

[COMMITTEE PRINT]

[SHOWING TEXT OF COMMITTEE PRINT AS APPROVED BY SUBCOMMITTEE ON HEALTH ON JUNE 19, 2007]

110TH CONGRESS  
1ST SESSION

H. R. \_\_\_\_\_

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

IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the Committee on \_\_\_\_\_

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to improve drug safety, 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. POSTMARKET STUDIES AND CLINICAL TRIALS**  
4 **REGARDING HUMAN DRUGS; RISK EVALUA-**  
5 **TION AND MITIGATION STRATEGIES.**

6 (a) IN GENERAL.—Section 505 of the Federal Food,  
7 Drug, and Cosmetic Act (21 U.S.C. 355) is amended by  
8 adding at the end the following subsections:

1           “(o) POSTMARKET STUDIES AND CLINICAL TRIALS;  
2 LABELING.—

3           “(1) IN GENERAL.—A responsible person may  
4 not introduce or deliver for introduction into inter-  
5 state commerce the new drug involved if the person  
6 is in violation of a requirement established under  
7 paragraph (3) or (4) with respect to the drug.

8           “(2) DEFINITIONS.—For purposes of this sub-  
9 section:

10           “(A) RESPONSIBLE PERSON.—The term  
11 ‘responsible person’ means a person who—

12           “(i) has submitted to the Secretary a  
13 covered application that is pending; or

14           “(ii) is the holder of an approved cov-  
15 ered application.

16           “(B) COVERED APPLICATION.—The term  
17 ‘covered application’ means—

18           “(i) an application under subsection  
19 (b) for a drug that is subject to section  
20 503(b); and

21           “(ii) an application under section 351  
22 of the Public Health Service Act.

23           “(C) NEW SAFETY INFORMATION; SERIOUS  
24 RISK.—The terms ‘new safety information’, ‘se-  
25 rious risk’, and ‘signal of a serious risk’ have

1 the meanings given such terms in section  
2 505A(b).

3 “(3) STUDIES AND CLINICAL TRIALS.—

4 “(A) IN GENERAL.—For any or all of the  
5 purposes specified in subparagraph (B), the  
6 Secretary may, subject to subparagraph (C), re-  
7 quire a responsible person for a drug to conduct  
8 a postapproval study of the drug, or a post-  
9 approval clinical trial of the drug, on the basis  
10 of scientific information, including information  
11 regarding chemically-related or pharmacologi-  
12 cally-related drugs.

13 “(B) PURPOSES OF STUDY OR TRIAL.—  
14 The purposes referred to in this subparagraph  
15 with respect to a postapproval study or post-  
16 approval clinical trial are the following:

17 “(i) To assess a known serious risks  
18 related to the use of the drug involved.

19 “(ii) To assess signals of serious risk  
20 related to the use of the drug.

21 “(iii) To identify a serious risk.

22 “(C) ESTABLISHMENT OF REQUIREMENT  
23 AFTER APPROVAL OF COVERED APPLICATION.—

24 The Secretary may require a postapproval study  
25 or postapproval trial for a drug for which an

1 approved covered application is in effect as of  
2 the date on which the Secretary seeks to estab-  
3 lish such requirement only if the Secretary be-  
4 comes aware of new safety information.

5 “(4) LABELING.—

6 “(A) IN GENERAL.—The Secretary may re-  
7 quire the responsible person for a drug to mod-  
8 ify the labeling of the drug if the Secretary de-  
9 termines that new safety information has be-  
10 come available that is associated with the use of  
11 the drug and should be communicated in the la-  
12 beling of the drug.

13 “(B) DISCUSSIONS; ORDER TO MAKE  
14 CHANGE; FAILURE TO COMPLY.—If the Sec-  
15 retary determines that a change in labeling  
16 should be required under subparagraph (A), the  
17 following applies:

18 “(i) The Secretary shall provide the  
19 responsible person a period of 45 days in  
20 which to discuss the change with the Sec-  
21 retary.

22 “(ii) Not later than 60 days after  
23 making such determination, the Secretary  
24 shall issue an order to make the change.

1                   “(iii) The order shall specify the date  
2                   by which the responsible person is required  
3                   to complete implementation of the change,  
4                   not to 60 days.

5                   “(iv) If the change is not made by the  
6                   date so specified, the responsible person  
7                   shall be considered to be in violation of  
8                   this section.

9                   “(C) RULE OF CONSTRUCTION.—This sub-  
10                  section may not be construed as having any  
11                  legal effect on the provisions of section 314.70  
12                  of title 21, Code of Federal Regulations (or suc-  
13                  cessor regulations).

14                  “(p) RISK EVALUATION AND MITIGATION STRAT-  
15                  EGY.—

16                  “(1) IN GENERAL.—A person may not intro-  
17                  duce or deliver for introduction into interstate com-  
18                  merce a new drug if—

19                         “(A)(i) the application for such drug is ap-  
20                         proved under subsection (b) or (j) and is sub-  
21                         ject to section 503(b); or

22                         “(ii) the application for such drug is ap-  
23                         proved under section 351 of the Public Health  
24                         Service Act; and

1           “(B) a risk evaluation and mitigation  
2 strategy is required under section 505A with re-  
3 spect to the drug and—

4           “(i) the person fails to maintain com-  
5 pliance with the requirements of the ap-  
6 proved strategy or with other requirements  
7 under section 505A, including require-  
8 ments regarding assessments of approved  
9 strategies; or

10           “(ii) in the case of a requirement for  
11 such a strategy that is first established  
12 after the applicable application referred to  
13 in subparagraph (A) was approved with re-  
14 spect to the drug, the Secretary, after no-  
15 tice and opportunity for a hearing, pub-  
16 lishes in the Federal Register a statement  
17 that the person is not cooperating with the  
18 Secretary in developing such a strategy for  
19 the drug.

20           “(2) REQUIRED STATEMENT DURING APPROVAL  
21 PROCESS.—In the case of an application referred to  
22 in paragraph (1)(A) or a supplement to such an ap-  
23 plication that requires substantive data, the Sec-  
24 retary may not approve the application or supple-

1           ment unless the person involved has complied with  
2           the following:

3                   “(A) The person has submitted to the Sec-  
4                   retary a statement that provides the following  
5                   information:

6                           “(i) Whether the person believes that  
7                           a risk evaluation and mitigation strategy  
8                           should be required under section 505A.

9                           “(ii) Whether a postmarket study or  
10                          clinical trial should be required under sub-  
11                          section (o)(3).

12                          “(B) In making the statement under sub-  
13                          paragraph (A), the person took into account  
14                          each of the following factors:

15                                  “(i) The estimated size of the popu-  
16                                  lation likely to use the drug involved.

17                                  “(ii) The seriousness of the disease or  
18                                  condition that is to be treated with the  
19                                  drug.

20                                  “(iii) The expected benefit of the drug  
21                                  with respect to such disease or condition.

22                                  “(iv) The expected or actual duration  
23                                  of treatment with the drug.

24                                  “(v) The seriousness of any known or  
25                                  potential adverse events that may be re-

1                   lated to the drug and the background inci-  
2                   dence of such events in the population like-  
3                   ly to use the drug.

4                   “(3) CERTAIN POSTMARKET STUDIES.—The  
5                   failure to conduct a postmarket study under subpart  
6                   H of part 314 of title 21, Code of Federal Regula-  
7                   tions (or any successor regulation), is deemed to be  
8                   a violation of paragraph (1).”.

9                   (b) REQUIREMENTS REGARDING STRATEGIES.—  
10                  Chapter V of the Federal Food, Drug, and Cosmetic Act  
11                  (21 U.S.C. 351 et seq.) is amended—

12                  (1) by redesignating section 505A as 505A–1;  
13                  and

14                  (2) by inserting after section 505 the following  
15                  section:

16                  **“SEC. 505A. RISK EVALUATION AND MITIGATION STRATE-**  
17                  **GIES.**

18                  “(a) SUBMISSION OF PROPOSED STRATEGY.—

19                  “(1) INITIAL APPROVAL.—A person who sub-  
20                  mits an application referred to in section  
21                  505(p)(1)(A) (referred to in this section as a ‘cov-  
22                  ered application’) shall submit to the Secretary with  
23                  the application a proposed risk evaluation and miti-  
24                  gation strategy if the Secretary determines such a  
25                  strategy is necessary to ensure that the benefits of

1 the drug involved outweigh the risks of the drug. In  
2 making such a determination, the Secretary shall  
3 consider the statement submitted by the person  
4 under section 505(p)(2) with respect to the drug.

5 “(2) POSTAPPROVAL REQUIREMENT.—

6 “(A) IN GENERAL.—If the Secretary ap-  
7 proves a covered application and does not when  
8 approving the application require a risk evalua-  
9 tion and mitigation strategy under paragraph  
10 (1), the Secretary may subsequently require  
11 such a strategy for the drug involved if the Sec-  
12 retary becomes aware of new safety information  
13 and makes a determination that such a strategy  
14 is necessary to ensure that the benefits of the  
15 drug outweigh the risks of the drug.

16 “(B) SUBMISSION OF PROPOSED STRAT-  
17 EGY.—Not later than 180 days after the Sec-  
18 retary notifies the holder of an approved cov-  
19 ered application that the Secretary has made a  
20 determination under subparagraph (A) with re-  
21 spect to the drug involved, the holder shall sub-  
22 mit to the Secretary a proposed risk evaluation  
23 and mitigation strategy.

