

TABLE 2—FY 2012 FEE RATES—Continued

Animal drug user fee category	Fee rate for FY 2012
Animal Drug Establishment Fee <sup>1</sup> .....	93,050
Animal Drug Sponsor Fee <sup>2</sup> .....	67,200

<sup>1</sup> An animal drug establishment is subject to only one such fee each fiscal year.  
<sup>2</sup> An animal drug sponsor is subject to only one such fee each fiscal year.

**IX. Procedures for Paying the FY 2012 Fees**

**A. Application Fees and Payment Instructions**

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted after September 30, 2011. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or electronically using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the “Pay Now” button.) On your check, bank draft, or U.S. postal money order, please write your application’s unique Payment Identification Number (PIN), beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO 63195–3877.

If payment is made by wire transfer, send payment to: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution regarding additional fees.

If you prefer to send a check by a courier such as Federal Express (FEDEX) or United Parcel Service (UPS), the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4821. This telephone number is

only for questions about courier delivery.)

The tax identification number of the Food and Drug Administration is 530196965. (**Note:** In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA’s CVM. FDA records the official application receipt date as the later of the following: The date the application was received by FDA’s CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA within one working day, using the PIN described previously.

**B. Application Cover Sheet Procedures**

**Step One**—Create a user account and password. Log on to the ADUFA Web site at <http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm> and under Tools and Resources click “The Animal Drug User Fee Cover Sheet” and then click “Create ADUFA User Fee Cover Sheet.” For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

**Step Two**—Create an Animal Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

**Step Three**—Send the payment for your application as described in section IX.A of this document.

**Step Four**—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

**C. Product, Establishment, and Sponsor Fees**

By December 31, 2011, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2012 using this Fee Schedule. Payment will be due and payable within 30 days of issuance of the invoice. FDA will issue invoices in November 2012 for any products, establishments, and sponsors subject to fees for FY 2012 that qualify for fees after the December 2011 billing.

Dated: July 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–19336 Filed 7–29–11; 8:45 am]

**BILLING CODE 4160–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2011–N–0547]

**Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2012**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2012 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Generic Drug User Fee Act of 2008 (AGDUFA), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, on certain generic new animal drug products, and on certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational

submissions for generic new animal drugs. This notice establishes the fee rates for FY 2012.

**FOR FURTHER INFORMATION CONTACT:** Visit FDA's Web site at <http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFADefault.htm> or contact Lisa Kable, Center for Veterinary Medicine (HFV-10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240-276-9718. For general questions, you may also email the Center for Veterinary Medicine (CVM) at: [cvmagdufa@fda.hhs.gov](mailto:cvmagdufa@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 741 of the FD&C Act (21 U.S.C. 379j-21) establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j-21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j-21(d)).

For FY 2009 through FY 2013, the FD&C Act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2009 may be adjusted for workload. Fees for applications, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for workload.

For FY 2012, the generic new animal drug user fee rates are: \$124,900 for each abbreviated application for a generic new animal drug; \$6,200 for each generic new animal drug product; \$54,350 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; \$40,763 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and \$27,175 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2012 product and sponsor fees by December 31, 2011. These fees will be due and payable within 30 days of the issuance of the invoices. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2011, and will remain in effect through September 30, 2012. Applications will not be accepted for review until FDA has received full payment of related application fees and any other fees owed under the Animal Generic Drug User Fee program.

**II. Revenue Amount for FY 2012**

*A. Statutory Fee Revenue Amounts*

AGDUFDA (Title II of Pub. L. 110-316 signed by the President on August 14, 2008) specifies that the aggregate revenue amount for FY 2012 for abbreviated application fees is \$1,712,000 and each of the other two generic new animal drug user fee categories, annual product fees and annual sponsor fees, is \$1,997,000 each, before any adjustment for workload is made (see 21 U.S.C. 379j-21(b)).

*B. Inflation Adjustment to Fee Revenue Amount*

The amounts established in AGDUFDA for each year for FY 2009 through FY 2013 include an inflation adjustment; so, no inflation adjustment is required.

*C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount*

For each FY beginning after FY 2009, AGDUFDA provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j-21(c)(1)).

FDA calculated the average number of each of the four types of applications and submissions specified in the workload adjustment provision (abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions) received over the 5-year period ended on September 30, 2008 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended on June 30, 2011.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA generic new animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 of table 1 is the weighted percent change in each category of workload and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 1, the sum of the values in column 5 is calculated, reflecting a total change in workload of negative 25.7 percent for FY 2012. This is the workload adjuster for FY 2012.

