Pub. L. 110–85, title I, § 106(b), Sept. 27, 2007, 121 Stat. 842, which provided that the amendment made by section 105 of Pub. L. 110–85 (enacting this section) would cease to be effective Jan. 31, 2013, was repealed by Pub. L. 112–144, title I, § 105(c)(1), July 9, 2012, 126 Stat. 1001.

Section effective Oct. 1, 2007, with fees under this subpart to be assessed for all human drug applications received on or after Oct. 1, 2007, see section 107 of Pub. L. 110–85, set out as an Effective and Termination Dates of 2007 Amendment note under section 379g of this title.

SUBPART 3—FEES RELATING TO DEVICES

§ 379i. Definitions

For purposes of this subpart:

(1) The term ''premarket application'' means—

(A) an application for approval of a device submitted under section 360e(c) of this title or section 262 of title 42; or

(B) a product development protocol described in section 360e(f) of this title.

Such term does not include a supplement, a premarket report, or a premarket notification submission.

(2) The term ''premarket report'' means a report submitted under section 360e(c)(2) of this title.

(3) The term ''premarket notification submission'' means a report submitted under section 360(k) of this title.

(4)(A) The term ''supplement'', with respect to a panel-track supplement, a 180-day supplement, a real-time supplement, or an efficacy supplement, means a request to the Secretary to approve a change in a device for which—

(i) an application or report has been approved under section 360e(d) of this title, or an application has been approved under section 262 of title 42; or

(ii) a notice of completion has become effective under section 360e(f) of this title.

(B) The term ''panel-track supplement'' means a supplement to an approved premarket application or premarket report under section 360e of this title that requests a significant change in design or performance of the device, or a new indication for use of the device, and for which substantial clinical data are necessary to provide a reasonable assurance of safety and effectiveness.

(C) The term ''180-day supplement'' means a supplement to an approved premarket application or premarket report under section 360e of this title that is not a panel-track supplement and requests a significant change in components, materials, design, specification, software, color additives, or labeling.

(D) The term ''real-time supplement'' means a supplement to an approved premarket application or premarket report under section 360e of this title that requests a minor change to the device, such as a minor change to the design of the device, software, sterilization, or labeling, and for which the applicant has requested and the agency has granted a meeting or similar forum to jointly review and determine the status of the supplement.

(E) The term ''efficacy supplement'' means a supplement to an approved premarket application under section 262 of title 42 that requires substantive clinical data.

(5) The term ''30-day notice'' means a notice under section 360e(d)(5) of this title that is limited to a request to make modifications to manufacturing procedures or methods of manufacture affecting the safety and effectiveness of the device.

(6) The term ''request for classification information'' means a request made under section 360c(g) of this title for information respecting the class in which a device has been classified or the requirements applicable to a device.

(7) The term ''annual fee'', for periodic reporting concerning a class III device, means the annual fee associated with periodic reports required by a premarket application approval order.

(8) The term ''de novo classification request'' means a request made under section 360c(f)(2)(A) of this title with respect to the classification of a device.

(9) The term ''process for the review of device applications'' means the following activities of the Secretary with respect to the review of premarket applications, premarket reports, supplements, premarket notification submissions, and de novo classification requests:

(A) The activities necessary for the review of premarket applications, premarket reports, supplements, and premarket notification submissions.

(B) The issuance of action letters that allow the marketing of devices or which set forth in detail the specific deficiencies in such applications, reports, supplements, or submissions and, where appropriate, the actions necessary to place them in condition for approval.

(C) The inspection of manufacturing establishments and other facilities undertaken as part of the Secretary's review of pending premarket applications, premarket reports, and supplements.

(D) Monitoring of research conducted in connection with the review of such applications, reports, supplements, submissions, and de novo classification requests.

(E) Review of device applications subject to section 262 of title 42 for an investigational new drug application under section 355(i) of this title or for an investigational device exemption under section 360j(g) of this title and activities conducted in anticipation of the submission of such applications under section 355(i) or 360j(g) of this title.

