# Calendar No. 31

113TH CONGRESS 1ST SESSION S. 622

To amend the Federal Food, Drug, and Cosmetic Act to reauthorize user fee programs relating to new animal drugs and generic new animal drugs.

### IN THE SENATE OF THE UNITED STATES

March 20, 2013

Mr. Harkin, from the Committee on Health, Education, Labor, and Pensions, reported the following original bill; which was read twice and placed on the calendar

# A BILL

To amend the Federal Food, Drug, and Cosmetic Act to reauthorize user fee programs relating to new animal drugs and generic new animal drugs.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Animal Drug and Ani-
- 5 mal Generic Drug User Fee Reauthorization Act of
- 6 2013".

#### 1 SEC. 2. TABLE OF CONTENTS; REFERENCES IN ACT.

- 2 (a) Table of Contents of
- 3 this Act is as follows:
  - Sec. 1. Short title.
  - Sec. 2. Table of contents; references in Act.

#### TITLE I—FEES RELATING TO ANIMAL DRUGS

- Sec. 101. Short title; finding.
- Sec. 102. Definitions.
- Sec. 103. Authority to assess and use animal drug fees.
- Sec. 104. Reauthorization; reporting requirements.
- Sec. 105. Savings clause.
- Sec. 106. Effective date.
- Sec. 107. Sunset dates.

#### TITLE II—FEES RELATING TO GENERIC ANIMAL DRUGS

- Sec. 201. Short title; finding.
- Sec. 202. Authority to assess and use generic new animal drug fees.
- Sec. 203. Reauthorization; reporting requirements.
- Sec. 204. Savings clause.
- Sec. 205. Effective date.
- Sec. 206. Sunset dates.
- 4 (b) References in Act.—Except as otherwise spec-
- 5 ified, amendments made by this Act to a section or other
- 6 provision of law are amendments to such section or other
- 7 provision of the Federal Food, Drug, and Cosmetic Act
- 8 (21 U.S.C. 301 et seq.).

## 9 TITLE I—FEES RELATING TO

## 10 ANIMAL DRUGS

- 11 SEC. 101. SHORT TITLE; FINDING.
- 12 (a) Short Title.—This title may be cited as the
- 13 "Animal Drug User Fee Amendments of 2013".
- 14 (b) FINDING.—Congress finds that the fees author-
- 15 ized by the amendments made in this title will be dedi-
- 16 cated toward expediting the animal drug development

- 1 process and the review of new and supplemental animal
- 2 drug applications and investigational animal drug submis-
- 3 sions as set forth in the goals identified, for purposes of
- 4 part 4 of subchapter C of chapter VII of the Federal Food,
- 5 Drug, and Cosmetic Act, in the letters from the Secretary
- 6 of Health and Human Services to the Chairman of the
- 7 Committee on Energy and Commerce of the House of
- 8 Representatives and the Chairman of the Committee on
- 9 Health, Education, Labor, and Pensions of the Senate as
- 10 set forth in the Congressional Record.
- 11 SEC. 102. DEFINITIONS.
- 12 Section 739 of the Federal Food, Drug, and Cosmetic
- 13 Act (21 U.S.C. 379j-11) is amended to read as follows:
- 14 "SEC. 739. DEFINITIONS.
- 15 "For purposes of this part:
- 16 "(1) The term 'animal drug application' means
- an application for approval of any new animal drug
- submitted under section 512(b)(1). Such term does
- 19 not include either a new animal drug application
- submitted under section 512(b)(2) or a supplemental
- 21 animal drug application.
- 22 "(2) The term 'supplemental animal drug appli-
- cation' means—

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1	"(A) a request to the Secretary to approve
2	a change in an animal drug application which
3	has been approved; or
4	"(B) a request to the Secretary to approve
5	a change to an application approved under sec-
6	tion 512(e)(2) for which data with respect to
7	safety or effectiveness are required.
8	"(3) The term 'animal drug product' means
9	each specific strength or potency of a particular ac-
10	tive ingredient or ingredients in final dosage form
11	marketed by a particular manufacturer or dis-
12	tributor, which is uniquely identified by the labeler
13	code and product code portions of the national drug
14	code, and for which an animal drug application or
15	a supplemental animal drug application has been ap-
16	proved.
17	"(4) The term 'animal drug establishment'
18	means a foreign or domestic place of business which
19	is at one general physical location consisting of one
20	or more buildings all of which are within 5 miles of
21	each other, at which one or more animal drug prod-
22	ucts are manufactured in final dosage form.
23	"(5) The term 'investigational animal drug sub-

mission' means—

- "(A) the filing of a claim for an investigational exemption under section 512(j) for a new animal drug intended to be the subject of an animal drug application or a supplemental animal drug application; or
  - "(B) the submission of information for the purpose of enabling the Secretary to evaluate the safety or effectiveness of an animal drug application or supplemental animal drug application in the event of their filing.
  - "(6) The term 'animal drug sponsor' means either an applicant named in an animal drug application that has not been withdrawn by the applicant and for which approval has not been withdrawn by the Secretary, or a person who has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive by the Secretary.
  - "(7) The term 'final dosage form' means, with respect to an animal drug product, a finished dosage form which is approved for administration to an animal without substantial further manufacturing. Such term includes animal drug products intended for mixing in animal feeds.

- "(8) The term 'process for the review of animal drug applications' means the following activities of the Secretary with respect to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions:
  - "(A) The activities necessary for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.
  - "(B) The issuance of action letters which approve animal drug applications or supplemental animal drug applications or which set forth in detail the specific deficiencies in animal drug applications, supplemental animal drug applications, or investigational animal drug submissions and, where appropriate, the actions necessary to place such applications, supplements or submissions in condition for approval.
  - "(C) The inspection of animal drug establishments and other facilities undertaken as part of the Secretary's review of pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

1	"(D) Monitoring of research conducted in
2	connection with the review of animal drug ap-
3	plications, supplemental animal drug applica-
4	tions, and investigational animal drug submis-
5	sions.
6	"(E) The development of regulations and
7	policy related to the review of animal drug ap-
8	plications, supplemental animal drug applica-
9	tions, and investigational animal drug submis-
10	sions.
11	"(F) Development of standards for prod-
12	ucts subject to review.
13	"(G) Meetings between the agency and the
14	animal drug sponsor.
15	"(H) Review of advertising and labeling
16	prior to approval of an animal drug application
17	or supplemental animal drug application, but
18	not after such application has been approved.
19	"(9) The term 'costs of resources allocated for
20	the process for the review of animal drug applica-
21	tions' means the expenses in connection with the
22	process for the review of animal drug applications
23	for—
24	"(A) officers and employees of the Food
25	and Drug Administration, contractors of the

Food and Drug Administration, advisory committees consulted with respect to the review of specific animal drug applications, supplemental animal drug applications, or investigational animal drug submissions, and costs related to such officers, employees, committees, and contractors, including costs for travel, education, and recruitment and other personnel activities;

- "(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 under section 740 and accounting for resources allocated for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.
- "(10) The term 'adjustment factor' applicable to a fiscal year refers to the formula set forth in section 735(8) with the base or comparator month being October 2002.

