deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only; do not send mail to this address.)

Please make sure that both of the following are written on your check: (1) The FDA lockbox number (Lockbox 979108) and (2) the PIN that is printed on your order. A copy of your printed order should also be mailed along with your check. FDA's tax identification number is 53–0196965.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment fees. To send a wire transfer, please read and comply with the following information:

- Include your order's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee order, in your wire transfer. Without the PIN your payment may not be applied to your facility and your registration will be delayed.
- The originating financial institution usually charges a wire transfer fee between $15 and $35. Please ask your financial institution about the fee and include it with your payment to ensure that your order is fully paid. Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 5600 Fishers Lane, Rockville, MD 20857.

*C. Step Three—Complete the Information Online To Update Your Establishment's Annual Registration for FY 2012, or to Register a New Establishment for FY 2012*

Go to CDRH's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the ''Access Electronic Registration'' link on the left of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the link (Access Electronic Registration) at the bottom of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2010 or FY 2011. Biologics manufacturers should register in the BER system at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using selections on the DRLM menu. Once you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, e-mail: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (**Note:** this e-mail address and this telephone number are for assistance with establishment registration only, and not for any other aspects of medical device user fees.) Problems with BER should be directed to *bloodregis@fda.hhs.gov* or call 301–827–3546.

*D. Step Four—Enter Your DFUF Order PIN and PCN*

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to companies who only manufacture licensed biologics devices. Fees are only required for those establishments defined in section I of this document.

Dated: July 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–19335 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–0559]**

### Prescription Drug User Fee Rates for Fiscal Year 2012

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2012. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2007 (Title 1 of the Food and Drug Administration Amendments Act of 2007 (FDAAA)) (PDUFA IV), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts to be generated from PDUFA fees were established by PDUFA IV, with provisions for certain adjustments. Fee revenue amounts for applications, establishments, and products are to be established each year by FDA so that one-third of the PDUFA fee revenues FDA collects each year will be generated from each of these categories. This document establishes fee rates for FY 2012 for application fees for an application requiring clinical data ($1,841,500), for an application not requiring clinical data or a supplement requiring clinical data ($920,750), for establishment fees ($520,100), and for product fees ($98,970). These fees are effective on October 1, 2011, and will remain in effect through September 30, 2012. For applications and supplements that are submitted on or after October 1, 2011, the new fee schedule must be used. Invoices for establishment and product fees for FY 2012 will be issued in August 2011, using the new fee schedule.

**FOR FURTHER INFORMATION CONTACT:** David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Picard Dr., PI50, Rm. 210J, Rockville, MD 20850, 301–796–7103.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively), establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (section 736(a) of the FD&C Act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act).

For FY 2008 through FY 2012, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA IV. The base revenue amount for FY 2008 is to be adjusted for workload, and that adjusted amount becomes the base amount for the remaining 4 FYs. That adjusted base revenue amount is increased for drug safety enhancements by $10,000,000 in each of the subsequent 4 FYs, and the increased total is further adjusted each year for inflation and workload. Fees for

applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

This document uses the fee base revenue amount for FY 2008 published in the **Federal Register** of October 12, 2007 (72 FR 58103) (the October 2007 notice); adjusts it for the FY 2009, FY 2010, FY 2011, and FY 2012 drug safety increases (see section 736(b)(4) of the FD&C Act), for inflation, and for workload, for excess collections through FY 2011, and for a final year adjustment; and then establishes the application, establishment, and product fees for FY 2012. These fees are effective on October 1, 2011, and will remain in effect through September 30, 2012.

## II. Fee Revenue Amount for FY 2012

The total fee revenue amount for FY 2012 is $702,172,000, based on the fee revenue amount specified in the statute, including additional fee funding for drug safety and adjustments for inflation, changes in workload, offset for excess collections and the final year adjustment. The statutory amount and a one-time base adjustment are described in sections II.A and II.B of this document. The adjustment for inflation is described in section II.C of this document, and the adjustment for changes in workload in section II.D of this document. The adjustment for estimated excess collections through FY 2012 is described in section III of this document, and the final year adjustment is described in section IV of this document.

### *A. FY 2012 Statutory Fee Revenue Amounts Before Adjustments*

PDUFA IV specifies that the fee revenue amount before adjustments for FY 2012 for all fees is $457,783,000 ($392,783,000 specified in section 736(b)(1) of the FD&C Act plus an additional $65,000,000 for drug safety in FY 2012 specified in section 736(b)(4)).