(F) The development of guidance, policy documents, or regulations to improve the process for the review of premarket applications, premarket reports, supplements, premarket notification submissions, and de novo classification requests.

(G) The development of voluntary test methods, consensus standards, or mandatory performance standards under section 360d of this title in connection with the review of such applications, reports, supplements, submissions, or requests and related activities.

(H) The provision of technical assistance to device manufacturers in connection with

the submission of such applications, reports, supplements, submissions, or requests.

(I) Any activity undertaken under section 360c or 360e(i) of this title in connection with the initial classification or reclassification of a device or under section 360e(b) of this title in connection with any requirement for approval of a device.

(J) Evaluation of postmarket studies required as a condition of an approval of a premarket application or premarket report under section 360e of this title or a premarket application under section 262 of title 42.

(K) Compiling, developing, and reviewing information on relevant devices to identify safety and effectiveness issues for devices subject to premarket applications, premarket reports, supplements, premarket notification submissions, or de novo classification requests.

(10) The term ''costs of resources allocated for the process for the review of device applications'' means the expenses in connection with the process for the review of device applications for—

(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees, and costs related to such officers, employees, and committees and to contracts with such contractors;

(B) management of information, and the acquisition, maintenance, and repair of computer resources;

(C) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies; and

(D) collecting fees and accounting for resources allocated for the review of premarket applications, premarket reports, supplements, submissions, and de novo classification requests.

(11) The term ''adjustment factor'' applicable to a fiscal year is the Consumer Price Index for all urban consumers (all items; United States city average) for October of the preceding fiscal year divided by such Index for October 2021.

(12) The term ''person'' includes an affiliate thereof.

(13) The term ''affiliate'' means a business entity that has a relationship with a second business entity (whether domestic or international) if, directly or indirectly—

(A) one business entity controls, or has the power to control, the other business entity; or

(B) a third party controls, or has power to control, both of the business entities.

(14) The term ''establishment subject to a registration fee'' means an establishment that is registered (or is required to register) with the Secretary under section 360 of this title because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device.

(June 25, 1938, ch. 675, §737, as added Pub. L. 107–250, title I, §102(a), Oct. 26, 2002, 116 Stat. 1589; amended Pub. L. 108–214, §2(a)(1), (d)(3)(A), Apr. 1, 2004, 118 Stat. 572, 577; Pub. L. 110–85, title II, §211, Sept. 27, 2007, 121 Stat. 843; Pub. L. 112–144, title II, §202, July 9, 2012, 126 Stat. 1002; Pub. L. 114–255, div. A, title III, §3051(c)(2), Dec. 13, 2016, 130 Stat. 1124; Pub. L. 115–52, title II, §202(a), Aug. 18, 2017, 131 Stat. 1013; Pub. L. 117–180, div. F, title II, §2002, Sept. 30, 2022, 136 Stat. 2148.)

TERMINATION OF SECTION

For termination of section by section 2007(a) of Pub. L. 117–180, see Effective and Termination Dates note below.

Editorial Notes

AMENDMENTS

2022—Par. (9). Pub. L. 117–180, §2002(1)(A), substituted ''premarket notification submissions, and de novo classification requests'' for ''and premarket notification submissions'' in introductory provisions.

Par. (9)(D). Pub. L. 117–180, §2002(1)(B), substituted ''submissions, and de novo classification requests'' for ''and submissions''.

Par. (9)(F). Pub. L. 117–180, §2002(1)(C), substituted ''premarket notification submissions, and de novo classification requests'' for ''and premarket notification submissions''.

Par. (9)(G), (H). Pub. L. 117–180, §2002(1)(D), substituted ''submissions, or requests'' for ''or submissions''.

Par. (9)(K). Pub. L. 117–180, §2002(1)(E), substituted ''premarket notification submissions, or de novo classification requests'' for ''or premarket notification submissions''.