1	"(11) The term 'person' includes an affiliate
2	thereof.
3	"(12) The term 'affiliate' refers to the defini-
4	tion set forth in section 735(11).".
5	SEC. 103. AUTHORITY TO ASSESS AND USE ANIMAL DRUG
6	FEES.
7	Section 740 of the Federal Food, Drug, and Cosmetic
8	Act (21 U.S.C. 379j–12) is amended to read as follows:
9	"SEC. 740. AUTHORITY TO ASSESS AND USE ANIMAL DRUG
10	FEES.
11	"(a) Types of Fees.—Beginning in fiscal year
12	2004, the Secretary shall assess and collect fees in accord-
13	ance with this section as follows:
14	"(1) Animal drug application and supple-
15	MENT FEE.—
16	"(A) IN GENERAL.—Each person that sub-
17	mits, on or after September 1, 2003, an animal
18	drug application or a supplemental animal drug
19	application shall be subject to a fee as follows:
20	"(i) A fee established in subsection (c)
21	for an animal drug application, except an
22	animal drug application subject to the cri-
23	teria set forth in section $512(d)(4)$ .
24	"(ii) A fee established in subsection
25	(c), in an amount that is equal to 50 per-

1	cent of the amount of the fee under clause
2	(i), for—
3	"(I) a supplemental animal drug
4	application for which safety or effec-
5	tiveness data are required; and
6	"(II) an animal drug application
7	subject to the criteria set forth in sec-
8	tion $512(d)(4)$ .
9	"(B) PAYMENT.—The fee required by sub-
10	paragraph (A) shall be due upon submission of
11	the animal drug application or supplemental
12	animal drug application.
13	"(C) Exception for previously filed
14	APPLICATION OR SUPPLEMENT.—If an animal
15	drug application or a supplemental animal drug
16	application was submitted by a person that paid
17	the fee for such application or supplement, was
18	accepted for filing, and was not approved or
19	was withdrawn (without a waiver or refund),
20	the submission of an animal drug application or
21	a supplemental animal drug application for the
22	same product by the same person (or the per-
23	son's licensee, assignee, or successor) shall not
24	be subject to a fee under subparagraph (A).

1	"(D) REFUND OF FEE IF APPLICATION RE-
2	FUSED FOR FILING.—The Secretary shall re-
3	fund 75 percent of the fee paid under subpara-
4	graph (B) for any animal drug application or
5	supplemental animal drug application which is
6	refused for filing.
7	"(E) REFUND OF FEE IF APPLICATION
8	WITHDRAWN.—If an animal drug application or
9	a supplemental animal drug application is with-
10	drawn after the application or supplement was
11	filed, the Secretary may refund the fee or por-
12	tion of the fee paid under subparagraph (B) if
13	no substantial work was performed on the ap-
14	plication or supplement after the application or
15	supplement was filed. The Secretary shall have
16	the sole discretion to refund the fee under this
17	paragraph. A determination by the Secretary
18	concerning a refund under this paragraph shall
19	not be reviewable.
20	"(2) Animal drug product fee.—
21	"(A) IN GENERAL.—Each person—
22	"(i) who is named as the applicant in
23	an animal drug application or supple-

mental animal drug application for an ani-

1	mal drug product which has been sub-
2	mitted for listing under section 510; and
3	"(ii) who, after September 1, 2003,
4	had pending before the Secretary an ani-
5	mal drug application or supplemental ani-
6	mal drug application,
7	shall pay for each such animal drug product the
8	annual fee established in subsection (c).
9	"(B) PAYMENT; FEE DUE DATE.—Such fee
10	shall be payable for the fiscal year in which the
11	animal drug product is first submitted for list-
12	ing under section 510, or is submitted for re-
13	listing under section 510 if the animal drug
14	product has been withdrawn from listing and
15	relisted. After such fee is paid for that fiscal
16	year, such fee shall be due each subsequent fis-
17	cal year that the product remains listed, upon
18	the later of—
19	"(i) the first business day after the
20	date of enactment of an appropriations Act
21	providing for the collection and obligation
22	of fees for such fiscal year under this sec-
23	tion; or
24	"(ii) January 31 of each year.

1	"(C) LIMITATION.—Such fee shall be paid
2	only once for each animal drug product for a
3	fiscal year in which the fee is payable.
4	"(3) Animal drug establishment fee.—
5	"(A) In general.—Each person—
6	"(i) who owns or operates, directly or
7	through an affiliate, an animal drug estab-
8	lishment;
9	"(ii) who is named as the applicant in
10	an animal drug application or supple-
11	mental animal drug application for an ani-
12	mal drug product which has been sub-
13	mitted for listing under section 510; and
14	"(iii) who, after September 1, 2003,
15	had pending before the Secretary an ani-
16	mal drug application or supplemental ani-
17	mal drug application,
18	shall be assessed an annual establishment fee as
19	established in subsection (c) for each animal
20	drug establishment listed in its approved animal
21	drug application as an establishment that man-
22	ufactures the animal drug product named in the
23	application.
24	"(B) PAYMENT; FEE DUE DATE.—The an-
25	nual establishment fee shall be assessed in each

1	fiscal year in which the animal drug product
2	named in the application is assessed a fee under
3	paragraph (2) unless the animal drug establish-
4	ment listed in the application does not engage
5	in the manufacture of the animal drug product
6	during the fiscal year. The fee under this para-
7	graph for a fiscal year shall be due upon the
8	later of—
9	"(i) the first business day after the
10	date of enactment of an appropriations Act
11	providing for the collection and obligation
12	of fees for such fiscal year under this sec-
13	tion; or
14	"(ii) January 31 of each year.
15	"(C) Limitation.—
16	"(i) In general.—An establishment
17	shall be assessed only one fee per fiscal
18	year under this section, subject to clause
19	(ii).
20	"(ii) Certain manufacturers.—If
21	a single establishment manufactures both
22	animal drug products and prescription
23	drug products, as defined in section
24	735(3), such establishment shall be as-
25	sessed both the animal drug establishment

1	fee and the prescription drug establish-
2	ment fee, as set forth in section 736(a)(2)
3	within a single fiscal year.
4	"(4) Animal drug sponsor fee.—
5	"(A) IN GENERAL.—Each person—
6	"(i) who meets the definition of an
7	animal drug sponsor within a fiscal year
8	and
9	"(ii) who, after September 1, 2003
10	had pending before the Secretary an ani-
11	mal drug application, a supplemental ani-
12	mal drug application, or an investigational
13	animal drug submission,
14	shall be assessed an annual sponsor fee as es-
15	tablished under subsection (c).
16	"(B) PAYMENT; FEE DUE DATE.—The fee
17	under this paragraph for a fiscal year shall be
18	due upon the later of—
19	"(i) the first business day after the
20	date of enactment of an appropriations Act
21	providing for the collection and obligation
22	of fees for such fiscal year under this sec-
23	tion; or
24	"(ii) January 31 of each year.

1	"(C) Limitation.—Each animal drug
2	sponsor shall pay only one such fee each fiscal
3	year.
4	"(b) FEE REVENUE AMOUNTS.—
5	"(1) In general.—Subject to subsections (c),
6	(d), (f), and (g)—
7	"(A) for fiscal year 2014, the fees required
8	under subsection (a) shall be established to gen-
9	erate a total revenue amount of \$23,600,000;
10	and
11	"(B) for each of fiscal years 2015 through
12	2018, the fees required under subsection (a)
13	shall be established to generate a total revenue
14	amount of \$21,600,000.
15	"(2) Types of fees.—Of the total revenue
16	amount determined for a fiscal year under para-
17	graph (1)—
18	"(A) 20 percent shall be derived from fees
19	under subsection (a)(1) (relating to animal
20	drug applications and supplements);
21	"(B) 27 percent shall be derived from fees
22	under subsection (a)(2) (relating to animal
23	drug products);

1	"(C) 26 percent shall be derived from fees
2	under subsection (a)(3) (relating to animal
3	drug establishments); and
4	"(D) 27 percent shall be derived from fees
5	under subsection (a)(4) (relating to animal
6	drug sponsors).
7	"(c) Annual Fee Setting; Adjustments.—
8	"(1) Annual fee setting.—The Secretary
9	shall establish, 60 days before the start of each fis-
10	cal year beginning after September 30, 2003, for
11	that fiscal year, animal drug application fees, sup-
12	plemental animal drug application fees, animal drug
13	sponsor fees, animal drug establishment fees, and
14	animal drug product fees based on the revenue
15	amounts established under subsection (b) and the
16	adjustments provided under this subsection.
17	"(2) Inflation adjustment.—For fiscal year
18	2015 and subsequent fiscal years, the revenue
19	amounts established in subsection (b) shall be ad-
20	justed by the Secretary by notice, published in the
21	Federal Register, for a fiscal year, by an amount
22	equal to the sum of—
23	"(A) one;
24	"(B) the average annual percent change in
25	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 of the preceding 4 fiscal years for which data are available, multiplied by the average proportion of personnel compensation and benefits costs to total Food and Drug Administration costs for the first 3 years of the preceding 4 fiscal years for which data are available; and

"(C) the average annual percent change that occurred in the Consumer Price Index for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 years of the preceding 4 years for which data are available multiplied by the average proportion of all costs other than personnel compensation and benefits costs to total Food and Drug Administration costs for the first 3 years of the preceding 4 fiscal years for which data are available.

