AMENDMENT NO._____ Calendar No._____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 959

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

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

(b) REFERENCES IN ACT.—Except as otherwise specified, amendments made by this Act to a section or other provision of law are amendments to such section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 2. REGULATION OF HUMAN DRUG COMPOUNDING.

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

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

''SEC. 503A. HUMAN DRUG COMPOUNDING.

''(a) SCOPE.—

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

''(A) include—

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

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

''(iii) repackaging; and

''(B) exclude mixing, reconstituting, or other such acts with respect to a marketed drug that are limited to and performed in accordance with specific directions for such acts contained in approved labeling provided by a drug's manufacturer, when performed based upon a pre-

scription order for an identified individual patient.

''(2) ADMINISTRATION NOT A SALE.—In this section, the terms 'sell' or 'resale' do not include circumstances in which a licensed practitioner administers a drug to a patient or provides a drug to a patient who has been instructed to self-administer the drug, including any fee associated with such administration or provision of the drug.

''(3) INAPPLICABILITY TO CERTAIN DRUGS.—

''(A) IN GENERAL.—For purposes of this section, the activities described in paragraph (1) shall not be considered 'compounding' if such activities are conducted in whole or in part with respect to a drug described in subparagraph (B).

''(B) EXCLUDED DRUGS.—The drugs described in this subparagraph are the following:

''(i) Blood and blood components for transfusion.

''(ii) Medical gases, as defined in section 575(2).

''(4) ANIMAL DRUGS FOR HUMAN USE.—Nothing in this section shall be construed to permit the

use of animal drugs in compounding a drug for human use.

''(b) DEFINITIONS.—In this section:

''(1) COMPOUNDING MANUFACTURER.—

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

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

''(ii) that repackages any preservative-free sterile drug or pools any sterile drugs, except as provided in paragraph (9)(B).

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

''(i) repackages drugs in accordance with section 506F or the final guidance described in section 506F(d) once the final guidance is published; and

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

"(2) COMPOUNDING NUCLEAR PHARMACY.—The term 'compounding nuclear pharmacy' means an entity that—

"(A) is a State-licensed pharmacy or a Federal facility;

"(B) holds a license currently in effect from the Nuclear Regulatory Commission or from a State pursuant to an agreement with such commission under section 274 of the Atomic Energy Act of 1954; and

"(C) does not compound other drugs that would cause the entity to be a compounding manufacturer described in paragraph (1)(A).

"(3) COPY.—The term 'copy' means an identical or nearly identical version of a drug.

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

"(A) mean taking a single drug approved under section 505 (other than a biological product) from the container in which it is distributed by the original manufacturer and combining it with the same drug from one or more

other containers without or before further manipulating the product (such as by diluting it or mixing it with another, different drug or drugs);

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

''(C) do not include combining a single drug from two or more separate containers of component products of a parenteral nutrition product, if such pooling, and labeling and use of the finished parenteral nutrition product, comply with State pharmacy law.

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

''(6) RADIOACTIVE DRUG.—The term 'radioactive drug'—

''(A) means any substance defined as a drug in section 201(g)(1) that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide

regenerator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides; and

''(B) includes a 'radioactive biological product,' which means a biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

''(7) REPACKAGE OR REPACKAGING.—The term 'repackage' or 'repackaging'—

''(A) means taking a drug approved under section 505 or licensed under section 351 of the Public Health Service Act from the container in which it is distributed by the original manufacturer and placing it in a different container of the same or smaller size without further manipulating the drug (such as by diluting it or mixing it with another, different drug or drugs); and

''(B) does not include removing the drug from its original container for immediate administration to a patient, such as withdrawing a drug into a syringe for immediate injection or

filling a cassette for immediate use within a drug delivery device.

