

**Financial Report to Congress**

# **Animal Drug User Fee Act**

**FY 2023**



**U.S. FOOD & DRUG  
ADMINISTRATION**

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## Executive Summary

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The Animal Drug User Fee Act of 2003 (ADUFA), as amended, requires the Food and Drug Administration (FDA) to report to Congress annually on the financial aspects of ADUFA implementation. This is the fifth report under the fourth authorization of ADUFA (ADUFA IV) and covers fiscal year (FY) 2023.

ADUFA IV specifies that the following three legal conditions must be satisfied each year for FDA to collect and spend ADUFA user fees:

1. FDA's overall Salaries and Expenses appropriation, excluding fees, must meet or exceed FDA's overall FY 2003 Salaries and Expenses appropriation, excluding fees and multiplied by an adjustment factor specified in the statute.
2. The fee amounts FDA can collect must be provided in appropriation acts.
3. FDA must spend at least as much from appropriated funds for the review of animal drug applications as it spent in FY 2003, multiplied by an adjustment factor specified in the statute.

FDA met the three legal conditions in FY 2023, and this report explains how these legal conditions were satisfied. The statements and tables in this report provide data on animal drug user fee collections, expenditures, and carryover, as well as comparative data from prior fiscal years.

In FY 2023, FDA had net collections of \$31 million in ADUFA fees, spent \$29 million in user fees for the process for the review of animal drug applications, and carried \$23 million forward for future fiscal years.

ADUFA user fees and non-user fee appropriations in FY 2023 supported 340 full-time equivalents, including salaries and operational expenses, to support the process for the review of animal drug applications. Detailed program accomplishments can be found in the FY 2023 ADUFA Performance Report.

## Report Overview

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### **A. Scope**

This financial report describes the collection and use of new animal drug user fees by the Food and Drug Administration (FDA or Agency) during the period from October 1, 2022, through September 30, 2023. It specifies the legal conditions that FDA must satisfy each year to collect and spend Animal Drug User Fee Act (ADUFA) fees and documents how FDA determined that it had met those requirements for fiscal year (FY) 2023. In addition, this report presents summary statements of FY 2023's fee collections, carryover, obligations of user fees, and total costs of the process for the review of animal drug applications.

### **B. Report Requirements**

In accordance with section 740A(b) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA will submit to Congress an annual financial report on the implementation of FDA's authority for user fees during the fiscal year for which the report is made and the use by the Agency of the fees collected for such fiscal year. The purpose of this report is to meet these requirements for FY 2023.

FDA is required to submit the financial report to Congress no later than 120 days after the end of each fiscal year. FDA also must make the report available to the public on its Internet website. Additional details on the reporting requirements are included in **Appendix A**.

## Management Discussion

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### C. Organization Background

FDA is responsible for protecting the public health by helping to ensure the safety, efficacy, and security of human and veterinary drugs, biological products, and medical devices and by ensuring the safety of our nation's food supply, cosmetics, and products that emit radiation. FDA also has responsibility for regulating the manufacturing, marketing, and distribution of tobacco products and advancing the public health by helping to speed innovations that make medical products more effective, safe, and affordable and by helping the public get accurate, science-based information needed to use medical products and to consume foods to maintain and improve their health. FDA similarly plays a significant role in the nation's counterterrorism capability. FDA fulfills this responsibility by ensuring the security of the food supply and by fostering development of medical products to respond to deliberate and naturally emerging public health threats.

The Center for Veterinary Medicine (CVM) is responsible for regulating animal drugs, veterinary devices, and food for animals. CVM evaluates new animal drug applications for safety and effectiveness; monitors animal drugs, foods, and devices on the market; evaluates animal food additives for safety and utility; and conducts applied research to further protect human and animal health. CVM also helps promote and provide incentives for the availability of animal drugs to meet the needs of the large number and wide diversity of minor species, such as fish, honeybees, and birds, and for minor uses (infrequent and limited) in the major species: cattle, pigs, chickens, dogs, cats, horses, and turkeys. In furtherance of the Agency's mission to promote and protect the health of humans and animals, CVM also takes steps to help facilitate access to safe, effective, and innovative products, including animal food products, that can address existing, novel, and emerging animal health challenges.

#### *Program Organization*

There are three major FDA components that support the ADUFA program: CVM, the Office of Regulatory Affairs (ORA), and Headquarters (HQ).

**Exhibit 1** provides an overview of the mission for each of these components.

#### **Exhibit 1: User Fee Program Components**

Component	Mission
CVM	Protects and promotes the health of humans and animals from a One Health perspective by helping to ensure the safety of the American food supply, the safety of animal food and devices, and the safety and effectiveness of animal drugs.
ORA	Protects consumers and enhances public health by maximizing the compliance of FDA-regulated products and minimizing the risk associated with those products.
HQ	Provides FDA-wide program direction and administrative services to ensure FDA's consumer and patient safety programs are effectively and efficiently managed.

## *User Fee Governance*

The Agency's expanding level of user fees, the reporting of the Agency's performance commitments associated with these fees, and the need for FDA to convey how these fees are executed calls for strong financial governance. This includes an understanding of the design of these programs, clear financial plans, data-driven decisions on resource allocation, consistency and transparency about assumptions, reliable financial forecasting, and accountability for resources spent.

FDA leverages the User Fee Financial Management Committee (UFFMC) for user fee governance. The UFFMC consists of senior financial, business operations, and program experts across the Agency that evaluate user fee resource needs, develop financial allocation plans, and forecast resource requirements—both programmatic and administrative—to support user fee financial decisions. The UFFMC is responsible for providing oversight and support of appropriate standards and policies to ensure FDA's compliance with sound financial management practices, as well as FDA's compliance with statutory provisions that authorize FDA to collect and spend user fees. The UFFMC receives policy guidance and strategic direction directly from FDA's Executive Committee relative to how the Agency will forecast and react to industry trends, plan and manage its research agenda in support of the user fee programs, and forecast its user fee workload. The UFFMC advises the Executive Committee and other Center and Office-level bodies on a variety of financial and performance-related topics.

### **D. User Fee Background and Structure**

The FD&C Act, as amended by ADUFA, authorizes FDA to collect fees from industry to supplement non-user fee appropriations that the Agency spends on the process for the review of animal drug applications.

The Animal Drug and Animal Generic Drug User Fee Amendments of 2018 included the reauthorization of ADUFA, also known as ADUFA IV, which extended the ADUFA program from October 1, 2018, through September 30, 2023. This 5-year reauthorization provided continued funding for FDA from FY 2019 through FY 2023 to support program operations, evaluation, and improvement. ADUFA IV delivered tremendous public health benefits by enhancing FDA's capacity to review new animal drug submissions to help ensure that products that came to the market for the American public were safe and effective. On September 30<sup>th</sup>, 2023, the program was reauthorized for an additional five years from FY 2024 through FY 2028 (ADUFA V).

FDA spends ADUFA user fee collections and non-user fee appropriations to hire, support, and maintain personnel for the review of animal drug applications.

ADUFA IV established a fee structure comprised of the following four types of fees: application fee, product fee, establishment fee, and sponsor fee.

**Exhibit 2** outlines the types of user fees under ADUFA IV.

## Exhibit 2: ADUFA IV Fee Types

Fee Type	Definition
<b>Application (Section 740(a)(1) of the FD&amp;C Act)</b>	Each person that submits an animal drug application, or a supplemental animal drug application for which safety or effectiveness data are required, shall be subject to an application fee. The term "animal drug application" means an application for approval of any new animal drug submitted under section 512(b)(1) or an application for conditional approval of a new animal drug submitted under section 571 of the FD&C Act. Because the definition of "animal drug application" was expanded by ADUFA IV to include applications for conditional approval submitted under section 571 of the FD&C Act, persons submitting such applications are now subject to ADUFA fees, except that fees may be waived in certain circumstances as provided in the statute, including when the drug is solely intended to provide for a minor use or minor species indication.
<b>Product (Section 740(a)(2) of the FD&amp;C Act)</b>	Each person named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003, shall pay an annual fee for each such animal drug product.
<b>Establishment (Section 740(a)(3) of the FD&amp;C Act)</b>	The establishment fee must be paid annually by the person who (1) owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year.
<b>Sponsor (Section 740(a)(4) of the FD&amp;C Act)</b>	The sponsor fee must be paid annually by each person who meets the definition of "animal drug sponsor" within that fiscal year and who had an animal drug application, supplemental animal drug application, or an investigational animal drug submission pending at FDA after September 1, 2003. An animal drug sponsor is subject only to one such fee each fiscal year. A person meets the definition of "animal drug sponsor" if that person is named as the applicant in an animal drug application, except for an application that has been withdrawn by the applicant or for which approval has been withdrawn by FDA, or if that person has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive by FDA.