The adjustment made each fiscal year under this paragraph shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2014 under this paragraph.

"(3) Workload adjustment.—For fiscal year 2015 and subsequent fiscal years, after the revenue amounts established in subsection (b) are adjusted for inflation in accordance with paragraph (2), the revenue amounts shall be further adjusted for such fiscal year to reflect changes in the workload of the Secretary for the process for the review of animal drug applications. With respect to such adjustment—

"(A) such adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of animal drug applications, supplemental animal drug applications for which data with respect to safety or effectiveness are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions submitted to the Secretary;

"(B) the Secretary shall publish in the Federal Register the fees resulting from such adjustment and the supporting methodologies; and

"(C) under no circumstances shall such adjustment result in fee revenues for a fiscal year

that are less than the fee revenues for that fiscal year established in subsection (b), as adjusted for inflation under paragraph (2).

"(4) Final year adjustment.—For fiscal year 2018, the Secretary may, in addition to other adjustments under this subsection, further increase the fees under this section, if such an adjustment is necessary, to provide for up to 3 months of operating reserves of carryover user fees for the process for the review of animal drug applications for the first 3 months of fiscal year 2019. If the Food and Drug Administration has carryover balances for the process for the review of animal drug applications in excess of 3 months of such operating reserves, then this adjustment will not be made. If this adjustment is necessary, then the rationale for the amount of the increase shall be contained in the annual notice setting fees for fiscal year 2018.

"(5) LIMIT.—The total amount of fees charged, as adjusted under this subsection, for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for the process for the review of animal drug applications.

"(d) FEE WAIVER OR REDUCTION.—

1	"(1) In general.—The Secretary shall grant a
2	waiver from or a reduction of one or more fees as-
3	sessed under subsection (a) where the Secretary
4	finds that—
5	"(A) the assessment of the fee would
6	present a significant barrier to innovation be-
7	cause of limited resources available to such per-
8	son or other circumstances;
9	"(B) the fees to be paid by such person
10	will exceed the anticipated present and future
11	costs incurred by the Secretary in conducting
12	the process for the review of animal drug appli-
13	cations for such person;
14	"(C) the animal drug application or sup-
15	plemental animal drug application is intended
16	solely to provide for use of the animal drug
17	in—
18	"(i) a Type B medicated feed (as de-
19	fined in section 558.3(b)(3) of title 21,
20	Code of Federal Regulations (or any suc-
21	cessor regulation)) intended for use in the
22	manufacture of Type C free-choice medi-
23	cated feeds; or
24	"(ii) a Type C free-choice medicated
25	feed (as defined in section 558.3(b)(4) of

1	title 21, Code of Federal Regulations (or
2	any successor regulation));
3	"(D) the animal drug application or sup-
4	plemental animal drug application is intended
5	solely to provide for a minor use or minor spe-
6	cies indication; or
7	"(E) the sponsor involved is a small busi-
8	ness submitting its first animal drug applica-
9	tion to the Secretary for review.
10	"(2) Use of standard costs.—In making the
11	finding in paragraph (1)(B), the Secretary may use
12	standard costs.
13	"(3) Rules for small businesses.—
14	"(A) Definition.—In paragraph $(1)(E)$ ,
15	the term 'small business' means an entity that
16	has fewer than 500 employees, including em-
17	ployees of affiliates.
18	"(B) WAIVER OF APPLICATION FEE.—The
19	Secretary shall waive under paragraph (1)(E)
20	the application fee for the first animal drug ap-
21	plication that a small business or its affiliate
22	submits to the Secretary for review. After a
23	small business or its affiliate is granted such a
24	waiver, the small business or its affiliate shall
25	pay application fees for all subsequent animal

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drug applications and supplemental animal drug applications for which safety or effectiveness data are required in the same manner as an entity that does not qualify as a small business.

"(C) CERTIFICATION.—The Secretary shall require any person who applies for a waiver under paragraph (1)(E) to certify their qualification for the waiver. The Secretary shall periodically publish in the Federal Register a list of persons making such certifications.

11 "(e) Effect of Failure To Pay Fees.—An ani-12 mal drug application or supplemental animal drug application submitted by a person subject to fees under sub-14 15 section (a) shall be considered incomplete and shall not be accepted for filing by the Secretary until all fees owed 16 by such person have been paid. An investigational animal 17 drug submission under section 739(5)(B) that is sub-18 mitted by a person subject to fees under subsection (a) 19 20 shall be considered incomplete and shall not be accepted 21 for review by the Secretary until all fees owed by such person have been paid. The Secretary may discontinue review of any animal drug application, supplemental animal drug application or investigational animal drug submission from a person if such person has not submitted for pay1 ment all fees owed under this section by 30 days after

2 the date upon which they are due.

### "(f) Assessment of Fees.—

"(1) LIMITATION.—Fees may not be assessed under subsection (a) for a fiscal year beginning after fiscal year 2003 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 2003 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

"(2) Authority.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, for animal drug applications, supplemental animal drug applications, investigational animal drug submissions, animal drug sponsors, animal drug establishments and animal drug products at any time in such

1	fiscal year notwithstanding the provisions of sub-
2	section (a) relating to the date fees are to be paid.
3	"(g) Crediting and Availability of Fees.—
4	"(1) In General.—Subject to paragraph
5	(2)(C), fees authorized under subsection (a) shall be
6	collected and available for obligation only to the ex-
7	tent and in the amount provided in advance in ap-
8	propriations Acts. Such fees are authorized to be ap-
9	propriated to remain available until expended. Such
10	sums as may be necessary may be transferred from
11	the Food and Drug Administration salaries and ex-
12	penses appropriation account without fiscal year lim-
13	itation to such appropriation account for salary and
14	expenses with such fiscal year limitation. The sums
15	transferred shall be available solely for the process
16	for the review of animal drug applications.
17	"(2) Collections and appropriation
18	ACTS.—
19	"(A) In General.—The fees authorized
20	by this section—
21	"(i) subject to subparagraph (C), shall
22	be collected and available in each fiscal
23	year in an amount not to exceed the
24	amount specified in appropriation Acts, or

1	otherwise made available for obligation for
2	such fiscal year, and
3	"(ii) shall be available to defray in-
4	creases in the costs of the resources allo-
5	cated for the process for the review of ani-
6	mal drug applications (including increases
7	in such costs for an additional number of
8	full-time equivalent positions in the De-
9	partment of Health and Human Services
10	to be engaged in such process) over such
11	costs, excluding costs paid from fees col-
12	lected under this section, for fiscal year
13	2003 multiplied by the adjustment factor.
14	"(B) COMPLIANCE.—The Secretary shall
15	be considered to have met the requirements of
16	subparagraph (A)(ii) in any fiscal year if the
17	costs funded by appropriations and allocated for
18	the process for the review of animal drug appli-
19	cations—
20	"(i) are not more than 3 percent
21	below the level specified in subparagraph
22	(A)(ii); or
23	"(ii)(I) are more than 3 percent below
24	the level specified in subparagraph (A)(ii),
25	and fees assessed for the fiscal year fol-

1	lowing the subsequent fiscal year are de-
2	creased by the amount in excess of 3 per-
3	cent by which such costs fell below the
4	level specified in subparagraph (A)(ii); and
5	"(II) such costs are not more than 5
6	percent below the level specified in sub-
7	paragraph (A)(ii).
8	"(C) Provision for Early Payments.—
9	Payment of fees authorized under this section
10	for a fiscal year, prior to the due date for such
11	fees, may be accepted by the Secretary in ac-
12	cordance with authority provided in advance in
13	a prior year appropriations Act.
14	"(3) Authorization of appropriations.—
15	For each of the fiscal years 2014 through 2018,
16	there is authorized to be appropriated for fees under
17	this section an amount equal to the total revenue
18	amount determined under subsection (b) for the fis-
19	cal year, as adjusted or otherwise affected under
20	subsection (c) and paragraph (4).
21	"(4) Offset of overcollections; recovery
22	OF COLLECTION SHORTFALLS.—
23	"(A) Offset of overcollections.—If
24	the sum of the cumulative amount of fees col-
25	lected under this section for fiscal years 2014

through 2016 and the amount of fees estimated to be collected under this section for fiscal year 2017 (including any increased fee collections attributable to subparagraph (B)), exceeds the cumulative amount appropriated pursuant to paragraph (3) for the fiscal years 2014 through 2017, the excess amount shall be credited to the appropriation account of the Food and Drug Administration as provided in paragraph (1), and shall be subtracted from the amount of fees that would otherwise be authorized to be collected under this section pursuant to appropriation Acts for fiscal year 2018.