### *B. Base Adjustment to Statutory Fee Revenue Amount*

The statute also specifies that $354,893,000 of the base amount is to be further adjusted for workload increases through FY 2007 (see section 736(b)(1)(B) of the FD&C Act). The workload adjustment on this amount is to be made in accordance with the workload adjustment provisions that were in effect for FY 2007, except that the adjustment for investigational new drug (IND) workload is based on the number of INDs with a submission in the previous 12 months rather than on the number of new commercial INDs submitted in the same 12-month period. This adjustment was explained in detail in the October 2007 notice. Increasing the statutorily specified amount of $354,893,000 by the specified workload adjuster (11.73 percent) results in an increase of $41,629,000, rounded to the nearest thousand. Adding this amount to the $457,783,000 statutorily specified amount from section II.A of this document, results in a total adjusted PDUFA IV base revenue amount of $499,412,000, before further adjustment for inflation and changes in workload after FY 2007.

### *C. Inflation Adjustment to FY 2012 Fee Revenue Amount*

PDUFA IV provides that fee revenue amounts for each FY after FY 2008 shall be adjusted for inflation. The adjustment must reflect the greater of the following amounts: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set; (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area; or (3) the average annual change in cost, per FDA full time equivalent (FTE), of all personnel compensation and benefits paid for the first 5 of the previous 6 FYs. PDUFA IV provides for this annual adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the FD&C Act).

The first factor is the CPI increase for the 12-month period ending in June 2011. The CPI for June 2011 was 225.722 and the CPI for June 2010 was 217.965. (These CPI figures are available on the Bureau of Labor Statistics (BLS) Web site at *http://data.bls.gov/cgi-bin/surveymost?bls* by checking the first box under ''Price Indexes'' and then clicking ''Retrieve Data'' at the bottom of the page. FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**) The CPI for June 2011 is 3.559 percent higher than the CPI for the previous 12-month period.

The second factor is the increase in pay for the previous FY (FY 2011 in this case) for Federal employees stationed in the Washington, DC metropolitan area. This figure is published by the Office of Personnel Management (OPM), and found on their Web site at *http://www.opm.gov/oca/11tables/html/dcb.asp* above the salary table. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**) For FY 2011 it was 0.00 percent.

The third factor is the average change in FDA cost for compensation and benefits per FTE over the previous 5 of the most recent 6 FYs (FY 2006 through FY 2010). The data on total compensation paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees. Table 1 of this document summarizes that actual cost and FTE use data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the most 5 recent FYs, which is 3.72 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

| | FY2006 | FY2007 | FY2008 | FY2009 | FY2010 | Annual average increase for latest 5 years |
|---|---|---|---|---|---|---|
| Total PC&B | $1,114,704,000 | $1,144,369,000 | $1,215,627,000 | $1,464,445,000 | $1,634,108,000 | ..... |
| Total FTE | 9,698 | 9,569 | 9,811 | 11,413 | 12,256 | ..... |
| PC&B per FTE | $114,942 | $119,591 | $123,905 | $128,314 | $130,457 | ..... |
| Percent Change from Previous Year | 5.70 | 4.05 | 3.61 | 3.56 | 1.67 | 3.72 |

The inflation increase for FY 2012 is 3.72 percent. This is the greater of the CPI change during the 12-month period ending June 30 preceding the FY for which fees are being set (3.559 percent), the increase in pay for the previous FY (FY 2011 in this case) for Federal employees stationed in the Washington, DC metropolitan area (0.00 percent), and

the average annual change in cost, per FDA FTE, of all personnel compensation and benefits paid for the first 5 of the previous 6 FYs (3.72 percent). Because the average change in pay per FTE (3.72 percent) is the highest of the three factors, it becomes the inflation adjustment for total fee revenue for FY 2012.

The inflation adjustment for FY 2009 was 5.64 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees were being set (June 30, 2008, which was 5.05 percent), the increase in pay for FY 2008 for Federal employees stationed in Washington, DC (4.49 percent), or the average annual change in cost, per FDA FTE, of all personnel compensation and benefits paid for the first 5 of the previous 6 FYs (5.64 percent).

The inflation adjustment for FY 2010 was 5.54 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees were being set (June 30, 2009) (negative 1.43 percent), the increase in pay for FY 2009 for Federal employees stationed in Washington, DC (4.78 percent), or the average annual change in cost, per FDA FTE, of all personnel compensation and benefits paid for the first 5 of the previous 6 FYs (5.54 percent).