Section 740(b) of the FD&C Act establishes the total revenue amounts to be generated from fees for each fiscal year of ADUFA IV. It also specifies the percentage of the total revenue amounts to be derived from each type of user fee: application fees (20 percent), product fees (27 percent), establishment fees (26 percent), and sponsor fees (27 percent).

The statute specifies at section 740(c) of the FD&C Act how the fees are to be calculated each fiscal year, including annual adjustments that must be made for inflation, beginning with FY 2020. The statute also provides for the possibility of annual

adjustments because of changes in FDA's workload related to the process for the review of animal drug applications, also beginning with FY 2020. FDA publishes the fee amounts, and the methodology it used to calculate these amounts, in the *Federal Register* each year.<sup>1</sup>

ADUFA user fees are not a fee-for-service. Instead, the user fees that are collected are pooled together and may be used for any of the allowable activities as defined in the FD&C Act. Refer to **Appendix B** for a detailed list of allowable and excluded activities.

**Appendix C** provides more background information on the ADUFA user fee program.

## **E. Legal Conditions**

The FD&C Act, as amended by ADUFA, specifies three legal conditions that must be satisfied each year for FDA to collect and spend user fees under the ADUFA program.

**Exhibit 3** describes those legal conditions and provides a brief explanation as to how those legal conditions were met for FY 2023.

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<sup>1</sup> See <https://www.federalregister.gov/documents/2022/07/28/2022-16176/animal-drug-user-fee-rates-and-payment-procedures-for-fiscal-year-2023>.



### Exhibit 3: ADUFA Legal Conditions

Legal Condition #	Details	
1	Description	FDA's overall Salaries and Expenses appropriation (excluding user fees) for the fiscal year at issue must meet or exceed the amount of FDA's FY 2003 Salaries and Expenses appropriation (excluding user fees), multiplied by an adjustment factor specified in the statute. (Section 740(f)(1) of the FD&C Act.)
	Met	In FY 2023, FDA's Salaries and Expenses appropriation, excluding user fees, was \$3,530,150,000. FDA's FY 2003 Salaries and Expenses appropriation, excluding user fees, was \$2,095,720,220 after applying the adjustment factor. Therefore, the first legal condition was satisfied.
2	Description	The amount of user fees FDA may collect for each fiscal year must be specified in that year's appropriation acts. (Section 740(g)(2)(A)(i) of the FD&C Act.)
	Met	Division A, Title VI of Public Law 117-328 specified that \$32,144,000 shall be derived from animal drug user fees and that animal drug user fees collected in excess of this amount, if any, are appropriated for FDA. Therefore, the second legal condition was satisfied.
3	Description	User fees may be collected and used only in years when FDA spends a specified minimum amount of appropriated funds (exclusive of user fees) for the review of animal drug applications. This specified minimum is the amount FDA spent on the process for the review of animal drug applications from appropriations (exclusive of user fees) in FY 2003, multiplied by an adjustment factor specified in the statute. (Section 740(g)(2)(A)(ii) of the FD&C Act.) Under ADUFA, this legal condition is considered met if the total review expense funded by appropriations in any fiscal year is no more than three percent below the specified minimum. (Section 740(g)(2)(B) of the FD&C Act.)
	Met	The specified minimum level for FY 2023 is \$49,959,923. In FY 2023, FDA obligated \$68,895,421 from appropriations (exclusive of user fees) for the process for the review of animal drug applications. Because FDA spent more than the specified minimum amount from appropriations in FY 2023, the third legal condition was satisfied.

The legal conditions as stated in the FD&C Act and details on the adjustment factor are included in **Appendix D**.

## F. Strategic Plan

FDA is focused on utilizing ADUFA user fees and non-user fee appropriations to achieve the performance goals and program enhancements outlined in the ADUFA IV Performance Goals and Procedures.<sup>2</sup> FDA is also committed to enhancing a flexible,

<sup>2</sup> For more details, see "Animal Drug User Fee Act Reauthorization Performance Goals and Procedures – Fiscal Years 2019 Through 2023" at <https://www.fda.gov>.

risk-based approach that facilitates the development of innovative products to enhance human and animal health while promoting consumer confidence.

## **G. Performance Summary**

FDA met or exceeded the performance goals in the first 4 years of ADUFA IV. In FY 2022, FDA met the review-time goals for 711 of 727 submissions. The entire FY 2022 cohort has closed; therefore, there are no pending submissions.

As of September 30, 2023, preliminary performance data was available for 418 of 706 submissions filed in FY 2023. FDA will meet one performance goal and is currently exceeding performance goals for the other seven submission types that had at least one submission acted on in FY 2023. Overall, FDA met review-time goals for 411 of 418 submissions acted on. With 284 submissions pending within the goal, FDA has the potential to meet or exceed the 90 percent performance level for all nine of the submission types for which submissions were received in FY 2023. Please refer to the FY 2023 ADUFA Performance Report for more information.

## Financial Information

This section provides an overview of the program financials for ADUFA for FYs 2022 and 2023. These financials include user fee revenue, obligations, carryover, non-user fee appropriations, and full-time equivalents (FTEs).

### H. User Fee Program Financials

**Table 1** represents a summary of the ADUFA user fee financial position for FY 2022 and FY 2023. The financial notes referenced in this table can be found in **Appendix E**.

**Table 1: Animal Drug Resources, Obligations, and Carryover for FYs 2022 and 2023**

Budgetary Resources	Notes	FY 2022	FY 2023
<b>Target Revenue</b>		\$31,641,000	\$32,144,000
Total Carryover, Beginning of Year		\$23,848,631	\$21,556,256
Net Collections		\$30,753,843	\$30,790,477
Recoveries	Note 1	\$424,899	\$252,212
<b>Total Budgetary Resources</b>		<b>\$55,027,373</b>	<b>\$52,598,945</b>
Obligations	Notes	FY 2022	FY 2023
Total Payroll and Operating	Note 2	\$27,764,692	\$24,338,559
Total Rent	Note 3	\$1,677,747	\$1,361,906
Total Shared Services	Note 4	\$4,028,678	\$3,616,680
<b>Total Obligations</b>		<b>\$33,471,117</b>	<b>\$29,317,145</b>
Carryover	Notes	FY 2022	FY 2023
<b>Total Carryover, End of Year</b>		<b>\$21,556,256</b>	<b>\$23,281,800</b>

Target Revenue has been rounded to the nearest thousand dollars.  
All other numbers have been rounded to the nearest dollar.

**Budgetary Resources:** The “Total Budgetary Resources” component of **Table 1** illustrates the total user fee funding (i.e., the existing total carryover and additional user fee collections). The “Target Revenue” is the total revenue amount set out in section 740(b)(1) of the FD&C Act for each fiscal year of ADUFA IV, after adjustment for inflation, workload, and/or shortfall when applicable. The target revenue amount is determined as part of the process of setting fee rates for the fiscal year. “Net Collections” are the actual amounts collected during the fiscal year.

ADUFA IV specifies how the fees must be calculated each fiscal year, including annual adjustments to revenue amounts that must be made for inflation for FY 2020 through FY 2023. After the applicable inflation adjustment to fees is done, FDA may further increase the fee revenue amounts to reflect changes in workload for FY 2020 through FY 2023. For FY 2021 through 2023, if fee revenue is increased to reflect changes in workload, the increase may be reduced by the amount of any excess collections for the second preceding fiscal year, up to the full amount of the workload-based fee revenue

increase, as described in section 740(g)(5)(B) of the FD&C Act. However, the reduction for excess collections cannot result in fee revenue for a fiscal year that are less than the inflation-adjusted amount originally calculated.