"(B) Recovery of collection shortfalls.—

"(i) FISCAL YEAR 2016.—For fiscal year 2016, the amount of fees otherwise authorized to be collected under this section shall be increased by the amount, if any, by which the amount collected under this section and appropriated for fiscal year 2014 falls below the amount of fees authorized for fiscal year 2014 under paragraph (3).

"(ii) FISCAL YEAR 2017.—For fiscal 1 2 year 2017, the amount of fees otherwise 3 authorized to be collected under this section shall be increased by the amount, if any, by which the amount collected under 6 this section and appropriated for fiscal 7 year 2015 falls below the amount of fees 8 authorized for fiscal year 2015 under para-9 graph(3).

"(iii) FISCAL YEAR 2018.—For fiscal year 2018, the amount of fees otherwise authorized to be collected under this section (including any reduction in the authorized amount under subparagraph (A)), shall be increased by the cumulative amount, if any, by which the amount collected under this section and appropriated for fiscal years 2016 and 2017 (including estimated collections for fiscal year 2017) falls below the cumulative amount of fees authorized under paragraph (3) for fiscal years 2016 and 2017.

"(h) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due,

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- 1 such fee shall be treated as a claim of the United States
- 2 Government subject to subchapter II of chapter 37 of title
- 3 31, United States Code.
- 4 "(i) Written Requests for Waivers, Reduc-
- 5 TIONS, AND REFUNDS.—To qualify for consideration for
- 6 a waiver or reduction under subsection (d), or for a refund
- 7 of any fee collected in accordance with subsection (a), a
- 8 person shall submit to the Secretary a written request for
- 9 such waiver, reduction, or refund not later than 180 days
- 10 after such fee is due.
- 11 "(j) Construction.—This section may not be con-
- 12 strued to require that the number of full-time equivalent
- 13 positions in the Department of Health and Human Serv-
- 14 ices, for officers, employees, and advisory committees not
- 15 engaged in the process of the review of animal drug appli-
- 16 cations, be reduced to offset the number of officers, em-
- 17 ployees, and advisory committees so engaged.
- 18 "(k) Abbreviated New Animal Drug Applica-
- 19 Tions.—The Secretary shall—
- 20 "(1) to the extent practicable, segregate the re-
- view of abbreviated new animal drug applications
- from the process for the review of animal drug appli-
- 23 cations; and
- 24 "(2) adopt other administrative procedures to
- ensure that review times of abbreviated new animal

- drug applications do not increase from their current
- 2 level due to activities under the user fee program.".
- 3 SEC. 104. REAUTHORIZATION; REPORTING REQUIREMENTS.
- 4 Section 740A of the Federal Food, Drug, and Cos-
- 5 metic Act (21 U.S.C. 379j-13) is amended to read as fol-
- 6 lows:
- 7 "SEC. 740A. REAUTHORIZATION; REPORTING REQUIRE-
- 8 MENTS.
- 9 "(a) Performance Report.—Beginning with fiscal
- 10 year 2014, not later than 120 days after the end of each
- 11 fiscal year during which fees are collected under this part,
- 12 the Secretary shall prepare and submit to the Committee
- 13 on Health, Education, Labor, and Pensions of the Senate
- 14 and the Committee on Energy and Commerce of the
- 15 House of Representatives a report concerning the progress
- 16 of the Food and Drug Administration in achieving the
- 17 goals identified in the letters described in section 101(b)
- 18 of the Animal Drug User Fee Amendments of 2013 to-
- 19 ward expediting the animal drug development process and
- 20 the review of the new and supplemental animal drug appli-
- 21 cations and investigational animal drug submissions dur-
- 22 ing such fiscal year, the future plans of the Food and
- 23 Drug Administration for meeting the goals, the review
- 24 times for abbreviated new animal drug applications, and
- 25 the administrative procedures adopted by the Food and

- 1 Drug Administration to ensure that review times for ab-
- 2 breviated new animal drug applications are not increased
- 3 from their current level due to activities under the user
- 4 fee program.
- 5 "(b) FISCAL REPORT.—Beginning with fiscal year
- 6 2014, not later than 120 days after the end of each fiscal
- 7 year during which fees are collected under this part, the
- 8 Secretary shall prepare and submit to the Committee on
- 9 Health, Education, Labor, and Pensions of the Senate and
- 10 the Committee on Energy and Commerce of the House
- 11 of Representatives a report on the implementation of the
- 12 authority for such fees during such fiscal year and the
- 13 use, by the Food and Drug Administration, of the fees
- 14 collected during such fiscal year for which the report is
- 15 made.
- 16 "(c) Public Availability.—The Secretary shall
- 17 make the reports required under subsections (a) and (b)
- 18 available to the public on the Internet Web site of the
- 19 Food and Drug Administration.
- 20 "(d) REAUTHORIZATION.—
- 21 "(1) Consultation.—In developing rec-
- ommendations to present to the Congress with re-
- spect to the goals, and plans for meeting the goals,
- for the process for the review of animal drug appli-
- 25 cations for the first 5 fiscal years after fiscal year

1	2018, and for the reauthorization of this part for
2	such fiscal years, the Secretary shall consult with—
3	"(A) the Committee on Health, Education,
4	Labor, and Pensions of the Senate;
5	"(B) the Committee on Energy and Com-
6	merce of the House of Representatives;
7	"(C) scientific and academic experts;
8	"(D) veterinary professionals;
9	"(E) representatives of patient and con-
10	sumer advocacy groups; and
11	"(F) the regulated industry.
12	"(2) Prior public input.—Prior to beginning
13	negotiations with the regulated industry on the reau-
14	thorization of this part, the Secretary shall—
15	"(A) publish a notice in the Federal Reg-
16	ister requesting public input on the reauthoriza-
17	tion;
18	"(B) hold a public meeting at which the
19	public may present its views on the reauthoriza-
20	tion, including specific suggestions for changes
21	to the goals referred to in subsection (a);
22	"(C) provide a period of 30 days after the
23	public meeting to obtain written comments from
24	the public suggesting changes to this part; and

1	"(D) publish the comments on the Food
2	and Drug Administration's Internet Web site.
3	"(3) Periodic Consultation.—Not less fre-
4	quently than once every 4 months during negotia-
5	tions with the regulated industry, the Secretary shall
6	hold discussions with representatives of veterinary
7	patient, and consumer advocacy groups to continue
8	discussions of their views on the reauthorization and
9	their suggestions for changes to this part as ex-
10	pressed under paragraph (2).
11	"(4) Public Review of Recommenda-
12	TIONS.—After negotiations with the regulated indus-
13	try, the Secretary shall—
14	"(A) present the recommendations devel-
15	oped under paragraph (1) to the Congressional
16	committees specified in such paragraph;
17	"(B) publish such recommendations in the
18	Federal Register;
19	"(C) provide for a period of 30 days for
20	the public to provide written comments on such
21	recommendations;
22	"(D) hold a meeting at which the public
23	may present its views on such recommenda-
24	tions; and

1 "(E) after consideration of such public 2 views and comments, revise such recommenda-3 tions as necessary.

"(5) Transmittal of recommendations.—
Not later than January 15, 2018, the Secretary shall transmit to Congress the revised recommendations under paragraph (4) a summary of the views and comments received under such paragraph, and any changes made to the recommendations in response to such views and comments.

### "(6) MINUTES OF NEGOTIATION MEETINGS.—

"(A) Public availability.—Before presenting the recommendations developed under paragraphs (1) through (5) to Congress, the Secretary shall make publicly available, on the Internet Web site of the Food and Drug Administration, minutes of all negotiation meetings conducted under this subsection between the Food and Drug Administration and the regulated industry.