''(8) STERILE DRUG.—The term 'sterile drug' means a drug that is—

''(A) intended for parenteral administration;

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

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

''(9) TRADITIONAL COMPOUNDER.—

''(A) IN GENERAL.—The term 'traditional compounder' means a facility operating pursuant to State law—

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

''(I) a licensed pharmacist, in a State-licensed pharmacy or a licensed Federal facility; or

''(II) a licensed physician;

''(ii) that—

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

''(II) compounds a drug in limited quantities before receipt of a pre-

scription order for an identified individual patient, if such compounding is based on a history of the licensed pharmacist or licensed physician receiving prescription orders for the compounding of the drug, which orders have been generated solely within an established relationship between the licensed pharmacist or licensed physician and—

"(aa) such individual patient for whom the prescription order will be provided; or

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

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

"(B) EXCEPTIONS.—

"(i) HOSPITALS AND HEALTH SYSTEMS.—A pharmacy within a hospital or health system shall be considered a traditional compounder if such pharmacy other-

wise meets the definition under subparagraph (A) and if, with respect to a drug compounded by such pharmacy, the only activity conducted by the pharmacy is to dispense or administer such drug (which may include interstate shipment) solely to a patient of such hospital or health system.

''(ii) HEALTH SYSTEM DEFINED.—For purposes of this subparagraph, the term 'health system' means one or more hospitals that are owned and operated by the same entity and that share access to databases with drug order information for patients. A health system includes the inpatient, outpatient, and ambulatory facilities wholly owned by the health system.

''(c) EXEMPTIONS FROM CERTAIN REQUIREMENTS.—

''(1) IN GENERAL.—Except as otherwise provided in paragraphs (2), (3), and (4), a compounded drug shall be subject to all the requirements of this Act applicable to new drugs.

''(2) DRUGS COMPOUNDED BY TRADITIONAL COMPOUNDERS.—Sections 501(a)(2)(B), 502(f)(1), and 505 of this Act and section 351 of the Public

Health Service Act shall not apply to a compounded drug if such drug—

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

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

"(3) DRUGS COMPOUNDED BY COMPOUNDING MANUFACTURERS.—Sections 502(f)(1) and 505 of this Act and section 351 of the Public Health Service Act shall not apply to a compounded prescription drug, if such prescription drug—

"(A) is compounded by a compounding manufacturer—

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

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

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

"(4) DRUGS COMPOUNDED BY COMPOUNDING NUCLEAR PHARMACIES.—Sections 501(a)(2)(B), 502(f)(1), and 505 of this Act and section 351 of

the Public Health Service Act shall not apply to a compounded radioactive drug if such drug is compounded—

"(A) by a licensed pharmacist in a compounding nuclear pharmacy;

"(B) solely using a radioactive drug approved under section 505 or licensed under section 351 of the Public Health Service Act, and one or more ingredients in compliance with subsection (e)(1)(B); and

"(C) in compliance with the United States Pharmacopoeia chapters on pharmacy compounding.

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

"(1) IN GENERAL.—The following drugs may not be compounded:

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

"(B) MARKETED DRUGS.—A drug (other than a biological product) that is a copy of a marketed drug approved under 505 or a vari-

ation of such drug compounded from bulk drug substances, except as provided in paragraph (3).

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

''(D) DRUGS SUBJECT TO RISK EVALUATION AND MITIGATION STRATEGY.—A copy or variation of a drug approved under section 505 or licensed under section 351 of the Public Health Service Act that is the subject of a risk evaluation and mitigation strategy approved with elements to assure safe use pursuant to section 505–1, except provided in paragraph (5).

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

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

"(A) IN GENERAL.—The Secretary may promulgate a regulation that designates drugs or categories of drugs that are demonstrably difficult to compound that may not be compounded, or that may be compounded only under conditions specified by the Secretary. Such regulation may include the designation of drugs or categories of drugs that are complex dosage forms or biological products, such as extended release products, metered dose inhalers, transdermal patches, and sterile liposomal products.