24 “(3) APPROVAL OF NEW INDICATION FOR  
25 USE.—The applicability of paragraph (2) includes

1 applicability to a drug for which an approved cov-  
2 ered application was in effect on the day before the  
3 effective date of this section and for which, on or  
4 after such effective date, the holder of the approved  
5 application submits to the Secretary a supplemental  
6 application seeking approval of a new indication for  
7 use of the drug.

8 “(4) ABBREVIATED NEW DRUG APPLICA-  
9 TIONS.—The applicability of this section to an appli-  
10 cation under section 505(j) is subject to subsection  
11 (i).

12 “(b) DEFINITIONS.—For purposes of this section:

13 “(1) ADVERSE DRUG EXPERIENCE.—The term  
14 ‘adverse drug experience’ means any adverse event  
15 associated with the use of a drug in humans, wheth-  
16 er or not considered drug related, including—

17 “(A) an adverse event occurring in the  
18 course of the use of the drug in professional  
19 practice;

20 “(B) an adverse event occurring from an  
21 overdose of the drug, whether accidental or in-  
22 tentional;

23 “(C) an adverse event occurring from  
24 abuse of the drug;

1           “(D) an adverse event occurring from  
2           withdrawal of the drug; and

3           “(E) any failure of expected pharma-  
4           cological action of the drug.

5           “(2) COVERED APPLICATION.—The term ‘cov-  
6           ered application’ has the meaning indicated for such  
7           term in subsection (a)(1).

8           “(3) NEW SAFETY INFORMATION.—The term  
9           ‘new safety information’ with respect to a drug  
10          means information about—

11           “(A) a serious risk or an unexpected seri-  
12          ous risk associated with use of the drug that  
13          the Secretary has become aware of since the  
14          last assessment of the approved risk evaluation  
15          and mitigation strategy for the drug; or

16           “(B) the effectiveness of the approved risk  
17          evaluation and mitigation strategy for the drug  
18          obtained since the last assessment of such  
19          strategy.

20          “(4) SERIOUS ADVERSE DRUG EXPERIENCE.—  
21          The term ‘serious adverse drug experience’ is an ad-  
22          verse event that—

23           “(A) results in—

24           “(I) death;

1           “(ii) an adverse drug experience that  
2           places the patient at immediate risk of  
3           death from the adverse drug experience as  
4           it occurred (not including an adverse drug  
5           experience that might have caused death  
6           had it occurred in a more severe form);

7           “(iii) inpatient hospitalization or pro-  
8           longation of existing hospitalization;

9           “(iv) a persistent or significant inca-  
10          pacity or substantial disruption of the abil-  
11          ity to conduct normal life functions; or

12          “(v) a congenital anomaly or birth de-  
13          fect; or

14          “(B) based on appropriate medical judg-  
15          ment, may jeopardize the patient and may re-  
16          quire a medical or surgical intervention to pre-  
17          vent an outcome described under subparagraph  
18          (A).

19          “(5) SERIOUS RISK.—The term ‘serious risk’  
20          means a risk of a serious adverse drug experience.

21          “(6) SIGNAL OF A SERIOUS RISK.—The term  
22          ‘signal of a serious risk’ means information related  
23          to a serious adverse drug experience associated with  
24          use of a drug and derived from—

25          “(A) a clinical trial;

1 “(B) adverse event reports;

2 “(C) a postapproval study, including a  
3 study under section 505(o)(3); or

4 “(D) peer-reviewed biomedical literature.

5 “(7) RESPONSIBLE PERSON.—The term ‘re-  
6 sponsible person’ has the meaning indicated for such  
7 term in subsection (e)(2).

8 “(8) UNEXPECTED SERIOUS RISK.—The term  
9 ‘unexpected serious risk’ means a serious adverse  
10 drug experience that is not listed in the labeling of  
11 a drug, or that may be symptomatically and  
12 pathophysiologically related to an adverse drug expe-  
13 rience identified in the labeling, but differs from  
14 such adverse drug experience because of greater se-  
15 verity, specificity, or prevalence.

16 “(c) CONTENTS.—A proposed risk evaluation and  
17 mitigation strategy under subsection (a) shall—

18 “(1) include the timetable required under sub-  
19 section (d); and

20 “(2) to the extent required by the Secretary, in-  
21 clude additional elements described in subsections  
22 (e) and (f).

23 “(d) MINIMAL STRATEGY.—For purposes of sub-  
24 section (c)(1), the risk evaluation and mitigation strategy

1 for a drug shall require a timetable for submission of as-  
2 sessments of the strategy that—

3 “(1) is not less frequent than once annually for  
4 the first 3 years after the strategy is initially ap-  
5 proved;

6 “(2) includes an assessment in the seventh year  
7 after the strategy is so approved; and

8 “(3) subject to paragraph (2), for subsequent  
9 years—

10 “(A) is at a frequency specified in the  
11 strategy;

12 “(B) is increased or reduced in frequency  
13 as necessary as provided for in subsection  
14 (g)(4)(F); and

15 “(C) is eliminated after the 3-year period  
16 described in paragraph (1) if the Secretary de-  
17 termines that serious risks of the drug have  
18 been adequately identified and assessed and are  
19 being adequately managed.

20 “(e) ADDITIONAL POTENTIAL ELEMENTS OF STRAT-  
21 EGY.—

22 “(1) IN GENERAL.—The Secretary may under  
23 subsection (c)(2) require that the risk evaluation  
24 and mitigation strategy for a drug include 1 or more  
25 of the additional elements described in this sub-

1 section if the Secretary makes the determination re-  
2 quired with respect to the element involved.

3 “(2) MEDGUIDE; PATIENT PACKAGE INSERT.—  
4 The risk evaluation and mitigation strategy for a  
5 drug may require that, as applicable, the person sub-  
6 mitting the covered application or the holder of the  
7 approved such application (referred to in this section  
8 as the ‘responsible person’) develop for distribution  
9 to each patient when the drug is dispensed—

10 “(A) a Medication Guide, as provided for  
11 under part 208 of title 21, Code of Federal  
12 Regulations (or any successor regulations); and

13 “(B) a patient package insert, if the Sec-  
14 retary determines that such insert may help  
15 mitigate a serious risk of the drug.

16 “(3) COMMUNICATION PLAN.—The risk evalua-  
17 tion and mitigation strategy for a drug may require  
18 that the responsible person conduct a communica-  
19 tion plan to health care providers, if, with respect to  
20 such drug, the Secretary determines that such plan  
21 may support implementation of an element of the  
22 strategy. Such plan may include—

23 “(A) sending letters to health care pro-  
24 viders;

1           “(B) disseminating information about the  
2           elements of the risk evaluation and mitigation  
3           strategy to encourage implementation by health  
4           care providers of components that apply to such  
5           health care providers, or to explain certain safe-  
6           ty protocols (such as medical monitoring by  
7           periodic laboratory tests); or

8           “(C) disseminating information to health  
9           care providers through professional societies  
10          about any serious risks of the drug and any  
11          protocol to assure safe use.

12          “(f) RESTRICTIONS ON DISTRIBUTION OR USE.—

13                 “(1) IN GENERAL.—If the Secretary determines  
14                 that a drug shown to be effective can be safely used  
15                 only if distribution or use of such drug is restricted,  
16                 the Secretary may under subsection (c)(2) require as  
17                 elements of the risk evaluation and mitigation strat-  
18                 egy such restrictions on distribution or use as are  
19                 needed to ensure safe use of the drug.

20                 “(2) ASSURING ACCESS AND MINIMIZING BUR-  
21                 DEN.—Elements of a risk evaluation and mitigation  
22                 strategy included under paragraph (1) shall—

23                         “(A) be commensurate with a specific seri-  
24                         ous risk listed in the labeling of the drug;

1           “(B) be posted publicly by the Secretary  
2 with an explanation of how such elements will  
3 mitigate the observed safety risk, which posting  
4 shall be made within 30 days after the date on  
5 which the Secretary requires the element in-  
6 volved;

7           “(C) considering the risk referred to in  
8 subparagraph (A) , not be unduly burdensome  
9 on patient access to the drug, considering in  
10 particular—

11           “(i) patients with serious or life-  
12 threatening diseases or conditions; and

13           “(ii) patients who have difficulty ac-  
14 cessing health care (such as patients in  
15 rural or medically underserved areas); and

16           “(D) to the extent practicable, so as to  
17 minimize the burden on the health care delivery  
18 system—

19           “(i) conform with elements to assure  
20 safe use for other drugs with similar, seri-  
21 ous risks; and

22           “(ii) be designed to be compatible  
23 with established distribution, procurement,  
24 and dispensing systems for drugs.