The inflation adjustment for FY 2011 was 4.53 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees were being set (June 30, 2010) (1.053 percent), the increase in pay for FY 2010 for Federal employees stationed in Washington, DC (2.42 percent), or the average annual change in cost, per FDA FTE, of all personnel compensation and benefits paid for the first 5 of the previous 6 FYs (4.53 percent).

PDUFA IV provides for this inflation adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the FD&C Act). This factor for FY 2012 (3.72 percent) is compounded by adding one to it and then multiplying it by one plus the inflation adjustment factor for FY 2011 (4.53 percent) and by one plus the inflation adjustment factor for FY 2010 (5.54 percent) and by one plus the inflation adjustment factor for FY 2009 (5.64 percent). The result of this multiplication of the inflation factors for the 4 years since FY 2008 (1.0372 times 1.0453 times 1.0554 times 1.0564 percent) becomes the inflation adjustment for FY 2012. This inflation adjustment for FY 2012 is 20.88 percent.

Increasing the FY 2012 fee revenue base of $499,412,000, by 20.88 percent yields an inflation-adjusted fee revenue amount for FY 2012 of $603,689,000, rounded to the nearest thousand dollars, before the application of the FY 2012 workload adjustment.

*D. Workload Adjustment to the FY 2012 Inflation Adjusted Fee Revenue Amount*

PDUFA IV does not allow FDA to adjust the total revenue amount for workload beginning in FY 2010, unless an independent accounting firm study is complete (see section 736(c)(2)(C) of the FD&C Act). That study, conducted by Deloitte Touche, LLP, was completed on March 31, 2009, and is available online at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm164339.htm.* The study found that the adjustment methodology used by FDA reasonably captures changes in workload for reviewing human drug applications under PDUFA IV. Accordingly, FDA continues to use the workload adjustment methodology prescribed in PDUFA IV.

For each fiscal year beginning in FY 2009, PDUFA IV provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see section 736(c)(2) of the FD&C Act). PDUFA IV continues the Prescription Drug User Fee Amendments of 2002 (PDUFA III) workload adjustment with modifications, and provides for a new additional adjustment for changes in review activity.

FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications, (2) active commercial INDs (applications that have at least one submission during the previous 12 months), (3) efficacy supplements, and (4) manufacturing supplements received over the 5-year period that ended on June 30, 2007 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2011.

The calculations are summarized in table 2 of this document. The 5-year averages for each application category are provided in Column 1 (''5–Year Average Base Years 2002–2007'') and Column 2a (''5-Year Average 2007–2011'').

PDUFA IV specifies that FDA make additional adjustments for changes in review activities to human drug applications and active commercial INDs. These adjustments, specified under PDUFA IV, are summarized in columns 2b and 2c in table 2 of this document. The number in the new drug applications/biologics license applications (NDAs/BLAs) line of column 2b of table 2 of this document is the percent by which the average workload for meetings, annual reports, and labeling supplements for NDAs and BLAs has changed from the 5-year period 2002 through 2007, to the 5-year period 2007 through 2011. Likewise, the number in the ''Active commercial INDs'' line of column 2b of table 2 of this document is the percent by which the workload for meetings and special protocol assessments for active commercial INDs has changed from the 5-year period 2002 through 2007, to the 5-year period 2007 through 2011. There is no entry in the last two lines of column 2b because the adjustment for changes in review workload does not apply to the workload for efficacy supplements and manufacturing supplements.

Column 3 of table 2 of this document reflects the percent change in workload from column 1 to column 2c. Column 4 of table 2 of this document shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of table 2 of this document is the weighted percent change in each category of workload. This 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 2 of this document is the sum of the values in column 5 that are added, reflecting an increase in workload of 8.12 percent for FY 2012 when compared to the base years.