Par. (11). Pub. L. 117–180, §2002(2), substituted ''2021'' for ''2016''.

2017—Par. (8). Pub. L. 115–52, §202(a)(2), added par. (8). Former par. (8) redesignated (9).

Par. (9). Pub. L. 115–52, §202(a)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Par. (10). Pub. L. 115–52, §202(a)(1), (3), redesignated par. (9) as (10) and substituted ''submissions, and de novo classification requests'' for ''and submissions'' in subpar. (D). Former par. (10) redesignated (11).

Par. (11). Pub. L. 115–52, §202(a)(1), (4), redesignated par. (10) as (11) and substituted ''2016'' for ''2011''.

Pars. (12) to (14). Pub. L. 115–52, §202(a)(1), redesignated pars. (11) to (13) as (12) to (14), respectively.

2016—Par. (5). Pub. L. 114–255 substituted ''360e(d)(5)'' for ''360e(d)(6)''.

2012—Par. (9). Pub. L. 112–144, §202(1), struck out ''incurred'' after ''expenses'' in introductory provisions.

Par. (10). Pub. L. 112–144, §202(2), substituted ''October 2011'' for ''October 2001''.

Par. (13). Pub. L. 112–144, §202(3), substituted ''is registered (or is required to register) with the Secretary under section 360 of this title because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device.'' for ''is required to register with the Secretary under section 360 of this title and is one of the following types of establishments:'' and struck out subpars. (A) to (C) which related to manufacturer, single-use device reprocessor, and specification developer establishments.

2007—Pub. L. 110–85, §211(1), substituted ''For purposes of this subpart'' for ''For purposes of this part'' in introductory provisions.

Pars. (5) to (9). Pub. L. 110–85, §211(2), (3), added pars. (5) to (7) and redesignated former pars. (5) and (6) as (8) and (9), respectively. Former pars. (7) and (8) redesignated (10) and (12), respectively.

Par. (10). Pub. L. 110–85, §211(2), (4), redesignated par. (7) as (10) and substituted ''October of the preceding fiscal year'' for ''April of the preceding fiscal year'' and ''October 2001'' for ''April 2002''.

Par. (11). Pub. L. 110–85, §211(5), added par. (11).

Par. (12). Pub. L. 110–85, § 211(2), redesignated par. (8) as (12).

Par. (13). Pub. L. 110–85, § 211(6), added par. (13).

2004—Pub. L. 108–214, § 2(d)(3)(A), made technical correction to directory language of Pub. L. 107–250, § 102(a), which enacted this section.

Par. (4)(B). Pub. L. 108–214, § 2(a)(1)(A), substituted ''and for which substantial clinical data are necessary to provide a reasonable assurance of safety and effectiveness'' for ''and for which clinical data are generally necessary to provide a reasonable assurance of safety and effectiveness''.

Par. (4)(D). Pub. L. 108–214, § 2(a)(1)(B), struck out ''manufacturing,'' after ''software,''.

Par. (5)(J). Pub. L. 108–214, § 2(a)(1)(C), substituted ''a premarket application or premarket report under section 360e of this title or a premarket application under section 262 of title 42.'' for ''a premarket application under section 360e of this title or section 262 of title 42.''

Par. (8). Pub. L. 108–214, § 2(a)(1)(D), substituted ''The term 'affiliate' means a business entity that has a relationship with a second business entity (whether domestic or international)'' for ''The term 'affiliate' means a business entity that has a relationship with a second business entity''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–180 effective Oct. 1, 2022, with fees under this subpart to be assessed for all submissions listed in section 379j(a)(2)(A) of this title received on or after Oct. 1, 2022, see section 2008 of Pub. L. 117–180, set out as a note under section 360d of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–52, title II, § 209, Aug. 18, 2017, 131 Stat. 1020, provided that: ''The amendments made by this title [see section 201(a) of Pub. L. 115–52, set out as a Short Title of 2017 Amendment note under section 301 of this title] shall take effect on October 1, 2017, or the date of the enactment of this Act [Aug. 18, 2017], whichever is later, except that fees under part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 379i et seq.] shall be assessed for all submissions listed in section 738(a)(2)(A) of such Act [21 U.S.C. 379j(a)(2)(A)] received on or after October 1, 2017, regardless of the date of the enactment of this Act.''