"(B) CONTENT.—The minutes described under subparagraph (A) shall summarize any substantive proposal made by any party to the negotiations as well as significant controversies

- 1 or differences of opinion during the negotiations
- 2 and their resolution.".

#### 3 SEC. 105. SAVINGS CLAUSE.

- 4 Notwithstanding the amendments made by this title,
- 5 part 4 of subchapter C of chapter VII of the Federal Food,
- 6 Drug, and Cosmetic Act (21 U.S.C. 379j–11 et seq.), as
- 7 in effect on the day before the date of the enactment of
- 8 this title, shall continue to be in effect with respect to ani-
- 9 mal drug applications and supplemental animal drug ap-
- 10 plications (as defined in such part as of such day) that
- 11 on or after October 1, 2008, but before October 1, 2013,
- 12 were accepted by the Food and Drug Administration for
- 13 filing with respect to assessing and collecting any fee re-
- 14 quired by such part for a fiscal year prior to fiscal year
- 15 2014.

### 16 SEC. 106. EFFECTIVE DATE.

- 17 The amendments made by this title shall take effect
- 18 on October 1, 2013, or the date of enactment of this Act,
- 19 whichever is later, except that fees under part 4 of sub-
- 20 chapter C of chapter VII of the Federal Food, Drug, and
- 21 Cosmetic Act, as amended by this title, shall be assessed
- 22 for all animal drug applications and supplemental animal
- 23 drug applications received on or after October 1, 2013,
- 24 regardless of the date of the enactment of this Act.

#### SEC. 107. SUNSET DATES.

- 2 (a) Authorization.—Section 740 of the Federal
- 3 Food, Drug, and Cosmetic Act (21 U.S.C. 379j-12) shall
- 4 cease to be effective October 1, 2018.
- 5 (b) Reporting Requirements.—Section 740A of
- 6 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
- 7 379j–13) shall cease to be effective January 31, 2019.
- 8 (c) Previous Sunset Provision.—
- 9 (1) IN GENERAL.—Section 108 of the Animal
- Drug User Fee Amendments of 2008 (Public Law
- 11 110–316) is repealed.
- 12 (2) Conforming Amendment.—The Animal
- Drug User Fee Amendments of 2008 (Public Law
- 14 110–316) is amended in the table of contents in sec-
- tion 1, by striking the item relating to section 108.
- 16 (d) Technical Clarification.—Effective Novem-
- 17 ber 18, 2003, section 5 of the Animal Drug User Fee Act
- $18\,$  of 2003 (Public Law 108–130) is repealed.

# 19 TITLE II—FEES RELATING TO

## 20 **GENERIC ANIMAL DRUGS**

- 21 SEC. 201. SHORT TITLE; FINDING.
- 22 (a) Short Title.—This title may be cited as the
- 23 "Animal Generic Drug User Fee Amendments of 2013".
- (b) FINDING.—The fees authorized by this title will
- 25 be dedicated toward expediting the generic new animal
- 26 drug development process and the review of abbreviated

1	applications for generic new animal drugs, supplemental
2	abbreviated applications for generic new animal drugs,
3	and investigational submissions for generic new animal
4	drugs as set forth in the goals identified in the letters from
5	the Secretary of Health and Human Services to the Chair-
6	man of the Committee on Energy and Commerce of the
7	House of Representatives and the Chairman of the Com-
8	mittee on Health, Education, Labor, and Pensions of the
9	Senate as set forth in the Congressional Record.
10	SEC. 202. AUTHORITY TO ASSESS AND USE GENERIC NEW
11	ANIMAL DRUG FEES.
12	Section 741 of the Federal Food, Drug, and Cosmetic
1 4	
13	Act (21 U.S.C. 379j–21) is amended to read as follows:
13	,
13 14	Act (21 U.S.C. 379j–21) is amended to read as follows:
13 14 15	Act (21 U.S.C. 379j–21) is amended to read as follows: "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW
	Act (21 U.S.C. 379j–21) is amended to read as follows: "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW ANIMAL DRUG FEES.
13 14 15 16 17	Act (21 U.S.C. 379j-21) is amended to read as follows:  "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW  ANIMAL DRUG FEES.  "(a) Types of Fees.—Beginning with respect to fis-
13 14 15 16 17	Act (21 U.S.C. 379j-21) is amended to read as follows:  "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW  ANIMAL DRUG FEES.  "(a) Types of Fees.—Beginning with respect to fiscal year 2009, the Secretary shall assess and collect fees
13 14 15 16 17	Act (21 U.S.C. 379j-21) is amended to read as follows:  "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW  ANIMAL DRUG FEES.  "(a) Types of Fees.—Beginning with respect to fiscal year 2009, the Secretary shall assess and collect fees in accordance with this section as follows:
13 14 15 16 17 18	Act (21 U.S.C. 379j-21) is amended to read as follows:  "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW  ANIMAL DRUG FEES.  "(a) Types of Fees.—Beginning with respect to fiscal year 2009, the Secretary shall assess and collect fees in accordance with this section as follows:  "(1) Abbreviated application fee.—
13 14 15 16 17 18 19 20	Act (21 U.S.C. 379j–21) is amended to read as follows:  "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW  ANIMAL DRUG FEES.  "(a) Types of Fees.—Beginning with respect to fiscal year 2009, the Secretary shall assess and collect fees in accordance with this section as follows:  "(1) Abbreviated application fee.—  "(A) In General.—Each person that sub-
13 14 15 16 17 18 19 20 21	Act (21 U.S.C. 379j–21) is amended to read as follows:  "SEC. 741. AUTHORITY TO ASSESS AND USE GENERIC NEW  ANIMAL DRUG FEES.  "(a) Types of Fees.—Beginning with respect to fiscal year 2009, the Secretary shall assess and collect fees in accordance with this section as follows:  "(1) Abbreviated Application Fee.—  "(A) In General.—Each person that submits, on or after July 1, 2008, an abbreviated

1 "(B) PAYMENT.—The fee required by sub-2 paragraph (A) shall be due upon submission of 3 the abbreviated application.

#### "(C) Exceptions.—

"(i) Previously filed application was submitted by a person that paid the fee for such application, was accepted for filing, and was not approved or was withdrawn (without a waiver or refund), the submission of an abbreviated application for the same product by the same person (or the person's licensee, assignee, or successor) shall not be subject to a fee under subparagraph (A).

"(ii) CERTAIN ABBREVIATED APPLICATIONS INVOLVING COMBINATION ANIMAL
DRUGS.—An abbreviated application which
is subject to the criteria in section
512(d)(4) and submitted on or after October 1, 2013 shall be subject to a fee equal
to 50 percent of the amount of the abbreviated application fee established in subsection (c).

1	"(D) REFUND OF FEE IF APPLICATION RE-
2	FUSED FOR FILING.—The Secretary shall re-
3	fund 75 percent of the fee paid under subpara-
4	graph (B) for any abbreviated application which
5	is refused for filing.
6	"(E) REFUND OF FEE IF APPLICATION
7	WITHDRAWN.—If an abbreviated application is
8	withdrawn after the application was filed, the
9	Secretary may refund the fee or portion of the
10	fee paid under subparagraph (B) if no substan-
11	tial work was performed on the application
12	after the application was filed. The Secretary
13	shall have the sole discretion to refund the fee
14	under this subparagraph. A determination by
15	the Secretary concerning a refund under this
16	subparagraph shall not be reviewable.
17	"(2) Generic New Animal drug product
18	FEE.—
19	"(A) IN GENERAL.—Each person—
20	"(i) who is named as the applicant in
21	an abbreviated application or supplemental
22	abbreviated application for a generic new
23	animal drug product which has been sub-
24	mitted for listing under section 510; and