**Obligations:** The “Obligations” component of **Table 1** shows the annual expenditure of ADUFA fee funds broken out into major expense categories. ADUFA fees may be expended only for costs to support the “process for the review of animal drugs,” as defined in ADUFA IV.

**Carryover:** ADUFA fees collected, appropriated, and not obligated at the end of the fiscal year remain available to support the ADUFA program in future fiscal years. In this report, such fee funds, plus certain user fee funds that FDA has collected that are considered unappropriated are referred to as the “total carryover” or the “ADUFA carryover.” Maintaining an appropriate level of carryover enables FDA to mitigate financial risks to the program, including for example, the risk of under-collecting fees and the financial challenges associated with a lapse in appropriations, so that FDA can continue performing reviews of animal drug applications under these financial constraints.

When setting fees for the final fiscal year of ADUFA IV, FDA is authorized to increase fees, if necessary, to provide for up to 3 months of carryover at the end of FY 2023 (operational reserve) to sustain operations for the first 3 months of FY 2024. See **Section K** for more information on carryover and the operational reserve.

## I. User Fee Revenue

**Table 2** outlines the annual target revenue amounts for fiscal years 2022 and 2023. These amounts are used to establish the ADUFA fee rates for each fiscal year. The financial notes referenced in this table can be found in **Appendix E**.

**Table 2: Animal Drug User Fee Target Revenue for FYs 2022 and 2023**

Target Revenue	Notes	FY 2022	FY 2023
Base Amount		\$29,931,240	\$29,931,240
Inflation Adjustment	Note 5	\$1,709,702	\$2,213,146
Workload Adjustment	Note 6	\$0	\$0
Shortfall Recovery	Note 7	\$0	\$0
Final Year Adjustment		N/A	\$0
<b>Target Revenue Total</b>		<b>\$31,641,000</b>	<b>\$32,144,000</b>

Target Revenue Total has been rounded to the nearest thousand dollars.  
All other numbers have been rounded to the nearest dollar.

The process for adjusting the statutory fee revenue amount for inflation, workload, shortfall recovery, and/or the final year adjustment, when applicable, to calculate the annual target revenue amount that will be used to set the fee rates for each fiscal year is described in the statute. Using the target revenue amount, FDA calculates the fee rates for the fiscal year and publishes the rates in the *Federal Register*.

### Cohort Year

The year in which user fee collections are originally due and reported. For example, a fee originally due in FY 2023 but received in FY 2024 is attributed to FY 2023 collections.

ADUFA authorizes FDA to collect application fees, product fees, establishment fees, and sponsor fees. User fee collections are recognized and reported in the year the fee was originally due (referred to as the “cohort year”). Totals reported for each fiscal year are net of any refunds for the cohort year.

Net collections differ between the fiscal year and the cohort year. Cohort year collections reflect collections for a single cohort year (e.g., FY 2023) collected across multiple fiscal years. Transactions such as late collections or refunds processed in a different fiscal year will be displayed in **Table 3** (e.g., a refund processed during FY 2024 for an FY 2023 payment), while other data tables use FY data that shows solely the activity within that single fiscal year. To ensure the quality of the information provided in this financial report, FDA annually updates the prior years’ numbers.

**Tables 3a-3c** outline ADUFA collections and receivables by fee type and cohort year.

**Table 3a: Animal Drug User Fee Collections by Fee Type for Cohort Year 2022**

Fees Collected	Estimated†	Actual	% Diff
Application Fees	\$6,328,200	\$5,805,678	(8%)
Product Fees	\$8,543,070	\$8,759,042	3%
Establishment Fees	\$8,226,660	\$7,916,220	(4%)
Sponsor Fees	\$8,543,070	\$8,267,444	(3%)
<b>Total Collections</b>	<b>\$31,641,000</b>	<b>\$30,748,384</b>	<b>(3%)</b>

Numbers have been rounded to the nearest dollar.

† Estimated values were taken from the animal drug user fee rates published in the FY 2022 *Federal Register* notice.<sup>3</sup>

<sup>3</sup><https://www.govinfo.gov/app/details/FR-2021-07-28/2021-16043>

**Table 3b: Animal Drug User Fee Collections by Fee Type for Cohort Year 2023**

Fees Collected	Estimated††	Actual	% Diff
Application Fees	\$6,428,800	\$5,934,276	(8%)
Product Fees	\$8,678,880	\$7,920,476	(9%)
Establishment Fees	\$8,357,440	\$8,357,450	0%
Sponsor Fees	\$8,678,880	\$8,080,311	(7%)
<b>Total Collections</b>	<b>\$32,144,000</b>	<b>\$30,292,513</b>	<b>(6%)</b>

Numbers have been rounded to the nearest dollar.

†† Estimated values were taken from the animal drug user fee rates published in the FY 2023 *Federal Register* notice.<sup>4</sup>

**Table 3c: Animal Drug User Fee Receivables by Fee Type in FY 2023 for Cohort Years 2022 and 2023**

Fees Receivable	Cohort Year 2022 Actual	Cohort Year 2023 Actual
Application Fees	\$0	\$0
Product Fees	\$10,787	\$22,750
Establishment Fees	\$0	\$167,149
Sponsor Fees	\$2,480,238	\$3,740,900
<b>Total Receivables</b>	<b>\$2,491,025</b>	<b>\$3,930,799</b>

## J. User Fee Obligations

ADUFA fees may be expended only for costs to support the “process for the review of animal drug applications,” as defined in ADUFA IV. For more information on allowable and excluded costs under ADUFA, see **Appendix B**.

**Table 4** provides a comparison breakout of user fee obligations by expense category during the past 2 fiscal years. The financial notes can be found in **Appendix E**.

**Table 4: Animal Drug User Fee Obligations by Expense Category for FYs 2022 and 2023**

User Fee Obligations	Notes	FY 2022	FY 2023
Payroll & Operating	Note 2		
CVM		\$26,350,532	\$22,996,030
ORA		\$408,838	\$412,927
HQ		\$1,005,322	\$929,601
Total Rent	Note 3	\$1,677,747	\$1,361,906
Total Shared Services	Note 4	\$4,028,678	\$3,616,680
<b>Total Obligations</b>		<b>\$33,471,117</b>	<b>\$29,317,145</b>

Numbers have been rounded to the nearest dollar.

<sup>4</sup> <https://www.govinfo.gov/app/details/FR-2022-07-28/2022-16176>.

Total obligations include payroll and operating, rent, and shared services costs. The details of each component of total obligations are as follows:

- **Payroll and Operating:** These obligations provide for all payroll and operating costs that support the allowable activities for which ADUFA fees may be expended, as set forth in the statute. Such payroll and operating activities include, for example, core regulatory review functions, pre-approval inspections, guidance and policy development activities, scientific activities, and management and administrative functions that support the ADUFA program.
- **Rent:** This amount is paid to the General Services Administration (GSA) for the federal buildings that FDA occupies, as well as to non-federal sources for direct leases and services. Rent is charged at different rates depending on the type and location of the space provided.
- **Shared Services:** FDA has several shared service organizations that provide support across the user fee programs, such as human resources and information technology (IT).

For historical context, **Table 5** provides the total amount spent by FDA and by each FDA organization on the ADUFA program for the past 5 years, including both user fee and non-user fee appropriation obligations. As illustrated by the table, costs have increased over time and the percentage spent by each FDA organizational component has remained steady.