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–144, title II, § 206, July 9, 2012, 126 Stat. 1007, provided that: ''The amendments made by this title [enacting section 379d–3 of this title, amending this section and sections 360e, 379j, and 379j–1 of this title, and repealing provisions set out as notes under this section] shall take effect on October 1, 2012, or the date of the enactment of this Act [July 9, 2012], whichever is later, except that fees under part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act [this subpart] shall be assessed for all submissions listed in section 738(a)(2)(A) of such Act [21 U.S.C. 379j(a)(2)(A)] received on or after October 1, 2012, regardless of the date of the enactment of this Act.''

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Pub. L. 110–85, title II, § 216, Sept. 27, 2007, 121 Stat. 852, provided that: ''The amendments made by this subtitle [subtitle A (§§ 211–217) of title II of Pub. L. 110–85, enacting section 379j–1 of this title and amending this section and section 379j of this title] shall take effect on October 1, 2007, or the date of the enactment of this Act [Sept. 27, 2007], whichever is later, except that fees under part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act [this subpart] shall be assessed for all premarket applications, premarket reports, supplements, 30-day notices, and premarket notification submissions received on or after October 1, 2007, regardless of the date of the enactment of this Act.''

Pub. L. 110–85, title II, § 217, Sept. 27, 2007, 121 Stat. 852, which provided that the amendments by sections 211 to 217 of Pub. L. 110–85 (amending this section and section 379j of this title) would cease to be effective Oct. 1, 2012, and that section 379j–1 of this title would cease to be effective Jan. 31, 2013, was repealed by Pub. L. 112–144, title II, § 207(b)(1), July 9, 2012, 126 Stat. 1007.

EFFECTIVE AND TERMINATION DATES

Pub. L. 117–180, div. F, title II, § 2007(a), Sept. 30, 2022, 136 Stat. 2154, provided that: ''Sections 737 and 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i; 379j) shall cease to be effective October 1, 2027.''

Pub. L. 115–52, title II, § 210(a), Aug. 18, 2017, 131 Stat. 1020, which provided that this section and section 379j of this title would cease to be effective Oct. 1, 2022, was repealed by Pub. L. 117–180, div. F, title II, § 2007(c), Sept. 30, 2022, 136 Stat. 2154.

[Pub. L. 117–180, div. F, title II, § 2007(c), Sept. 30, 2022, 136 Stat. 2154, provided that the repeal of section 210(a) of Pub. L. 115–52, formerly set out above, is effective Oct. 1, 2022.]

Pub. L. 112–144, title II, § 207(a), July 9, 2012, 126 Stat. 1007, which provided that sections 737 and 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i; 379j) would cease to be effective Oct. 1, 2017, and that section 738A (21 U.S.C. 379j–1) of the Federal Food, Drug, and Cosmetic Act (regarding reauthorization and reporting requirements) would cease to be effective Jan. 31, 2018, was repealed by Pub. L. 115–52, title II, § 210(c), Aug. 18, 2017, 131 Stat. 1020.

[Pub. L. 115–52, title II, § 210(c), Aug. 18, 2017, 131 Stat. 1020, provided that the repeal of section 207(a) of Pub. L. 112–144, formerly set out above, is effective Oct. 1, 2017.]

