~~Title: To provide incentives for the development of qualified infectious disease products.~~

TITLE VIII—GENERATING ANTIBIOTIC INCENTIVES NOW

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

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "___ Act of ___".~~

~~SEC. 2. TABLE OF CONTENTS.~~

~~The table of contents of this Act is as follows:~~

~~SEC. 3~~ **SEC. 801**. EXTENSION OF EXCLUSIVITY PERIOD FOR DRUGS.

(a) In ~~General.—The Federal Food, Drug, and Cosmetic Act~~ **General.—Chapter V (21 U.S.C. 351 et seq.)** is amended by inserting after section 505D ~~(21 U.S.C. 355e)~~ the following:

"SEC. 505E. EXTENSION OF EXCLUSIVITY PERIOD FOR NEW QUALIFIED INFECTIOUS DISEASE PRODUCTS.

"(a) Extension.—If the Secretary approves an application pursuant to section 505 for a drug that has been designated as a qualified infectious disease product under subsection (d), the ~~[~~4- and ~~]~~ 5-year ~~period[s]~~ **periods** described in ~~subsection[s] [(c)(3)(E)(ii) and]~~ **subsections(c)(3)(E)(ii) and** (j)(5)(F)(ii) of section 505, the 3-year periods described in clauses (iii) and (iv) of subsection (c)(3)(E) and clauses (iii) and (iv) of subsection (j)(5)(F) of section 505, or the 7-year period described in section 527, as applicable, shall be extended by 5 years.

"(b) Relation to Pediatric Exclusivity.—Any extension under subsection (a) of a period shall be in addition to any extension of the period under section 505A with respect to the drug.

"(c) Limitations.—Subsection (a) does not apply to the approval of—

"(1) a supplement to an application under section 505(b) for any qualified infectious disease product for which an extension described in subsection (a) is in effect or has expired;

"(2) a subsequent application filed with respect to a product approved under section 505 **for** ~~for —~~

~~"(A)~~ a change that results in a new indication, route of administration, dosing schedule, dosage form, delivery system, delivery device, or strength; or

~~"(B) a modification to the moiety of the qualified infectious disease product that does not result in a change in safety or effectiveness; or~~

~~"(3)~~ **"(3) an application for** a product that is not ~~indicated~~ **approved** for the use for which it received a designation under subsection (d).

"(d) Designation.—

"(1) IN GENERAL.—The manufacturer or sponsor of a drug may request the Secretary to designate a drug as a qualified infectious disease product at any time before the submission of an application under section 505(b) for such drug. **The Secretary shall, not later than 60 days after the submission of such a request, determine whether the drug is a qualified infectious disease product.**

"(2) LIMITATION.—Except as provided in paragraph (3), a~~"(2) Limitation. —A~~ designation under this subsection shall not be withdrawn for any reason, including modifications to the list of qualifying pathogens under subsection (f)(2)(C).

"(3) REVOCATION OF DESIGNATION.—The Secretary may revoke a designation of a drug as a qualified infectious disease product if the Secretary finds that the request for such designation contained an untrue statement of material fact.

"(e) Regulations.—

"(1) IN GENERAL.—Not later than ~~1 year~~ **2 years** after the date of enactment of the ~~[insert short title]~~ **Food and Drug Administration Safety and Innovation Act**, the Secretary shall adopt final regulations implementing this section.

"(2) PROCEDURE.—In promulgating a regulation implementing this section, the Secretary shall—

"(A) issue a notice of proposed rulemaking that includes a copy of the proposed regulation;

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

"(C) publish the final regulation not less than 30 days before the effective date of the regulation.

"(3) RESTRICTIONS.—Notwithstanding any other provision of law, the Secretary shall promulgate regulations implementing this section only as described in paragraph (2), except that the Secretary may issue interim guidance for sponsors seeking designation under subsection (d) prior to the promulgation of such regulations.

"(4) DESIGNATION PRIOR TO REGULATIONS.—The Secretary may designate drugs as qualified infectious disease products under subsection (d) prior to the promulgation of regulations under this subsection.