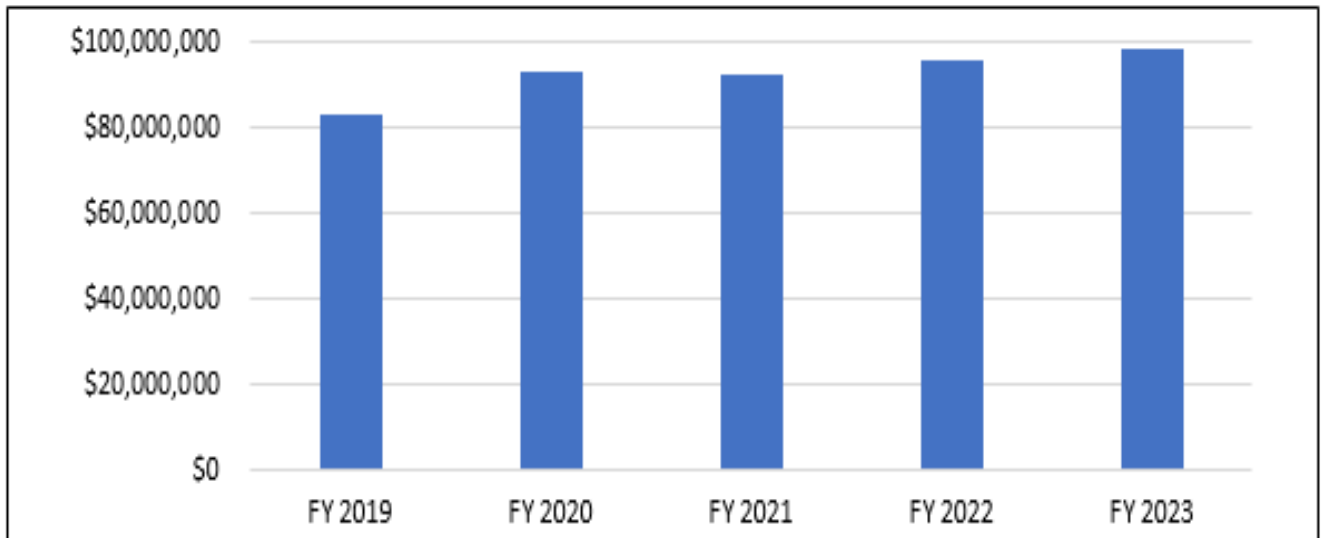
**Table 5: Animal Drug Review Process – Historical Trend of Total Costs by Organization as of September 30 of Each Fiscal Year**

CATEGORY	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
CVM Spent (\$)	\$73,418,342	\$83,728,651	\$83,331,213	\$86,840,311	\$89,046,378
CVM Percentage (%)	88%	90%	90%	90%	91%
ORA Spent (\$)	\$2,019,499	\$1,987,649	\$1,840,469	\$2,287,239	\$2,088,445
ORA Percentage (%)	2%	2%	2%	2%	2%
HQ Spent (\$)	\$7,620,283	\$7,307,157	\$7,141,820	\$7,029,063	\$7,077,743
HQ Percentage (%)	9%	8%	8%	7%	7%
<b>Total Spent</b>	<b>\$83,058,124</b>	<b>\$93,023,457</b>	<b>\$92,313,501</b>	<b>\$96,156,613</b>	<b>\$98,212,566</b>

Numbers have been rounded to the nearest dollar.

**Exhibit 4** below provides an illustration of the combined historical ADUFA costs for CVM, ORA, and HQ for the past 5 fiscal years.

#### Exhibit 4: Historical Total Costs by Fiscal Year



As demonstrated by this graph, the ADUFA program was fairly consistent over the ADUFA IV authorization.

#### K. User Fee Carryover

ADUFA fees collected, appropriated, and not obligated at the end of the fiscal year remain available to FDA for use in future fiscal years.

Maintaining an appropriate level of carryover enables FDA to mitigate financial risks to the program, including for example, the risk of under-collecting fee amounts, and the financial constraints associated with a lapse in appropriations. FDA considers a reasonable range of carryover for the ADUFA program to maintain in anticipation of these risks to be about 20 weeks. FDA notes this reasonable range is higher for ADUFA than for some other FDA user fee programs. This is because ADUFA is a much smaller program, as measured by workload or planned expenditures, and small shifts in submission numbers could have a significant impact on workload and the requisite funding needed to maintain operations.

The net change in carryover each year is equal to net collections minus total obligations. This is demonstrated best in **Table 1** on Page 12.

**Table 6** provides the ADUFA carryover at the end of FY 2023. The financial note can be found in **Appendix E**.



**Table 6: ADUFA Carryover for FY's 2022 and 2023**

Carryover	Notes	FY 2022	FY 2023
<b>Total Carryover, End of Year</b>		<b>\$21,556,256</b>	<b>\$23,281,800</b>
Unappropriated Amounts		(\$2,058,256)	(\$2,058,256)
Future Year Refunds Allowance, Set Aside	Note 8	(\$1,000,000)	(\$1,000,000)
Operational Reserve, Set Aside		(\$8,036,000)	(\$8,375,000)
<b>Carryover Net of Unavailable and Set Aside, End of Year</b>		<b>\$10,462,000</b>	<b>\$11,848,544</b>

Numbers have been rounded to the nearest dollar.

These terms are defined below:

- **Total Carryover, End of Year** – This is the total amount of unobligated fee funds at the end of the fiscal year.
- **Unappropriated Amounts** – FDA's ADUFA carryover includes \$2,058,256 in fee collections that are considered unappropriated and therefore currently unavailable for obligation. This amount is the cumulative total of fee collections that exceeded the annual level of ADUFA fees appropriated for a given year prior to a technical fix that was added to the appropriations language to ensure that all fee collections would be considered appropriated.
- **Future Year Refunds Allowance, Set Aside** – FDA maintains a small amount to provide for any refunds, as a matter of prudent operations. For that purpose, a total of \$1,000,000 in fee funds available for obligation is being set aside annually. See **Note 8** for additional details.
- **Operational Reserve, Set Aside** – In FY 2023, FDA has the authority to hold up to 3 months (12 weeks) of operating reserves for the process for the review of animal drug applications for the beginning of FY 2024.
- **Carryover Net of Unavailable and Set Aside, End of Year** – This is the total carryover less any carryover funds subject to set asides, or subject to any restrictions that currently preclude FDA from obligating the carryover funds.

The operations in FY 2023 resulted in a net increase of the carryover of \$1,725,544, from \$21,556,256 at the end of FY 2022 to \$23,281,800 at the end of FY 2023. The increase is due to CVM obligating less than the FY 2023 net collections.

**Tables 7a-7b** reflect the historical amount of carryover, fees collected, and fees obligated during the previous and current reauthorization periods.

**Table 7a: Historical Animal Drug User Fee Carryover by Reauthorization Period**

Category	Notes	ADUFA I (FY 2004 2008)	ADUFA II (FY 2009 2013)	ADUFA III (FY 2014 2018)	ADUFA IV (FY 2019 2023)
<b>Total Carryover, Beginning of Year</b>		\$0	\$4,029,812	\$11,959,322	\$15,845,573
<b>Net Collections</b>		\$49,077,860	\$89,279,716	\$113,861,017	\$155,290,612
<b>Recoveries</b>	Note 1	\$0	\$0	\$457,080	\$1,718,627
<b>Total Obligations</b>		(\$45,048,048)	(\$81,350,206)	(\$110,431,847)	(\$149,573,012)
<b>Total Carryover, End of Year</b>		<b>\$4,029,812</b>	<b>\$11,959,322</b>	<b>\$15,845,573</b>	<b>\$23,281,800</b>

Numbers have been rounded to the nearest dollar.