"(B) INTERIM LIST.—

"(i) IN GENERAL.—Before the effective date of the regulation promulgated under subparagraph (A), the Secretary may designate drugs or categories of drugs that present demonstrable difficulties for compounding, which may include complex dosage forms or biological products that cannot be compounded, except under conditions specified by the Secretary, by—

"(I) publishing a notice of such drugs or categories of drugs proposed for designation, including the ration-

ale for such designation, in the Federal Register;

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

"(III) publishing a notice in the Federal Register designating such drugs or categories of drugs that cannot be compounded, including the rationale for such designation.

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

"(C) CONSULTATION WITH STAKEHOLDERS.—Prior to establishing the lists described in this paragraph, the Secretary shall consult with relevant stakeholders including pharmacists, professional associations, patient advocacy groups, manufacturers and physicians

about the need for the compounded drugs to be included or excluded from the lists.

''(D) UPDATES TO DIFFICULT TO COMPOUND LIST.—Five years after the effective date of the regulation described in subparagraph (A), and every 5 years thereafter, the Secretary shall publish a Federal Register notice seeking public input about the need for the compounded drugs to be included or excluded from the list described in subparagraph (A). Nothing in the previous sentence prohibits notifications or submissions before or during any 5-year period described under such sentence regarding the need for the compounded drugs to be included or excluded from the list.

''(3) EXCEPTIONS REGARDING MARKETED DRUGS.—

''(A) IN GENERAL.—A drug (other than a biological product) that is a copy of a marketed drug approved under 505, including variations of such drug compounded from bulk drug substances, may be compounded only if—

''(i) the compounded variation produces for the patient a clinical difference between the compounded drug and such

marketed drug, as determined by the prescribing practitioner, and, prior to beginning compounding such variation, the traditional compounder compounding the variation receives a prescription order for an identified individual patient specifying that the variation may be compounded; or

''(ii)(I) such marketed drug, at the time of compounding a copy of such drug and at the time of distribution of the compounded drug, is on the drug shortage list under section 506E, or in the Secretary's sole discretion, has otherwise been identified by the Secretary as in shortage such as in a specific region or on a drug shortage list maintained by a private party;

''(II) the facility compounding the drug notifies the Secretary not later than 3 calendar days after beginning the compounding; and

''(III) in the case of a compounding manufacturer, the compounding manufacturer has registered under subsection (g)(2) as an entity that intends to compound pursuant to this paragraph and no-

tifies the Secretary at least 14 days prior to beginning the compounding.

''(B) NOTICE WAIVER.—The Secretary may waive a notice required under subparagraph (A)(ii)(II).

''(C) EXCLUSION.—For purposes of this paragraph, repackaging a marketed drug approved under section 505 does not make the repackaged drug a copy of such marketed drug, unless the repackaged drug is also a marketed drug approved under section 505.

''(4) EXCEPTIONS REGARDING BIOLOGICAL PRODUCTS.—

''(A) IN GENERAL.—A drug that is a variation of a licensed biological product may be compounded only if—

''(i)(I) such compounded variation is compounded solely using a licensed biological product, or solely using a licensed biological product and one or more ingredients in compliance with subsection (e)(1)(B); or

''(II) in the case of a licensed allergenic product, such variation is compounded solely using one or more licensed

allergenic products, or solely using one or more licensed allergenic products and one or more ingredients in compliance with subsection (e)(1)(B);

''(ii) such compounded variation produces for the patient a clinical difference between such compounded variation and the licensed biological product, as determined by—

''(I) the prescribing practitioner (in the case of a variation compounded by a traditional compounder); or

''(II) a licensed practitioner responsible for the patient's care in a health care entity that provides medical services through licensed practitioners directly to patients (in the case of a variation compounded by a compounding manufacturer);

''(iii) prior to beginning compounding—

''(I) except as provided in subparagraph (B), the traditional compounder receives a prescription

order for an identified individual patient specifying that the biological product may be compounded for an identified individual patient; or

''(II) the compounding manufacturer receives a duly authorized medical order from a health care entity that provides medical services through licensed practitioners directly to patients, specifying that the biological product may be compounded for an identified patient or patients; and

''(iv) in the case of a radioactive biological product, the compounded variation is compounded by a compounding nuclear pharmacy in accordance with subsection (b)(2).