1           “(3) ELEMENTS.—The restrictions on distribu-  
2           tion or use described in paragraph (1) shall include  
3           1 or more goals to evaluate or mitigate a serious  
4           risk listed in the labeling of the drug, and may re-  
5           quire that—

6                   “(A) health care providers that prescribe  
7                   the drug have special training or experience, or  
8                   are specially certified, which training or certifi-  
9                   cation with respect to the drug is available to  
10                  any willing provider from a frontier area;

11                  “(B) pharmacies, practitioners, or health  
12                  care settings that dispense the drug are spe-  
13                  cially certified, which training or certification  
14                  with respect to the drug is available to any will-  
15                  ing provider from a frontier area;

16                  “(C) the drug be dispensed to patients only  
17                  in certain health care settings, such as hos-  
18                  pitals;

19                  “(D) the drug be dispensed to patients  
20                  with evidence or other documentation of safe-  
21                  use conditions, such as laboratory test results;

22                  “(E) each patient using the drug be sub-  
23                  ject to certain monitoring; or

24                  “(F) each patient using the drug be en-  
25                  rolled in a registry.

1           “(4) IMPLEMENTATION SYSTEM.—The restric-  
2           tions on distribution or use described in paragraph  
3           (1) may require a system through which the respon-  
4           sible person is able to—

5                   “(A) monitor and evaluate implementation  
6                   of the restrictions by health care providers,  
7                   pharmacists, patients, and other parties in the  
8                   health care system who are responsible for im-  
9                   plementing the restrictions;

10                   “(B) work to improve implementation of  
11                   the restrictions by health care providers, phar-  
12                   macists, patients, and other parties in the  
13                   health care system who are responsible for im-  
14                   plementing the restrictions; and

15                   “(C) stop distribution of the drug to those  
16                   health care providers, pharmacists, and other  
17                   parties in the health care system—

18                           “(I) who are responsible for imple-  
19                           menting the restrictions; and

20                           “(ii) whom the responsible person  
21                           knows have failed to meet their responsibil-  
22                           ities for implementing the restrictions,  
23                           after the responsible person has informed  
24                           such party of such failure and such party  
25                           has not remedied such failure.

1           “(5) PATENTS.—The Secretary shall not ap-  
2           prove a risk evaluation and mitigation strategy for  
3           a drug, or any modification to the strategy, under  
4           subsection (a) if—

5                   “(A) the strategy includes a restriction on  
6                   distribution or use described in paragraph (1)  
7                   that is protected by a patent;

8                   “(B) such patent was issued after the date  
9                   of the enactment of this section; and

10                   “(C) such patent would prohibit or impair  
11                   the application of such restriction under sub-  
12                   section (j)(1)(G) to a drug that is the subject  
13                   of an abbreviated new drug application.

14           “(g) ASSESSMENT AND MODIFICATION OF APPROVED  
15           STRATEGY.—

16                   “(1) VOLUNTARY ASSESSMENTS.—After the ap-  
17                   proval of a risk evaluation and mitigation strategy  
18                   under subsection (a), the responsible person involved  
19                   may, subject to paragraph (2), submit to the Sec-  
20                   retary an assessment of, and propose a modification  
21                   to, the approved strategy for the drug involved at  
22                   any time.

23                   “(2) REQUIRED ASSESSMENTS.—A responsible  
24                   person shall, subject to paragraph (5), submit an as-  
25                   sessment of, and may propose a modification to, the

1 approved risk evaluation and mitigation strategy for  
2 a drug—

3 “(A) when submitting a supplemental ap-  
4 plication for a new indication for use under sec-  
5 tion 505(b) or under section 351 of the Public  
6 Health Service Act, unless the drug is not sub-  
7 ject to section 503(b) and the risk evaluation  
8 and mitigation strategy for the drug includes  
9 only the timetable under subsection (d);

10 “(B) when required by the strategy, as  
11 provided for in such timetable under subsection  
12 (d);

13 “(C) within a time specified by the Sec-  
14 retary, not to be less than 45 days, when or-  
15 dered by the Secretary, if the Secretary deter-  
16 mines that new safety or effectiveness informa-  
17 tion indicates that an element under subsection  
18 (d) or (e) should be modified or included in the  
19 strategy;

20 “(D) within 90 days when ordered by the  
21 Secretary, if the Secretary determines that new  
22 safety or effectiveness information indicates  
23 that an element under subsection (f) should be  
24 modified or included in the strategy; or

1           “(E) within 15 days when ordered by the  
2           Secretary, if the Secretary determines that  
3           there may be a cause for action by the Sec-  
4           retary under section 505(e).

5           “(3) REQUIREMENTS FOR ASSESSMENTS.—An  
6           assessment under paragraph (1) or (2) of an ap-  
7           proved risk evaluation and mitigation strategy for a  
8           drug shall include—

9           “(A) with respect to any goal under sub-  
10          section (f), an assessment of the extent to  
11          which the restrictions on distribution or use are  
12          meeting the goal or whether the goal or such  
13          restrictions should be modified;

14          “(B) with respect to any postapproval  
15          study required under section 505(o(3)), the sta-  
16          tus of such study, including whether any dif-  
17          ficulties completing the study have been en-  
18          countered; and

19          “(C) with respect to any postapproval clin-  
20          ical trial required under section 505(o), the sta-  
21          tus of such clinical trial, including whether en-  
22          rollment has begun, the number of participants  
23          enrolled, the expected completion date, whether  
24          any difficulties completing the clinical trial have  
25          been encountered, and registration information

1 with respect to requirements under section  
2 402(I) of the Public Health Service Act.

3 “(4) MODIFICATION.—A modification (whether  
4 an enhancement or a reduction) to the approved risk  
5 evaluation and mitigation strategy for a drug may  
6 include the addition or modification of any element  
7 under subsection (d) or the addition, modification,  
8 or removal of any element under subsection (e) or  
9 (f), such as—

10 “(A) modifying the timetable for assess-  
11 ments of the strategy under subsection (d), in-  
12 cluding to eliminate assessments; or

13 “(B) adding, modifying, or removing a re-  
14 striction on distribution or use under subsection  
15 (f);

16 “(5) NO EFFECT ON LABELING CHANGES THAT  
17 DO NOT REQUIRE PREAPPROVAL.—In the case of a  
18 labeling change to which section 314.70 of title 21,  
19 Code of Federal Regulations (or any successor regu-  
20 lation), applies for which the submission of a supple-  
21 mental application is not required or for which dis-  
22 tribution of the drug involved may commence upon  
23 the receipt by the Secretary of a supplemental appli-  
24 cation for the change, the submission of an assess-  
25 ment of the approved risk evaluation and mitigation

1 strategy for the drug under paragraph (2) is not re-  
2 quired.

3 “(h) REVIEW OF PROPOSED STRATEGIES; REVIEW  
4 OF ASSESSMENTS OF APPROVED STRATEGIES.—

5 “(1) IN GENERAL.—The Secretary shall  
6 promptly review each proposed risk evaluation and  
7 mitigation strategy for a drug submitted under sub-  
8 section (a) and each assessment of an approved risk  
9 evaluation and mitigation strategy for a drug sub-  
10 mitted under subsection (g).

11 “(2) DISCUSSION.—The Secretary shall initiate  
12 discussions with a responsible person for purposes of  
13 this subsection to determine a strategy—

14 “(A) if the proposed strategy is submitted  
15 as part of an application or supplemental appli-  
16 cation under subsection (a) or subsection  
17 (g)(2)(A), not less than 60 days before the ac-  
18 tion deadline for the application that has been  
19 agreed to by the Secretary and that has been  
20 set forth in goals identified in letters of the  
21 Secretary (relating to the use of fees collected  
22 under section 736 to expedite the drug develop-  
23 ment process and the process for the review of  
24 human drug applications);

1           “(B) if the assessment is submitted under  
2           subparagraph (B) or (C)) or subsection (g)(2),  
3           not later than 20 days after such submission;

4           “(C) if the assessment is submitted under  
5           subsection (g)(1) or subsection (g)(2)(D) , not  
6           later than 30 days after such submission; or

7           “(D) if the assessment is submitted under  
8           subsection (g)(2)(E), not later than 10 days  
9           after such submission.

10          “(3) ACTION.—

11           “(A) IN GENERAL.—Unless the responsible  
12           person requests the dispute resolution process  
13           described under paragraph (4), the Secretary  
14           shall approve and describe the risk evaluation  
15           and mitigation strategy for a drug, or any  
16           modification to the strategy—

17           “(i) as part of the action letter on the  
18           application, when a proposed strategy is  
19           submitted under subsection (a) or an as-  
20           sessment of the strategy is submitted  
21           under subsection (g)(1)(A); or

22           “(ii) in an order issued not later than  
23           50 days after the date discussions of such  
24           modification begin under paragraph (2),  
25           when an assessment of the strategy is sub-

1                   mitted under subsection (g)(1) or under  
2                   any of subparagraphs (B) through (E) of  
3                   subsection (g)(2).

4                   “(B) INACTION.—An approved risk evalua-  
5                   tion and mitigation strategy shall remain in ef-  
6                   fect until the Secretary acts, if the Secretary  
7                   fails to act as provided under subparagraph  
8                   (A).

9                   “(C) PUBLIC AVAILABILITY.—Any action  
10                  letter described in subparagraph (A)(I) or order  
11                  described in subparagraph (A)(ii) shall be made  
12                  publicly available.

