Generic Drug User Fee Amendments of 2012: Questions and Answers Related to User Fee Assessments

Guidance for Industry

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research (CDER)

November 2016
User Fees

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Generic Drug User Fee Amendments of 2012: Questions and Answers Related to User Fee Assessments Guidance for Industry[1]

This guidance represents the current thinking of the Food and Drug Administration (FDA or Agency) on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the FDA office responsible for this guidance as listed on the title page.

I. INTRODUCTION

This guidance provides answers to anticipated user-fee questions from generic drug industry participants regarding the Generic Drug User Fee Amendments of 2012 (Public Law 112-144, Title III), commonly referred to as GDUFA.[2] The questions and answers (Q&A) format is intended to promote transparency and facilitate compliance. The first version of this document was issued pursuant to 21 CFR 10.115 and was made available on FDA's website on August 22, 2012. In response to comments received in the docket and to address additional questions that have arisen since the beginning of GDUFA, FDA issued Revision 1 of the draft guidance on September 10, 2013.

This guidance finalizes the user fee Q&A section of Revision 1 of the draft guidance. This final guidance document addresses comments FDA received on Revision 1, adds questions and answers that FDA and industry have discussed regarding user fees since the launch of the program, and finalizes the user fee section of the revised version of the guidance. Questions and answers related to GDUFA's self-identification, review of generic drug submissions, and inspections and compliance provisions that appeared in draft versions of this guidance will appear in updated form in a separately issued final guidance.

This guidance is one in a series of GDUFA communications. Other communications, including similar guidances and Federal Register (FR) notices, are available at http://www.fda.gov/ForIndustry/UserFees/GenericDrugUserFees/default.htm.

Where applicable, references to information in these communications are included in this Q&A guidance.

[1] This guidance has been prepared by the Center for Drug Evaluation and Research (CDER), Office of Management (OM), Division of User Fee Management and Budget Formulation (DUFMBF), at the Food and Drug Administration (FDA).

[2] We note that GDUFA expires on September 30, 2017. FDA expects that there will be a successor statute ("GDUFA II"), but that that statute will differ from GDUFA with respect to the fees required in important ways. While it is expected that some aspects of this guidance will apply to the successor statute, others will not.

The Food and Drug Administration's guidance documents, including this guidance, do not establish legally enforceable responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in Agency guidances means that something is suggested or recommended, but not required.

II. BACKGROUND

On July 9, 2012, GDUFA was signed into law by the President.[3] GDUFA is designed to speed the delivery of safe and effective generic drugs to the public and improve upon the predictability of the review process. GDUFA is based on an agreement negotiated by FDA and representatives of the generic drug industry to address a growing number of regulatory challenges. GDUFA reflects input received during an open process that included regular public meetings, posting of meeting minutes, and consideration of comments from a public docket. Agreed upon recommendations were sent to Congress, and Congress held hearings on GDUFA that included testimony from FDA, the generic drug industry, and other interested parties.

GDUFA aims to put FDA's generic drug program on a firm financial footing and ensure timely access to safe, high-quality, affordable generic drugs. GDUFA enables FDA to assess user fees to fund critical and measurable enhancements to the performance of FDA's generic drugs program, bringing greater predictability and timeliness to the review of generic drug applications.

GDUFA establishes application fees (for abbreviated new drug applications (ANDAs), prior approval supplements (PASs) to ANDAs, and drug master files (DMFs)), annual facility fees, and a one-time fee for ANDAs pending on October 1, 2012, referred to as backlog applications. Beginning on October 1, 2012, ANDA applicants and DMF holders are required to pay application fees when they submit ANDAs and PASs, or the first time a DMF is referenced by an initial letter of authorization in an ANDA or PAS.

The facility fee rates are published in August following the close of the annual facilities self-identification reporting period. Under GDUFA, facilities, sites, and organizations must self-identify annually. FDA calculates annual facility fees for facilities manufacturing, or intending to manufacture, active pharmaceutical ingredients (API) of human generic drugs and/or finished dosage form (FDF) human generic drugs, based on the number of facilities that have self-identified.

More information about GDUFA fees can be found at:
http://www.fda.gov/ForIndustry/UserFees/GenericDrugUserFees/ucm456776.htm.

Although most facilities that are required to self-identify are also required to pay an annual facility user fee, certain types of generic facilities, sites, and organizations are not required to pay the annual facility user fee. These include facilities, sites, and organizations that solely manufacture positron emission tomography (PET) drugs; clinical bioequivalence or bioavailability study sites; in vitro bioequivalence testing or bioanalytical testing sites; API/FDF analytical testing sites; relabelers; and repackagers.

[3] On October 5, 2012, the President signed into law the FDA User Fee Corrections Act of 2012. This act amends GDUFA so that due dates for GDUFA user fees in fiscal year 2013 are not dependent on enactment of an appropriations act.

Additional information on self-identification is available at http://www.fda.gov/ForIndustry/UserFees/GenericDrugUserFees/default.htm.