Pub. L. 107–250, title I, § 106, Oct. 26, 2002, 116 Stat. 1602, provided that: ''The amendments made by this title [enacting this subpart] shall take effect on the date of the enactment of this Act [Oct. 26, 2002], except that fees shall be assessed for all premarket applications, premarket reports, supplements, and premarket notification submissions received on or after October 1, 2002, regardless of the date of enactment.''

Pub. L. 107–250, title I, § 107, Oct. 26, 2002, 116 Stat. 1602, which provided that the amendments made by title I of Pub. L. 107–250 (enacting this subpart) would cease to be effective Oct. 1, 2007, except that section 103 of Pub. L. 107–250, set out as a note below, would cease to be effective Jan. 31, 2008, was repealed by Pub. L. 112–144, title II, § 207(c)(1), July 9, 2012, 126 Stat. 1007.

[Pub. L. 112–144, title II, § 207(c), July 9, 2012, 126 Stat. 1007, provided that the repeal of section 107 of Pub. L. 107–250, formerly set out above, is effective Sept. 30, 2007.]

SAVINGS PROVISIONS

Pub. L. 117–180, div. F, title II, § 2009, Sept. 30, 2022, 136 Stat. 2155, provided that: ''Notwithstanding the amendments made by this title [amending this section and sections 379j and 379j–1 of this title and repealing provisions set out as notes under this section and section 379j–1 of this title], part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in effect on the day before the date of the enactment of this title [Sept. 30, 2022], shall continue to be in effect with respect to the submissions listed in section 738(a)(2)(A) of such Act [21 U.S.C. 379j(a)(2)(A)] (as defined in such part as of such day) that on or after October 1, 2017, but before October 1, 2022, were received by the Food and Drug Administration with respect to assessing and collecting any fee required by such part for a fiscal year prior to fiscal year 2023.''

Pub. L. 115–52, title II, § 208, Aug. 18, 2017, 131 Stat. 1019, provided that: ''Notwithstanding the amendments

made by this title [see section 201(a) of Pub. L. 115–52, set out as a Short Title of 2017 Amendment note under section 301 of this title], part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in effect on the day before the date of the enactment of this title [Aug. 18, 2017], shall continue to be in effect with respect to the submissions listed in section 738(a)(2)(A) of such Act [21 U.S.C. 379j(a)(2)(A)] (as defined in such part as of such day) that on or after October 1, 2012, but before October 1, 2017, were accepted by the Food and Drug Administration for filing with respect to assessing and collecting any fee required by such part for a fiscal year prior to fiscal year 2018.''

Pub. L. 112–144, title II, §205, July 9, 2012, 126 Stat. 1007, provided that: ''Notwithstanding the amendments made by this title [enacting section 379d–3 of this title, amending this section and sections 360e, 379j, and 379j–1 of this title, and repealing provisions set out as notes under this section], part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in effect on the day before the date of the enactment of this title [July 9, 2012], shall continue to be in effect with respect to the submissions listed in section 738(a)(2)(A) of such Act [21 U.S.C. 379j(a)(2)(A)] (in effect as of such day) that on or after October 1, 2007, but before October 1, 2012, were accepted by the Food and Drug Administration for filing with respect to assessing and collecting any fee required by such part for a fiscal year prior to fiscal year 2013.''

Pub. L. 110–85, title II, §214, Sept. 27, 2007, 121 Stat. 852, provided that: ''Notwithstanding section 107 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250) [formerly set out as an Effective and Termination Dates note above], and notwithstanding the amendments made by this subtitle [subtitle A (§§211–217) of title II of Pub. L. 110–85, enacting section 379j–1 of this title and amending this section and section 379j of this title], part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as in effect on the day before the date of the enactment of this subtitle [Sept. 27, 2007], shall continue to be in effect with respect to premarket applications, premarket reports, premarket notification submissions, and supplements (as defined in such part as of such day) that on or after October 1, 2002, but before October 1, 2007, were accepted by the Food and Drug Administration for filing with respect to assessing and collecting any fee required by such part for a fiscal year prior to fiscal year 2008.''