"(f) Qualifying Pathogen.—

"(1) DEFINITION.—In this section, the term 'qualifying pathogen' means a pathogen identified and listed by the Secretary under paragraph (2) that has the potential to pose a serious threat to public health, such as—

"(A) resistant gram positive pathogens, including methicillin-resistant Staphylococcus aureus, vancomycin-resistant Staphylococcus aureus, and vancomycin-resistant enterococcus;

"(B) multi-drug resistant gram negative bacteria, including Acinetobacter, Klebsiella, Pseudomonas, and E. coli species;

"(C) multi-drug resistant tuberculosis; and

"(D) Clostridium difficile.

"(2) LIST OF QUALIFYING PATHOGENS.—

"(A) IN GENERAL.—The Secretary shall establish and maintain a list of qualifying pathogens.

"(B) CONSIDERATIONS.—In establishing and maintaining the list of pathogens described under this section the Secretary shall—

"(i) consider—

"(I) the impact on the public health due to drug-resistant organisms in humans;

"(II) the rate of growth of drug-resistant organisms in humans;

"(III) the increase in resistance rates in humans; and

"(IV) the morbidity and mortality in humans; and

"(ii) consult with experts in infectious diseases, including the Centers for Disease Control and Prevention, the Food and Drug Administration, medical professionals, and the clinical research community.

"(C) REVIEW.—Every 5 years, or more often as needed, the Secretary shall review, provide modifications to, and publish the list of qualifying pathogens under

subparagraph (A) and shall by regulation revise the list as necessary, in accordance with subsection (e).

"(g) Qualified Infectious Disease Product.—The term 'qualified infectious disease product' means an antibacterial or antifungal drug for human use intended to treat serious or life-threatening infections, including those caused by—

"(1) an antibacterial or antifungal resistant pathogen, including novel or emerging infectious pathogens; or

"(2) qualifying pathogens listed by the Secretary under subsection (f).".

(b) Application.—Section 505E of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), applies only with respect to a drug that is first approved under section 505(c) of such Act (21 U.S.C. 355(c)) on or after the date of the enactment of this Act.

SEC. **802** ~~4. ADDITIONAL EXTENSION OF EXCLUSIVITY PERIOD FOR QUALIFIED INFECTIOUS DISEASE PRODUCTS FOR WHICH A COMPANION DIAGNOSTIC TEST IS CLEARED OR APPROVED.~~

~~The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended by section 3, is further amended by inserting after section 505E the following:~~

~~"SEC. 505E1. ADDITIONAL EXTENSION OF EXCLUSIVITY FOR QUALIFIED INFECTIOUS DISEASE PRODUCTS FOR WHICH A COMPANION DIAGNOSTIC TEST IS CLEARED OR APPROVED.~~

~~"(a) In General.—If the sponsor or manufacturer of a qualified infectious disease product identifies in accordance with subsection (b) a companion diagnostic test described in subsection (c), any period extended under section 505E(a) with respect to such product shall be further extended by 6 months.~~

~~"(b) Identification Requirements.—For purposes of subsection (a), the identification of a companion diagnostic test shall—~~

~~"(1) be made in such manner as the Secretary may require; and~~

~~"(2) occur before the expiration of the period to be extended~~

~~under subsection (a), not counting any extension to such period under section 505E(a) or 505A.~~

~~"(c) Companion Diagnostic Test.—For purposes of subsection (a), a device is a companion diagnostic test with respect to a qualified infectious disease product if each of the following is met:~~

~~"(1) The device is determined by the Secretary to be a test for diagnosis of an infection described in section 505E(g).~~

~~"(2) The qualified infectious disease product has been designated under section 505E(d) to be for treating such qualifying pathogen.~~

~~"(3) The device is cleared under section 510(k) or approved under section 515.~~

~~"(d) Relation to Pediatric Exclusivity.—Any extension under subsection (a) of a period with respect to a qualified infectious disease product shall be in addition to any extension of the period under section 505A of this Act with respect to the product.~~

~~"(e) Limitations.—After the extension of any period under subsection (a) with respect to a qualified infectious disease product pursuant to the identification of a device as a companion diagnostic test, subsection (a) does not authorize—~~

~~"(1) any subsequent extension with respect to such product; or~~

~~"(2) any extension with respect to any other product pursuant to identification of such device.~~