The following responses have been developed for implementation of the GDUFA program to assist generic drug manufacturers in meeting the user-fee requirements of GDUFA.

III. QUESTIONS AND ANSWERS

A. Fees

The following questions and answers provide information on the various fees required by GDUFA. For convenience, these are summarized in Table 1.

Table 1. Summary of GDUFA User Fee Requirements[3]

Fee Type	Who Incurs the Fee?	Payment Frequency	For Further Information
Backlog Fee	An applicant whose original ANDA was pending on Oct. 1, 2012, without a tentative approval	Once	See questions 1-8
DMF Fee	A Type II active pharmaceutical ingredient (API) DMF holder whose DMF is referenced by an initial letter of authorization[A] in a generic drug submission on or after Oct. 1, 2012	Once for each API DMF, no later than when first letter of authorization is submitted	See questions 9-17
Generic Drug Submission Fees: ANDA and PAS Fee Fee for API not referenced by a DMF (also referred to as (a)(3)(F) Fee)[B]	An applicant submitting an ANDA or PAS on or after October 1, 2012	Once, at time of submission of ANDA or PAS	See questions 18-32
Facility Fees: API FDF	The owner of a facility identified in at least one generic drug submission that is pending or approved to produce one or more generic drug finished dosage form (FDF) and/or APIs	Annually	See questions 33-50

A See question 10 for information about a letter of authorization.
B See questions 29-30 for information about the (a)(3)(F) fee.

[3] Fees will be published in the Federal Register not more than 60 days before the start of each FY (generally in the first week of August each year). For fee amounts, visit FDA's GDUFA website at http://www.fda.gov/ForIndustry/UserFees/GenericDrugUserFees/default.htm.

1. Backlog Fee

Q1. Who was required to pay a backlog fee?

Each person who owned an original ANDA that was pending on October 1, 2012, and had not been tentatively approved on that date was required to pay a backlog fee for that ANDA.

Q2. How did FDA define *pending* applications for purposes of paying the backlog fee?

An original ANDA was considered to be pending and subject to the backlog fee, if, as of September 28, 2012, FDA had not *tentatively approved*, *approved*, or *refused to receive* (RTR) the application. See FR notice – Opportunity to Withdraw Abbreviated New Drug Applications to Avoid Backlog Fee Obligations for additional details.

Q3. How much is the backlog fee, how is it assessed, and when is it due?

The backlog was determined based on the number of original ANDAs pending at the start of the business day on October 1, 2012. In accordance with GDUFA, FDA divided $50 million by the number of original ANDAs pending to arrive at the amount of the one-time backlog fee, due for each pending original ANDA.

The final backlog fee is $17,434. See FR notice – Generic Drug User Fee – Backlog Fee Rate for Fiscal Year 2013 for additional details. Payment was due no later than November 26, 2012.

Q4. If FDA refused, after October 1, 2012, to receive an original ANDA submitted before October 1, 2012, was the application subject to a backlog fee?

Yes.

Q5. If FDA refuses to receive an application in the backlog, will the backlog fee be refunded?

No.

Q6. If FDA refuses to receive an application in the backlog, will the sponsor be required to pay an application fee upon resubmission in response to the identified issue(s)?

Yes. An ANDA fee will be due when the application is resubmitted.

Q7. What is the penalty for failure to pay the backlog fee?

Any person who owned an original ANDA that failed to pay the backlog fee was placed on a publicly available arrears list available at www.fda.gov/gdufa. FDA will

not receive a new ANDA or supplement submitted by that person, or any affiliate of that person, within the meaning of 505(j)(5)(A) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), until the outstanding fee is paid.

Note: The fee is an obligation to the U.S. government, and the failure to pay the fee may result in collection activities by the government pursuant to applicable laws.

Q8. What is an "affiliate" for this purpose?

GDUFA defines the term *affiliate* as a business entity that has a relationship with a second business entity if, directly or indirectly, one business entity controls, or has the power to control, the other business entity; or a third party controls, or has power to control, both of the business entities.

2. Drug Master File (DMF) Fee

Q9. Which DMFs incur fees?

Only DMFs that cover the manufacture of an API (Type II API DMFs) for use in a generic drug application incur fees. Specifically, each person who owns a Type II API DMF (DMF holder) that is referenced on or after October 1, 2012, in a generic drug submission, by any initial letter of authorization, shall be subject to a DMF fee.

Q10. When is a DMF fee incurred?

The owner of a DMF incurs the fee the first time that a generic drug submission references that DMF by an initial letter of authorization on or after October 1, 2012.

Q11. Do holders of DMFs submitted and reviewed by FDA before October 1, 2012, have to pay a DMF fee?

GDUFA does not make a distinction between DMFs submitted before or after October 1, 2012. Holders of DMFs reviewed prior to GDUFA implementation must pay the one-time DMF fee if their DMF is referenced in a new generic drug submission.

Q12. Do DMF holders incur a fee each time their DMF is referenced?