TABLE 2—WORKLOAD ADJUSTER CALCULATION FOR FY 2012

| Application type | Column 1 5-year average base years 2002–2007 | Column 2a 5-year average 2007–2011 | Column 2b Adjustment for changes in review activity | Column 2c (Column 2a increased by column 2b) | Column 3 Percent change (column 1 to column 2c) | Column 4 Weighting factor | Column 5 Weighted percent change |
|---|---|---|---|---|---|---|---|
| NDAs/BLAs | 123.8 | 130.8 | −0.01% | 130.8 | 5.6% | 35.3% | 1.99% |
| Active commercial INDs | 5,528.2 | 6520.6 | −2.41 | 6363.2 | 15.1 | 42.4 | 6.40 |
| Efficacy supplements | 163.4 | 157.4 | NA | 157.4 | −3.7 | 9.9 | −0.36 |
| Manufacturing supplements | 2589.2 | 2606.8 | NA | 2606.8 | 0.7 | 12.4 | 0.08 |
| FY 2012 Workload Adjuster | | | | | | | 8.12 |

The FY 2012 workload adjuster reflected in the calculations in table 3 of this document is 8.12 percent. Therefore the inflation-adjusted revenue amount of $603,689,000 from section II.C of this document will be increased by the FY 2012 workload adjuster of 8.12 percent, resulting in a total adjusted revenue amount in FY 2012 of $652,709,000, rounded to the nearest thousand dollars.

*E. Rent and Rent-Related Adjustment to the FY 2011 Adjusted Fee Revenue Amount*

PDUFA specifies that for FY 2010 and each subsequent FY, the revenue amount will be decreased if the actual cost paid for rent and rent-related expenses for preceding FYs are less than estimates made for such FYs in FY 2006 (see section 736(c)(3) of the FD&C Act). Table 3 of this document shows the estimates of rent and rent-related costs for FY 2008 through FY 2010 made in 2006 and the actual costs for these 3 FYs, the only FYs for which complete data are available at this time.

TABLE 3—COMPARISON OF ACTUAL AND ESTIMATED RENT AND RENT-RELATED EXPENSES FOR THE CENTER FOR DRUG EVALUATION AND RESEARCH (CDER) AND THE CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)

| | Estimates made in 2006 | | | | Actual amounts paid | | | |
|---|---|---|---|---|---|---|---|---|
| | FY 2008 | FY 2009 | FY 2010 | Total | FY 2008 | FY 2009 | FY 2010 | Total |
| CDER | $46,732,000 | $40,415,000 | $41,589,000 | $128,736,000 | $51,619,000 | $64,687,250 | $58,049,000 | $174,355,250 |
| CBER | 22,295,000 | 23,067,000 | 25,652,000 | 71,014,000 | 26,715,000 | 26,966,750 | 27,815,000 | 81,496,750 |
| Total | 69,027,000 | 63,482,000 | 67,241,000 | 199,750,000 | 78,334,000 | 91,654,000 | 85,864,000 | 255,852,000 |

Because FY 2008 through FY 2010 costs for rent and rent-related items in total ($255,852,000) exceeded the estimates of these costs made in FY 2006 ($199,750,000), no decrease in the FY 2012 estimated PDUFA revenues is required under this provision of PDUFA.

**III. Offset for Excess Collections Through FY 2011**

Under the provisions of PDUFA III, which applies to user fees collected for FY 2002 through FY 2007, if the amount of fees collected for a FY exceeds the amount of fees specified in appropriation acts for that FY, the excess amount shall be credited to FDA's appropriation account and shall be subtracted from the amount of fees that would otherwise be authorized to be collected in a subsequent FY (See 21 U.S.C. 379h(g)(4) as amended by PDUFA III). In setting PDUFA fees for FY 2007 in August of 2006, some offsets were made under these provisions, but some offsets still need to be made based on final collection data for that period. Table 4 shows the amount of fees specified in FDA's annual appropriation for each year from FY 2003 through FY 2007; the amounts FDA has collected for each year; the amount of offset previously taken; and the cumulative difference. FDA will take this difference as an offset against FY 2012 fee collections.

TABLE 4—OFFSETS REMAINING TO BE TAKEN FOR PDUFA III, FY 2003–2007

| Fiscal year | Fees appropriated | Fees collected | Excess collections offset under section 736(g)(4) of the FD&C Act when 2007 fees were set | Remaining excess collections to be offset |
|---|---|---|---|---|
| 2003 | $222,900,000 | $218,302,684 | | |
| 2004 | 249,825,000 | 258,333,700 | $7,230,906 | $1,277,794 |
| 2005 | 284,394,000 | 287,178,231 | | 2,784,231 |
| 2006 | 305,332,000 | 313,514,278 | | 8,209,278 |
| 2007 | 352,200,000 | 370,934,966 | | 18,734,966 |
| Cumulative difference to be offset against FY 2012 collections | | | | 30,974,959 |

In addition, under the provisions of PDUFA, as amended by PDUFA IV, if the sum of the cumulative amount of the fees collected for FY 2008 through 2010, and the amount of fees estimated to be collected under this section III of the document for FY 2011, exceeds the cumulative amount appropriated for fees for FYs 2008 through 2011, the excess will be credited to FDA's appropriation account and subtracted from the amount of fees that FDA would otherwise be authorized to collect for FY 2012 under the FD&C Act (21 U.S.C. 379h(g)(4) as amended by PDUFA IV).