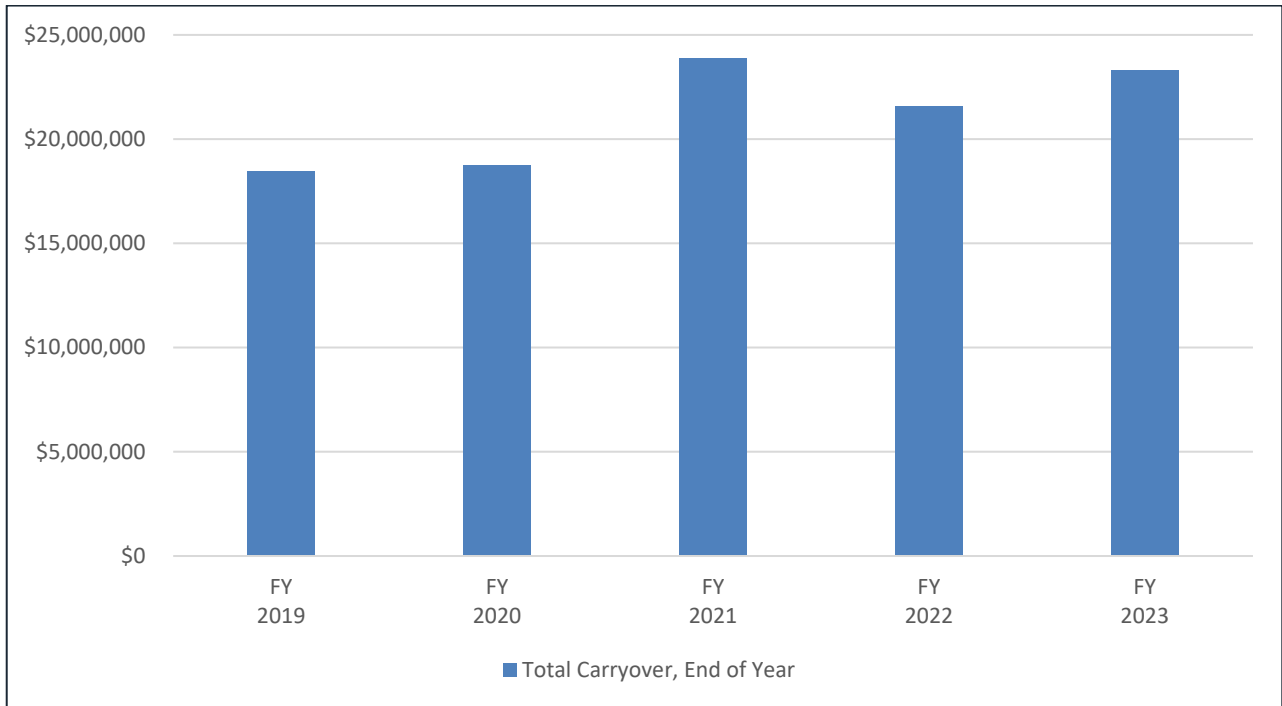
**Table 7b: Animal Drug User Fee Carryover for ADUFA IV**

Category	Notes	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>Total Carryover, Beginning of Year</b>		<b>\$15,845,573</b>	<b>\$18,455,175</b>	<b>\$18,723,954</b>	<b>\$23,848,631</b>	<b>\$21,556,256</b>
Net Collections		\$28,829,816	\$30,666,855	\$34,249,621	\$30,753,843	\$30,790,477
Recoveries	Note 1	\$470,515	\$293,823	\$277,178	\$424,899	\$252,212
Obligations		(\$26,690,729)	(\$30,691,899)	(\$29,402,122)	(\$33,471,117)	(\$29,317,145)
<b>Total Carryover, End of Year</b>		<b>\$18,455,175</b>	<b>\$18,723,954</b>	<b>\$23,848,631</b>	<b>\$21,556,256</b>	<b>\$23,281,800</b>

Numbers have been rounded to the nearest dollar.

**Exhibit 5** provides a historical perspective of the carryover for the last 5 fiscal years. FY 2019 and FY 2020 remained fairly consistent, FY 2021 saw an increase in the total carryover due to obligating less than the total collections, FY 2022 saw a decrease due to obligating more than total collections, and FY 2023 saw an increase due to obligating less than total collections.

### Exhibit 5: Historical Carryover by Fiscal Year



#### L. Non-User Fee Appropriations

For FDA to obligate user fees collected under ADUFA, a certain minimum amount of non-user fee appropriations must be spent on the process for the review of animal drug applications during that fiscal year. This is often referred to as a “non-user fee spending trigger.” (See Legal Condition 3 in **Exhibit 3**.) The non-user fee spending trigger was \$49,959,923 for FY 2023.

The “non-user fee spending trigger amount” is the amount of non-user fee appropriations spent on the animal drug review process in FY 2003 (\$32,748,000), multiplied by the adjustment factor. See **Note 9** for more details on the adjustment factor.

**Table 8** provides the total amount spent on the ADUFA program for the past 5 fiscal years and the dollar amount and percentages derived from user fee collections and non-user fee appropriations. The percentages attributable to ADUFA fees have generally remained steady over time.

**Table 8: Historical Animal Drug User Fee Obligations by Funding Source as of September 30 of Each Fiscal Year**

Funding Source	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Non-User Fee Appropriations Obligated: Total (\$)	\$56,367,396	\$62,331,558	\$62,911,379	\$62,685,496	\$68,895,421
Non-User Fee Appropriations Obligated: Percent (%)	68%	67%	68%	65%	70%
User Fee Funds Obligated: Total (\$)	\$26,690,729	\$30,691,899	\$29,402,122	\$33,471,117	\$29,317,145
User Fee Funds Obligated: Percent (%)	32%	33%	32%	35%	30%
<b>Total Obligated</b>	<b>\$83,058,124</b>	<b>\$93,023,457</b>	<b>\$92,313,501</b>	<b>\$96,156,613</b>	<b>\$98,212,566</b>

Numbers have been rounded to the nearest dollar.

### M. Full-Time Equivalents

“FTE employment” (often referred to as “staff year”) as defined by Office of Management and Budget (OMB) Circular No. A-11, section 85, means the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered “hours worked” for purposes of defining FTE employment.

As it specifically relates to ADUFA, an FTE is referred to as a “Process FTE,” which is the measure of a paid staff year devoted to the ADUFA program. In the table below, an FTE does not represent an accounting of individual people but rather an estimate of labor hours expended on ADUFA activities. Funding is distributed to Centers based on the workload to support payroll to accomplish the program goals.

**Table 9** presents total Process FTE levels, paid from user fee collections and non-user fee appropriations, that support the ADUFA program. The data cover the past 5 fiscal years and are arranged by FDA organizational components (CVM, ORA, and HQ). Staff in the consolidated shared services organizations (facilities, procurement, IT services, etc.) are included in the FTE levels for various components.

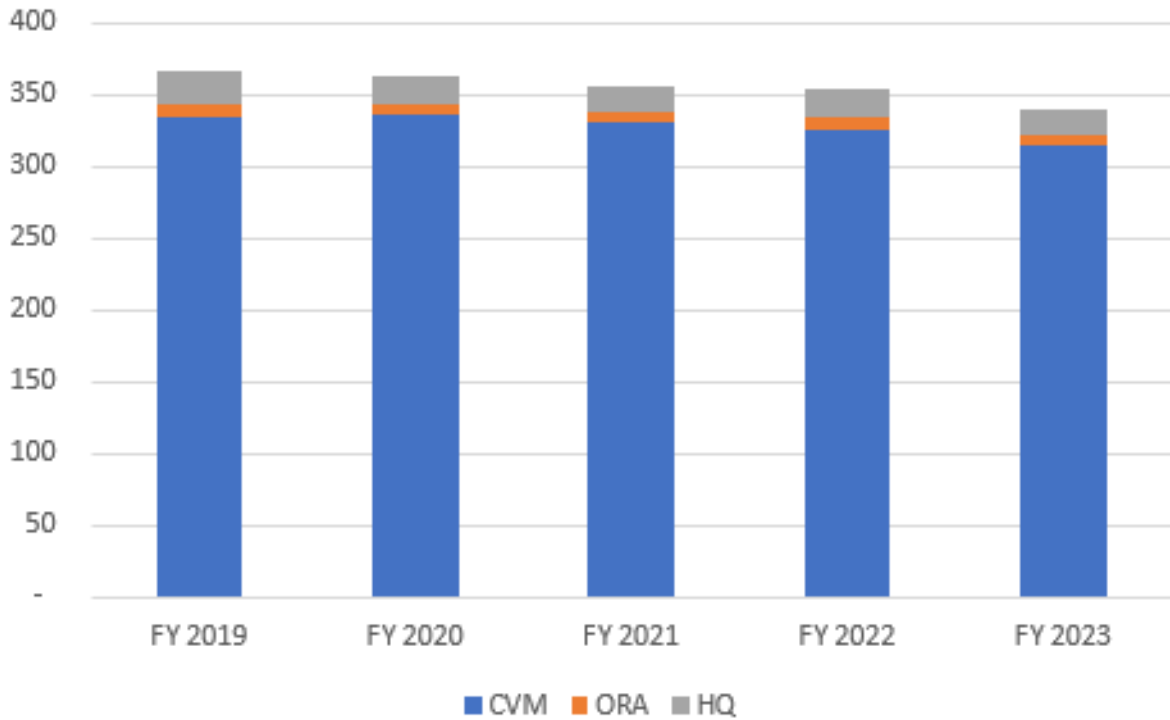
**Table 9: Historical Trend of Total Process FTEs Utilized by Organization as of September 30 of Each Fiscal Year**

Fiscal Year	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
CVM	335	336	331	327	315
ORA	8	8	7	9	7
HQ	23	20	18	18	18
<b>TOTAL</b>	<b>366</b>	<b>364</b>	<b>356</b>	<b>354</b>	<b>340</b>

Numbers have been rounded to the nearest whole number.