''(B) SPECIAL RULE FOR PEDIATRIC USES.—A traditional compounder that is a hospital or health system may begin compounding a drug that is a variation of a licensed biological product prior to receiving a prescription order as required under subparagraph (A)(iii) if—

"(i) such compounded variation is a diluted or repackaged variation of the licensed biological product for emergent use in pediatric patients; and

"(ii) such compounded variation produces for the patient a clinical difference between such compounded variation and the licensed biological product, as determined by a licensed practitioner responsible for the patient's care in the hospital or health system.

"(C) INAPPLICABILITY.—Clauses (ii) and (iii) of subparagraph (A) shall not apply to a compounded allergenic product.

"(5) REQUIREMENT FOR DRUGS THAT HAVE RISK EVALUATION AND MITIGATION STRATEGIES.—

"(A) IN GENERAL.—A copy or variation of a drug approved under section 505 or biological product licensed under section 351 of the Public Health Service Act that is the subject of a risk evaluation and mitigation strategy approved with elements to assure safe use pursuant to section 505–1, may be compounded only if—

''(i) the entity compounding the copy or variation receives a prescription order for an identified individual patient specifying that the drug or biological product may be compounded; and

''(ii) the entity compounding the copy or variation demonstrates to the Secretary, prior to beginning compounding, that the entity will utilize controls that are comparable to the controls applicable under the relevant risk evaluation and mitigation strategy for the approved drug or licensed biological product.

''(B) EFFECT.—Nothing in this paragraph shall be construed to permit compounding a copy or variation of a drug other than as permitted in paragraphs (3) and (4).

''(e) QUALITY OF DRUG INGREDIENTS.—

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

''(A) if compounding a drug from bulk drug substances (as defined in regulations of the Secretary published at section 207.3(a)(4) of title 21, Code of Federal Regulations (or any

successor regulations)), use only bulk substances—

"(i) that—

"(I) comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists and has not been identified under paragraph (2);

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

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

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

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

"(B) use ingredients (other than bulk drug substances) that comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if a monograph exists and has not been identified under paragraph (2); and

"(C) in the case of a traditional compounder, comply with the standards of the United States Pharmacopoeia chapters on pharmacy compounding.

"(2) IDENTIFICATION BY SECRETARY.—

"(A) IN GENERAL.—Notwithstanding the existence of an applicable monograph under subparagraph (A)(i)(I) or (B) of paragraph (1), the Secretary may identify bulk substances that the Secretary determines, based on public health concerns, may not be used in compounding a drug.

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

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

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

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

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

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

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

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

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

"(C) as of the date of enactment of the Pharmaceutical Compounding Quality and Accountability Act, the compounding manufacturer is an entity that provides pharmacy benefits management services on behalf of a health benefits plan;

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

"(E) the compounding manufacturer receives confirmation from the Secretary that the compounding manufacturer qualifies for the exception under this paragraph and the sterile drug or drugs for which the exemption applies; and

"(3) in the case of a compounded drug offered for sale, shall be labeled 'not for resale'.

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

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

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

"(A) REGISTRATION OF COMPOUNDING MANUFACTURERS.—

"(i) ANNUAL REGISTRATION.—During the period beginning on October 1 and ending on December 31 each year, each compounding manufacturer shall register with the Secretary its name, place of busi-

ness, and unique facility identifier (which shall conform to the requirements for the unique facility identifier established under section 510), and a point of contact e-mail address, and shall indicate whether the compounding manufacturer intends to compound drug in shortage pursuant to subsection (d)(3)(A)(ii).

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

''(iii) AVAILABILITY OF REGISTRATION FOR INSPECTION.—The Secretary shall make available for inspection, to any per-

son so requesting, any registration filed pursuant to this subparagraph.