Table 5 of this document shows the amounts specified in appropriation acts for each year from FY 2008 through FY 2011, and the amounts FDA has collected for FYs 2008, 2009, and 2010 as of March 31, 2011, and the amount that FDA estimated it would collect in FY 2011 when it published the notice of FY 2011 fees in the **Federal Register** on August 4, 2010 (75 FR 46956). In FY 2011, application fee revenues to date are less than anticipated when fees were set in August 2010. The bottom line of table 5 of this document shows the estimated cumulative difference between fee amounts specified in appropriation acts for FY 2008 through FY 2011 and PDUFA fee amounts collected.

TABLE 5—OFFSETS TO BE TAKEN FOR THE PDUFA IV PERIOD, FY 2008–2011 FOR FY 2008–2010, FEES COLLECTED THROUGH 3/31/2011; FOR FY 2011, ESTIMATE AS OF 3/31/2011

| Fiscal year | Fees appropriated | Fees collected | Difference |
|---|---|---|---|
| 2008 | $459,412,000 | $479,582,086 | $20,170,086 |
| 2009 | 510,665,000 | 521,496,042 | 10,831,042 |
| 2010 | 578,162,000 | 567,877,548 | (10,284,452) |
| 2011 estimate | 667,057,000 | 619,070,000 | (47,987,000) |
| Cumulative difference | ..... | ..... | (27,270,324) |

The cumulative fees collected for FYs 2008 through 2011 are estimated to be more than $27 million less than the cumulative fee amounts specified in appropriation acts during this same period. Under section 736(g)(4) of the FD&C Act, an offset is only made if the cumulative fees collected exceed cumulative fee appropriations for this period. Accordingly, there will be no offset of fees attributable to the PDUFA IV period of FYs 2008 through 2012. The only offset will be for the $30,974,959 for the PDUFA III period. Reducing the inflation and workload adjusted estimate of total revenue of $652,709,000 by the PDUFA III offset of $30,975,000 (rounded to the nearest thousand dollars) results in a revenue estimate of $621,734,000, before the final year adjustment.

## IV. Final Year Adjustment

Under the provisions of PDUFA, as amended, the Secretary of Health and Human Services may, in addition to the inflation and workload adjustments, further increase the fees and fee revenues if such an adjustment is necessary to provide for not more than 3 months of operating reserves of carryover user fees for the process for the review of human drug applications for the first 3 months of FY 2013. The rationale for the amount of this increase shall be contained in the annual notice establishing fee revenues and fees for FY 2012 (see 21 U.S.C. 379h(c)(4)).

TABLE 6—ESTIMATED CARRYOVER BALANCE AT THE END OF FY 2012, AFTER DEDUCTION OF ESTIMATED FY 2011–2012 OPERATING COSTS

| | |
|---|---|
| Total carryover balance end of FY 2010 | $150,611,598 |
| Used for offset in 2012 | 30,975,000 |
| Used for additional 53 FTE (FDAAA drug safety), FY 2011–2012 | 29,771,000 |
| Reserve for refunds | 2,500,000 |
| Used for CBER move to White Oak | 37,896,000 |
| Used to cover 2011 estimated revenue shortfalls | 8,382,000 |
| Used to cover 2012 estimated revenue shortfalls | 8,694,000 |
| Estimated 2012 end of FY carryover balance | 32,393,598 |

As of September 30, 2010, FDA had cash carryover balances of $150,611,598. However, of this amount, a total of $30,975,000 will be used to cover the cost of the reduction in fee revenue that will result from the offset in fees for excess collections during PDUFA III. A total of $29,771,000 will be used in FY 2011 and FY 2012 to cover the cost of additional FTEs allocated in FY 2009 to address increased PDUFA workload associated with new drug safety provisions under FDAAA. A total of $2,500,000 is not available to FDA to obligate because it represents the minimum amount FDA will need to keep in reserve for refunds that will need to be made. A total of $37,896,000 is expected to be used for the CBER move to the White Oak campus in FY 2012–2014. Based on FDA's experience in FY 2010 when about 17 fewer paid full application fees were received by FDA than expected, causing a revenue shortfall, FDA is assuming that about 5.5 fewer full applications will be received in both FY 2011 and FY 2012, resulting in shortfalls of over $8,382,000 and $8,694,000 each year, respectively, that will have to be covered from the carryover balances. Thus the amount of carry-over balance FDA expects to be available for obligation at the end of FY 2012 is $32,393,598, as shown in the last line of table 6 of this document.