No. The DMF fee is a one-time fee, incurred on first reference of the DMF on or after October 1, 2012. This fee is not incurred every time a DMF is referenced.

Q13. How much is the DMF fee?

DMF fees are published in the FR not more than 60 days before the start of each FY (generally in the first week of August each year).

See FDA's GDUFA website for the current fiscal year's fee amounts.

Q14. When are DMF fees due?

DMF fees will be due no later than the date on which the first generic drug submission that references the associated DMF holder's file is submitted.

Q15. Do DMF holders need to wait for a new ANDA applicant to request a letter of authorization before the DMF is assessed to be available for reference?

No. DMF holders can pay the fee before a letter of authorization is requested. The DMF will then undergo an initial completeness assessment, using factors articulated in the final guidance *Completeness Assessments for Type II Active Pharmaceutical Ingredient Drug Master Files Under the Generic Drug User Fee Amendments*. If the DMF passes the initial completeness assessment, FDA will identify the DMF on the Type II Drug Master Files – Available for Reference List.

Q16. Can an ANDA applicant pay the DMF fee for an API referenced in its submission?

Yes.

Q17. What is the penalty for failure to pay the DMF fee?

The DMF will be deemed not available for reference. Once the DMF fee becomes due, no generic drug submission submitted referencing the DMF will be received unless the fee is paid and the DMF is deemed available for reference.

ANDA applicants that reference a DMF for which a fee is due but has not been paid will be provided notification of the DMF holder's failure to satisfy the user fee obligation. If the DMF fee is not paid within 20 calendar days after notification, the ANDA referencing the DMF will not be received.

3. ANDA and PAS Fees

Q18. How much are the ANDA and PAS fees?

Fees will be published in the FR not more than 60 days before the start of each FY (generally in the first week of August each year).

See FDA's GDUFA website for the current fiscal year's fee amounts.

Q19. When will ANDA and PAS filing fees be due?

ANDA and PAS fees will be due on the date of submission of the application.

Q20. If FDA refuses to receive an ANDA or PAS, is there any provision for a partial refund of the application fee?

In certain circumstances, a partial refund may be possible. If the reason that the application was refused was not related to failure to pay fees, then 75 percent of the fee paid will be refunded to the applicant.

Q21. How does the ANDA sponsor receive the 75% refund if FDA has refused to receive the ANDA/PAS pursuant to section 505(j)(4) of the FD&C Act?

To request a refund, email CDERCollections@fda.hhs.gov and include your Tax ID number (required for all domestic companies) or DUNS number (required for all foreign companies), and the address where the refund should be sent. This information is required, and FDA cannot process a refund without it. To expedite the refund process, submit your refund request as soon as possible after an ANDA/PAS has been refused to receive. If you do not submit a refund request, FDA will initiate a refund during its periodic review of outstanding refunds.

Q22. If such a previously refused application is then resubmitted, will the applicant be required to pay another full fee at the time of resubmission?

Yes.

Q23. When is a response to an RTR letter considered a resubmission?

A resubmission, which incurs a new ANDA filing fee, is a response to an RTR Letter that remedies all of the deficiencies (major, minor, eCTD) that are identified therein. A request for reconsideration without these remedies is not considered a resubmission and therefore not subject to a new ANDA filing fee.

Q24. What is the penalty for failure to pay the ANDA or PAS filing fee?

The ANDA or PAS will not be received unless the fee is paid within 20 calendar days of the due date.

Q25. If an ANDA or PAS applicant pays its filing fee more than 20 calendar days after the due date, what will FDA consider as the application's date of submission?

If an applicant does not submit payment within 20 calendar days of the due date, its application will be deemed incomplete on the date of submission. So long as FDA finds that none of the disqualifications outlined in 21 CFR 314.101(d) and (e) apply, the application will be considered submitted as of the date all obligations are satisfied and the payments are received in full.

Q26. If an ANDA or PAS is withdrawn, will FDA issue a refund?

No.

Q27. If an ANDA or PAS is withdrawn before the filing fee is paid, will the obligation to pay the fee remain?

Yes. An ANDA or PAS filing fee is incurred upon submission. Once the ANDA or PAS is submitted, the applicant is liable for paying that fee, even if the ANDA or PAS is withdrawn prior to satisfying the obligation.

Q28. What is a generic drug submission?

The phrase *generic drug submission* refers to an ANDA, an amendment to an ANDA, or a PAS to an ANDA.

Q29. If a generic drug submission includes API information other than by reference to a DMF, is the applicant required to pay an additional fee?

Yes. The applicant is required to pay an API-related fee for each API manufactured in its own facility or facilities for which it has not previously paid an API-related fee. As with a DMF fee, this fee is paid only once.

The amount of the API-related fee is a function of the number of APIs referenced in the application and the number of facilities in which those APIs are manufactured. If the ANDA references more than one facility as manufacturing each API, the applicant must pay the API-related fee for each such facility. See the examples that follow.