**Exhibit 6** provides the historical trend of total Process FTE levels for ADUFA across CVM, ORA, and HQ for the past 5 fiscal years. The program has seen a minor decrease in FTEs over this 5-year authorization period.

**Exhibit 6: Historical Total Process FTE Levels by FDA Organization**



## Management Assurance

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### N. Internal Controls

The Federal Managers' Financial Integrity Act of 1982 (FMFIA) is intended to strengthen internal controls and accounting systems. OMB Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control, implements the FMFIA requirements. FMFIA requires that management establish and maintain effective internal controls to achieve the following objectives:

1. Effective and efficient operations
2. Reliable reporting
3. Compliance with applicable laws and regulations

The Department of Health and Human Services (HHS) provides guidance to its operating divisions (OpDivs) to implement FMFIA through its FMFIA Guidelines. HHS's OpDivs, including FDA, are responsible for developing and maintaining internal control and compliance programs that include programmatic and operational controls, as well as reporting controls to support sound financial management. The Government Accountability Office's Standards for Internal Control in the Federal Government (Green Book) states: "Management is responsible for an effective internal control system. As part of this responsibility, management sets the entity's objectives, implements controls, and evaluates the internal control system." OMB Circular A-123 requires an annual internal control assessment, and FMFIA requires the head of each executive agency to report annually on the effectiveness of the internal controls and any identified material weaknesses in those controls.

In alignment with FMFIA, OMB Circular A-123, OMB Circular A-11, the Green Book, and HHS guidelines, FDA established an Enterprise Risk Management (ERM) Program, with an ERM Council (ERMC) as the governance body responsible for providing overall oversight and accountability. The Council's purview includes deciding on and managing the Agency's Enterprise Risk Profile and ensuring integration with FDA's FMFIA, budget formulation, and strategic planning activities. The ERMC has senior executive representatives from each FDA Center and Office, and is chaired by the Chief Operating Officer, with a Center Director as Co-Chair and Chief Financial Officer (CFO) as President Pro Tempore. FDA's ERM Program supports the Council in managing the Agency's Enterprise Risk Profile, facilitates risk response planning, collaborates with Center and Office senior leaders and staff in conducting a range of analyses to manage risks, and provides communications and training opportunities that promote a risk-informed culture.

Additionally, FDA has an established Senior Assessment Team (SAT) to act as the governance body responsible for providing oversight and accountability for FDA's internal control over reporting, including overseeing the FMFIA and OMB Circular A-123 assessments, and for fostering an environment that promotes strong internal controls and reduces the risk of fraud, waste, and abuse. The SAT is chaired by FDA's CFO and co-chaired by the Deputy CFO and Director of the Office of Financial Management, as well as a Program Co-Chair who is a Center Deputy Executive Officer

appointed by the CFO. The SAT members are representatives from each FDA Center and Office. FDA's internal control program includes integrated management controls covering the OMB A-123 appendices. Specifically:

1. Reporting controls (including business and IT controls) are implemented in accordance with Appendix A, Management of Reporting and Data Integrity Risk.
2. Charge card controls are implemented in accordance with Appendix B, A Risk Management Framework for Government Charge Card Programs,
3. Controls over financial disbursements are implemented in accordance with Appendix C, Requirements for Payment Integrity Improvement, and
4. Financial system controls are implemented in accordance with Appendix D, Compliance with the Federal Financial Management Improvement Act of 1996.

In FY 2023, FDA's annual assessment of internal controls included tests of 94 business and IT controls across 9 major transaction cycles and 21 transaction sub-cycles to identify recommendations to strengthen internal controls and compliance. This assessment included 11 IT controls related to the User Fee System. Further, FDA has enhanced its integration with HHS to focus on IT controls, align with HHS's standardized IT controls guidance, and provide overall collaboration with HHS.

Annually, FDA conducts an improper payments risk assessment and performs improper payment testing to assess financial disbursements. In FY 2023, FDA completed the FDA FY 2023 Improper Payments risk assessment to identify FDA programs that were susceptible to significant improper payments. The FDA programs—including FDA User Fees (Non-General Fund), Animal Drugs and Feed, FDA Other Activities (FDA Headquarters), Payment to FDA Innovation Account, National Center for Toxicological Research, Coronavirus Emergency Funding Supplemental and FDA Buildings and Facilities Foods, Human Drugs, Biologics, CURES Activities, Reimbursable Program (Federal Sources), and Opioids (including International Mail Facilities Programs)—were deemed to not be susceptible to significant improper payments. The Biologics Program and the Devices and Radiological Health Program were selected for improper payment transactions testing, but neither were found to be susceptible to significant improper payments.

The Unified Financial Management System FDA-set-of-books, Integrated Budget, Acquisition Planning Systems (IBAPS), and the User Fee System are compliant with HHS guidelines and with Appendix D of OMB Circular A-123, Compliance with the Federal Financial Management Improvement Act of 1996.

FDA has also implemented other internal control procedures, including the performance of Organizational Risk Reviews, which are reviews of targeted financial and non-financial management processes to identify potential recommendations to enhance internal controls. Also, FDA maintains a Continuous Monitoring Program to

oversee the timely implementation of corrective action plans for any deficiencies identified through any of its control assessments.

As a component of HHS, FDA's financial data is presented in HHS's consolidated financial statements. The FY 2023 HHS audit found that FDA's financial statements fairly present, in all material respects, the consolidated financial position of HHS as of September 30, 2022, and 2023, and related notes are in accordance with generally accepted accounting principles in the United States. Further, FDA's FY 2023 Assurance Statements found no material weaknesses or financial system nonconformances.

## O. Risks and Challenges

### Financial Risks and Mitigation

As is the case with all financial programs, there are certain financial risks and challenges that exist with FDA's user fee programs. These risks and challenges can vary from program to program, with some being in FDA's control and some out of FDA's control. An example of a shared financial risk across all user fee programs is that FDA cannot obligate funds in advance of receiving the funds, either through appropriated user fee collections or non-user fee appropriations. FDA can only assume what the Agency's total appropriation will be in any given year. As a result, FDA has some risk of missing important performance goals or failing to meet the non-user fee spending trigger for the fiscal year if the total appropriation comes in considerably lower than anticipated. Below is a list of foreseeable risks associated with the collections and obligations of funds for which FDA has identified contingency plans; these contingency plans help ensure that FDA is able to move forward in the best interests of the program.

- **Uncertainty of User Fees and Non-User Fee Appropriations Levels:** It is difficult to predict the amount of non-user fee appropriations that will be approved by Congress, which creates financial planning challenges for the program since non-user fee fund levels are often uncertain for a good portion of the fiscal year. This is because of prolonged Continuing Resolutions (CRs), versus enactment of annual appropriations bills early in the fiscal year. This creates a situation where, because of extended CR periods, FDA is uncertain of its non-user fee appropriations for a significant portion of the fiscal year, yet it must still meet the non-user fee spending trigger. Additionally, fluctuations in industry submissions from year to year can change the total user fee collections.
- **Lapse in Non-User Fee Appropriations:** FDA is mitigating this risk to the program by maintaining a certain level of ADUFA fee collections as a carryover. FDA considers a reasonable range of carryover for the ADUFA program to maintain in anticipation of these risks to be about 20 weeks. FDA notes this reasonable range is higher for ADUFA than for some other FDA user fee programs. This is because ADUFA is a much smaller program, as measured by workload or planned expenditures, and small shifts in submissions could have a significant impact on workload and the requisite funding needed to maintain operations. This reserve can



be used to help support program operations in the event of a shutdown.