TABLE 7—ESTIMATED FEE REVENUE NEEDED TO SUSTAIN FY 2012 OPERATIONS FOR THE FIRST 3 MONTHS OF FY 2013

| | |
|---|---|
| Estimated total spending from fees in FY 2012 | $652,709,000 |
| Estimated FY 2013 inflation costs at 3.72% | 24,280,775 |
| Estimated FY 2013 funds to sustain FY 2012 operations | 676,989,755 |
| Estimated fees needed for 3 months in FY 2013 | 169,247,444 |
| Estimated end-of-FY 2012 carryover balance | 32,393,598 |
| Additional revenue needed for 3 months in FY 2013 | 136,854,000 |

In FY 2012, FDA expects to spend a total of $652,709,000, as noted at the end of section III of this document. To sustain current operations in FY 2012, with an anticipated inflation rate of 3.72 percent, FDA expects to obligate a total of $676,989,775 in FY 2013—or a total of about $169,247,444 during the first 3 months of FY 2013. The available

carryover balance at the beginning of FY 2013 is estimated at $32,393,598. Thus FDA would need an additional $136,854,000 ($169,247,444 minus $32,393,598, rounded to the nearest thousand dollars) as the final year adjustment to assure sufficient operating reserves for the first 3 months of FY 2013.

FDA recognizes that adding $136,854,000 to the fee revenue costs in FY 2012 poses a substantial burden on the regulated industry at a time when it is undergoing significant financial strain. In light of this, and in light of the fact that the legislative language authorizing the final year adjustment allows FDA discretion in whether to make this adjustment for a full 3 months of operating reserves or for a shorter period, FDA has decided to balance its own risks with the amount of burden the final year adjustment will place on the industry. In making this decision, FDA has decided to assume more risk, making the final year adjustment to allow for only 2 months of operating reserves instead of for 3 months of operating reserves. Accordingly FDA will make the final year adjustment for a lesser amount, as derived in table 8 of this document.

TABLE 8—ESTIMATED FEE REVENUE NEEDED TO SUSTAIN FY 2012 OPERATIONS FOR THE FIRST 2 MONTHS OF FY 2013

| | |
|---|---|
| Estimated total spending from fees in FY 2012 | $652,709,000 |
| Estimated FY 2013 inflation costs at 3.72% | 24,280,775 |
| Estimated 2013 funds to sustain 2012 operations | 676,989,775 |
| Estimated fees needed for 2 months in FY 2013 | 112,831,629 |
| Estimated 2012 end of FY carryover balance | 32,393,598 |
| Additional revenue needed for 2 months in 2013 | 80,438,031 |

Rounding this amount to the nearest thousand dollars results in a final year adjustment of $80,438,000. Adding this amount to the total of $621,743,000, the total after the offset adjustment at the end of section III of this document, results in a total revenue target of $702,172,000, rounded to the nearest thousand dollars, for FY 2012.

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the FD&C Act). Accordingly, one-third of the total revenue amount (rounded to the nearest thousand dollars), or a total of $234,057,000 is the total amount of fee revenue that will be derived from each of these fee categories: Application Fees, Establishment Fees, and Product Fees.

While the fee revenue amount anticipated in FY 2012 is $702,172,000, as the previous paragraph shows, FDA assumes that the fee appropriation for FY 2012 will be 5 percent higher, or $737,281,000, rounded to the nearest thousand dollars. The PDUFA IV 5-Year Financial Plan, (which can be found at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm153456.htm*) states in Assumption 14 (Fee Revenue and Annual Appropriation Amount) that the PDUFA workload adjuster is a lagging adjustment dampened by averages over five years, and will not help FDA keep up with workload if there are sudden increases in the number of applications to be reviewed in the current fiscal year. Appropriated amounts for PDUFA fee revenue each year are estimated at 5 percent higher than estimated fee revenues for each year, to provide FDA with the ability to cope with surges in application review workload should that occur. If FDA collects less than the fee estimate at the beginning of the year and less than the fee appropriation, then collections rather than appropriations set the upper limit on how much FDA may actually keep and spend. If, however, FDA collects more than fee estimates at the beginning of the year, due to a workload surge, a slightly higher fee appropriation will permit FDA to keep and spend the higher collections in order to respond to a real surge in review workload that caused the increased collections—an unexpected increase in the number of applications that FDA must review in accordance with PDUFA goals. For this reason, in most FY since 1993, actual appropriations have slightly exceeded PDUFA fee revenue estimates made each year.