GDUFA specifies that the ANDA applicant must pay a fee for each API facility for which an API-related fee has not previously been paid that is described in the generic drug submission by means other than reference to a DMF.

Because the calculation is potentially confusing, we provide the following two examples.

Example One:

An applicant (XYZ Corp.) submits an ANDA that describes manufacture of APIs, not by reference to DMFs.

Product	**API**	**Facility that has not paid API fee**
Drug X	Alpha	1, 2, 3
	Beta	1, 2
	Gamma	1

In this example, XYZ Corp. owes the following API-related fee:

Fee = (APIs (Alpha + Beta + Gamma) + extra facilities (Alpha 2 + Alpha 3 + Beta 2)) x DMF fee

= (3 APIs + 3 Extra facilities) x DMF fee

= 6 x DMF fee

Example Two:

XYZ Corp. submits a new application for a second product with the following information about API manufacture other than by reference to a DMF:

Product	**API**	**Facility**
Drug Y	Alpha	1, 2, 3
	Beta	1, 2
	Gamma	1, 2
	Delta	1

The one-time fee has already been paid for Alpha, Beta, and Gamma, so no additional fee is due for these components. In addition, XYZ Corp. has already paid for all of the extra facilities except for Gamma 2, so a new fee is only owed for Gamma 2.

The applicant owes the following API-related fee:

Fee = (APIs (Delta) + extra facilities (Gamma 2)) x DMF fee

= (1 API + 1 Extra facility) x DMF fee

= 2 x DMF fee

Q30. Are the references to fees for each API facility in the above example different from the annual fee that each API facility must pay (discussed below)?

Yes. The reference to fees for each API facility in the calculation above is meant to replicate the DMF fee required if the information is submitted in a DMF. Annual API facility fees are discussed below and are required for each facility that is identified in an ANDA or a DMF.

Q31. Is a PAS filing fee required for such changes as labeling and microbiology?

Yes. User fees are required for all PASs, including labeling and microbiology that require prior approval under FDA regulations.

Q32. When should the application filing fee for a serially submitted ANDA be paid?

In some circumstances, ANDA applicants choose to serially submit complete ANDAs in anticipation of a patent being listed for a reference listed drug (RLD) that is protected by new chemical entity (NCE) exclusivity and has no other patents listed. This is done because the ANDA cannot be submitted until the final year of the five-year exclusivity period, and then only if the submitter is challenging the patent. A single payment for multiple submissions of the same ANDA is required.

Applicants who choose to serially submit complete ANDAs in anticipation of a patent being listed for a RLD that is protected by NCE exclusivity and has no other patents listed should refrain from remitting their application filing fee until such time as the applicant is instructed by OGD that it has a valid application. Once a patent has been listed and an application can therefore be received for review by OGD, an applicant will have 20 days in which to pay its user fee.

4. Facility Fees

Q33. What are the finished dosage form (FDF) and active pharmaceutical ingredient (API) facility fees for U.S. and foreign manufacturers?

Annual fees are adjusted based on the number of facilities that self-identify, inflation, and other relevant factors. Fee amounts will be published in the FR not more than 60 days before the start of each FY (generally in the first week of August each year).

See FDA's GDUFA website for the current fiscal year's fee amounts.

Q34. When will facility fees be due?

Facility fees will be due on the first business day on or after October 1 of each FY, or the first business day after the enactment of an appropriations Act providing for the collection and obligation of fees for such year.

Q35. Under what conditions is a facility fee incurred?

A facility fee is incurred if a facility is identified in a generic drug submission that is pending or approved to produce an API or FDF. For purposes of the user fee statute, a "facility" is a business or other entity, under one management, either direct or indirect, and at one geographic location or address engaged in manufacturing or processing an API or FDF.[4]

[4] See Section 744A(5) of the Act (21 U.S.C. § 379j-41(5)).

Q36. Do all facilities, sites, and organizations that have to self-identify also have to pay facility fees?

Please note that self-identification does not, in and of itself, trigger a liability to pay GDUFA facility fees. Most facilities that self-identify are required to pay an annual facility user fee. These include facilities manufacturing, or intending to manufacture, API of human generic drugs and/or finished dosage form (FDF) human generic drugs. Other sites and organizations must self-identify, but are not required to pay the annual facility user fee. These include facilities that solely manufacture positron emission tomography (PET) drugs, or sites and organizations that only perform testing, repackaging, or relabeling operations. Please note that while repackagers are not required to pay user fees, packagers are, in most cases, FDF manufacturers and subject to facility fees.

For more information on self-identification, please visit http://www.fda.gov/ForIndustry/UserFee s/GenericDrugUserFees/default.htm, and see the final guidance on *Self-Identification of Generic Drug Facilities, Sites, and Organizations*.

Q37. If a facility is first identified, or intended to be identified, in a pending or approved generic drug submission after the due date for payment of the facility fee for a fiscal year, is it required to pay the fee for that year?

No. The obligation to pay the fee depends on the status of the facility on the due date, the first business day on or after October 1 of each fiscal year. In most cases the critical question will be whether there is a generic drug submission pending or approved on the due date in which the facility is referenced.