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

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

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

''(II) with respect to each drug identified under subclause (I), providing the active ingredient, the source of such active ingredient, the National Drug Code, if available, number of the source drug or bulk active ingredient, the strength of the active ingredient per unit, the dosage form and route of administration, the package description, the number of in-

dividual units produced, the National Drug Code number of the final product, if assigned, and which conforms to other applicable requirements identified by the Secretary in accordance with clause (ii).

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

''(iii) CONFIDENTIALITY.—Reports submitted pursuant to this subparagraph shall be exempt from inspection under subparagraph (A)(iii), unless the Secretary finds that such an exemption would be inconsistent with the protection of the public health.

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

"(D) RISK-BASED INSPECTION FREQUENCY.—

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

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

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

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

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

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

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

''(V) Whether the compounding manufacturer has registered under subsection (g)(2) as an entity that intends to compound pursuant to subsection (d)(3)(A)(ii).

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

''(3) ADVERSE EVENT REPORTING.—

''(A) DEFINITIONS.—In this paragraph:

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

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

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

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

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

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

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

''(I) results in—

''(aa) death;

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

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

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

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

"(II) based on appropriate medical judgment, may jeopardize the patient and may require a medical or surgical intervention to prevent an outcome described in subclause (I).

"(B) REPORTS.—

"(i) ADVERSE EVENT REPORTING REQUIREMENT.—

"(I) 15-DAY REPORT.—If a compounding manufacturer becomes aware of any serious adverse event, such manufacturer shall submit reports of each instance to the Secretary as soon as practicable, but in no case later than 15 calendar days after the initial receipt of the applica-

ble information. Such manufacturer shall investigate and submit to the Secretary followup reports for each such instance not later than 15 calendar days after receipt of new information or as requested by the Secretary. Unless and until the Secretary establishes the content and format of adverse event reports by guidance or regulation, reports shall be submitted in accordance with the content and format requirements under section 310.305 of title 21, Code of Federal Regulations (or any successor regulations) or section 600.80 of title 21, Code of Federal Regulations (or any successor regulations).

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

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

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

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

title 21, Code of Federal Regulations (or any successor regulation), or as otherwise directed by the Secretary in regulations.

''(4) LABELING OF DRUGS.—

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

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

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

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

''(I) the lot or batch number;

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

''(III) the dosage form and strength;

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

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

''(VI) the expiration date;

''(VII) storage and handling instructions;

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

''(IX) the 'not for resale' statement as required by subsection (f)(3); and

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

''(B) CONTAINER.—The container from which the individual units of a drug compounded by a compounding manufacturer are removed for dispensing or for administration (such as a plastic bag containing individual product syringes) shall include—

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

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

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

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

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

"(1) DEFINITIONS.—In this subsection—

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

"(B) the term 'gross annual sales' means the total worldwide gross annual sales, in United States dollars, for a compounding manufacturer, including the sales of all the affiliates of the compounding manufacturer; and

"(C) the term 'reinspection' means, with respect to a compounding manufacturer, 1 or more inspections conducted under section 704

subsequent to an inspection conducted under such provision which identified noncompliance materially related to an applicable requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.

''(2) ESTABLISHMENT AND REINSPECTION FEES.—

''(A) IN GENERAL.—For fiscal year 2015 and each subsequent fiscal year, the Secretary shall, in accordance with this subsection, assess and collect—

''(i) an annual establishment fee from each compounding manufacturer; and

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

''(B) MULTIPLE REINSPECTIONS.—A compounding manufacturer subject to multiple reinspections in a fiscal year shall be subject to a reinspection fee for each reinspection.

''(3) ESTABLISHMENT AND REINSPECTION FEE SETTING.—The Secretary shall establish the establishment and reinspection fee to be collected under this subsection for each fiscal year, based on the

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

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

"(A) IN GENERAL.—For each compounding manufacturer in a fiscal year—

"(i) except as provided in subparagraph (D), the amount of the annual establishment fee under paragraph (2) shall be equal to the sum of—

"(I) $15,000, multiplied by the inflation adjustment factor described in subparagraph (B); plus

"(II) the small business adjustment factor described in subparagraph (C); and

"(ii) the amount of any reinspection fee (if applicable) under paragraph (2) shall be equal to $15,000, multiplied by the inflation adjustment factor described in subparagraph (B).