13                 “(4) DISPUTE RESOLUTION.—

14                         “(A) REQUEST FOR REVIEW.—

15                                 “(i) IN GENERAL.—Not earlier than  
16                                 15 days, and not later than 35 days, after  
17                                 discussions under paragraph (2) have  
18                                 begun, the responsible person may request  
19                                 in writing that a dispute about the strat-  
20                                 egy be reviewed by the Drug Safety Over-  
21                                 sight Board under subsection (k), except  
22                                 that the determination of the Secretary to  
23                                 require a risk evaluation and mitigation  
24                                 strategy is not subject to review under this  
25                                 paragraph. The preceding sentence does

1 not prohibit review under this paragraph of  
2 the particular elements of such a strategy.

3 “(ii) SCHEDULING.— Upon receipt of  
4 a request under clause (i), the Secretary  
5 shall schedule the dispute involved for re-  
6 view under subparagraph (B) and, not  
7 later than 5 business days of scheduling  
8 the dispute for review, shall publish by  
9 posting on the Internet or otherwise a no-  
10 tice that the dispute will be reviewed by  
11 the Drug Safety Oversight Board.

12 “(B) SCHEDULING REVIEW.—If a respon-  
13 sible person requests review under subpara-  
14 graph (A), the Secretary—

15 “(I) shall schedule the dispute for re-  
16 view at 1 of the next 2 regular meetings of  
17 the Drug Safety Oversight Board, which-  
18 ever meeting date is more practicable; or

19 “(ii) may convene a special meeting of  
20 the Drug Safety Oversight Board to review  
21 the matter more promptly, including to  
22 meet an action deadline on an application  
23 (including a supplemental application).

24 “(C) AGREEMENT AFTER DISCUSSION OR  
25 ADMINISTRATIVE APPEALS.—

1                   “(I) FURTHER DISCUSSION OR AD-  
2                   MINISTRATIVE APPEALS.—A request for  
3                   review under subparagraph (A) shall not  
4                   preclude further discussions to reach  
5                   agreement on the risk evaluation and miti-  
6                   gation strategy, and such a request shall  
7                   not preclude the use of administrative ap-  
8                   peals within the Food and Drug Adminis-  
9                   tration to reach agreement on the strategy,  
10                  including appeals as described in letters of  
11                  the Secretary (relating to the use of fees  
12                  collected under section 736 to expedite the  
13                  drug development process and the process  
14                  for the review of human drug applications)  
15                  for procedural or scientific matters involv-  
16                  ing the review of human drug applications  
17                  and supplemental applications that cannot  
18                  be resolved at the divisional level.

19                  “(ii) AGREEMENT TERMINATES DIS-  
20                  PUTE RESOLUTION.—At any time before a  
21                  decision and order is issued under sub-  
22                  paragraph (G) , the Secretary and the re-  
23                  sponsible person may reach an agreement  
24                  on the risk evaluation and mitigation strat-  
25                  egy through further discussion or adminis-

1           trative appeals, terminating the dispute  
2           resolution process, and the Secretary shall  
3           issue an action letter or order, as appro-  
4           priate, that describes the strategy.

5           “(D) MEETING OF THE BOARD.—At a  
6           meeting of the Drug Safety Oversight Board  
7           described in subparagraph (B), the Board  
8           shall—

9                     “(I) hear from both parties; and

10                    “(ii) review the dispute.

11           “(E) RECORD OF PROCEEDINGS.—The  
12           Secretary shall ensure that the proceedings of  
13           any such meeting are recorded, transcribed, and  
14           made public within 30 days of the meeting. The  
15           Secretary shall redact the transcript to protect  
16           any trade secrets or other confidential informa-  
17           tion described in section 552(b)(4) of title 5,  
18           United States Code.

19           “(F) RECOMMENDATION OF THE  
20           BOARD.—Not later than 5 days after any such  
21           meeting, the Drug Safety Oversight Board shall  
22           provide a written recommendation on resolving  
23           the dispute to the Secretary. Not later than 5  
24           days after the Board provides such written rec-  
25           ommendation to the Secretary, the Secretary

1 shall make the recommendation available to the  
2 public.

3 “(G) ACTION BY THE SECRETARY.—

4 “(I) ACTION LETTER.—With respect  
5 to a proposal or assessment referred to in  
6 paragraph (1), the Secretary shall issue an  
7 action letter that resolves the dispute not  
8 later than the later of—

9 “(I) the action deadline referred  
10 to in paragraph (2)(A); or

11 “(II) 7 days after receiving the  
12 recommendation of the Drug Safety  
13 Oversight Board.

14 “(ii) ORDER.—With respect to an as-  
15 sessment of an approved risk evaluation  
16 and mitigation strategy under subsection  
17 (g)(1) or under any of subparagraphs (B)  
18 through (E) of subsection (g)(2), the Sec-  
19 retary shall issue an order, which shall be  
20 made public, that resolves the dispute not  
21 later than 7 days after receiving the rec-  
22 ommendation of the Drug Safety Oversight  
23 Board.

24 “(H) INACTION.—An approved risk evalua-  
25 tion and mitigation strategy shall remain in ef-

1           fect until the Secretary acts, if the Secretary  
2           fails to act as provided for under subparagraph  
3           (G).

4           “(I) EFFECT ON ACTION DEADLINE.—  
5           With respect to a proposal or assessment re-  
6           ferred to in paragraph (1), the Secretary shall  
7           be considered to have met the action deadline  
8           referred to in paragraph (2)(A) with respect to  
9           the application involved if the responsible per-  
10          son requests the dispute resolution process de-  
11          scribed in this paragraph and if the Secretary—

12                   “(I) has initiated the discussions de-  
13                   scribed under paragraph (2) not less than  
14                   60 days before such action deadline; and

15                           “(ii) has complied with the timing re-  
16                           quirements of scheduling review by the  
17                           Drug Safety Oversight Board, providing a  
18                           written recommendation, and issuing an  
19                           action letter under subparagraphs (B),  
20                           (F), and (G), respectively.

21          “(J) DISQUALIFICATION.—No individual  
22          who is an employee of the Food and Drug Ad-  
23          ministration and who reviews a drug or who  
24          participated in an administrative appeal under  
25          subparagraph (C)(I) with respect to such drug

1           may serve on the Drug Safety Oversight Board  
2           at a meeting under subparagraph (D) to review  
3           a dispute about the risk evaluation and mitiga-  
4           tion strategy for such drug.

5           “(K) ADDITIONAL EXPERTISE.—The Drug  
6           Safety Oversight Board may add members with  
7           relevant expertise from the Food and Drug Ad-  
8           ministration, including the Office of Pediatrics,  
9           the Office of Women’s Health, or the Office of  
10          Rare Diseases, or from other Federal public  
11          health or health care agencies, for a meeting  
12          under subparagraph (D) of the Drug Safety  
13          Oversight Board.

14          “(5) USE OF ADVISORY COMMITTEES.—The  
15          Secretary may convene a meeting of 1 or more advi-  
16          sory committees of the Food and Drug Administra-  
17          tion to—

18                 “(A) review a concern about the safety of  
19                 a drug or class of drugs, including before an as-  
20                 sessment of the risk evaluation and mitigation  
21                 strategy or strategies of such drug or drugs is  
22                 required to be submitted under any of subpara-  
23                 graphs (B) through (E) of subsection (g)(2);

1           “(B) review the risk evaluation and mitiga-  
2           tion strategy or strategies of a drug or group  
3           of drugs; or

4           “(C) review a dispute under paragraph (4).

5           “(6) PROCESS FOR ADDRESSING DRUG CLASS  
6           EFFECTS.—

7           “(A) IN GENERAL.—When a concern about  
8           a serious risk of a drug may be related to the  
9           pharmacological class of the drug, the Secretary  
10          may defer assessments of the approved risk  
11          evaluation and mitigation strategies for such  
12          drugs until the Secretary has convened 1 or  
13          more public meetings to consider possible re-  
14          sponses to such concern. If the Secretary defers  
15          an assessment under this subparagraph, the  
16          Secretary shall give notice to the public of the  
17          deferral not later than 5 days of the deferral.

18          “(B) PUBLIC MEETINGS.—Such public  
19          meetings may include—

20                 “(I) 1 or more meetings of the re-  
21                 viewed entities for such drugs;

22                 “(ii) 1 or more meetings of 1 or more  
23                 advisory committees of the Food and Drug  
24                 Administration, as provided for under  
25                 paragraph (5); or

1                   “(iii) 1 or more workshops of sci-  
2                   entific experts and other stakeholders.

3                   “(C) ACTION.—After considering the dis-  
4                   cussions from any meetings under subpara-  
5                   graph (B), the Secretary may—

6                   “(I) announce in the Federal Register  
7                   a planned regulatory action, including a  
8                   modification to each risk evaluation and  
9                   mitigation strategy, for drugs in the phar-  
10                  macological class;

11                  “(ii) seek public comment about such  
12                  action; and

13                  “(iii) after seeking such comment,  
14                  issue an order addressing such regulatory  
15                  action.

16                  “(7) INTERNATIONAL COORDINATION.—The  
17                  Secretary may coordinate the timetable for submis-  
18                  sion of assessments under subsection (d), or a study  
19                  or clinical trial under section 505(o)(3), with efforts  
20                  to identify and assess the serious risks of such drug  
21                  by the marketing authorities of other countries  
22                  whose drug approval and risk management processes  
23                  the Secretary deems comparable to the drug ap-  
24                  proval and risk management processes of the United  
25                  States. If the Secretary takes action to coordinate

1 such timetable, the Secretary shall give notice to the  
2 public of the action not later than 5 days after the  
3 action.