TABLE 1—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1 5-Year average (base years)	Column 2 Latest 5-year average	Column 3 Percent change	Column 4 Weighting factor	Column 5 Weighted percent change
Abbreviated New Animal Drug Applications (ANADAs) .....	44.2	25.4	-43	50%	-21.3
Manufacturing Supplements ANADAs .....	114.6	118.4	3	22%	0.7
Generic Investigational Study Submissions .....	17.4	17.0	-2	10%	-0.2
Generic Investigational Protocol Submissions .....	21.6	15.6	-28	17%	-4.8
FY 2012 AGDUFDA Workload Adjuster .....	.....	.....	.....	.....	-25.7

AGDUFDA specifies that the workload adjuster may not result in fees for a fiscal year that are less than the statutory revenue amount (21 U.S.C. 379j-21(c)(1)(B)) for that fiscal year.

Because applying the workload adjuster for FY 2012 would result in fees less than the statutory amount, the workload adjustment will not be applied in FY 2012. As a result, the statutory revenue

amount for each category of fees for FY 2012 (\$1,712,000 for application fees and \$1,997,000 for both product and sponsor fees) becomes the revenue target for the fees in FY 2012, for a total

fee revenue target in FY 2012 of \$5,706,000 for fees from all three categories.

### III. Abbreviated Application Fee Calculations for FY 2012

The term “abbreviated application for a generic new animal drug” is defined in 21 U.S.C. 379j–21(k)(1).

#### A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for abbreviated applications for a generic new animal drug that is subject to fees under AGDUFA and that is submitted on or after July 1, 2008. The application fees are to be set so that they will generate \$1,712,000 in fee revenue for FY 2012. This is the amount set out in the statute.

To set fees for abbreviated applications for generic new animal drugs to realize \$1,712,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2012.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. FDA is making estimates and applying different assumptions for two types of submissions: Original submissions of abbreviated applications for generic new animal drugs and “reactivated” submissions of abbreviated applications for generic new animal drugs. Any original submissions of abbreviated applications for generic new animal drugs that were received by FDA before July 1, 2008, were not assessed fees (21 U.S.C. 379j–21(a)(1)(A)). Some of these non-fee-paying submissions were later resubmitted after July 1 because the initial submission was not approved by FDA (i.e., FDA marked the submission as incomplete and requested additional nonadministrative information) or because the original submission was withdrawn by the sponsor. Because these abbreviated applications for generic new animal drugs are resubmitted after July 1, 2008, they are assessed fees. In this notice, FDA refers to these resubmitted applications as “reactivated” applications.

Regarding original submissions of abbreviated applications for generic new animal drugs, FDA is assuming that the number of applications that will pay fees in FY 2012 will equal 30 percent less than the average number of submissions over the 5 most recent completed years (2006–2010). This 30-percent reduction is made because of the anticipated impact of fees on the

number of submissions. The average number of original submissions of abbreviated applications for generic new animal drugs over the 5 most recent completed years is 14.4. Applying a 30-percent reduction to the 14.4 average, the estimate for original submissions of abbreviated applications for generic new animal drugs for FY 2012 is 10.1. (If the number of original submissions of abbreviated applications for generic new animal drugs does not increase over the next year, a higher percent reduction will have to be applied next year when fees are set for FY 2013.)

Regarding reactivated submissions of abbreviated applications for generic new animal drugs, FDA is applying a 75-percent reduction. This is based on the fact that there were a limited number of original submissions of abbreviated applications for generic new animal drugs received by FDA before July 1, 2008, which were not assessed fees. For these original submissions that were not approved before July 1, 2008, resubmission to FDA would trigger an application fee (21 U.S.C. 379j–21(a)(1)(A)). Once these initial original submissions of abbreviated applications for generic new animal drugs received by FDA before July 1, 2008, have either been withdrawn or resubmitted, “reactivation submissions” will cease completely. This reduction is consistent with estimates made when this user fee program was in the development process. The average number of receipts for reactivated submissions of abbreviated applications for generic new animal drugs is 14.5 per year, which is the average of the 5 most recent completed years. Applying a 75-percent reduction to the 14.5 average, the estimate for reactivated submissions of abbreviated applications for generic new animal drugs for FY 2012 is 3.6. These reductions may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after years of experience with other user fee programs.

Based on the previous assumptions, FDA is estimating that it will receive a total of 13.7 fee-paying generic new animal drug applications in FY 2012 (10.1 original applications and 3.6 reactivations).