1	"(ii) who, after September 1, 2008,
2	had pending before the Secretary an abbre-
3	viated application or supplemental abbre-
4	viated application,
5	shall pay for each such generic new animal
6	drug product the annual fee established in sub-
7	section (c).
8	"(B) PAYMENT; FEE DUE DATE.—Such fee
9	shall be payable for the fiscal year in which the
10	generic new animal drug product is first sub-
11	mitted for listing under section 510, or is sub-
12	mitted for relisting under section 510 if the ge-
13	neric new animal drug product has been with-
14	drawn from listing and relisted. After such fee
15	is paid for that fiscal year, such fee shall be due
16	each subsequent fiscal year that the product re-
17	mains listed, upon the later of—
18	"(i) the first business day after the
19	date of enactment of an appropriations Act
20	providing for the collection and obligation
21	of fees for such fiscal year under this sec-
22	tion; or
23	"(ii) January 31 of each year.
24	"(C) Limitation.—Such fee shall be paid
25	only once for each generic new animal drug

1	product for a fiscal year in which the fee is pay-
2	able.
3	"(3) Generic New Animal Drug sponsor
4	FEE.—
5	"(A) IN GENERAL.—Each person—
6	"(i) who meets the definition of a ge-
7	neric new animal drug sponsor within a
8	fiscal year; and
9	"(ii) who, after September 1, 2008
10	had pending before the Secretary an abbre-
11	viated application, a supplemental abbre-
12	viated application, or an investigational
13	submission,
14	shall be assessed an annual generic new anima
15	drug sponsor fee as established under sub-
16	section (e).
17	"(B) PAYMENT; FEE DUE DATE.—Such fee
18	shall be due each fiscal year upon the later of—
19	"(i) the first business day after the
20	date of enactment of an appropriations Act
21	providing for the collection and obligation
22	of fees for such fiscal year under this sec-
23	tion; or
24	"(ii) January 31 of each year.

1	"(C) Amount of fee.—Each generic new
2	animal drug sponsor shall pay only 1 such fee
3	each fiscal year, as follows:
4	"(i) 100 percent of the amount of the
5	generic new animal drug sponsor fee pub-
6	lished for that fiscal year under subsection
7	(c) for an applicant with more than 6 ap-
8	proved abbreviated applications.
9	"(ii) 75 percent of the amount of the
10	generic new animal drug sponsor fee pub-
11	lished for that fiscal year under subsection
12	(c) for an applicant with more than 1 and
13	fewer than 7 approved abbreviated applica-
14	tions.
15	"(iii) 50 percent of the amount of the
16	generic new animal drug sponsor fee pub-
17	lished for that fiscal year under subsection
18	(e) for an applicant with 1 or fewer ap-
19	proved abbreviated applications.
20	"(b) Fee Amounts.—Subject to subsections (c), (d),
21	(f), and (g), the fees required under subsection (a) shall
22	be established to generate fee revenue amounts as follows:
23	"(1) Total fee revenues for application
24	FEES.—The total fee revenues to be collected in ab-
25	breviated application fees under subsection (a)(1)

- 1 shall be \$1,832,000 for fiscal year 2014, \$1,736,000
- 2 for fiscal year 2015, \$1,857,000 for fiscal year
- 3 2016, \$1,984,000 for fiscal year 2017, and
- 4 \$2,117,000 for fiscal year 2018.
- 5 "(2) Total fee revenues for product
- 6 FEES.—The total fee revenues to be collected in ge-
- 7 neric new animal drug product fees under subsection
- 8 (a)(2) shall be \$2,748,000 for fiscal year 2014,
- 9 \$2,604,000 for fiscal year 2015, \$2,786,000 for fis-
- 10 cal year 2016, \$2,976,000 for fiscal year 2017, and
- 11 \$3,175,000 for fiscal year 2018.
- 12 "(3) Total fee revenues for sponsor
- 13 FEES.—The total fee revenues to be collected in ge-
- 14 neric new animal drug sponsor fees under subsection
- (a)(3) shall be \$2,748,000 for fiscal year 2014,
- 16 \$2,604,000 for fiscal year 2015, \$2,786,000 for fis-
- 17 cal year 2016, \$2,976,000 for fiscal year 2017, and
- 18 \$3,175,000 for fiscal year 2018.
- 19 "(c) Annual Fee Setting; Adjustments.—
- 20 "(1) Annual fee setting.—The Secretary
- shall establish, 60 days before the start of each fis-
- cal year beginning after September 30, 2008, for
- 23 that fiscal year, abbreviated application fees, generic
- new animal drug sponsor fees, and generic new ani-
- 25 mal drug product fees, based on the revenue

1 amounts established under subsection (b) and the 2 adjustments provided under this subsection.

"(2) WORKLOAD ADJUSTMENT.—The fee revenues shall be adjusted each fiscal year after fiscal year 2014 to reflect changes in review workload. With respect to such adjustment:

"(A) This adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions submitted to the Secretary. The Secretary shall publish in the Federal Register the fees resulting from this adjustment and the supporting methodologies.

"(B) Under no circumstances shall this workload adjustment result in fee revenues for a fiscal year that are less than the fee revenues for that fiscal year established in subsection (b).

1 "(3) Final year adjustment.—For fiscal 2 year 2018, the Secretary may, in addition to other 3 adjustments under this subsection, further increase 4 the fees under this section, if such an adjustment is 5 necessary, to provide for up to 3 months of oper-6 ating reserves of carryover user fees for the process 7 for the review of abbreviated applications for generic 8 new animal drugs for the first 3 months of fiscal 9 year 2019. If the Food and Drug Administration 10 has carryover balances for the process for the review 11 of abbreviated applications for generic new animal 12 drugs in excess of 3 months of such operating re-13 serves, then this adjustment shall not be made. If 14 this adjustment is necessary, then the rationale for 15 the amount of the increase shall be contained in the 16 annual notice setting fees for fiscal year 2018.

"(4) Limit.—The total amount of fees charged, as adjusted under this subsection, for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for the process for the review of abbreviated applications for generic new animal drugs.

23 "(d) FEE WAIVER OR REDUCTION.—The Secretary 24 shall grant a waiver from or a reduction of 1 or more fees 25 assessed under subsection (a) where the Secretary finds

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- 1 that the generic new animal drug is intended solely to pro-
- 2 vide for a minor use or minor species indication.
- 3 "(e) Effect of Failure to Pay Fees.—An abbre-
- 4 viated application for a generic new animal drug sub-
- 5 mitted by a person subject to fees under subsection (a)
- 6 shall be considered incomplete and shall not be accepted
- 7 for filing by the Secretary until all fees owed by such per-
- 8 son have been paid. An investigational submission for a
- 9 generic new animal drug that is submitted by a person
- 10 subject to fees under subsection (a) shall be considered
- 11 incomplete and shall not be accepted for review by the Sec-
- 12 retary until all fees owed by such person have been paid.
- 13 The Secretary may discontinue review of any abbreviated
- 14 application for a generic new animal drug, supplemental
- 15 abbreviated application for a generic new animal drug, or
- 16 investigational submission for a generic new animal drug
- 17 from a person if such person has not submitted for pay-
- 18 ment all fees owed under this section by 30 days after
- 19 the date upon which they are due.
- 20 "(f) Assessment of Fees.—
- 21 "(1) Limitation.—Fees may not be assessed
- under subsection (a) for a fiscal year beginning after
- fiscal year 2008 unless appropriations for salaries
- and expenses of the Food and Drug Administration
- for such fiscal year (excluding the amount of fees

appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 2003 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

"(2) AUTHORITY.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, for abbreviated applications, generic new animal drug sponsors, and generic new animal drug products at any time in such fiscal year notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

### "(g) Crediting and Availability of Fees.—

"(1) IN GENERAL.—Subject to paragraph (2)(C), fees authorized under subsection (a) 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 be appropriated to remain available until expended. Such

1	sums as may be necessary may be transferred from
2	the Food and Drug Administration salaries and ex-
3	penses appropriation account without fiscal year lim-
4	itation to such appropriation account for salary and
5	expenses with such fiscal year limitation. The sums
6	transferred shall be available solely for the process
7	for the review of abbreviated applications for generic
8	new animal drugs.
9	"(2) Collections and Appropriation
10	ACTS.—
11	"(A) In General.—The fees authorized
12	by this section—
13	"(i) subject to subparagraph (C), shall
14	be collected and available in each fiscal
15	year in an amount not to exceed the
16	amount specified in appropriation Acts, or
17	otherwise made available for obligation for
18	such fiscal year; and
19	"(ii) shall be available to defray in-
20	creases in the costs of the resources allo-
21	cated for the process for the review of ab-
22	breviated applications for generic new ani-
23	mal drugs (including increases in such
24	costs for an additional number of full-time
25	equivalent positions in the Department of