- **Under-Collecting and Over-Collecting Fees:** If FDA does not receive the estimated number of industry submissions, there may be an excess or deficit in net collections as compared to target revenue. When FDA under-collects user fees, it leverages its carryover to maintain continuity in operations. If FDA over-collected in FY 2019 through FY 2021, the excess collections were used to reduce any increases in fee revenue resulting from workload-based adjustments in FY 2021 through FY 2023, up to the amount of the fee revenue increase. If FDA under-collects user fees in certain fiscal years, the statute authorizes the Agency to increase the amount of fees charged to recover the collection shortfall. FDA monitors collections throughout the fiscal year, and the UFFMC and other FDA senior leaders determine how to mitigate any instances when user fee collection deviates from forecasted estimates.

In addition to these mitigation strategies, FDA implemented IBAPS to enable a greater and more timely insight into budget activity across the Agency. IBAPS improves the accuracy and availability of budget and acquisition information that enables FDA to better plan, forecast, track, and analyze the data to make better informed decisions about the best use of the Agency's resources.

## Appendices

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### A. Reporting Requirements

The following table provides details regarding the financial reporting requirements for ADUFA IV.

Requirement	Details
Section 740A(b) of the FD&C Act	“Beginning with fiscal year 2019, not later than 120 days after the end of each fiscal year during which fees are collected under this part, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected during such fiscal year for which the report is made.”

### B. Allowable and Excluded Costs for ADUFA

Section 739(8) of the FD&C Act defines the phrase “process for the review of animal drug applications” to mean the following activities of FDA with respect to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions:

## Included Activities

- |   |  |
|---|--|
| <ol style="list-style-type: none"><li>1. The activities necessary for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions</li><li>2. 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</li><li>3. The inspection of animal drug establishments and other facilities undertaken as part of the [HHS] Secretary's review of pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions</li><li>4. Monitoring of research conducted in connection with the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions</li></ol> | <ol style="list-style-type: none"><li>5. The development of regulations and policy related to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions</li><li>6. Development of standards for products subject to review</li><li>7. Meetings between the Agency and the animal drug sponsor</li><li>8. A review of advertising and labeling prior to approval of an animal drug application or supplemental animal drug application but not after such application has been approved</li><li>9. The activities necessary for implementation of a U.S.- European Union Good Manufacturing Practice Mutual Inspection Agreement with respect to animal drug products subject to review, including implementation activities prior to and following product approval</li></ol> |
|---|--|

Section 739(9) of the FD&C Act defines the phrase "costs of resources allocated for the process for the review of animal drug applications" as the expenses in connection with the process for the review of animal drug applications for:

### Included Expenses

1. Officers and employees of FDA; contractors of FDA; advisory committees consulted with respect to the review of specific animal drug applications, supplemental animal drug applications, or investigational animal drug submissions; and the costs related to such officers, employees, committees, and contractors, including costs for travel, education, recruitment, and other personnel activities
2. Management of information and the acquisition, maintenance, and repair of computer resources
3. Leasing, maintenance, renovation, and repair of facilities, and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies
4. Collecting fees under section 740 [of the FD&C Act] and accounting for resources allocated for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions

The ADUFA program does not include costs related to the following activities:

### Excluded Activities

1. Review of abbreviated new animal drug applications
2. Enforcement policy development
3. Post-approval surveillance and compliance activities
4. Post-approval activities relating to the review of advertising
5. Inspections unrelated to the ADUFA program
6. Research unrelated to the ADUFA program

## C. User Fee Program History

ADUFA was enacted in 2003 and reauthorized in 2008 (ADUFA II), 2013 (ADUFA III), 2018 (ADUFA IV), and 2023 (ADUFA V). The FD&C Act, as amended by ADUFA, authorizes FDA to collect user fees from the animal drug industry to supplement the non-user fee appropriations that the Agency spends on the process for the review of animal drug applications. FDA spends user fee revenue and non-user fee appropriations to hire, support, and maintain personnel for the process for the review of animal drug applications and to help ensure that safe and effective animal drugs reach the American public in a timely manner.

## **D. Conditions for Assessment and Use of Fees**

### *Introduction*

The FD&C Act, as amended by ADUFA IV, specifies three legal conditions that must be met each fiscal year for FDA to collect and spend animal drug user fees. This appendix describes these legal conditions and the applicable adjustment factor, as described in the FD&C Act.

### *Adjustment Factor*

To determine whether the legal conditions are satisfied, FDA must calculate and incorporate an “adjustment factor” (as defined in section 739(10) of the FD&C Act) in the assessment of the first and third legal conditions.

Section 739(10) of the FD&C Act provides the following definition:

The term “adjustment factor” applicable to a fiscal year refers to the formula set forth in section 735(8) [of the FD&C Act] with the base or comparator month being October 2002.

In turn, Section 735(8) of the FD&C Act defines “adjustment factor” as follows:

The term “adjustment factor” applicable to a fiscal year is the Consumer Price Index for all urban consumers (all items; United States city average) for October of the preceding fiscal year divided by such Index for October 1996.

This adjustment factor formula applies to ADUFA IV, except that the base month is October 2002, as reflected in section 739(10) of the FD&C Act. Thus, the adjustment factor that applies to ADUFA IV is the Consumer Price Index for all urban consumers (all items; United States city average) for October of the preceding fiscal year divided by such Index for October 2002.

The Consumer Price Index (CPI) for October 2021—the October of the fiscal year preceding FY 2023 (beginning on October 1, 2022)—was 276.589. The CPI for October 2002 was 181.3. Dividing the CPI of October 2021 by the CPI of October 2002 yields an adjustment factor for FY 2023 of 1.525587 (rounded to six decimal places).

### *Legal Conditions*

First legal condition: FDA’s Salaries and Expenses appropriation (excluding user fees) for FY 2003 was \$1,373,714,000. Multiplying this amount by the adjustment factor of 1.525587 (rounded to the sixth decimal place) equals \$2,095,720,220.

Second legal condition: Division A, Title VI of Public Law 117-328 specified that \$32,144,000 shall be derived from animal drug user fees, and that animal drug user fees collected in excess of this amount, if any, are appropriated for FDA.

Third legal condition: In FY 2003, the amount spent from appropriations for the ADUFA program was \$32,748,000 (rounded to the nearest thousand). After applying the

adjustment factor of 1.525587 (rounded to the sixth decimal place), the minimum appropriation spending level for the ADUFA program for FY 2023, excluding user fees, is \$49,959,923.

**Exhibit 7** below provides the details regarding each of the three legal conditions that must be met each fiscal year, as quoted from the FD&C Act.

### Exhibit 7: Legal Conditions

Legal Condition #	FD&C Act Section	Details
1	740(f)(1)	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	740(g)(2)(A)(i)	The fees authorized by this section shall be collected and available in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation for such fiscal year.
3	740(g)(2)(A)(ii)	The fees authorized by this section shall be available to defray increases in the costs of the resources allocated for the process for the review of animal drug applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs, excluding costs paid from fees collected under this section, for fiscal year 2003 multiplied by the adjustment factor.

## E. Financial Notes

### Note 1. Recoveries

Recoveries account for funds returned to the Agency in the form of de-obligations of prior year obligations. For example, recoveries could include funding from a contract that ended in a prior year and was not expended.

### Note 2. Payroll and Operating Costs

For payroll, employees are required to report their time in an activity-based reporting system, which allows FDA to identify activities that user fees can be used to support. See **Appendix B** for a listing of those activities. For operating activities (e.g., contracting services), funds are allocated based on the proportion to which those activities support the ADUFA program. If an operating activity solely supports ADUFA, it will be fully funded by the program. If the operating activity is shared, ADUFA will fund the activity in proportion to its level of use by the program as compared to other programs.