If the facility is first identified, or intended to be identified, in a pending or approved generic drug submission after the due date, its owner will be first obligated to pay a facility fee on the next due date. However, if a facility is identified, or intended to be identified, in a pending or approved generic drug submission on the due date, and that reference to the facility is later withdrawn, or the drug submission is later withdrawn, the fee will not be refunded.

Q38. How can a facility be sure that it is no longer identified in an ANDA so that it no longer incurs new user fees?

An ANDA sponsor should remove from the ANDA any reference to a manufacturing facility when that facility no longer manufactures its API or FDF and when it no longer seeks to retain the facility as an approved manufacturer of the API or FDF. The ANDA sponsor may remove sites that are no longer used, but in some cases may need to provide justification if the site being removed has not been replaced by another appropriate site to continue the approved function.

An ANDA sponsor can identify a facility that it does not own in its application only if the owner of that facility has provided the ANDA sponsor permission to refer to the facility.

If the owner of the facility withdraws that permission, FDA will consider that facility to no longer be identified in the application as of the date when FDA receives notice of that withdrawal. Please note that if the permission is withdrawn the facility will no longer be approved for manufacture of the FDF, or the API, covered by that application.

Since a facility continues to incur facility fees until FDA is notified of the facility's withdrawal of permission, the Agency encourages a person who wishes to withdraw permission for its facility to be identified in an ANDA to take the following steps prior to the FY fee due date:

1. Notify the ANDA sponsor and/or DMF holder in writing that it is withdrawing its permission to reference the facility in its ANDA and/or DMF.

2. Send a copy of this letter to the standard application submission methods for ANDAs and DMFs via FDA electronic gateway or by mail to the ANDA archival file at the following address:

   Office of Generic Drugs (HFD-600)
   Center for Drug Evaluation and Research
   Food and Drug Administration
   Document Control Room
   Metro Park North VII
   7620 Standish Pl.
   Rockville, MD 20855

3. In addition, email the copy of the withdrawal letter to the Division of User Fee Management and Budget Formulation at CDERCollections@fda.hhs.gov.

4. If you are a DMF holder, be sure to also update your DMF with this change.

Q39. Will a facility owner have to pay a GDUFA fee if the facility is manufacturing only non-generic APIs or FDFs, but is referenced in a generic drug submission?

Yes. An entity will incur facility fees if it manufactures any human drugs and is referenced in a generic drug submission on the facility fee due date.

Q40. Will a facility owner have to pay a GDUFA fee if the facility is referenced in a generic drug submission, but is only manufacturing drugs for the non-US market?

Yes.

Q41. Does a facility that is not currently manufacturing an API or FDF have to pay the applicable facility fees?

A facility listed in a generic drug submission – pending or approved – incurs annual facility fees as long as it is identified in a generic drug submission, even if the facility has not started commercial-scale production of the API or FDF covered by that

submission, or if the facility has stopped, temporarily or permanently, the production of that API or FDF. See question 38 for a description of how a facility can ensure that it is no longer identified in an ANDA.

The facility will cease to incur additional fees if it is no longer identified in any generic drug submission or has stopped manufacturing all APIs and FDFs (including both generic and non-generic APIs and FDFs) by the date that the fee is due. Any outstanding fee obligations will, however, remain due.

Q42. If a facility manufactures both FDFs and APIs for generic drugs, does it incur more than one facility fee?

Yes. Under GDUFA, such a facility incurs annual FDF and API facility fees. Any such facility incurs both fees regardless of whether the API is offered for sale as an API or is offered for sale only after it is further processed so as to become an FDF within the meaning of the statute.

Q43. Is a facility that manufactures an API excipient mixture or a mixture of two or more APIs used to produce FDFs required to pay an annual FDF facility fee?

Generally, manufacturers of API mixtures are required to pay the annual FDF facility fee. However, GDUFA provides one exception, for fee-paying purposes only, to the definition of in-process mixtures as FDF. GDUFA defines an API mixture as an API when it is produced because the API is unstable and cannot be transported on its own. Examples include: an API mixed with an antioxidant for chemical stability when the API is prone to oxidative degradation or an API excipient mixture for physical stability to maintain its amorphous form.

Any facility producing an API and further processing it with an excipient or another API is also required to pay an annual API fee, regardless of whether the API is offered for sale as an API or is offered for sale only after it is further processed so as to become an FDF within the meaning of the statute.

Q44. Who does FDA consider as a packager for purposes of GDUFA?

If you receive product prior to the point in the manufacturing process in which the drug is first packaged in a container/closure system specified in the "How Supplied" section of an approved ANDA and you package that product into such a container/closure system for the first time, you are a packager for purposes of GDUFA. Every ANDA specifies the forms in which the approved drug product may be distributed in the "How Supplied" section.

For example, if you receive bulk drugs and package them into the containers in which they are marketed, you are a packager.

