the drug or biological product to restrict use to certain patients;

''(iii) placing restriction on the distribution of the drug or biological product to ensure safe use;

''(iv) requiring the sponsor of the drug or biological product or license to establish a patient registry;

''(v) requiring patients to sign a consent form prior to receiving a prescription of the drug or biological product;

''(vi) requiring the sponsor to monitor sales and usage of the drug or biological product to detect unsafe use;

''(vii) requiring patient or physician education; and

"(viii) requiring the establishment of a risk management plan by the sponsor; and

"(B) shall include the requirements with respect to promotional material under subsection (l)(1).

"(3) PENALTIES.—

"(A) IN GENERAL.—If the Secretary determines, after notice and opportunity for an informal hearing, that a sponsor of a drug or biological product has failed to take the corrective action ordered by the Director of the Center under this subsection or has failed to comply with subsection (l)(2), the Secretary may order such sponsor to pay a civil penalty.

"(B) AMOUNT OF PENALTIES.—

"(i) IN GENERAL.—The civil penalty order under subparagraph (A) shall be $250,000 for the first 30-day period that the sponsor does not comply with the order under paragraph (1), and shall double in amount for every 30-day period thereafter that the order is not complied with.

"(ii) LIMITATION.—In no case shall a penalty under clause (i) exceed $2,000,000 for any 30-day period.

"(C) NOTIFICATION OF PENALTY.—The Secretary shall publish in the Federal Register any civil penalty ordered under this paragraph.

"(l) PROMOTION MATERIAL.—

"(1) SAFETY ISSUE.—If the Director of the Center makes a determination that a drug or biological product may present an unreasonable risk to the health of patients or the general public under subsection (g), such Director, in consultation with the Division of Drug Marketing, Advertising, and Communications of the Food and Drug Administration, shall—

"(A) notwithstanding section 502(n), require that the sponsor of such drug or biological product submit to the Director of the Center copies of all promotional material with respect to the drug or biological product not less than 30 days prior to the dissemination of such material; and

"(B) require that all promotional material with respect to the drug or biological product include certain disclosures, which shall be dis-

played prominently and in a manner easily understood by the general public, including—

"(i) a statement that describes the unreasonable risk to the health of patients or the general public as determined by the Director of the Center;

"(ii) a statement that encourages patients to discuss potential risks and benefits with their healthcare provider;

"(iii) a description of the corrective actions required under subsection (k);

"(iv) where appropriate, a statement explaining that there may be products available to treat the same disease or condition that present a more favorable benefit-to-risk profile, and that patients should talk to their healthcare provider about the risks and benefits of alternative treatments;

"(v) a description of any requirements of outstanding clinical and observational studies, including the purpose of each study; and

"(vi) contact information to report a suspected adverse reaction.

''(2) NEW PRODUCTS; OUTSTANDING STUDIES.—For the first 2-year period after a drug is approved under section 505 of this Act or a biological product is licensed under section 351 of the Public Health Service Act, and with respect to drugs and biological products for which there are outstanding study requirements under subsection (d) or (e), the Director of the Center, in consultation with the Division of Drug Marketing, Advertising, and Communications of the Food and Drug Administration, shall—

''(A) notwithstanding section 502(n), require that the sponsor of such drug or biological product submit to the Director of the Center copies of all promotional material with respect to the drug or biological product not less than 30 days prior to the dissemination of such material; and

''(B) require that all promotional material with respect to the drug or biological product include certain disclosures, which shall be displayed prominently and in a manner easily understood by the general public, including—

''(i) a statement explaining that the drug or biological product is newly ap-

proved or licensed or the subject of outstanding clinical or observational studies, as the case may be, and, as a result, not all side effects or drug interactions may be known;

''(ii) the number of people in which the drug or biological product has been studied and the duration of time during which the drug or biological product has been studied;

''(iii) a statement that encourages patients to discuss the potential risks and benefits of treatment with their healthcare provider;

''(iv) a description of any requirements of outstanding clinical and observational studies, including the purpose of each study; and

''(v) contact information to report a suspected adverse reaction.

''(3) EFFECT OF VOLUNTARY SUBMISSION.—Paragraphs (1)(A) and (2)(A) shall not apply to the sponsor of a drug or biological product if such sponsor has voluntarily submitted to the Division of Drug Marketing, Advertising, and Communications

of the Food and Drug Administration all promotional material with respect the drug or biological product prior to the dissemination of such material.

''(m) WITHDRAWAL OR SUSPENSION OF APPROVAL OR LICENSURE.—

''(1) IN GENERAL.—The Director of the Center, may withdraw or suspend approval of a drug or license of a biological product using expedited procedures (as prescribed by the Secretary in regulations promulgated not later than 1 year after the date of enactment of the Food and Drug Administration Safety Act of 2005, which shall include an opportunity for an informal hearing) after consultation with the Director of Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, as appropriate, and any other person as determined appropriate by the Director of the Center, if—

''(A) the Director of the Center makes a determination that the drug or biological product may present an unreasonable risk to the health of patients or the general public, and that risk cannot be satisfactorily alleviated by a corrective action under subsection (k); or

''(B) the sponsor fails to comply with an order or requirement under this section.

''(2) PUBLIC INFORMATION.—The Secretary shall make available to the public, by publication in the Federal Register and posting on an Internet website, the details of the consultation described in paragraph (1), including—

''(A) the reason for the determination to withdraw, suspend, or failure to withdraw or suspend, approval for the drug or licensure for the biological product;

''(B) the factual basis for such determination;

''(C) reference to supporting empirical data;

''(D) an explanation that describes why contrary data is insufficient; and

''(E) the position taken by each individual consulted.

''(n) EFFECT OF SECTION.—The authorities conferred by this section shall be separate from and in addition to the authorities conferred by section 505B.

''(o) ADMINISTRATION OF SECTION.—The provisions of this section shall be carried out by the Secretary, acting through the Director of the Center.''.

(b) MISBRANDING.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amended by inserting after subsection (j) the following:

''(k) If it is a drug or biological product for which the sponsor of an application or holder of an approved application or license has not complied with an order or requirement under section 507.''.

(c) REPORT ON DEVICES.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Commissioner of Food and Drugs, the Director of the Center for Postmarket Drug Evaluation and Research, and the Director of the Center for Devices and Radiological Health, shall submit to Congress a report that—

(1) identifies deficiencies in the current process of postmarket surveillance of devices approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.);

(2) includes recommendations on ways to improve deficiencies of postmarket surveillance of devices; and

(3) identifies the changes in authority needed to make those improvements, recognizing the legitimate differences between devices and other medical prod-

ucts regulated by the Food and Drug Administration.

(d) TRANSFER OF FUNCTIONS.—The functions and duties of the Office of Drug Safety, including the Drug Safety and Risk Management Drugs Advisory Committee, of the Food and Drug Administration on the day before the date of enactment of this Act shall be transferred to the Center for Postmarket Drug Evaluation and Research established under section 507 of the Federal Food, Drug, and Cosmetic Act (as added by this section). The Center for Postmarket Drug Evaluation and Research shall be a separate entity within the Food and Drug Administration and shall not be an administrative office of the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act (and the amendments made by this Act)—

(1) $50,000,000 for fiscal year 2006;

(2) $75,000,000 for fiscal year 2007;

(3) $100,000,000 for fiscal year 2008;

(4) $125,000,000 for fiscal year 2009; and

(5) $150,000,000 for fiscal year 2010.