### Note 3. Rent Costs

GSA charges rent to FDA for the federal buildings that FDA occupies. Rental rates vary based on the type and location of the space provided. Because rent is an essential support cost for the process for the review of animal drug applications, a portion of those charges is paid from non-user fee appropriations and a portion is paid from ADUFA fees. Also included in this account are recurring costs that FDA pays to non-federal sources under the delegation of direct lease and service authority. These services include rental of space and all recurring services for building operations such as utilities, janitorial services, guards, and ground maintenance. The amount of rent and rent-related costs each Center pays is directly related to the square footage occupied by that Center.

### Note 4. Shared Services Costs

FDA has several shared service organizations, located with the Working Capital Fund, that provide support across the user fee programs. The shared service organizations in FY 2023 include the following:

- **FDA Central:** Provides for Center-wide and Agency-wide services such as telecommunications, training, printing, mail and document management, IT systems, employee health units, and other support and miscellaneous services.
- **Office of Acquisitions and Grants Services:** Manages contracts, grants, and other agreements.
- **Office of Equal Employment Opportunity:** Promotes an inclusive work environment that ensures equal employment opportunity and fosters a culture that values diversity and empowers individuals.
- **Office of Facilities, Engineering, and Mission Support Services:** Provides FDA employees with office and laboratory facilities.
- **Office of Financial Management:** Provides financial managerial services and policy guidance.
- **Office of Digital Transformation:** Provides the information, communication, and knowledge infrastructure and services that enhance, transform, and sustain the ability of FDA to protect and promote the public health. Provides support to all FDA employees requesting administrative, IT, facilities, human resources, or other employee services.
- **Division of Budget Execution and Control:** Initiates, monitors, and analyzes FDA's budget resources. The Agency's budget is comprised of several appropriation accounts including Salaries and Expenses, Revolving Fund for Color Certification and other Services, Cooperative Research and Development Agreement, Contingency Fund, Building and Facilities, and Royalties.
- **Office of Finance, Budget, Acquisitions, and Planning:** Leads FDA's budget, acquisitions, and financial management functions while ensuring the financial integrity of FDA's resources.
- **Office of Security Operations:** Develops and implements the Agency-wide security policies and programs by providing leadership and guidance to managers and staff on all aspects of security. Administers vital security functions that contribute to the Agency's mission of protecting the public health

- by enhancing the safety and security of all personnel, facilities, and information.
- **Office of Laboratory Safety:** Reinforces FDA’s expectations for safety and laboratory security, enhances communications among FDA’s safety staff, and provides program support.
  - **Office of Ethics and Integrity:** Protects the integrity of FDA’s programs and operations by promoting an ethical culture and ensuring compliance with applicable federal ethics laws.
  - **Office of Enterprise Management Services:** Provides strategic and tactical enterprise-wide services through the development and implementation of administrative policies, programs, and initiatives.
  - **Office of Human Capital Management:** Provides human resource services that promote collaboration and a work environment that is characterized by diversity, fairness, open communication, personal accountability, trust, and mutual respect.
  - **Office of Talent Solutions:** Provides high quality and efficient human resource solutions that enable FDA to hire a talented and qualified workforce.
  - **Office of Planning, Evaluation, and Risk Management:** Partners with FDA’s leaders to achieve organizational excellence by improving program performance, governance, operational efficiency, and risk management.

#### **Note 5. Inflation Adjustment**

The fee revenue amounts established in ADUFA IV for FY 2020 and subsequent fiscal years are subject to adjustment to account for inflation. The inflation adjustment adjusts the annual fee revenue amounts specified in the ADUFA statute (see section 740(b) of the FD&C Act) to maintain the purchasing power of fee funds despite inflation. The adjustment is made to the non-payroll-related portion by changes in the CPI and adjusts the payroll-related portion by changes in FDA’s average personnel compensation and benefits.

In July 2022, FDA set fees for FY 2023 in accordance with the amounts specified in ADUFA IV (see 87 FR 45339, July 28, 2022). The fee revenue amount is adjusted each year after FY 2019 to reflect changes in inflation if applicable. For FY 2023, the fee revenue amount was adjusted by 1.5911 percent to account for inflation.

#### **Note 6. Workload Adjustment**

The fee revenue amounts established in ADUFA IV for FY 2020 and subsequent fiscal years are also subject to adjustment to reflect changes in FDA’s workload for the process for the review of animal drug applications. A workload adjustment will be applied to the inflation-adjusted fee revenue amount (section 740(c)(3) of the FD&C Act).

To apply the workload adjustment, ADUFA IV specifies that FDA shall calculate the weighted average of the change in the total number of each of the five types of applications and submissions specified in the workload adjustment provision (i.e., animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug



applications, investigational animal drug study submissions, and investigational animal drug protocol submissions).

In July 2022, FDA set fees for FY 2023 in accordance with the amounts specified in ADUFA IV (see 87 FR 45339, July 28, 2022). FDA increases the fee revenue amount established for the fiscal year to reflect changes in workload only if the workload adjuster is equal to or greater than 1 percent. The fee revenue amount is adjusted each year after FY 2019 to reflect changes in review workload, if applicable. FDA did not adjust the FY 2023 fee revenue amount for workload changes because the workload adjuster was less than 1 percent.

#### **Note 7. Shortfall Recovery/Excess Fee Collections**

**Recovery of Collection Shortfalls:** Under section 740(g)(5)(A)(iii) of the FD&C Act, for FY 2023, the amount of fees otherwise authorized to be collected shall be increased by the cumulative amount, if any, by which the amount collected and appropriated for FYs 2021 and 2022 (including estimated collections for FY 2022) falls below the cumulative amount of fees authorized for those two fiscal years.

In FY 2021, the total revenue amount authorized was \$33,339,000, and the total amount of fees collected for FY 2021 was \$33,668,934. The total revenue amount authorized for FY 2022 was \$31,641,000, and the total amount of fees collected for FY 2022 was \$30,748,384. The cumulative amount of fees collected and estimated for FYs 2021 and 2022 was below the total authorized revenue amount by \$892,616. Therefore, the recovery of collection shortfalls provision of section 740(g)(5)(A)(iii) of the FD&C Act was invoked.

**Excess Fee Collections:** Under section 740(g)(5)(B) of the FD&C Act, when FDA's calculations under section 740(g)(5)(A) would result in a fee increase for that fiscal year to recover a collection shortfall in a prior year, FDA must reduce the increase by the amount of any excess collections for preceding fiscal years (after FY 2018) that has not already been applied to reduce workload-based fee increases. FDA's calculations under section 740(g)(5)(A) would result in a fee increase for FY 2023 to recover a collection shortfall of \$892,616. FDA calculated that it had \$795,666 of excess collections in FY 2020 and \$329,934 of excess collections in FY 2021 that have not been applied to reduce workload-based fee increases, for a total of \$1,125,600 in excess collections. Because the FYs 2020 and 2021 excess collections not previously applied to a workload-based fee increase exceeded the shortfall in FY 2022, there is a reduction of the shortfall-based fee increase under section 740(g)(5)(B). Therefore, no recovery of collections shortfall was added to the FY 2023 target revenue.

#### **Note 8. Future Year Refunds Allowance, Set Aside**

If a sponsor pays the fee for an animal drug application or supplemental animal drug application that is subsequently refused for filing, the sponsor receives a refund for 75 percent of the fee paid (section 740(a)(1)(D) of the FD&C Act). If an animal drug application or supplemental animal drug application is withdrawn after the application or supplement has been filed, the sponsor may receive a refund of the fee or a portion of the fee paid if no substantial work was performed by the Agency on the application or supplement after it was filed (section 740(a)(1)(E) of the FD&C Act).

To qualify for consideration for a waiver or reduction in fees, or for a refund, a written request must be submitted to FDA no later than 180 days after such fee is due (section 740(i) of the FD&C Act).

**Note 9. Minimum Non-User Fee Appropriations Adjustment Factor**

FDA must calculate and incorporate an adjustment factor for the third legal condition. For purposes of ADUFA IV, the following adjustment factor is applied: the Consumer Price Index for all urban consumers (all items; United States city average) for October of the preceding fiscal year divided by such Index for October 2002.” (See section 739(10) of the FD&C Act.)

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