#### B. Fee Rates for FY 2012

FDA must set the fee rates for FY 2012 so that the estimated 13.7 abbreviated applications that pay the fee will generate a total of \$1,712,000. To generate this amount, the fee for a generic new animal drug application, rounded to the nearest hundred dollars, will have to be \$124,900.

### IV. Generic New Animal Drug Product Fee Calculations for FY 2012

#### A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an abbreviated new animal drug application or supplemental abbreviated application for generic new animal drugs for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term “generic new animal drug product” means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate \$1,997,000 in fee revenue for FY 2012. This is the amount set out in the statute and no further adjustments are required for FY 2012.

To set generic new animal drug product fees to realize \$1,997,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2012. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who FDA estimated would have an abbreviated new animal drug application or supplemental abbreviated application pending after September 1, 2008. FDA estimates a total of 358 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 358 products will be subject to this fee in FY 2012.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2012, FDA is assuming that approximately 10 percent of the products invoiced, or 36, will not pay fees in FY 2012 due to fee waivers

and reductions. Based on experience with other user fee programs and the first 3 years of AGDUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2012.

Accordingly, the Agency estimates that a total of 322 (358 minus 36) products will be subject to product fees in FY 2012.

**B. Product Fee Rates for FY 2012**

FDA must set the fee rates for FY 2012 so that the estimated 322 products that pay fees will generate a total of \$1,997,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest 5 dollars, to be \$6,200.

**V. Generic New Animal Drug Sponsor Fee Calculations for FY 2012**

**A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors**

The generic new animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an abbreviated application for a new generic animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive; and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(B)). Applicants with more than 6 approved abbreviated applications will pay 100 percent of the sponsor fee, applicants with 2 to 6 approved abbreviated applications will pay 75 percent of the sponsor fee, and applicants with 1 or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(B)). The sponsor fees are to be set so that they will generate \$1,997,000 in fee revenue for FY 2012. This is the amount set out in the statute and no adjustments are required for FY 2012.

To set generic new animal drug sponsor fees to realize \$1,997,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2012. Based on the number of firms that meet this definition, FDA

estimates that in FY 2012, 12 sponsors will pay 100 percent fees, 13 sponsors will pay 75 percent fees, and 38 sponsors will pay 50 percent fees. That totals the equivalent of 40.75 full sponsor fees (12 times 100 percent or 12, plus 13 times 75 percent or 9.75, plus 38 times 50 percent or 19).

FDA estimates that about 10 percent of all of these sponsors, or 4, may qualify for a minor use/minor species waiver.

Accordingly, the Agency estimates that the equivalent of 36.75 full sponsor fees (40.75 minus 4) are likely to be paid in FY 2012.

**B. Sponsor Fee Rates for FY 2012**

FDA must set the fee rates for FY 2012 so that the estimated equivalent of 36.75 full sponsor fees will generate a total of \$1,997,000. To generate this amount will require the 100-percent fee for a generic new animal drug sponsor, rounded to the nearest \$50, to be \$54,350. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be \$40,763, and the fee for those paying 50 percent of the full sponsor fee will be \$27,175.

**VI. Fee Schedule for FY 2012**

The fee rates for FY 2012 are summarized in table 2 of this document.

**TABLE 2—FY 2012 FEE RATES**

Generic new animal drug user fee category	Fee rate for FY 2012
Abbreviated Application Fee for Generic New Animal Drug Application .....	\$124,900
Generic New Animal Drug Product Fee .....	6,200
100 Percent Generic New Animal Drug Sponsor Fee <sup>1</sup>	54,350
75 Percent Generic New Animal Drug Sponsor Fee <sup>1</sup> ....	40,763
50 Percent Generic New Animal Drug Sponsor Fee <sup>1</sup> ....	27,175

<sup>1</sup> An animal drug sponsor is subject to only one such fee each fiscal year.

**VII. Procedures for Paying FY 2012 Generic New Animal Drug User Fees**

**A. Abbreviated Application Fees and Payment Instructions**

The FY 2012 fee established in the new fee schedule must be paid for an abbreviated new animal drug application subject to fees under AGDUFA that is submitted on or after October 1, 2011. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or by automatic clearing house using *Pay.gov*. (The *Pay.gov* payment option is

available to you after you submit a cover sheet. Click the “Pay Now” button). On your check, bank draft, or U.S. postal money order, please write your application’s unique Payment Identification Number (PIN), beginning with the letters “AG”, from the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write the FDA post office box number (PO Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO 63195–3877.

If payment is made via wire transfer, send payment to U. S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, *Account Name: Food and Drug Administration, account number: 75060099, routing number: 021030004, SWIFT number: FRNYUS33*. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution regarding the amount of the fees that need to be paid in addition to the wire transfer amount.