You also are a packager if you receive product in a container/closure specified in the "How Supplied" section of an approved ANDA, and apply the FDA-approved prescription package labeling to that product for the first time.

Q45. Are facilities that manufacture atypical APIs required to pay API facility fees?

Facilities that process raw materials used to manufacture human generic drugs are generally required to pay annual facility fees if they supply a product that qualifies as an API as defined in GDUFA.

Q46. Are packagers required to pay FDF facility fees?

Packagers are considered to be manufacturers, regardless of whether that packaging is done pursuant to a contract or by the applicant itself. Such facilities are required to pay annual FDF facility fees. Repackagers are not required to pay facility fees under GDUFA.

Q47. Are quality control (QC) testing sites required to pay annual facility fees?

No. They are only required to self-identify.

Q48. Is there a difference in fees between foreign and domestic generic drug facilities?

Yes. GDUFA specifies that the amount of the fee for a facility located outside the United States and its territories and possessions shall not be less than $15,000 and not more than $30,000 higher than the amount of the fee for a domestic facility. The differential amount is designed to reflect the higher costs of inspections funded, in part, through GDUFA.

The cost differential has been set by FDA at $15,000 for each year of GDUFA.

Q49. Do two locations of the same company have to pay separate facility fees?

The answer depends on geography. If the same company's two locations manufacture a U.S. generic product and they are in different geographic locations, each has to pay an annual facility fee. However, separate buildings within close proximity are considered to be at one geographic location or address if:

(1) the activities in them are closely related to the same business enterprise;
(2) they are under the supervision of the same local management[3]; and
(3) they are capable of being inspected by FDA during a single inspection

[3] The statute further states that if a business or other entity would meet the definition of a facility but for being under multiple management, the business or entity is deemed to constitute multiple facilities, one per management entity.

These are the same criteria used to evaluate whether separate FDA Facility Establishment Identifiers **(**FEIs) are necessary for multiple facilities (see final guidance *Self-Identification of Generic Drug Facilities, Sites, and Organizations*).

If a firm believes that multiple FEIs have been assigned in error, the firm may request consolidation of the FEIs. Please note that once a facility fee is incurred, the fee remains outstanding regardless of whether FDA later agrees to consolidation of FEI numbers. Domestic firms should submit the request to the appropriate FDA District office. Contact information is available at http://www.fda.gov/downloads/ICECI/Inspections/IOM/UCM123522.pdf. Foreign firms should contact FDAGDUFAFEIRequest@fda.hhs.gov.

Q50. What is the penalty for failure to pay a facility fee?

There are several consequences for failure to pay a facility fee:

(1) no new generic drug submission referencing the facility will be received until the fee is paid
(2) the facility will be placed on a publicly available arrears list if the fee is not fully paid within 20 days of the due date
(3) FDA will notify the ANDA applicant of the facility's failure to satisfy its user fee obligations.

Furthermore, all FDFs or APIs manufactured in the non-paying facility and all FDFs containing APIs manufactured in such a facility will be deemed misbranded. This means that it will be a violation of federal law to ship these products in interstate commerce or to import them into the United States. Such violations can result in prosecution of those responsible, injunctions, or seizures of misbranded products. Products misbranded because of failure to pay facility fees are subject to being denied entry into the United States.

Additionally, goal dates will not apply to applications that have already been received but list facilities for which facility fees are owed. Please note that the fee is an obligation to the U.S. government, and the failure to pay the fee may result in collection activities by the government pursuant to applicable laws.

5. Other Fee Related Questions

Q51. What is the process for paying GDUFA user fees?

The process is similar to payment procedures for PDUFA and other FDA user fees. The FDA website contains instructions for paying the fees.

- Those responsible for payment of fees enter required information on FDA's website to generate a GDUFA user fee payment cover sheet.
- The cover sheet is designed to provide the minimum necessary information to determine if a person has satisfied all relevant user fee obligations.

- The cover sheet is submitted to FDA electronically generating a receipt with a user fee payment identification (ID) number to assist in tracking payment.
- Fee payers may pay online by credit card or Automated Clearing House (ACH) electronic check or send payment by check, bank draft, U.S. postal money order, or wire transfer. Cover sheets should be submitted with generic drug submissions and DMFs.

The Generic Drug User Fee Cover Sheet and additional payment information is available on the GDUFA website (www.fda.gov/gdufa).

Q52. Is payment accepted in non-U.S. currency?

No. Payment must be made in U.S. currency drawn on a U.S. bank by electronic payments (such as by credit card or ACH electronic check), check, bank draft, U.S. postal money order, or wire transfer.

Q53. What happens if a person pays less than the full amount of required GDUFA fees?

FDA's expectation is for full and timely payment of all GDUFA fees. Penalties associated with non-payment, including refusal to receive a generic drug submission and failure of a DMF to be placed on a publicly available reference list, will apply until such obligations are satisfied in full.

Those paying fees are responsible for determining all financial institution transaction fees that may be deducted from a company's authorized amount for payment to FDA. These include wire transfer and foreign exchange fees. Please ask your financial institution about fees to ensure FDA receives full payment.