~~"(f) Determination.—The sponsor or manufacturer of a drug may request the Secretary to determine that a device is a test for diagnosis of a qualifying pathogen. Such a request shall be made~~

~~at least 45 days before the submission of a notification under section 510(k) or an application under section 515 for such device. The Secretary shall, not later than 30 days after the submission of such request, determine whether the device is a test for diagnosis of a qualifying pathogen.~~

~~"(g) Definitions. In this section:~~

~~"(1) The term 'qualified infectious disease product' means a drug that is determined to be a qualified infectious disease product under section 505E.~~

~~"(2) The term 'qualifying pathogen' has the meaning given to such term in section 505E.".~~

~~SEC. 5~~. PRIORITY REVIEW.

(a) Amendment.—Chapter V ~~of the Federal Food, Drug, and Cosmetic Act is~~ **(21 U.S.C. 351 et seq.) is further** amended by inserting after section 524 ~~(21 U.S.C. 360n)~~ the following:

"SEC. 524A. PRIORITY REVIEW FOR QUALIFIED INFECTIOUS DISEASE PRODUCTS.

"If the Secretary designates a drug under section 505E(d) as a qualified infectious disease product, then the Secretary shall give priority review to any application submitted for approval for such drug under section 505(b).".

(b) Application.—Section 524A of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), applies only with respect to an application that is submitted under section 505(b) **of such Act** (21 U.S.C. 355(b)) on or after the date of the enactment of this Act.

SEC. ~~6~~ **803**. FAST TRACK PRODUCT.

Section 506(a)(1) ~~of the Federal Food, Drug, and Cosmetic Act~~(21 U.S.C. 356(a)(1)) is amended by inserting "or if the Secretary designates the drug as a qualified infectious disease product under section 505E(d)" after "such a condition".

SEC. ~~7~~ **804**. GAO STUDY.

(a) In General.—The Comptroller General of the United States shall—

(1) conduct a study—

(A) on the need for incentives to encourage the research, development, and marketing of qualified infectious disease biological products and antifungal products; and

(B) consistent with trade and confidentiality data protections, assessing, for all antibacterial and antifungal drugs, including biological products, the average or aggregate—

(i) costs of all clinical trials for each phase;

(ii) percentage of success or failure at each phase of clinical trials; and

(iii) public versus private funding levels of the trials for each phase; and

(2) not later than 1 year after the date of enactment of this Act, submit a report to Congress on the results of such study, including any recommendations of the Comptroller General on appropriate incentives for addressing such need.

(b) Contents.—The part of the study described in subsection (a)(1)(A) shall include—

(1) an assessment of any underlying regulatory issues related to qualified infectious disease products, including qualified infectious disease biological products;

(2) an assessment of the management by the Food and Drug Administration of the review of qualified infectious disease products, including qualified infectious disease biological products and the regulatory certainty of related regulatory pathways for such products;

(3) a description of any regulatory impediments to the clinical development of new qualified infectious disease products, including qualified infectious disease biological products, and the efforts of the Food and Drug Administration to address such impediments; and

(4) recommendations with respect to—

(A) improving the review and predictability of regulatory pathways for such products; and

(B) overcoming any regulatory impediments identified in paragraph (3).

(c) Definitions.—In this section:

(1) The term "biological product" has the meaning given to such term in section 351 of the Public Health Service Act (42 U.S.C. 262).

(2) The term "qualified infectious disease biological product" means a biological product intended to treat a serious or life-threatening infection described in section 505E(g) **of the Federal Food, Drug, and Cosmetic Act, as added by section 3**.

(3) The term "qualified infectious disease product" has the meaning given such term in section 505E(g) of the Federal Food, Drug, and Cosmetic Act, as added by section 3.

SEC. ~~8~~ **805**. CLINICAL TRIALS.

(a) Review and Revision of ~~Guidelines.—~~ **Guidance Documents.—**

(1) IN GENERAL.—The Secretary **of Health and Human Services (referred to in this section as the "Secretary")** shall review and, as appropriate, revise not fewer than 3 ~~guidances~~ **guidance documents** per year, which shall include—

(A) reviewing the ~~guidelines~~ **guidance documents** of the Food and Drug Administration for the conduct of clinical trials with respect to antibiotic drugs; and

(B) as appropriate, revising such ~~guidelines~~ **guidance documents** to reflect developments in scientific and medical information and technology and to ensure clarity regarding the procedures and requirements for approval of an antibiotic drug under chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.).