## V. Application Fee Calculations

### *A. Application Fee Revenues and Application Fees*

Application fees will be set to generate one-third of the total fee revenue amount, or $234,057,000, in FY 2012, as calculated previously in this document.

### *B. Estimate of the Number of Fee-Paying Applications and the Establishment of Application Fees*

For FY 2008 through FY 2012, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the 5 most recent fiscal years. Using a rolling average of the 5 most recent fiscal years is the same method that has been applied for the last 8 years.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2012, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FY 2007 through FY 2011. For FY 2011, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months, as we have done for the past 8 years.

Table 9 of this document shows, in column 1, the total number of each type of FAE received in the first 9 months of FY 2011, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2011. Column 4 estimates the 12-month total fee-paying FAEs for FY 2011 based on the applications received through June 30, 2011. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

TABLE 9—FY 2011 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2011, AND PROJECTED THROUGH SEPTEMBER 30, 2011

| | Column 1 Total received through 6/30/2011 | Column 2 Fees exempted or waived through 6/30/2011 | Column 3 Total fee paying through 6/30/2011 | Column 4 12-Month fee paying projection |
|---|---|---|---|---|
| Applications requiring clinical data | 55 | 18 | 37 | 49.33 |
| Applications not requiring clinical data | 9.5 | 5.5 | 4 | 5.33 |
| Supplements requiring clinical data | 44.5 | 9 | 35.5 | 47.88 |
| Withdrawn or refused to file | 1.625 | 1.25 | .375 | .5 |
| Total | 110.625 | 33.75 | 76.875 | 102.5 |

In the first 9 months of FY 2011, FDA received 110.625 FAEs, of which 76.875 were fee-paying. Based on data from the last 10 FYs, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 76.875 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the FY and projects the number of fee-paying FAEs in FY 2011 at 102.5.

As table 10 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, and including our estimate for FY 2011, is 127.1 FAEs. FDA will set fees for FY 2011 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 10—FEE-PAYING FAE 5-YEAR AVERAGE

| Fiscal year | 2007 | 2008 | 2009 | 2010 | 2011 estimate | 5-Year average |
|---|---|---|---|---|---|---|
| Fee-Paying FAEs | 134.4 | 140.0 | 140.3 | 118.4 | 102.5 | 127.1 |

The FY 2012 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 127.1, into the fee revenue amount to be derived from application fees in FY 2012, $234,057,000. The result, rounded to the nearest $100, is a fee of $1,841,500 per full application requiring clinical data, and $920,750 per application not requiring clinical data or per supplement requiring clinical data.

## VI. Fee Calculations for Establishment and Product Fees

### *A. Establishment Fees*

At the beginning of FY 2011, the establishment fee was based on an estimate that 415 establishments would be subject to, and would pay, fees. By the end of FY 2011, FDA estimates that 475 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA estimates that a total of 10 establishment fee waivers or reductions will be made for FY 2011. In addition, FDA estimates that another 15 full establishment fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the FD&C Act). Subtracting 25 establishments (10 waivers, plus the estimated 15 establishments under the orphan exemption) from 450 leaves a net of 415 fee-paying establishments. FDA will use 450 for its FY 2012 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($234,057,000) by the estimated 450 establishments, for an establishment fee rate for FY 2012 of $520,100 (rounded to the nearest $100).

### *B. Product Fees*

At the beginning of FY 2011, the product fee was based on an estimate that 2,385 products would be subject to and would pay product fees. By the end of FY 2011, FDA estimates that 2,450 products will have been billed for product fees, before all decisions on requests for waivers, reductions, or exemptions are made. FDA assumes that there will be 55 waivers and reductions granted. In addition, FDA estimates that another 30 product fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the FD&C Act). FDA estimates that 2,365 products will qualify for product fees in FY 2011, after allowing for waivers and reductions, including the orphan drug products eligible under the FDAAA exemption, and will use this number for its FY 2012 estimate. The FY 2012 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($234,057,000) by the estimated 2,365 products for a FY 2012 product fee of $98,970 (rounded to the nearest $10).