4 “(8) EFFECT.—Use of the processes described  
5 in paragraphs (6) and (7) shall not delay action on  
6 an application or a supplement to an application for  
7 a drug.

8 “(i) ABBREVIATED NEW DRUG APPLICATIONS.—

9 “(1) IN GENERAL.—A drug that is the subject of an  
10 abbreviated new drug application under section 505(j) is  
11 subject to only the following elements of the risk evalua-  
12 tion and mitigation strategy required under subsection (a)  
13 for the applicable listed drug:

14 “(A) A Medication Guide or patient package insert,  
15 if required under subsection (e) for the applicable listed  
16 drug.

17 “(B) Restrictions on distribution or use, if required  
18 under subsection (f) for the listed drug. A drug that is  
19 the subject of an abbreviated new drug application and  
20 the listed drug shall use a single, shared system under  
21 subsection (f)(4). The Secretary may waive the require-  
22 ment under the preceding sentence for a drug that is the  
23 subject of an abbreviated new drug application if the Sec-  
24 retary determines that—

1           “(i) it is not practical for the drug to use such  
2           single, shared system; or

3           “(ii) the burden of using the single, shared sys-  
4           tem outweighs the benefit of using the single system.

5           “(2) ACTION BY SECRETARY.—For an applicable list-  
6           ed drug for which a drug is approved under section 505(j),  
7           the Secretary—

8           “(A) shall undertake any communication plan to  
9           health care providers required under subsection (e)(3) for  
10          the applicable listed drug; and

11          “(B) shall inform the responsible person for the drug  
12          that is so approved if the risk evaluation and mitigation  
13          strategy for the applicable listed drug is modified.

14          “(j) DRUG SAFETY OVERSIGHT BOARD.—

15                 “(1) IN GENERAL.—There is established a  
16                 Drug Safety Oversight Board.

17                 “(2) COMPOSITION; MEETINGS.—The Drug  
18                 Safety Oversight Board shall—

19                         “(A) be composed of scientists and health  
20                         care practitioners appointed by the Secretary,  
21                         each of whom is an employee of the Federal  
22                         Government;

23                         “(B) include representatives from offices  
24                         throughout the Food and Drug Administration;

1           “(C) include at least 1 representative from  
2           each of the National Institutes of Health and  
3           the Department of Health and Human Services  
4           (other than the Food and Drug Administra-  
5           tion);

6           “(D) representatives from other appro-  
7           priate agencies that wish to provide representa-  
8           tives; and

9           “(E) meet at least monthly to provide  
10          oversight and advice to the Secretary on the  
11          management of important drug safety issues.”.

12          (c) REGULATION OF BIOLOGICAL PRODUCTS.—Sec-  
13          tion 351 of the Public Health Service Act (42 U.S.C. 262)  
14          is amended—

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

17                 “(D) RISK EVALUATION AND MITIGATION STRAT-  
18                 EGY.—A person that submits an application for a license  
19                 under this paragraph is subject to section 505(p) of the  
20                 Federal Food, Drug, and Cosmetic Act.”; and

21                 (2) in subsection (j), by inserting “, including  
22                 the requirements under section 505(p) of such Act,”  
23                 after “, and Cosmetic Act”.

24          (d) PREREVIEW OF ADVERTISEMENTS.—

1           (1) SENSE OF CONGRESS.—It is the sense of  
2 the Congress that—

3           (A) “Guidance for Industry Consumer-Di-  
4 rected Broadcast Advertisements” issued by the  
5 FDA in August, 1999, represents generally  
6 good guidance for direct-to-consumer (DTC)  
7 advertising of prescription medicines and other  
8 treatments;

9           (B) direct-to-consumer advertising as an  
10 accurate source of health information for all  
11 populations, specifically including the elderly  
12 populations, children, chronically ill and racial  
13 and ethnic minority populations, should be  
14 made more reliable by ensuring the truth and  
15 credibility of information provided through such  
16 advertising; and

17           (C) the Congress will work with the Food  
18 and Drug Administration to ensure that infor-  
19 mation provided through direct-to-consumer ad-  
20 vertising of prescription medicines and other  
21 treatments is not false or misleading and com-  
22 municates clearly and sensitively to all commu-  
23 nities.

1           (2) PREREVIEW.—The Federal Food, Drug,  
2           and Cosmetic Act (21 U.S.C. 301 et seq.) is amend-  
3           ing—

4                   (A) in section 301 (21 U.S.C. 331), by  
5           adding at the end the following:

6           “(\_\_\_\_) The dissemination of a television advertise-  
7           ment without complying with section 503B.”; and

8                   (B) by inserting after section 503A the fol-  
9           lowing:

10   **“SEC. 503B. PREREVIEW OF TELEVISION ADVERTISEMENTS.**

11           “(a) IN GENERAL.—The Secretary may require the  
12           submission of any television advertisement for a drug (in-  
13           cluding any script, story board, rough, or a completed  
14           video production of the television advertisement) to the  
15           Secretary for review under this section not later than 45  
16           days before dissemination of the television advertisement.

17           “(b) REVIEW.—In conducting a review of a television  
18           advertisement under this section, the Secretary may make  
19           recommendations—

20                   “(1) on changes that are—

21                           “(A) necessary to protect the consumer  
22                           good and well-being; or

23                           “(B) consistent with prescribing informa-  
24                           tion for the product under review; and

1           “(2) if appropriate and if information exists, on  
2           statements for inclusion in the advertisement to ad-  
3           dress the specific efficacy of the drug as it relates  
4           to a specific population group, including elderly pop-  
5           ulations, children, and racially and ethnically diverse  
6           populations.

7           “(c) NO AUTHORITY TO REQUIRE CHANGES.—This  
8           section does not authorize the Secretary to make or direct  
9           changes in any material submitted pursuant to subsection  
10          (a).

11          “(d) ELDERLY POPULATIONS, CHILDREN, RACIALLY  
12          AND ETHNICALLY DIVERSE COMMUNITIES.—In formu-  
13          lating recommendations under subsection (b), the Sec-  
14          retary shall take into consideration the impact of the ad-  
15          vertised drug on elderly populations, children, and racially  
16          and ethnically diverse communities.

17          “(e) SPECIFIC DISCLOSURES.—

18                 “(1) SERIOUS RISK; SAFETY PROTOCOL.—In  
19                 conducting a review of a television advertisement  
20                 under this section, if the Secretary determines that  
21                 the advertisement would be false or misleading with-  
22                 out a specific disclosure about a serious risk listed  
23                 in the labeling of the drug involved, the Secretary  
24                 may require inclusion of such disclosure in the ad-  
25                 vertisement.

1           “(2) DATE OF APPROVAL.—In conducting a re-  
2 view of a television advertisement under this section,  
3 the Secretary may require the advertisement to in-  
4 clude, for a period not to exceed 2 years from the  
5 date of the approval of the drug under section 505,  
6 a specific disclosure of such date of approval if the  
7 Secretary determines that the advertisement would  
8 otherwise be false or misleading.”.

9           (3) DIRECT-TO-CONSUMER ADVERTISEMENTS.—

10           (A) IN GENERAL.—Section 502(n) of the  
11 Federal Food, Drug, and Cosmetic Act (21  
12 U.S.C. 352(n)) is amended by adding at the  
13 end the following: “In the case of an advertise-  
14 ment for a drug subject to section 503(b)(1)  
15 presented directly to consumers in television or  
16 radio format and stating the name of the drug  
17 and its conditions of use, the major statement  
18 relating to side effects and contraindications  
19 shall be presented in a clear and conspicuous  
20 manner.”.

21           (B) REGULATIONS TO DETERMINE CLEAR  
22 AND CONSPICUOUS MANNER.—The Secretary of  
23 Health and Human Services shall by regulation  
24 establish standards for determining whether a  
25 major statement relating to side effects and

1           contraindications of a drug, described in section  
2           502(n) of the Federal Food, Drug, and Cos-  
3           metic Act (21 U.S.C. 352(n)) (as amended by  
4           subparagraph (A)) is presented in the manner  
5           required under such section.

6           (4) CIVIL PENALTIES.—Section 303 of the Fed-  
7           eral Food, Drug, and Cosmetic Act (21 U.S.C. 333)  
8           is amended by adding at the end the following:

9           “(\_\_\_\_)(1) Any person who disseminates a direct-to-  
10          consumer advertisement for a prescription drug that is  
11          false or misleading shall be liable to the United States for  
12          a civil penalty in an amount not to exceed \$250,000 for  
13          the first such violation in any 3-year period, and not to  
14          exceed \$500,000 for each subsequent violation in any 3-  
15          year period. For the purposes of this paragraph, repeated  
16          dissemination of the same or similar advertisement prior  
17          to the receipt of the written notice referred to in para-  
18          graph (2) for such advertisements shall be considered as  
19          one violation. No other civil monetary penalties in this  
20          Act (including the civil penalty in section 303(f)(3)) shall  
21          apply to a violation regarding direct-to-consumer adver-  
22          tising.