CONGRESSIONAL FINDINGS CONCERNING FEES RELATING TO DEVICES

Pub. L. 117–180, div. F, title II, §2001(b), Sept. 30, 2022, 136 Stat. 2147, provided that: ''Congress finds that the fees authorized under the amendments made by this title [amending this section and sections 379j and 379j–1 of this title and repealing provisions set out as notes under this section and section 379j–1 of this title] will be dedicated toward expediting the process for the review of device applications and for assuring the safety and effectiveness of devices, as set forth in the goals identified for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.''

Pub. L. 115–52, title II, §201(b), Aug. 18, 2017, 131 Stat. 1013, provided that: ''The Congress finds that the fees authorized under the amendments made by this title [see section 201(a) of Pub. L. 115–52, set out as a Short Title of 2017 Amendment note under section 301 of this title] will be dedicated toward expediting the process for the review of device applications and for assuring the safety and effectiveness of devices, as set forth in the goals identified for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act [this subpart] in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.''

Pub. L. 112–144, title II, §201(b), July 9, 2012, 126 Stat. 1002, provided that: ''The Congress finds that the fees authorized under the amendments made by this title [enacting section 379d–3 of this title, amending this section and sections 360e, 379j, and 379j–1 of this title, and repealing provisions set out as notes under this section] will be dedicated toward expediting the process for the review of device applications and for assuring the safety and effectiveness of devices, as set forth in the goals identified for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act [this subpart] in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.''

Pub. L. 110–85, title II, §201(c), Sept. 27, 2007, 121 Stat. 842, provided that: ''The Congress finds that the fees authorized under the amendments made by this title [enacting section 379j–1 of this title and amending this section and sections 333, 360, 360i, 360m, 374, and 379j of this title] will be dedicated toward expediting the process for the review of device applications and for assuring the safety and effectiveness of devices, as set forth in the goals identified for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 379i et seq.] in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record.''

Pub. L. 107–250, title I, §101, Oct. 26, 2002, 116 Stat. 1589, provided that: ''The Congress finds that—

''(1) prompt approval and clearance of safe and effective devices is critical to the improvement of the public health so that patients may enjoy the benefits of devices to diagnose, treat, and prevent disease;

''(2) the public health will be served by making additional funds available for the purpose of augmenting the resources of the Food and Drug Administration that are devoted to the process for the review of devices and the assurance of device safety and effectiveness so that statutorily mandated deadlines may be met; and

''(3) the fees authorized by this title [enacting this subpart and provisions set out as notes under this section and section 379j of this title] will be dedicated to meeting the goals identified in the letters from the Secretary of Health and Human Services to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, as set forth in the Congressional Record.''

ANNUAL REPORTS

Pub. L. 107–250, title I, §103, Oct. 26, 2002, 116 Stat. 1600, as amended by Pub. L. 109–43, §2(b), Aug. 1, 2005, 119 Stat. 441, provided that:

''(a) IN GENERAL.—Beginning with fiscal year 2003, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report concerning—

''(1) the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 101(3) [set out as a note above] during such fiscal year and the future plans of the Food and Drug Administration for meeting the goals, not later than 60 days after the end of each fiscal year during which fees are collected under this part [title I of Pub. L. 107–250 does not contain parts]; and

''(2) the implementation of the authority for such fees during such fiscal year, and the use, by the Food and Drug Administration, of the fees collected during such fiscal year, not later than 120 days after the end of each fiscal year during which fees are collected under the medical device user-fee program established under the amendment made by section 102 [enacting this subpart].

