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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R.

To amend the Federal Food, Drug, and Cosmetic Act with respect to limitations on exclusive approval or licensure of orphan drugs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. DEAN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to limitations on exclusive approval or licensure of orphan drugs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Orphan
5 Drug Exclusivity Act”.

1 **SEC. 2. LIMITATIONS ON EXCLUSIVE APPROVAL OR LICEN-**
2 **SURE OF ORPHAN DRUGS.**

3 (a) IN GENERAL.—Section 527 of the Federal Food,
4 Drug, and Cosmetic Act (21 U.S.C. 360cc) is amended—

5 (1) in subsection (a), by striking “Except as
6 provided in subsection (b)” and inserting “Except as
7 provided in subsection (b) or (f)”; and

8 (2) by adding at the end the following:

9 “(f) LIMITATIONS ON EXCLUSIVE APPROVAL, CER-
10 TIFICATION, OR LICENSE.—

11 “(1) IN GENERAL.—For a drug designated
12 under section 526 for a rare disease or condition
13 pursuant to the criteria set forth in subsection
14 (a)(2)(B) of such section, the Secretary shall not
15 grant, recognize, or apply exclusive approval or licen-
16 sure under subsection (a), and, if such exclusive ap-
17 proval or licensure has been granted, recognized, or
18 applied, shall revoke such exclusive approval or licen-
19 sure, unless the sponsor of the application for such
20 drug demonstrates—

21 “(A) with respect to an application ap-
22 proved or a license issued after the date of en-
23 actment of this subsection, upon such approval
24 or issuance, that there is no reasonable expecta-
25 tion at the time of such approval or issuance
26 that the cost of developing and making avail-

1 able in the United States such drug for such
2 disease or condition will be recovered from sales
3 in the United States of such drug, taking into
4 account all sales made or reasonably expected
5 to be made within 12 years of first marketing
6 the drug; or

7 “(B) with respect to an application ap-
8 proved or a license issued on or prior to the
9 date of enactment of this subsection, not later
10 than 60 days after such date of enactment, that
11 there was no reasonable expectation at the time
12 of such approval or issuance that the cost of de-
13 veloping and making available in the United
14 States such drug for such disease or condition
15 would be recovered from sales in the United
16 States of such drug, taking into account all
17 sales made or reasonably expected to be made
18 within 12 years of first marketing the drug.

19 “(2) CONSIDERATIONS.—For purposes of sub-
20 paragraphs (A) and (B) of paragraph (1), the Sec-
21 retary and the sponsor of the application for the
22 drug designated for a rare disease or condition de-
23 scribed in such paragraph shall consider sales from
24 all drugs that—

1 “(A) are developed or marketed by the
2 same sponsor or manufacturer of the drug (or
3 a licensor, predecessor in interest, or other re-
4 lated entity to the sponsor or manufacturer);
5 and

6 “(B) are covered by the same designation
7 under section 526.

8 “(3) CRITERIA.—No drug designated under
9 section 526 for a rare disease or condition pursuant
10 to the criteria set forth in subsection (a)(2)(B) of
11 such section shall be eligible for exclusive approval
12 or licensure under this section unless it met such
13 criteria under such subsection on the date on which
14 the drug was approved or licensed.”.

15 (b) RULE OF CONSTRUCTION.—The amendments
16 made in subsection (a) shall apply to any drug that has
17 been or is hereafter designated under section 526 of the
18 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb)
19 for a rare disease or condition pursuant to the criteria
20 under subsection (a)(2)(B) of such section regardless of—

21 (1) the date on which such drug is designated
22 or becomes the subject of a designation request
23 under such section;

24 (2) the date on which such drug is approved
25 under section 505 of such Act (21 U.S.C. 355) or

1 licensed under section 351 of the Public Health
2 Service Act (42 U.S.C. 262) or becomes the subject
3 of an application for such approval or licensure; and

4 (3) the date on which such drug is granted ex-
5 clusive approval or licensure under section 527 of
6 the Federal Food, Drug, and Cosmetic Act (21
7 U.S.C. 360cc) or becomes the subject of a request
8 for such exclusive approval or licensure.

9 **SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

10 The budgetary effects of this Act, for the purpose of
11 complying with the Statutory Pay-As-You-Go Act of 2010,
12 shall be determined by reference to the latest statement
13 titled “Budgetary Effects of PAYGO Legislation” for this
14 Act, submitted for printing in the Congressional Record
15 by the Chairman of the House Budget Committee, pro-
16 vided that such statement has been submitted prior to the
17 vote on passage.