## VII. Fee Schedule for FY 2012

The fee rates for FY 2012 are set out in table 11 of this document.

TABLE 11—FEE SCHEDULE FOR FY 2012

| Fee category | Fee rates for FY 2012 |
|---|---|
| Applications | |
| Requiring clinical data | $1,841,500 |
| Not requiring clinical data | 920,750 |
| Supplements requiring clinical data | 920,750 |
| Establishments | 520,100 |
| Products | 98,970 |

## IX. Fee Payment Options and Procedures

### *A. Application Fees*

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received 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. Please include the user fee

identification (ID) number on your check, bank draft, or postal money order. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

Wire transfer payment may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee between $15.00 and $35.00. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD, 20850.

Application fees can also be paid online with an electronic check (ACH). FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after the user fee ID number is generated.

The tax identification number of the Food and Drug Administration is 53–0196965.

*B. Establishment and Product Fees*

FDA will issue invoices for establishment and product fees for FY 2012 under the new fee schedule in August 2011. Payment will be due on October 1, 2011. FDA will issue invoices in November 2012 for any products and establishments subject to fees for FY 2012 that qualify for fee assessments after the August 2011 billing.

Dated: July 26, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–19332 Filed 7–29–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Combination Cancer Therapy Using an IL13-Targeted Toxin and a Vaccine**

*Description of Technology:* Typical cancer treatments such as chemotherapy, radiation therapy and surgical resection are non-specific processes that kill healthy cells as well as diseased cells, ultimately resulting in discomfort and undesirable side-effects for patients. In an effort to reduce the burden on cancer patients, a tremendous effort has been placed on developing ways to increase the specificity of cancer treatments. One way to increase specificity is to identify proteins which are present on the surface of cancer cells but absent on normal healthy cells, and use that protein as a target for delivering a therapeutic agent. Because the therapeutic agent only reaches the diseased cell, patients are less likely to experience non-specific side-effects, reducing their pain burden during treatment.

IL13-receptor-alpha-2 (IL13–Rα2) is a cell surface protein that is selectively expressed on certain diseased cells, including cancer cells. IL13–Rα2 binds to the cytokine IL13, suggesting that a therapeutic agent fused to IL13 can target and kill only those cancer cells which express IL13–Rα2. Our inventors previously constructed fusion proteins comprising (1) IL13 and (2) an active fragment of the bacterial toxin *Pseudomonas* exotoxin A (PE). These IL13–PE fusion proteins demonstrated the ability to selectively kill cancer cells that overexpressed IL13–Rα2, as well as other types of diseased cells (asthma, pulmonary fibrosis) which overexpressed IL13–Rα2. This suggested that IL13–PE fusion proteins were excellent candidates for new therapeutic agents.

The inventors recently sought methods to increase the effectiveness of these IL13–PE fusion proteins in the treatment of disease. This technology is directed to a combination therapy comprising (a) a DNA vaccine against IL13–Rα2 and (b) an IL13–PE fusion protein. By combining these therapeutic approaches it is possible to kill certain cell types that express IL13–Rα2 at high levels (such as cancer cells), making this combinatorial approach an attractive potential therapeutic.

*Applications:*

- Treatment of diseases associated with the increased expression of IL13–Rα2
- Relevant diseases include pulmonary fibrosis, asthma and cancers such as pancreatic cancer, glioblastoma multiforme and other head and neck cancers

*Advantages:*

- The DNA vaccine only affects cells where IL13–Rα2 expression is increased, limiting their effects to diseased cells
- IL13–PE fusion proteins also only kill cells that overexpress IL13–Rα2, allowing specific targeting of treatment
- Targeted treatment decreases non-specific killing of healthy, essential cells, resulting in fewer side-effects and healthier patients

*Development Status:* Preclinical stage of development.

*Inventors:* Puri *et al.* (FDA).

*Patent Status:* US provisional application 61/451,331 (HHS reference E–104–2011/0–US–01).

*For more information, see:*

- US Patents 5,614,191, 5,919,456 and 6,518,061 (HHS technology reference E–266–1994/0)
- US Patent Publication US 20040136959 A1 (HHS technology reference E–032–2000/0)
- US Patent 7,541,040 (HHS technology reference E–296–2001/0)

*Licensing Status:* Available for licensing.

*Licensing Contact:* David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov.*