If you prefer to send a check by a courier such as Federal Express (FEDEX) or United Parcel Service (UPS), the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, *Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101*.

(Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4821. This telephone number is only for questions about courier delivery.)

The tax identification number of the Food and Drug Administration is 530196965.

(Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA’s Center for Veterinary Medicine. FDA records the official abbreviated application receipt date as the later of the following: The date the application was received by FDA’s CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of payment. U.S. Bank and the U.S. Treasury are required to notify FDA within 1 working day, using the PIN described previously.

### B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the AGDUFA Web site at <http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm> and scroll down the page until you find the link “Create AGDUFA User Fee Cover Sheet.” Click on that link and follow the directions. For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated animal drug application. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section VII.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Generic Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV-199), 7500 Standish Pl., Rockville, MD 20855.

### C. Product and Sponsor Fees

By December 31, 2011, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2012 using this fee schedule. Fees will be due and payable 30 days after the issuance of the invoices. FDA will issue invoices in November 2012 for any products and sponsors subject to fees for FY 2012 that qualify for fees after the December 2011 billing.

Dated: July 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-N-0529]

#### Burden of Food and Drug Administration Food Safety Modernization Act Fee Amounts on Small Business; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; Request for comments and information.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment of a docket to obtain information that will be used to formulate a proposed set of guidelines in consideration of the burden of fee amounts on small business, as set forth in the FDA Food Safety Modernization Act (FSMA). FSMA provides the Agency with authority under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to assess and collect user fees, including those for costs associated with certain domestic and foreign facility reinspections, failure to comply with a recall order, and importer reinspections. The Agency is seeking public comment on what burdens these fees impose on small business, and whether and how the Agency should alleviate such burdens. In particular, the Agency is seeking public comments on whether a reduction of fees or other consideration for small business is appropriate, and if so, what factors the Agency should consider for each. In addition, the Agency is seeking public comment on how small business should be defined or recognized. FDA is establishing this docket in order to provide an opportunity for interested parties to provide data and share views that will inform future Agency actions with respect to these matters.

**DATES:** Submit either electronic or written comments by October 17, 2011.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

Alexis Nazario-Negron, Office of Financial Management, Food and Drug Administration, 1350 Piccard Dr., rm. 210E, Rockville, MD 20850, 301-796-7223, [Alexis.Nazario-Negron@fda.hhs.gov](mailto:Alexis.Nazario-Negron@fda.hhs.gov).

## SUPPLEMENTARY INFORMATION:

### I. Background

Each year about 48 million people (1 in 6 Americans) are sickened, 128,000 are hospitalized, and 3,000 die from food borne diseases, according to recent data from the Centers for Disease Control and Prevention (Refs. 1 and 2). This is a significant public health burden that is largely preventable.

FSMA (Pub. L. 111-353), signed into law by President Obama on January 4, 2011, enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than reacting to problems after they occur. The law also provides FDA with new enforcement authorities to help it achieve higher rates of compliance with prevention- and risk-based food safety standards and to better respond to problems when they do occur. The law also gives FDA important new tools to better ensure the safety of imported foods and directs FDA to build an integrated national food safety system in partnership with State and local authorities.

Among the new authorities Congress provided in FSMA, the Secretary of Health and Human Services (and by delegation, FDA) is to assess and collect fees from industry for FDA's costs associated with certain activities. Section 107(a) of FSMA (which amends the FD&C Act by adding section 743 (21 U.S.C. 379j-31)) mandates that FDA assess and collect fees for costs associated with certain domestic and foreign facility reinspections, failure to comply with a recall order under sections 423 and 412(f) of the FD&C Act (21 U.S.C. 350l and 350a(f)), and certain importer reinspections (section 743(a)(1) of the FD&C Act).<sup>1</sup>

Section 743(b)(2)(A) of the FD&C Act specifies that the Agency must base these fees on an estimation of 100 percent of the costs of the various activities which are described in section 743(a)(1), for the fiscal year. These fees must be published in the **Federal Register** not later than 60 days before the start of each fiscal year. Elsewhere in this issue of the **Federal Register**, FDA is publishing notice of these fees.

Congress directed FDA to publish, within 180 days of enactment of FSMA, a proposed set of guidelines in consideration of the burden of fee

<sup>1</sup> FDA is not soliciting comments, in this **Federal Register** notice, on the burdens to small businesses that participate in the voluntary qualified importer program (VQIP) under section 743(a)(1)(C) of the FD&C Act. FDA intends to consider such burdens at the time the VQIP is established.