Q54. What happens if a person inadvertently pays more than it owes?

To qualify for the return of a fee claimed to have been paid in error, a person shall submit to the Secretary a written request justifying such return within 180 calendar days after such fee was paid. The format for submitting refund requests is Form 3913, attached as Appendix 1. Form 3913 is available on the internet at http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM492188.pdf.

Please note that FDA will not permit a refund if a written request is made past 180 calendar days from the date of payment.

A written overpayment or refund request should be submitted to the Division of User Fee Management and Budget Formulation at CDERCollections@fda.hhs.gov.

Q55. Under what conditions will FDA issue a refund?

FDA will only refund payments of fees made in error. If a fee was properly incurred, there will be no refund of the payment. A refund request must be made within 180 calendar

days of the payment. If a written request is not made within 180 calendar days, FDA will not return the fee.

Q56. What are the penalties for not paying the fee by the due date?

Delinquent companies will receive an invoice from the FDA detailing information on the user fee incurred, the due date, and payment instructions.

If full payment is not received by the date specified on the invoice, interest will be charged at a rate set by the U.S. Department of the Treasury. More information regarding current interest rates on overdue and delinquent debts may be found at http://www.hhs.gov/asfr/of/finpollibrary/chronorates.html. In addition, delinquent invoices will have a $20 administrative fee assessed for each 30-day period that the invoice remains outstanding. A penalty of 6% per year will be assessed on any invoices delinquent for more than 90 days, in accordance with 45 CFR Subpart B, Section 30.18.

Q57. Where should responses to FDA correspondence regarding user fee payment issues be directed?

Responses to FDA correspondence regarding user fee payment issues should be directed to the Division of User Fee Management and Budget Formulation at CDERCollections@fda.hhs.gov.

In addition, responses should be submitted via standard application submission methods. These include submission via FDA electronic gateway or by mail to the ANDA archival file. Correspondence sent by mail should be directed to the following addresses, as appropriate:

Office of Generic Drugs (HFD-600)
Center for Drug Evaluation and Research
Food and Drug Administration
Document Control Room
Metro Park North VII
7620 Standish Place
Rockville, MD 20855

Center for Biologics Evaluation and Research
Document Control Center
10903 New Hampshire Avenue
WO71, G112
Silver Spring, MD 20993-0002

The Division of User Fee Management and Budget Formulation provides assistance in resolving outstanding user fee payment questions from industry. Given fixed statutory deadlines, contacting the Office of Generic Drugs directly, without including the Division

of User Fee Management and Budget Formulation, may result in delays that increase the possibility of incurring statutory penalties.

If an applicant has a user fee question unrelated to an issued user fee correspondence from FDA, please email askgdufa@fda.hhs.gov.

Q58. Who will receive user fee-related communications?

FDA will send user fee-related correspondence to the Applicant's Responsible Official listed in boxes 32-37 of the Form FDA 356h. For DMF and facility-related issues, FDA will contact the DMF holder or facility owner.

Q59. May one entity pay GDUFA fees on behalf of another entity?

Yes.

Q60. Are there any exemptions from the fees for categories of drugs?

Positron Emission Tomography (PET) drug manufacturers are the only human generic drug manufacturers excluded from payment of GDUFA fees. However, they are required to self-identify. FDA also requests that all drug manufacturers, including generic PET manufacturers, submit a user fee cover sheet with any new FDA submissions. PET manufacturers should complete a generic drug user fee cover sheet for $0.

Q61. Should PET drug manufacturers submit a generic drug user fee cover sheet?

Yes. A PET GDUFA cover sheet may be created and submitted electronically through the User Fee System. Please see http://www.fda.gov/ForIndustry/UserFees/default.htm for more information.

Q62. Are reduced fees available for small businesses or others?

No. The majority of generic companies are small companies that are expected to benefit significantly from reductions in the review time needed to commercialize their products and from the certainty associated with performance review metrics and program efficiencies.

In addition to diminishing the fee-paying base, the cost of a fee waiver or reduction provision would have added to the administrative cost of the GDUFA program. As such, no fee waiver or reduction provision was included. Congress specifically considered this issue and agreed with the decision not to have a fee waiver or reduction mechanism in GDUFA, whose individual fee amounts are expected to be orders of magnitude less than those in PDUFA.

Q63. How does FDA communicate and update the arrears lists?

The backlog arrears list, facility arrears list, and outstanding facility fees – not on arrears list are available on the GDUFA website (www.fda.gov/gdufa) and are updated regularly.

Q64. What are the consequences of a sponsor's affiliation with an entity on the arrears list?

FDA cannot receive generic drug submissions from sponsors that are affiliated with an entity on the arrears list. If FDA discovers that a sponsor or its affiliate is on the arrears list, FDA will refuse to receive the generic drug submission until the sponsor or affiliate satisfies all of its outstanding user fee obligations. See question 8 for the definition of an affiliate.