1	Health and Human Services to be engaged
2	in such process) over such costs, excluding
3	costs paid from fees collected under this
4	section, for fiscal year 2008 multiplied by
5	the adjustment factor.
6	"(B) COMPLIANCE.—The Secretary shall
7	be considered to have met the requirements of
8	subparagraph (A)(ii) in any fiscal year if the
9	costs funded by appropriations and allocated for
10	the process for the review of abbreviated appli-
11	cations for generic new animal drugs—
12	"(i) are not more than 3 percent
13	below the level specified in subparagraph
14	(A)(ii); or
15	"(ii)(I) are more than 3 percent below
16	the level specified in subparagraph (A)(ii),
17	and fees assessed for the fiscal year fol-
18	lowing the subsequent fiscal year are de-
19	creased by the amount in excess of 3 per-
20	cent by which such costs fell below the
21	level specified in subparagraph (A)(ii); and
22	"(II) such costs are not more than 5
23	percent below the level specified in sub-
24	paragraph (A)(ii).

1	"(C) Provision for Early Payments.—
2	Payment of fees authorized under this section
3	for a fiscal year, prior to the due date for such
4	fees, may be accepted by the Secretary in ac-
5	cordance with authority provided in advance in
6	a prior year appropriations Act.
7	"(3) Authorization of appropriations.—
8	There are authorized to be appropriated for fees
9	under this section—
10	"(A) \$7,328,000 for fiscal year 2014;
11	"(B) \$6,944,000 for fiscal year 2015;
12	"(C) \$7,429,000 for fiscal year 2016;
13	"(D) $$7,936,000$ for fiscal year 2017; and
14	"(E) $\$8,467,000$ for fiscal year 2018;
15	as adjusted to reflect adjustments in the total fee
16	revenues made under this section and changes in the
17	total amounts collected by abbreviated application
18	fees, generic new animal drug sponsor fees, and ge-
19	neric new animal drug product fees.
20	"(4) Offset.—If the sum of the cumulative
21	amount of fees collected under this section for the
22	fiscal years 2014 through 2016 and the amount of
23	fees estimated to be collected under this section for
24	fiscal year 2017 exceeds the cumulative amount ap-
25	propriated under paragraph (3) for the fiscal years

- 1 2014 through 2017, the excess amount shall be
- 2 credited to the appropriation account of the Food
- and Drug Administration as provided in paragraph
- 4 (1), and shall be subtracted from the amount of fees
- 5 that would otherwise be authorized to be collected
- 6 under this section pursuant to appropriation Acts
- 7 for fiscal year 2018.
- 8 "(h) Collection of Unpaid Fees.—In any case
- 9 where the Secretary does not receive payment of a fee as-
- 10 sessed under subsection (a) within 30 days after it is due,
- 11 such fee shall be treated as a claim of the United States
- 12 Government subject to subchapter II of chapter 37 of title
- 13 31, United States Code.
- 14 "(i) Written Requests for Waivers, Reduc-
- 15 Tions, and Refunds.—To qualify for consideration for
- 16 a waiver or reduction under subsection (d), or for a refund
- 17 of any fee collected in accordance with subsection (a), a
- 18 person shall submit to the Secretary a written request for
- 19 such waiver, reduction, or refund not later than 180 days
- 20 after such fee is due.
- 21 "(j) Construction.—This section may not be con-
- 22 strued to require that the number of full-time equivalent
- 23 positions in the Department of Health and Human Serv-
- 24 ices, for officers, employees, and advisory committees not
- 25 engaged in the process of the review of abbreviated appli-

1	cations for generic new animal drugs, be reduced to offset
2	the number of officers, employees, and advisory commit-
3	tees so engaged.
4	"(k) Definitions.—In this section and section 742:
5	"(1) Abbreviated application for a ge-
6	NERIC NEW ANIMAL DRUG.—The terms 'abbreviated
7	application for a generic new animal drug' and 'ab-
8	breviated application' mean an abbreviated applica-
9	tion for the approval of any generic new animal drug
10	submitted under section 512(b)(2). Such term does
11	not include a supplemental abbreviated application
12	for a generic new animal drug.
13	"(2) Adjustment factor.—The term 'adjust-
14	ment factor' applicable to a fiscal year is the Con-
15	sumer Price Index for all urban consumers (all
16	items; United States city average) for October of the
17	preceding fiscal year divided by—
18	"(A) for purposes of subsection $(f)(1)$ ,
19	such Index for October 2002; and
20	"(B) for purposes of subsection
21	(g)(2)(A)(ii), such Index for October 2007.
22	"(3) Costs of resources allocated for
23	THE PROCESS FOR THE REVIEW OF ABBREVIATED
24	APPLICATIONS FOR GENERIC NEW ANIMAL DRUGS.—
25	The term 'costs of resources allocated for the proc-

ess for the review of abbreviated applications for generic new animal drugs' means the expenses in connection with the process for the review of abbreviated applications for generic new animal drugs for—

"(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees consulted with respect to the review of specific abbreviated applications, supplemental abbreviated applications, or investigational submissions, and costs related to such officers, employees, committees, and contractors, including costs for travel, education, and recruitment and other personnel activities;

- "(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 under this section and accounting for resources allocated for the re-

- view of abbreviated applications, supplemental abbreviated applications, and investigational submissions.
  - "(4) Final dosage form.—The term 'final dosage form' means, with respect to a generic new animal drug product, a finished dosage form which is approved for administration to an animal without substantial further manufacturing. Such term includes generic new animal drug products intended for mixing in animal feeds.
    - "(5) GENERIC NEW ANIMAL DRUG.—The term 'generic new animal drug' means a new animal drug that is the subject of an abbreviated application.
    - "(6) GENERIC NEW ANIMAL DRUG PRODUCT.—
      The term 'generic new animal drug product' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or a supplemental abbreviated application has been approved.
    - "(7) GENERIC NEW ANIMAL DRUG SPONSOR.—
      The term 'generic new animal drug sponsor' means

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either an applicant named in an abbreviated application for a generic new animal drug that has not been withdrawn by the applicant and for which approval has not been withdrawn by the Secretary, or a person who has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive by the Secretary.

- "(8) Investigational submission for a generic new animal drug' and 'investigational submission' mean—
  - "(A) the filing of a claim for an investigational exemption under section 512(j) for a generic new animal drug intended to be the subject of an abbreviated application or a supplemental abbreviated application; or
  - "(B) the submission of information for the purpose of enabling the Secretary to evaluate the safety or effectiveness of a generic new animal drug in the event of the filing of an abbreviated application or supplemental abbreviated application for such drug.

- 1 "(9) PERSON.—The term 'person' includes an 2 affiliate thereof (as such term is defined in section 3 735(11)).
  - "(10) Process for the review of abbreviated applications for generic new animal drugs' means the following activities of the Secretary with respect to the review of abbreviated applications, supplemental abbreviated applications, and investigational submissions:
    - "(A) The activities necessary for the review of abbreviated applications, supplemental abbreviated applications, and investigational submissions.
    - "(B) The issuance of action letters which approve abbreviated applications or supplemental abbreviated applications or which set forth in detail the specific deficiencies in abbreviated applications, supplemental abbreviated applications, or investigational submissions and, where appropriate, the actions necessary to place such applications, supplemental applications, or submissions in condition for approval.