23          “(2) A civil penalty under paragraph (1) shall be as-  
24          sessed by the Secretary by an order made on the record  
25          after providing written notice to the person to be assessed

1 a civil penalty and an opportunity for a hearing in accord-  
2 ance with this paragraph and section 554 of title 5, United  
3 States Code. If upon receipt of the written notice, the per-  
4 son to be assessed a civil penalty objects and requests a  
5 hearing, then in the course of any investigation related  
6 to such hearing, the Secretary may issue subpoenas re-  
7 quiring the attendance and testimony of witnesses and the  
8 production of evidence that relates to the matter under  
9 investigation, including information pertaining to the fac-  
10 tors described in paragraph (3).

11 “(3) Upon the request of the person to be assessed  
12 a civil penalty under paragraph (1), the Secretary, in de-  
13 termining the amount of the civil penalty, shall take into  
14 account the nature, circumstances, extent, and gravity of  
15 the violation or violations, including the following factors:

16 “(A) Whether the person submitted the adver-  
17 tisement or a similar advertisement for review under  
18 section 736A.

19 “(B) Whether the person submitted the adver-  
20 tisement for review if required under section 503B.

21 “(C) Whether, after submission of the adver-  
22 tisement as described in subparagraph (A) or (B),  
23 the person disseminated the advertisement before  
24 the end of the 45-day comment period.

1           “(D) Whether the person incorporated any com-  
2           ments made by the Secretary with regard to the ad-  
3           vertisement into the advertisement prior to its dis-  
4           semination.

5           “(E) Whether the person ceased distribution of  
6           the advertisement upon receipt of the written notice  
7           referred to in paragraph (2) for such advertisement.

8           “(F) Whether the person had the advertisement  
9           reviewed by qualified medical, regulatory, and legal  
10          reviewers prior to its dissemination.

11          “(G) Whether the violations were material.

12          “(H) Whether the person who created the ad-  
13          vertisement acted in good faith.

14          “(I) Whether the person who created the adver-  
15          tisement has been assessed a civil penalty under this  
16          provision within the previous 1-year period.

17          “(J) The scope and extent of any voluntary,  
18          subsequent remedial action by the person.

19          “(K) Such other matters, as justice may re-  
20          quire.

21          “(4)(A) Subject to subparagraph (B), no person shall  
22          be required to pay a civil penalty under paragraph (1) if  
23          the person submitted the advertisement to the Secretary  
24          and disseminated such advertisement after incorporating

1 any comment received from the Secretary other than a  
2 recommendation subject to subsection 503B(c).

3 “(B) The Secretary may retract or modify any prior  
4 comments the Secretary has provided to an advertisement  
5 submitted to the Secretary based on new information or  
6 changed circumstances, so long as the Secretary provides  
7 written notice to the person of the new views of the Sec-  
8 retary on the advertisement and provides a reasonable  
9 time for modification or correction of the advertisement  
10 prior to seeking any civil penalty under paragraph (1).

11 “(5) The Secretary may compromise, modify, remit,  
12 with or without conditions, any civil penalty which may  
13 be assessed under paragraph (1). The amount of such pen-  
14 alty, when finally determined, or the amount charged upon  
15 in compromise, may be deducted from any sums owed by  
16 the United States to the person charged.

17 “(6) Any person who requested, in accordance with  
18 paragraph (2), a hearing with respect to the assessment  
19 of a civil penalty and who is aggrieved by an order assess-  
20 ing a civil penalty, may file a petition for de novo judicial  
21 review of such order with the United States Court of Ap-  
22 peals for the District of Columbia Circuit or for any other  
23 circuit in which such person resides or transacts business.  
24 Such a petition may only be filed within the 60-day period

1 beginning on the date the order making such assessments  
2 was issued.

3       “(7) On an annual basis, the Secretary shall report  
4 to the Congress on direct-to-consumer advertising and its  
5 ability to communicate to subsets of the general popu-  
6 lation, including elderly populations, children, and racial  
7 and ethnic minority communities. The Secretary shall es-  
8 tablish a permanent advisory committee to advise the Sec-  
9 retary with respect to such report. The membership of the  
10 advisory committee shall consist of nationally recognized  
11 medical, advertising, and communications experts, includ-  
12 ing experts representing subsets of the general population.  
13 The members of the advisory committee shall serve with-  
14 out pay, but may receive travel expenses, including per  
15 diem in lieu of subsistence in accordance with applicable  
16 provisions under subchapter I of chapter 57 of title 5,  
17 United States Code. The advisory committee shall study  
18 direct-to-consumer advertising as it relates to increased  
19 access to health information and decreased health dispari-  
20 ties for these populations. The annual report required by  
21 this paragraph shall recommend effective ways to present  
22 and disseminate information to these populations. Such  
23 report shall also make recommendations regarding impedi-  
24 ments to the participation of elderly populations, children,  
25 racially and ethnically diverse communities, and medically

1 underserved populations in clinical drug trials and shall  
2 recommend best practice approaches for increasing the in-  
3 clusion of such subsets of the general population. The Sec-  
4 retary shall submit the first annual report under this para-  
5 graph to the Committee on Health, Education, Labor, and  
6 Pensions of the Senate and the Committee on Energy and  
7 Commerce of the House of Representatives not later than  
8 18 months after the advisory committee has been con-  
9 vened by the Secretary.

10 “(8) If any person fails to pay an assessment of a  
11 civil penalty under paragraph (1)—

12 “(A) after the order making the assessment be-  
13 comes final, and if such person does not file a peti-  
14 tion for judicial review of the order in accordance  
15 with paragraph (6), or

16 “(B) after a court in an action brought under  
17 paragraph (6) has entered a final judgment in favor  
18 of the Secretary,

19 the Attorney General of the United States shall recover  
20 the amount assessed (plus interest at currently prevailing  
21 rates from the date of the expiration of the 60-day period  
22 referred to in paragraph (6) or the date of such final judg-  
23 ment, as the case may be) in an action brought in any  
24 appropriate district court of the United States. In such

1 an action, the validity, amount, and appropriateness of  
2 such penalty shall not be subject to review.”.

3 (e) **RULE OF CONSTRUCTION REGARDING PEDIATRIC**  
4 **STUDIES.**—This Act and the amendments made by this  
5 Act may not be construed as affecting the authority of  
6 the Secretary of Health and Human Services to request  
7 pediatric studies under section 505A–1 of the Federal  
8 Food, Drug, and Cosmetic Act or to require such studies  
9 under section 505B of such Act.

10 **SEC. 2. ENFORCEMENT.**

11 (a) **MISBRANDING.**—Section 502 of the Federal  
12 Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amend-  
13 ed by adding at the end the following:

14 “(y) If it is a drug subject to an approved risk evalua-  
15 tion and mitigation strategy pursuant to section 505(p)  
16 and the person responsible for complying with the strategy  
17 fails—

18 “(1) to make a labeling change required by  
19 such strategy after the Secretary has completed re-  
20 view of, and acted on, an assessment of such strat-  
21 egy under section 505A(g); or

22 “(2) to comply with a requirement of such  
23 strategy provided for under subsection (d), (e), or (f)  
24 of section 505A.”.

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

4 (1) by redesignating subsection (g) (relating to  
5 civil penalties) as subsection (f); and

6 (2) in subsection (f) (as so redesignated)—

7 (A) by redesignating paragraphs (3), (4),  
8 and (5) as paragraphs (4), (5), and (6), respec-  
9 tively;

10 (B) by inserting after paragraph (2) the  
11 following:”.

12 “(3)(A) Any person who violates a requirement of  
13 this Act which relates to drugs shall be liable to the United  
14 States for a civil penalty in an amount not to exceed  
15 \$20,000,000 for each such violation and, for all such viola-  
16 tions adjudicated in a single proceeding, in an amount not  
17 to exceed \$100,000,000.

18 “(B) If a violation referred to in subparagraph (A)  
19 is continuing in nature and poses a substantial threat to  
20 the public health, the Secretary may impose a civil penalty  
21 not to exceed \$1,000,000 per day during such time period  
22 such person is in violation.”.

23 (C) in paragraph (2)(C)), by striking  
24 “paragraph (3)(A)” and inserting “paragraph  
25 (4)(A)”;

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

5 (E) in paragraph (6), as so redesignated,  
6 by striking “paragraph (4)” each place it ap-  
7 pears and inserting “paragraph (5)”.

8 **SEC. 3. NO EFFECT ON WITHDRAWAL OR SUSPENSION OF**  
9 **APPROVAL.**

10 Section 505(e) of the Federal Food, Drug, and Cos-  
11 metic Act (21 U.S.C. 355(e)) is amended by adding at  
12 the end the following: “The Secretary may withdraw the  
13 approval of an application submitted under this section,  
14 or suspend the approval of such an application, as pro-  
15 vided under this subsection, without first ordering the ap-  
16 plicant to submit an assessment of the approved risk eval-  
17 uation and mitigation strategy for the drug under section  
18 505A(g)(2)(E).”.

19 **SEC. 4. BENEFIT-RISK ASSESSMENTS.**

20 Not later than 1 year after the date of the enactment  
21 of this Act, the Commissioner of Food and Drugs shall  
22 submit to the Congress a report on how best to commu-  
23 nicate to the public the risks and benefits of new drugs  
24 and the role of the risk evaluation and mitigation strategy  
25 in assessing such risks and benefits.