(2) ISSUES FOR REVIEW.—At a minimum, the review under paragraph (1) shall address the appropriate animal models of infection, in vitro techniques, valid micro-biological surrogate markers, the use of non-inferiority versus superiority trials, trial enrollment, data requirements, and appropriate delta values for non-inferiority trials.

(3) RULE OF CONSTRUCTION.—Except to the extent to which the Secretary makes revisions under paragraph (1)(B), nothing in this section shall be construed to repeal or otherwise affect the ~~guidelines~~ **guidance documents** of the Food and Drug Administration.

(b) Recommendations for Investigations.—

(1) REQUEST.—The sponsor of a drug intended to be designated as a qualified infectious disease product may request that the Secretary provide written recommendations for nonclinical and clinical investigations which the Secretary believes may be necessary to be conducted with the drug before such drug may be approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in treating, detecting, preventing, or identifying a qualifying pathogen**, as defined in section 505E of such Act**.

(2) RECOMMENDATIONS.—If the Secretary has reason to believe that a drug for which a request is made under this subsection is a qualified infectious disease product, the Secretary shall provide the person making the request written recommendations for the nonclinical and clinical investigations which the Secretary believes, on the basis of information available to the Secretary at the time of the request, would be necessary for approval under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) of such drug for the use described in paragraph (1).

(c) GAO Study.—Not later than ~~3 years after the date of enactment of this Act~~ **January 1, 2016**, the Comptroller General of the United States shall submit to Congress a report—

(1) regarding the review and revision of the clinical trial ~~guidelines~~ **guidance documents** required under subsection (a) and the impact such review and revision has had on the review and approval of qualified infectious disease products;

(2) ~~assessing the management of~~ **assessing—**

(A) the effectiveness of the results-oriented metrics managers employ to ensure that reviewers of such products ~~by the Food and Drug Administration and~~ **are familiar with, and consistently applying, clinical trial guidance documents; and**

(B) the predictability of related regulatory pathways and review;

(3) identifying any outstanding regulatory impediments to the clinical development of qualified infectious disease products;

(4) reporting on the progress the Food and Drug Administration has made in addressing the impediments identified under paragraph (3); and

(5) containing recommendations regarding how to improve the review of, and regulatory pathway for, such products.

~~(d) Definitions.—In this section:~~

~~(1) The term "drug" has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).~~

~~(2) The term "qualifying pathogen" has the meaning given such term in section 505E of the Federal Food, Drug, and Cosmetic Act, as added by section 3 of this Act.~~

~~(3) The term "Secretary" means the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs.~~

~~SEC. 9~~ **SEC. 806**. REGULATORY CERTAINTY AND PREDICTABILITY.

(a) Initial Strategy and Implementation Plan.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ~~"'Secretary'"~~**"Secretary")** shall submit to Congress a strategy and implementation plan with respect to the requirements of this Act. The strategy and implementation plan shall include—

(1) a description of the regulatory challenges to clinical development, approval, and licensure of qualified infectious disease products;

(2) the regulatory and scientific priorities of the Secretary with respect to such challenges; and

(3) the steps the Secretary will take to ensure regulatory certainty and predictability with respect to qualified infectious disease products, including steps the Secretary will take to ensure managers and reviewers are familiar with related regulatory pathways, requirements of the Food and Drug Administration, guidance **documents** related to such products, and applying such requirements consistently.

(b) Subsequent Report.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on—

(1) the progress made toward the priorities identified under subsection (a)(2);

(2) the number of qualified infectious disease products that have been submitted for approval or licensure on or after the date of enactment of this Act;

(3) a list of qualified infectious disease products with information on the types of exclusivity granted for each product, consistent with the information published under section 505(j)(7)(A)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)(A)(iii));

(4) the number of such qualified infectious disease products and that have been approved or licensed on or after the date of enactment of this Act; and

(5) the number of calendar days it took for the approval or licensure of the qualified infectious disease products approved or licensed on or after the date of enactment of this Act.