1	"(C) The inspection of generic new animal
2	drug establishments and other facilities under-
3	taken as part of the Secretary's review of pend-
4	ing abbreviated applications, supplemental ab-
5	breviated applications, and investigational sub-
6	missions.
7	"(D) Monitoring of research conducted in
8	connection with the review of abbreviated appli-
9	cations, supplemental abbreviated applications,
10	and investigational submissions.
11	"(E) The development of regulations and
12	policy related to the review of abbreviated appli-
13	cations, supplemental abbreviated applications,
14	and investigational submissions.
15	"(F) Development of standards for prod-
16	ucts subject to review.
17	"(G) Meetings between the agency and the
18	generic new animal drug sponsor.
19	"(H) Review of advertising and labeling
20	prior to approval of an abbreviated application
21	or supplemental abbreviated application, but
22	not after such application has been approved.
23	"(11) Supplemental abbreviated applica-
24	TION FOR GENERIC NEW ANIMAL DRUG.—The terms
25	'supplemental abbreviated application for a generic

- 1 new animal drug' and 'supplemental abbreviated ap-
- 2 plication' mean a request to the Secretary to ap-
- 3 prove a change in an approved abbreviated applica-
- 4 tion.".
- 5 SEC. 203. REAUTHORIZATION; REPORTING REQUIREMENTS.
- 6 Section 742 of the Federal Food, Drug, and Cosmetic
- 7 Act (21 U.S.C. 379j-22) is amended to read as follows:
- 8 "SEC. 742. REAUTHORIZATION; REPORTING REQUIRE-
- 9 MENTS.
- 10 "(a) Performance Reports.—Beginning with fis-
- 11 cal year 2014, not later than 120 days after the end of
- 12 each fiscal year during which fees are collected under this
- 13 part, the Secretary shall prepare and submit to the Com-
- 14 mittee on Health, Education, Labor, and Pensions of the
- 15 Senate, and the Committee on Energy and Commerce of
- 16 the House of Representatives a report concerning the
- 17 progress of the Food and Drug Administration in achiev-
- 18 ing the goals identified in the letters described in section
- 19 201(b) of the Animal Generic Drug User Fee Amend-
- 20 ments of 2013 toward expediting the generic new animal
- 21 drug development process and the review of abbreviated
- 22 applications for generic new animal drugs, supplemental
- 23 abbreviated applications for generic new animal drugs,
- 24 and investigational submissions for generic new animal
- 25 drugs during such fiscal year.

- 1 "(b) FISCAL REPORT.—Beginning with fiscal year
- 2 2014, not later than 120 days after the end of each fiscal
- 3 year during which fees are collected under this part, the
- 4 Secretary shall prepare and submit to Committee on
- 5 Health, Education, Labor, and Pensions of the Senate and
- 6 the Committee on Energy and Commerce of the House
- 7 of Representatives a report on the implementation of the
- 8 authority for such fees during such fiscal year and the
- 9 use, by the Food and Drug Administration, of the fees
- 10 collected during such fiscal year for which the report is
- 11 made.
- 12 "(c) Public Availability.—The Secretary shall
- 13 make the reports required under subsections (a) and (b)
- 14 available to the public on the Internet Web site of the
- 15 Food and Drug Administration.
- 16 "(d) Reauthorization.—
- 17 "(1) Consultation.—In developing rec-
- ommendations to present to Congress with respect to
- the goals, and plans for meeting the goals, for the
- 20 process for the review of abbreviated applications for
- 21 generic new animal drugs for the first 5 fiscal years
- after fiscal year 2018, and for the reauthorization of
- 23 this part for such fiscal years, the Secretary shall
- consult with—

1	"(A) the Committee on Energy and Com-
2	merce of the House of Representatives;
3	"(B) the Committee on Health, Education,
4	Labor, and Pensions of the Senate;
5	"(C) scientific and academic experts;
6	"(D) veterinary professionals;
7	"(E) representatives of patient and con-
8	sumer advocacy groups; and
9	"(F) the regulated industry.
10	"(2) Prior public input.—Prior to beginning
11	negotiations with the regulated industry on the reau-
12	thorization of this part, the Secretary shall—
13	"(A) publish a notice in the Federal Reg-
14	ister requesting public input on the reauthoriza-
15	tion;
16	"(B) hold a public meeting at which the
17	public may present its views on the reauthoriza-
18	tion, including specific suggestions for changes
19	to the goals referred to in subsection (a);
20	"(C) provide a period of 30 days after the
21	public meeting to obtain written comments from
22	the public suggesting changes to this part; and
23	"(D) publish the comments on the Food
24	and Drug Administration's Internet Web site.

1	"(3) Periodic Consultation.—Not less fre-
2	quently than once every 4 months during negotia-
3	tions with the regulated industry, the Secretary shall
4	hold discussions with representatives of veterinary
5	patient, and consumer advocacy groups to continue
6	discussions of their views on the reauthorization and
7	their suggestions for changes to this part as ex-
8	pressed under paragraph (2).
9	"(4) Public Review of Recommenda-
10	TIONS.—After negotiations with the regulated indus-
11	try, the Secretary shall—
12	"(A) present the recommendations devel-
13	oped under paragraph (1) to the congressional
14	committees specified in such paragraph;
15	"(B) publish such recommendations in the
16	Federal Register;
17	"(C) provide for a period of 30 days for
18	the public to provide written comments on such
19	recommendations;
20	"(D) hold a meeting at which the public
21	may present its views on such recommenda-
22	tions; and
23	"(E) after consideration of such public
24	views and comments, revise such recommenda-
25	tions as necessary.

"(5) Transmittal of recommendations.—

Not later than January 15, 2018, the Secretary shall transmit to Congress the revised recommendations under paragraph (4), a summary of the views and comments received under such paragraph, and any changes made to the recommendations in response to such views and comments.

#### "(6) MINUTES OF NEGOTIATION MEETINGS.—

"(A) Public availability.—Before presenting the recommendations developed under paragraphs (1) through (5) to Congress, the Secretary shall make publicly available, on the Internet Web site of the Food and Drug Administration, minutes of all negotiation meetings conducted under this subsection between the Food and Drug Administration and the regulated industry.

"(B) CONTENT.—The minutes described under subparagraph (A) shall summarize any substantive proposal made by any party to the negotiations as well as significant controversies or differences of opinion during the negotiations and their resolution.".

#### 1 SEC. 204. SAVINGS CLAUSE.

- 2 Notwithstanding the amendments made by this title,
- 3 part 5 of subchapter C of chapter VII of the Federal Food,
- 4 Drug, and Cosmetic Act, as in effect on the day before
- 5 the date of enactment of this title, shall continue to be
- 6 in effect with respect to abbreviated applications for a ge-
- 7 neric new animal drug and supplemental abbreviated ap-
- 8 plications for a generic new animal drug (as defined in
- 9 such part as of such day) that on or after October 1, 2008,
- 10 but before October 1, 2013, were accepted by the Food
- 11 and Drug Administration for filing with respect to assess-
- 12 ing and collecting any fee required by such part for a fiscal
- 13 year prior to fiscal year 2014.

#### 14 SEC. 205. EFFECTIVE DATE.

- 15 The amendments made by this title shall take effect
- 16 on October 1, 2013, or the date of enactment of this Act,
- 17 whichever is later, except that fees under part 5 of sub-
- 18 chapter C of chapter VII of the Federal Food, Drug, and
- 19 Cosmetic Act, as amended by this title, shall be assessed
- 20 for all abbreviated applications for a generic new animal
- 21 drug and supplemental abbreviated applications for a ge-
- 22 neric new animal drug received on or after October 1,
- 23 2013, regardless of the date of enactment of this Act.

#### 1 SEC. 206. SUNSET DATES.

- 2 (a) Authorization.—Section 741 of the Federal
- 3 Food, Drug, and Cosmetic Act (21 U.S.C. 379j-21) shall
- 4 cease to be effective October 1, 2018.
- 5 (b) REPORTING REQUIREMENTS.—Section 742 of the
- 6 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j-
- 7 22) shall cease to be effective January 31, 2019.
- 8 (c) Previous Sunset Provision.—
- 9 (1) IN GENERAL.—Section 204 of the Animal
- Generic Drug User Fee Act of 2008 (Public Law
- 11 110–316) is repealed.
- 12 (2) Conforming Amendment.—The Animal
- Generic Drug User Fee Act of 2008 (Public Law
- 14 110–316) is amended in the table of contents in sec-
- tion 1, by striking the item relating to section 204.

# Calendar No. 31

113TH CONGRESS S. 622

# A BILL

To amend the Federal Food, Drug, and Cosmetic Act to reauthorize user fee programs relating to new animal drugs and generic new animal drugs.

March 20, 2013

Read twice and placed on the calendar