1 **SEC. 5. ROUTINE ACTIVE SURVEILLANCE AND ASSESS-**  
2 **MENT.**

3 (a) IN GENERAL.—Subsection (k) of section 505 of  
4 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
5 355) is amended by adding at the end the following:

6 “(3) ROUTINE ACTIVE SURVEILLANCE AND AS-  
7 SESSMENT.—

8 “(A) DEVELOPMENT OF THE POSTMARKET  
9 RISK IDENTIFICATION AND ANALYSIS SYS-  
10 TEM.—The Secretary shall, not later than 2  
11 years after the date of enactment of the En-  
12 hancing Drug Safety and Innovation Act of  
13 2007, act in collaboration with academic insti-  
14 tutions and private entities to—

15 “(I) establish minimum standards for  
16 collection and transmission of post-  
17 marketing data elements from electronic  
18 health data systems; and

19 “(ii) establish, through partnerships,  
20 a validated and integrated postmarket risk  
21 identification and analysis system to inte-  
22 grate and analyze safety data from mul-  
23 tiple sources, with the goals of including,  
24 in aggregate—

25 “(I) at least 25,000,000 patients  
26 by July 1, 2010; and

1                   “(II) at least 100,000,000 pa-  
2                   tients by July 1, 2012.

3                   “(B) DATA COLLECTION ACTIVITIES.—

4                   “(I) IN GENERAL.—The Secretary  
5                   shall, not later than 1 year after the estab-  
6                   lishment of the minimum standards and  
7                   the identification and analysis system  
8                   under subparagraph (A), establish and  
9                   maintain an active surveillance infrastruc-  
10                  ture—

11                  “(I) to collect and report data for  
12                  pharmaceutical postmarket risk iden-  
13                  tification and analysis, in compliance  
14                  with the regulations promulgated  
15                  under section 264(c) of the Health  
16                  Insurance Portability and Account-  
17                  ability Act of 1996; and

18                  “(II) that includes, in addition to  
19                  the collection and monitoring (in a  
20                  standardized form) of data on all seri-  
21                  ous adverse drug experiences (as de-  
22                  fined in section 505A(b)) required to  
23                  be submitted to the Secretary under  
24                  paragraph (1), and those events vol-  
25                  untarily submitted from patients, pro-

1                   viders, and drug, when appropriate,  
2                   procedures to—

3                   “(aa) provide for adverse  
4                   event surveillance by collecting  
5                   and monitoring Federal health-  
6                   related electronic data (such as  
7                   data from the Medicare program  
8                   and the health systems of the  
9                   Department of Veterans Affairs);

10                  “(bb) provide for adverse  
11                  event surveillance by collecting  
12                  and monitoring private sector  
13                  health-related electronic data  
14                  (such as pharmaceutical purchase  
15                  data and health insurance claims  
16                  data);

17                  “(cc) provide for adverse  
18                  event surveillance by monitoring  
19                  standardized electronic health  
20                  records, as available;

21                  “(dd) provide for adverse  
22                  event surveillance by collecting  
23                  and monitoring other information  
24                  as the Secretary deems necessary  
25                  to create a robust system to iden-

1                   tify adverse events and potential  
2                   drug safety signals;

3                   “(ee) enable the program to  
4                   identify certain trends and pat-  
5                   terns with respect to data re-  
6                   ported to the program;

7                   “(ff) enable the program to  
8                   provide regular reports to the  
9                   Secretary concerning adverse  
10                  event trends, adverse event pat-  
11                  terns, incidence and prevalence of  
12                  adverse events, laboratory data,  
13                  and other information determined  
14                  appropriate, which may include  
15                  data on comparative national ad-  
16                  verse event trends; and

17                  “(gg) enable the program to  
18                  export data in a form appropriate  
19                  for further aggregation, statis-  
20                  tical analysis, and reporting.

21                  “(ii) TIMELINESS OF REPORTING.—  
22                  The procedures developed under clause (I)  
23                  shall ensure that such data are collected,  
24                  monitored, and reported in a timely, rou-  
25                  tine, and automatic manner, taking into

1 consideration the need for data complete-  
2 ness, coding, cleansing, and transmission.

3 “(iii) PRIVATE SECTOR RESOURCES.—

4 To ensure the establishment of the active  
5 surveillance infrastructure by the date de-  
6 scribed under clause (I), the Secretary  
7 may, on a temporary or permanent basis,  
8 implement systems or products developed  
9 by private entities.

10 “(iv) COMPLEMENTARY AP-

11 PROACHES.—To the extent the active sur-  
12 veillance infrastructure established under  
13 clause (I) is not sufficient to gather data  
14 and information relevant to priority drug  
15 safety questions, the Secretary shall de-  
16 velop, support, and participate in com-  
17 plementary approaches to gather and ana-  
18 lyze such data and information, includ-  
19 ing—

20 “(I) approaches that are com-  
21 plementary with respect to assessing  
22 the safety of use of a drug in domestic  
23 populations not included in the trials  
24 used to approve the drug (such as  
25 older people, people with

1 comorbidities, pregnant women, or  
2 children); and

3 “(II) existing approaches such as  
4 the Vaccine Adverse Event Reporting  
5 System and the Vaccine Safety  
6 Datalink or successor databases.

7 “(v) AUTHORITY FOR CONTRACTS.—  
8 The Secretary may enter into contracts  
9 with public and private entities to fulfill  
10 the requirements of this subparagraph.

11 “(C) RISK IDENTIFICATION AND ANAL-  
12 YSIS.—

13 “(I) PURPOSE.—To carry out this  
14 paragraph, the Secretary shall establish  
15 collaborations with other Government, aca-  
16 demic, and private entities, including the  
17 Centers for Education and Research on  
18 Therapeutics under section 912 of the  
19 Public Health Service Act, to provide for  
20 the risk identification and analysis of the  
21 data collected under subparagraph (B) and  
22 data that is publicly available or is pro-  
23 vided by the Secretary, in order to—

1                   “(I) improve the quality and effi-  
2                   ciency of postmarket drug safety risk-  
3                   benefit analysis;

4                   “(II) provide the Secretary with  
5                   routine access to expertise to study  
6                   advanced drug safety data; and

7                   “(III) enhance the ability of the  
8                   Secretary to make timely assessments  
9                   based on drug safety data.

10                  “(ii) PUBLIC PROCESS FOR PRIORITY  
11                  QUESTIONS.—At least biannually, the Sec-  
12                  retary shall seek recommendations from  
13                  the Drug Safety and Risk Management  
14                  Advisory Committee (or successor com-  
15                  mittee) and from other advisory commit-  
16                  tees, as appropriate, to the Food and Drug  
17                  Administration on—

18                         “(I) priority drug safety ques-  
19                         tions; and

20                         “(II) mechanisms for answering  
21                         such questions, including through—

22                                 “(aa) routine active surveil-  
23                                 lance under subparagraph (B);  
24                                 and

1                   “(bb) when such surveillance  
2                   is not sufficient, postmarket  
3                   studies under paragraph (4) of  
4                   section 505A(e) and postapproval  
5                   clinical trials under paragraph  
6                   (5) of such section.

7                   “(iii) PROCEDURES FOR THE DEVEL-  
8                   OPMENT OF DRUG SAFETY COLLABORA-  
9                   TIONS.—

10                   “(I) IN GENERAL.—Not later  
11                   than 180 days after the date of the  
12                   establishment of the active surveil-  
13                   lance infrastructure under subpara-  
14                   graph (B), the Secretary shall estab-  
15                   lish and implement procedures under  
16                   which the Secretary may routinely col-  
17                   laborate with a qualified entity to—

18                   “(aa) clean, classify, or ag-  
19                   gregate data collected under sub-  
20                   paragraph (B) and data that is  
21                   publicly available or is provided  
22                   by the Secretary;

23                   “(bb) allow for prompt in-  
24                   vestigation of priority drug safety  
25                   questions, including—

1 “(AA) unresolved safety  
2 questions for drugs or class-  
3 es of drugs; and

4 “(BB) for a newly-ap-  
5 proved drug: safety signals  
6 from clinical trials used to  
7 approve the drug and other  
8 preapproval trials; rare, seri-  
9 ous drug side effects; and  
10 the safety of use in domestic  
11 populations not included in  
12 the trials used to approve  
13 the drug (such as older peo-  
14 ple, people with  
15 comorbidities, pregnant  
16 women, or children);

17 “(cc) perform advanced re-  
18 search and analysis on identified  
19 drug safety risks;

20 “(dd) convene an expert ad-  
21 visory committee to oversee the  
22 establishment of standards for  
23 the ethical and scientific uses for,  
24 and communication of, post-  
25 marketing data collected under

1 subparagraph (B), including ad-  
2 vising on the development of ef-  
3 fective research methods for the  
4 study of drug safety questions;

5 “(ee) focus postmarket stud-  
6 ies under paragraph (4) of sec-  
7 tion 505A(e) and postapproval  
8 clinical trials under paragraph  
9 (5) of such section more effec-  
10 tively on cases for which reports  
11 under paragraph (1) and other  
12 safety signal detection is not suf-  
13 ficient to resolve whether there is  
14 an elevated risk of a serious ad-  
15 verse event associated with the  
16 use of a drug; and

17 “(ff) carry out other activi-  
18 ties as the Secretary deems nec-  
19 essary to carry out the purposes  
20 of this paragraph.