Q65. Will FDA notify sponsors that their affiliate is on the arrears list before refusing to receive the submission?

No, FDA will not notify sponsors before refusing to receive a submission. Companies are in the best position monitor their business affiliates for compliance with GDUFA. It is an applicant's responsibility to ensure that its user fee obligations, as well as those of its affiliates, are satisfied before submitting a new generic drug submission.

Q66. What should a sponsor do if FDA refuses to receive a submission because the sponsor, or an affiliate of the sponsor, is on the arrears list?

Before FDA can receive the submission, the sponsor must ensure that it and its affiliates are removed from the arrears list by satisfying the outstanding obligations. The sponsor is not required to pay the ANDA or PAS filing fee a second time; instead, the sponsor need only ensure that all *outstanding* user fee obligations are satisfied.

Q67. If a company believes that its appearance on the arrears list is in error, whom should it contact?

It should contact the Division of User Fee Management and Budget Formulation at CDERCollections@fda.hhs.gov. Please include a concise rationale for why the facility should not be included on the arrears list.

Q68. How does FDA determine the date and time of submission when a generic drug submission or Type II DMF is sent electronically?

A generic drug submission or Type II API DMF is deemed to be submitted to FDA on the calendar day when the electronic submission arrives at FDA's electronic gateway, except when a submission is made on a weekend, Federal holiday, or a day when the FDA office that will review the submission is not otherwise open for business. In those cases, the submission will be deemed to be submitted on the next day that office is open for business.

Q69. How does FDA determine the date and time of submission when a generic drug submission or Type II DMF is sent in physical media form?

For a generic drug submission or Type II API DMF that is submitted in physical media form, the date of submission will be the day it arrives at the appropriate designated FDA document room except when a submission arrives on a weekend or a day when the FDA office is not otherwise open for business. In those cases, the submission will be deemed to be submitted on the next day that office is open for business.

Q70. How is the date and time of submission affected when a generic drug submission or Type II DMF is submitted during a government-wide shutdown or when inclement weather closes the government?

When a government-wide shutdown or inclement weather occurs, FDA is considered not open for business and will not receive generic drug submissions until the next day that the FDA is open for business.

Q71. When did GDUFA fees begin?

On October 1, 2012.

Q72. Do GDUFA fees apply to drugs that are not generic drugs or not human generic drugs?

No. GDUFA fees apply only to generic drugs manufactured for human use.

Q73. Does GDUFA provide any mechanism for disputes concerning fees?

A person may submit a written request disputing FDA's assessment of user fees to CDERCollections@fda.hhs.gov. For refund requests, please use Form 3913, which is available on the internet at http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM492188.pdf. If a refund request is not made within 180 calendar days of the payment receipt date, no return of fees is permitted.

GDUFA does not provide a separate mechanism for disputes concerning fees, but the following FDA websites have information pertaining to formal and informal dispute resolution. For information on the formal dispute resolution process, please refer to http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ContactCDER/ucm444092.htm, and see FDA guidance on Formal Dispute Resolution: Appeals Above the Division Level, Revision 2 (September 2015). See 21 CFR 10.75 and 21 CFR 314.103 for more information.

For information on informal dispute resolution, please refer to http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ContactCDER/CDEROmbudsman/default.htm

Q74. How does GDUFA affect FDA's refuse to receive policy?

GDUFA adds a new requirement to FDA's existing refuse to receive policy with respect to payment of fees and the time of receipt of an ANDA.

- Failure to pay an ANDA fee within 20 calendar days of the applicable due date will result in the ANDA not being received.
- Failure to pay the fee for a DMF referenced in the ANDA within 20 calendar days of the date that FDA provides notification of that failure will result in the ANDA not being received.
- Failure to pay a facility fee already owed for any facility referenced in the ANDA within 20 calendar days of the date that FDA provides notification of that failure will result in the ANDA not being received.
- If an application is substantially complete except for failure to pay the ANDA fee, or the failure to pay the facility fee within 20 days of notification, the application will be deemed received as of the date the fee is paid.

IV. ABBREVIATIONS AND ACRONYMS LIST

The following is a list of abbreviations and acronyms used in the Generic Drug User Fee Amendments of 2012: Questions and Answers Guidance:

ANDA	abbreviated new drug application
API	active pharmaceutical ingredient
BA	bioavailability
BE	bioequivalence
BLA	biologic license application
CDER	Center for Drug Evaluation and Research
DMF	drug master file
FD&C Act	Federal Food, Drug, and Cosmetic Act
FDA	Food and Drug Administration
FDF	finished dosage form
FEI	facility establishment identifier
FR	*Federal Register*
FY	fiscal year
GDUFA	Generic Drug User Fee Amendments of 2012
ID	identification
NDA	new drug application
OGD	Office of Generic Drugs
PAS	prior approval supplement
PDUFA	Prescription Drug User Fee Act
PET	positron emission tomography
Q&A	questions and answers
RLD	reference listed drug
RTR	refuse to receive