''(b) ADDITIONAL INFORMATION.—For fiscal years 2006 and 2007, the report described under subsection (a)(2) shall include—

''(1) information on the number of different types of applications and notifications, and the total amount of fees paid for each such type of application or notification, from businesses with gross receipts or sales from $0 to $100,000,000, with such businesses categorized in $10,000,000 intervals; and

''(2) a certification by the Secretary that the amounts appropriated for salaries and expenses of the Food and Drug Administration for such fiscal year and obligated by the Secretary for the performance of any function relating to devices that is not for the process for the review of device applications, as defined in paragraph (5) [now (8)] of section 737 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i), are not less than such amounts for fiscal year 2002 multiplied by the adjustment factor, as defined in paragraph (7) [now (10)] of such section 737.''

STUDY

Pub. L. 107–250, title I, §104(b), Oct. 26, 2002, 116 Stat. 1601, directed the Secretary of Health and Human Services to conduct a study for the purpose of making certain determinations regarding the medical device user-fee program established under the amendment made by section 102 of Pub. L. 107–250 and to submit a report to Congress by Jan. 10, 2007.

CONSULTATION

Pub. L. 107–250, title I, §105, Oct. 26, 2002, 116 Stat. 1601, provided that:

''(a) IN GENERAL.—In developing recommendations to the Congress for the goals and plans for meeting the goals for the process for the review of medical device applications for fiscal years after fiscal year 2007, and for the reauthorization of sections 737 and 738 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 379i, 379j], the Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall consult with the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry.

''(b) RECOMMENDATIONS.—The Secretary shall publish in the Federal Register recommendations under subsection (a), after negotiations with the regulated industry; shall present such recommendations to the congressional committees specified in such paragraph; shall hold a meeting at which the public may present its views on such recommendations; and shall provide for a period of 30 days for the public to provide written comments on such recommendations.''

§ 379j. Authority to assess and use device fees

(a) Types of fees

(1) In general

Beginning in fiscal year 2023, the Secretary shall assess and collect fees in accordance with this section.

(2) Premarket application, premarket report, supplement, and submission fee, and annual fee for periodic reporting concerning a class III device

(A) In general

Except as provided in subparagraph (B) and subsections (d) and (e), each person who submits any of the following, on or after October 1, 2022, shall be subject to a fee established under subsection (c) for the fiscal year involved in accordance with the following:

(i) A premarket application.

(ii) For a premarket report, a fee equal to the fee that applies under clause (i).

(iii) For a panel track supplement, a fee equal to 80 percent of the fee that applies under clause (i).

(iv) For a 180-day supplement, a fee equal to 15 percent of the fee that applies under clause (i).

(v) For a real-time supplement, a fee equal to 7 percent of the fee that applies under clause (i).

(vi) For a 30-day notice, a fee equal to 1.6 percent of the fee that applies under clause (i).

(vii) For an efficacy supplement, a fee equal to the fee that applies under clause (i).

(viii) For a premarket notification submission, a fee equal to 4.5 percent of the fee that applies under clause (i).

(ix) For a request for classification information, a fee equal to 1.35 percent of the fee that applies under clause (i).

(x) For periodic reporting concerning a class III device, an annual fee equal to 3.5 percent of the fee that applies under clause (i).

(xi) For a de novo classification request, a fee equal to 30 percent of the fee that applies under clause (i).

(B) Exceptions

(i) Humanitarian device exemption

An application under section 360j(m) of this title is not subject to any fee under subparagraph (A).

(ii) Further manufacturing use

No fee shall be required under subparagraph (A) for the submission of a premarket application under section 262 of title 42 for a product licensed for further manufacturing use only.

(iii) State or Federal Government sponsors

No fee shall be required under subparagraph (A) for a premarket application, premarket report, supplement, premarket notification submission, or de novo classification request submitted by a State or Federal Government entity unless the device involved is to be distributed commercially.

(iv) Premarket notifications by third parties

No fee shall be required under subparagraph (A) for a premarket notification submission reviewed by an accredited person pursuant to section 360m of this title.

(v) Pediatric conditions of use

(I) In general

No fee shall be required under subparagraph (A) for a premarket application, premarket report, premarket notification submission, or de novo classifica-