

(4) The term “reinspection” means, with respect to an outsourcing facility, 1 or more inspections conducted under section 374 of this title subsequent to an inspection conducted under such provision which identified non-compliance materially related to an applicable requirement of this chapter, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction.

(June 25, 1938, ch. 675, §744J, as added Pub. L. 113-54, title I, §102(b), Nov. 27, 2013, 127 Stat. 593.)

§ 379j-62. Authority to assess and use outsourcing facility fees

(a) Establishment and reinspection fees

(1) In general

For fiscal year 2015 and each subsequent fiscal year, the Secretary shall, in accordance with this subsection, assess and collect—

- (A) an annual establishment fee from each outsourcing facility; and
- (B) a reinspection fee from each outsourcing facility subject to a reinspection in such fiscal year.

(2) Multiple reinspections

An outsourcing facility subject to multiple reinspections in a fiscal year shall be subject to a reinspection fee for each reinspection.

(b) Establishment and reinspection fee setting

The Secretary shall—

- (1) establish the amount of the establishment fee and reinspection fee to be collected under this section for each fiscal year based on the methodology described in subsection (c); and
- (2) publish such fee amounts in a Federal Register notice not later than 60 calendar days before the start of each such year.

(c) Amount of establishment fee and reinspection fee

(1) In general

For each outsourcing facility in a fiscal year—

- (A) except as provided in paragraph (4), the amount of the annual establishment fee under subsection (b) shall be equal to the sum of—
 - (i) \$15,000, multiplied by the inflation adjustment factor described in paragraph (2); plus
 - (ii) the small business adjustment factor described in paragraph (3); and
- (B) the amount of any reinspection fee (if applicable) under subsection (b) shall be equal to \$15,000, multiplied by the inflation adjustment factor described in paragraph (2).

(2) Inflation adjustment factor

(A) In general

For fiscal year 2015 and subsequent fiscal years, the fee amounts established in paragraph (1) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year by the amount equal to the sum of—

- (i) 1;
- (ii) the average annual percent change in the cost, per full-time equivalent position

of the Food and Drug Administration, of all personnel compensation and benefits paid with respect to such positions for the first 3 years of the preceding 4 fiscal years, multiplied by the proportion of personnel compensation and benefits costs to total costs of an average full-time equivalent position of the Food and Drug Administration for the first 3 years of the preceding 4 fiscal years; plus

(iii) the average annual percent change that occurred in the Consumer Price Index for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than personnel compensation and benefits costs to total costs of an average full-time equivalent position of the Food and Drug Administration for the first 3 years of the preceding 4 fiscal years.

(B) Compounded basis

The adjustment made each fiscal year under subparagraph (A) shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2014 under subparagraph (A).

(3) Small business adjustment factor

The small business adjustment factor described in this paragraph shall be an amount established by the Secretary for each fiscal year based on the Secretary’s estimate of—

- (A) the number of small businesses that will pay a reduced establishment fee for such fiscal year; and
- (B) the adjustment to the establishment fee necessary to achieve total fees equaling the total fees that the Secretary would have collected if no entity qualified for the small business exception in paragraph (4).

(4) Exception for small businesses

(A) In general

In the case of an outsourcing facility with gross annual sales of \$1,000,000 or less in the 12 months ending April 1 of the fiscal year immediately preceding the fiscal year in which the fees under this section are assessed, the amount of the establishment fee under subsection (b) for a fiscal year shall be equal to $\frac{1}{3}$ of the amount calculated under paragraph (1)(A)(i) for such fiscal year.

(B) Application

To qualify for the exception under this paragraph, a small business shall submit to the Secretary a written request for such exception, in a format specified by the Secretary in guidance, certifying its gross annual sales for the 12 months ending April 1 of the fiscal year immediately preceding the fiscal year in which fees under this subsection are assessed. Any such application shall be submitted to the Secretary not later than April 30 of such immediately preceding fiscal year.

(5) Crediting of fees

In establishing the small business adjustment factor under paragraph (3) for a fiscal year, the Secretary shall—

(A) provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of the small business adjustment factor for such previous fiscal year; and

(B) consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

(d) Use of fees

The Secretary shall make all of the fees collected pursuant to subparagraphs (A) and (B) of subsection (a)(1) available solely to pay for the costs of oversight of outsourcing facilities.

(e) Supplement not supplant

Funds received by the Secretary pursuant to this section shall be used to supplement and not supplant any other Federal funds available to carry out the activities described in this section.

(f) Crediting and availability of fees

Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the costs of oversight of outsourcing facilities.

(g) Collection of fees

(1) Establishment fee

An outsourcing facility shall remit the establishment fee due under this section in a fiscal year when submitting a registration pursuant to section 353b(b) of this title for such fiscal year.

(2) Reinspection fee

The Secretary shall specify in the Federal Register notice described in subsection (b)(2) the manner in which reinspection fees assessed under this section shall be collected and the timeline for payment of such fees. Such a fee shall be collected after the Secretary has conducted a reinspection of the outsourcing facility involved.

(3) Effect of failure to pay fees

(A) Registration

An outsourcing facility shall not be considered registered under section 353b(b) of this title in a fiscal year until the date that the outsourcing facility remits the establishment fee under this subsection for such fiscal year.

(B) Misbranding

All drugs manufactured, prepared, propagated, compounded, or processed by an outsourcing facility for which any establishment fee or reinspection fee has not been paid, as required by this section, shall be deemed misbranded under section 352 of this title until the fees owed for such outsourcing facility under this section have been paid.

(4) Collection of unpaid fees

In any case where the Secretary does not receive payment of a fee assessed under this section within 30 calendar days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31.

(h) Annual report to Congress

Not later than 120 calendar days after each fiscal year in which fees are assessed and collected under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, to include a description of fees assessed and collected for such year, a summary description of entities paying the fees, a description of the hiring and placement of new staff, a description of the use of fee resources to support inspecting outsourcing facilities, and the number of inspections and reinspections of such facilities performed each year.

(i) Authorization of appropriations

For fiscal year 2014 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equivalent to the total amount of fees assessed for such fiscal year under this section.

(June 25, 1938, ch. 675, §744K, as added Pub. L. 113-54, title I, §102(b), Nov. 27, 2013, 127 Stat. 594.)

SUBPART 10—FEES RELATING TO OVER-THE-COUNTER DRUGS

§ 379j-71. Definitions

In this subpart:

(1) The term “affiliate” means a business entity that has a relationship with a second business entity 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.

(2) The term “contract manufacturing organization facility” means an OTC monograph drug facility where neither the owner of such manufacturing facility nor any affiliate of such owner or facility sells the OTC monograph drug produced at such facility directly to wholesalers, retailers, or consumers in the United States.

(3) The term “costs of resources allocated for OTC monograph drug activities” means the expenses in connection with OTC monograph drug activities 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 costs related 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, sci-