21 “(II) REQUEST FOR SPECIFIC  
22 METHODOLOGY.—The procedures de-  
23 scribed in subclause (I) shall permit  
24 the Secretary to request that a spe-  
25 cific methodology be used by the

1 qualified entity. The qualified entity  
2 shall work with the Secretary to final-  
3 ize the methodology to be used.

4 “(iv) USE OF ANALYSES.—The Sec-  
5 retary shall provide the analyses described  
6 under this subparagraph, including the  
7 methods and results of such analyses,  
8 about a drug to the sponsor or sponsors of  
9 such drug.

10 “(v) QUALIFIED ENTITIES.—

11 “(I) IN GENERAL.—The Sec-  
12 retary shall enter into contracts with  
13 a sufficient number of qualified enti-  
14 ties to develop and provide informa-  
15 tion to the Secretary in a timely man-  
16 ner.

17 “(II) QUALIFICATION.—The Sec-  
18 retary shall enter into a contract with  
19 an entity under subclause (I) only if  
20 the Secretary determines that the en-  
21 tity—

22 “(aa) has the research capa-  
23 bility and expertise to conduct  
24 and complete the activities under  
25 this paragraph;

1                   “(bb) has in place an infor-  
2 mation technology infrastructure  
3 to support adverse event surveil-  
4 lance data and operational stand-  
5 ards to provide security for such  
6 data;

7                   “(cc) has experience with,  
8 and expertise on, the develop-  
9 ment of drug safety and effec-  
10 tiveness research using electronic  
11 population data;

12                   “(dd) has an understanding  
13 of drug development and risk/  
14 benefit balancing in a clinical set-  
15 ting; and

16                   “(ee) has a significant busi-  
17 ness presence in the United  
18 States.

19                   “(vi) CONTRACT REQUIREMENTS.—  
20 Each contract with a qualified entity shall  
21 contain the following requirements:

22                   “(I) ENSURING PRIVACY.—The  
23 qualified entity shall provide assur-  
24 ances that the entity will not use the

1 data provided by the Secretary in a  
2 manner that violates—

3 “(aa) the regulations pro-  
4 mulgated under section 264(e)  
5 of the Health Insurance Port-  
6 ability and Accountability Act of  
7 1996; or

8 “(bb) sections 552 or 552a  
9 of title 5, United States Code,  
10 with regard to the privacy of in-  
11 dividually-identifiable beneficiary  
12 health information.

13 “(II) COMPONENT OF ANOTHER  
14 ORGANIZATION.—If a qualified entity  
15 is a component of another organiza-  
16 tion—

17 “(aa) the qualified entity  
18 shall maintain the data related to  
19 the activities carried out under  
20 this paragraph separate from the  
21 other components of the organi-  
22 zation and establish appropriate  
23 security measures to maintain  
24 the confidentiality and privacy of  
25 such data; and

1           “(bb) the entity shall not  
2           make an unauthorized disclosure  
3           of such data to the other compo-  
4           nents of the organization in  
5           breach of such confidentiality and  
6           privacy requirement.

7           “(III) TERMINATION OR NON-  
8           RENEWAL.—If a contract with a  
9           qualified entity under this subpara-  
10          graph is terminated or not renewed,  
11          the following requirements shall apply:

12           “(aa) CONFIDENTIALITY  
13           AND PRIVACY PROTECTIONS.—  
14           The entity shall continue to com-  
15           ply with the confidentiality and  
16           privacy requirements under this  
17           paragraph with respect to all  
18           data disclosed to the entity.

19           “(bb) DISPOSITION OF  
20           DATA.—The entity shall return  
21           to the Secretary all data dis-  
22           closed to the entity or, if return-  
23           ing the data is not practicable,  
24           destroy the data.

1                   “(vii) COMPETITIVE PROCEDURES.—  
2                   The Secretary shall use competitive proce-  
3                   dures (as defined in section 4(5) of the  
4                   Federal Procurement Policy Act) to enter  
5                   into contracts under clause (v).

6                   “(viii) REVIEW OF CONTRACT IN THE  
7                   EVEN OF A MERGER OR ACQUISITION.—  
8                   The Secretary shall review the contract  
9                   with a qualified entity under this para-  
10                  graph in the event of a merger or acquisi-  
11                  tion of the entity in order to ensure that  
12                  the requirements under this subparagraph  
13                  will continue to be met.

14                  “(D) COORDINATION.—In carrying out  
15                  this paragraph, the Secretary shall provide for  
16                  appropriate communications to the public, sci-  
17                  entific, public health, and medical communities,  
18                  and other key stakeholders, and provide for the  
19                  coordination of the activities of private entities,  
20                  professional associations, or other entities that  
21                  may have sources of surveillance data.”.

22                  (b) AUTHORIZATION OF APPROPRIATIONS.—To carry  
23                  out activities under the amendment made by subsection  
24                  (a) for which funds are made available under section 736  
25                  of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

1 379h), there are authorized to be appropriated to carry  
2 out the amendment made by this section, in addition to  
3 such funds, \$25,000,000 for each of fiscal years 2008  
4 through 2012.

5 **SEC. 6. STATEMENT FOR INCLUSION IN DIRECT-TO-CON-**  
6 **SUMER ADVERTISEMENTS OF DRUGS.**

7 Section 502(n) of the Federal Food, Drug, and Cos-  
8 metic Act (21 U.S.C. 352), as amended by section 1(d)(3),  
9 is further amended by striking “of this Act, except that”  
10 and inserting “of this Act, and in the case of any direct-  
11 to-consumer advertisement the following statement: ‘You  
12 are encouraged to report adverse effects of prescription  
13 drug medication to the FDA. Log onto [www.fda.gov/](http://www.fda.gov/medwatch)  
14 [medwatch](http://www.fda.gov/medwatch) or call 1-800-FDA-1088.’, except that”.

15 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—For carrying out this Act and the  
17 amendments made by this Act, there is authorized to be  
18 appropriated \$25,000,000 for each of fiscal years 2008  
19 through 2012.

20 (b) RELATION TO OTHER FUNDING.—The authoriza-  
21 tion of appropriations under subsection (a) is in addition  
22 to any other funds available for carrying out this Act and  
23 the amendments made by this Act.

1 **SEC. 8. EFFECTIVE DATE AND APPLICABILITY.**

2 (a) **EFFECTIVE DATE.**—This Act takes effect 180  
3 days after the date of the enactment of this Act.

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

6 (1) **IN GENERAL.**—A drug that was approved  
7 before the effective date of this Act is, in accordance  
8 with paragraph (2), deemed to have in effect an ap-  
9 proved risk evaluation and mitigation strategy under  
10 section 505A of the Federal Food, Drug, and Cos-  
11 metic Act (as added by section 1 of this Act) (re-  
12 ferred to in this section as the “Act” ) if there are  
13 in effect on the effective date of this Act restrictions  
14 on distribution or use—

15 (A) required under section 314.520 or sec-  
16 tion 601.42 of title 21, Code of Federal Regula-  
17 tions; or

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

20 (2) **ELEMENTS OF STRATEGY; ENFORCE-**  
21 **MENT.**—The approved risk evaluation and mitigation  
22 strategy in effect for a drug under paragraph (1)—

23 (A) is deemed to consist of the elements  
24 described in paragraphs (1) and (2) of section  
25 505A(d) of the Act and any additional elements  
26 under subsections (d) and (e) of such section in

1 effect for such drug on the effective date of this  
2 Act; and

3 (B) is subject to enforcement by the Sec-  
4 retary to the same extent as any other risk  
5 evaluation and mitigation strategy under sec-  
6 tion 505A of the Act.

7 (3) SUBMISSION.—Not later than 180 days  
8 after the effective date of this Act, the holder of an  
9 approved application for which a risk evaluation and  
10 mitigation strategy is deemed to be in effect under  
11 paragraph (1) shall submit to the Secretary a pro-  
12 posed risk evaluation and mitigation strategy. Such  
13 proposed strategy is subject to section 505A of the  
14 Act as if included in such application at the time of  
15 submission of the application to the Secretary.

16 (c) OTHER DRUGS APPROVED BEFORE THE EFFEC-  
17 TIVE DATE.—The Secretary, on a case-by-case basis, may  
18 require the holder of an application approved before the  
19 effective date of this Act to which subsection (b) does not  
20 apply to submit a proposed risk evaluation and mitigation  
21 strategy in accordance with the timeframes provided for  
22 in subparagraphs (C) through (E) of section 505A(g)(2)  
23 of the Act if the Secretary determines (with respect to  
24 such drug or with respect to the group of drugs to which  
25 such drug belongs) that—

1           (1) an element described under 505A(d)(1) of  
2 the Act may require modification; or

3           (2) a standard for adding an element described  
4 in subsection (e) or (d) of the Act that is not in ef-  
5 fect with respect to such drug or class of drugs may  
6 apply.

7           (d) USE OF ADVISORY COMMITTEES; PROCESS FOR  
8 ADDRESSING DRUG CLASS EFFECTS.—In imposing a re-  
9 quirement under subsection (c), the Secretary—

10           (1) may convene a meeting of 1 or more advi-  
11 sory committees of the Food and Drug Administra-  
12 tion in accordance with paragraph (6) of section  
13 505A(h) of the Act; and

14           (2) may use the process described in paragraph  
15 (7) of such section 505A(h) (relating to addressing  
16 drug class effects).