"(B) INFLATION ADJUSTMENT FACTOR.—

"(i) IN GENERAL.—For fiscal year 2015 and subsequent fiscal years, the fee amounts established in subparagraph (A) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year by the amount equal to the sum of—

"(I) one;

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

"(III) the average annual percent change that occurred in the Consumer Price Index for urban consumers

(U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than personnel compensation and benefits costs to total costs of an average full-time equivalent position of the Food and Drug Administration for the first 3 years of the preceding 4 fiscal years.

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

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

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

"(ii) the adjustment to the establishment fee necessary to achieve total fees equaling the total fees that the Secretary would have collected if no entity qualified for the small business exception in subparagraph (D).

"(D) EXCEPTION FOR SMALL BUSINESSES.—

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

"(ii) APPLICATION.—To qualify for the exception under this subparagraph, a small business shall submit to the Sec-

retary a written request for such exception, in a format specified by the Secretary in guidance, certifying its gross annual sales for the 12 months ending April 1 of the fiscal year immediately preceding the fiscal year in which fees under this subsection are assessed. Any such application must be submitted to the Secretary not later than April 30 for the following fiscal year. Any statement or representation made to the Secretary shall be subject to section 1001 of title 18, United States Code.

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

''(5) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to clauses (i) and (ii) of paragraph (2)(A) available solely to pay for

the costs of oversight of compounding manufacturers.

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

''(7) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under this subsection shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the costs of oversight of compounding manufacturers.

''(8) COLLECTION OF FEES.—

''(A) ESTABLISHMENT FEE.—A compounding manufacturer shall remit the establishment fee due under this subsection in a

fiscal year when submitting a registration pursuant to subsection (g) for such fiscal year.

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

''(C) EFFECT OF FAILURE TO PAY FEES.—

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

''(ii) MISBRANDING.—All drugs manufactured, prepared, propagated, compounded, or processed by a compounding manufacturer for which any establishment fee or reinspection fee has not been paid as required by this subsection shall be deemed misbranded under section 502(cc) until the

fees owed for such compounding manufacturer under this subsection have been paid.

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

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

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

total amount of fees assessed for such fiscal year under this subsection.

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

''(1) IDENTIFICATION OF COMPOUNDING MANUFACTURERS.—The Secretary shall encourage States to identify to the Secretary facilities that are licensed by a State as a pharmacy that appear to be entities that are required to be registered with the Secretary as a compounding manufacturer.

''(2) DESIGNATION.—The Secretary shall designate a point of contact and establish a format and procedure for a State Board of Pharmacy to notify the Secretary if it appears to a State Board of Pharmacy that an entity licensed by a State as a pharmacy is required to be registered with the Secretary as a compounding manufacturer.

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

tion and shall make such determination publicly available on the Internet Web site of the Food and Drug Administration.

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

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

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

(2) by adding at the end the following:

''(ccc)(1) The resale of a compounded drug that is labeled 'not for resale' as required by section 503A.

''(2) The failure to register in accordance with subsection (g) of section 503A or the failure to submit a report as required by subsection (g)(2)(B) or (g)(3) of such section.''.

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

SEC. 3. OTHER REQUIREMENTS RELATING TO COMPOUNDING MANUFACTURERS.

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

''(bb) If it is a compounded drug and (1) the labeling does not include the information as required by subsections (f)(3) and (g)(4) of section 503A, as applicable, or (2) the labeling or advertising or promotion of such drug is false or misleading in any particular.

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

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

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

SEC. 4. IMPLEMENTATION.

(a) CONSULTATION WITH STAKEHOLDERS.—In implementing this section, the Secretary of Health and Human Services shall consult with relevant stakeholders including pharmacists, professional associations, patient advocacy groups, manufacturers and physicians.

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

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

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

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

SEC. 5. EFFECTIVE DATE.

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