(b) Report on innovative products

(1) In general

Not later than 3 years after June 22, 2009, the Secretary, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to regulate, promote, and encourage the development of innovative products and treatments (including nicotine-based and non-nicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

(A) total abstinence from tobacco use;

(B) reductions in consumption of tobacco; and

(C) reductions in the harm associated with continued tobacco use.

(2) Recommendations

The report under paragraph (1) shall include the recommendations of the Secretary on how the Food and Drug Administration should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Administration and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant agencies.

(June 25, 1938, ch. 675, § 918, as added Pub. L. 111–31, div. A, title I, § 101(b)(3), June 22, 2009, 123 Stat. 1825.)

MODIFICATION OF DEADLINES FOR SECRETARIAL ACTION

With respect to any time periods specified in an amendment by div. A of Pub. L. 111–31 that begin on June 22, 2009, within which the Secretary of Health and Human Services is required to carry out and complete specified activities, with certain limitations, the calculation of such time periods shall commence on the first day of the first fiscal quarter following the initial 2 consecutive fiscal quarters of fiscal year 2010 for which the Secretary has collected fees under section 387s of this title, and the Secretary may extend or reduce the duration of one or more such time periods, except that no such period shall be extended for more than 90 days, see section 6 of Pub. L. 111–31, set out as a note under section 387 of this title.

§ 387s. User fees

(a) Establishment of quarterly fee

Beginning on June 22, 2009, the Secretary shall in accordance with this section assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products subject to this subchapter. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

(b) Assessment of user fee

(1) Amount of assessment

The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

(A) For fiscal year 2009, $85,000,000 (subject to subsection (e)).

(B) For fiscal year 2010, $235,000,000.

(C) For fiscal year 2011, $450,000,000.

(D) For fiscal year 2012, $477,000,000.

(E) For fiscal year 2013, $505,000,000.

(F) For fiscal year 2014, $534,000,000.

(G) For fiscal year 2015, $566,000,000.

(H) For fiscal year 2016, $599,000,000.

(I) For fiscal year 2017, $635,000,000.

(J) For fiscal year 2018, $672,000,000.

(K) For fiscal year 2019 and each subsequent fiscal year, $712,000,000.

(2) Allocations of assessment by class of tobacco products

(A) In general

The total user fees assessed and collected under subsection (a) each fiscal year with respect to each class of tobacco products shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

(B) Applicable percentage

(i) In general

For purposes of subparagraph (A), the applicable percentage for a fiscal year for each of the following classes of tobacco products shall be determined in accordance with clause (ii):

(I) Cigarettes.

(II) Cigars, including small cigars and cigars other than small cigars.

(III) Snuff.

(IV) Chewing tobacco.

(V) Pipe tobacco.

(VI) Roll-your-own tobacco.

(ii) Allocations

The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 518d(c) of title 7 for each such class of product for such fiscal year.

(iii) Requirement of regulations

Notwithstanding clause (ii), no user fees shall be assessed on a class of tobacco products unless such class of tobacco products is listed in section 387a(b) of this title or is deemed by the Secretary in a regulation under section 387a(b) of this title to be subject to this subchapter.

(iv) Reallocations

In the case of a class of tobacco products that is not listed in section 387a(b) of this title or deemed by the Secretary in a regulation under section 387a(b) of this title to be subject to this subchapter, the amount of user fees that would otherwise be assessed to such class of tobacco products shall be reallocated to the classes of tobacco products that are subject to this subchapter in the same manner and based on the same relative percentages otherwise determined under clause (ii).

(3) Determination of user fee by company

(A) In general

The total user fee to be paid by each manufacturer or importer of a particular class of tobacco products shall be determined for each quarter by multiplying—

(i) such manufacturer's or importer's percentage share as determined under paragraph (4); by

(ii) the portion of the user fee amount for the current quarter to be assessed on all manufacturers and importers of such class of tobacco products as determined under paragraph (2).

(B) No fee in excess of percentage share

No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.

(4) Allocation of assessment within each class of tobacco product

The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 518d of title 7.

(5) Allocation for cigars

Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.

(6) Timing of assessment

The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

(7) Memorandum of understanding

(A) In general

The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

(B) Assurances

Beginning not later than fiscal year 2015, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage shares described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.

(c) Crediting and availability of fees

(1) In general

Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, subject to paragraph (2)(D). Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

(2) Availability

(A) In general

Fees appropriated under paragraph (3) are available only for the purpose of paying the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this subchapter and the Family Smoking Prevention and Tobacco Control Act (referred to in this subsection as ''tobacco regulation activities''), except that such fees may be used for the reimbursement specified in subparagraph (C).

(B) Prohibition against use of other funds

(i) In general

Except as provided in clause (ii), fees collected under subsection (a) are the only funds authorized to be made available for tobacco regulation activities.

(ii) Startup costs

Clause (i) does not apply until October 1, 2009. Until such date, any amounts available to the Food and Drug Administration (excluding user fees) shall be available and allocated as needed to pay the costs of tobacco regulation activities.

(C) Reimbursement of start-up amounts

(i) In general

Any amounts allocated for the start-up period pursuant to subparagraph (B)(ii) shall be reimbursed through any appropriated fees collected under subsection (a), in such manner as the Secretary determines appropriate to ensure that such allocation results in no net change in the total amount of funds otherwise available, for the period from October 1, 2008, through September 30, 2010, for Food and Drug Administration programs and activities (other than tobacco regulation activities) for such period.

(ii) Treatment of reimbursed amounts

Amounts reimbursed under clause (i) shall be available for the programs and ac-

tivities for which funds allocated for the start-up period were available, prior to such allocation, until September 30, 2010, notwithstanding any otherwise applicable limits on amounts for such programs or activities for a fiscal year.

(D) Fee collected during start-up period

Notwithstanding the first sentence of paragraph (1), fees under subsection (a) may be collected through September 30, 2009 under subparagraph (B)(ii) and shall be available for obligation and remain available until expended. Such offsetting collections shall be credited to the salaries and expenses account of the Food and Drug Administration.

(E) Obligation of start-up costs in anticipation of available fee collections

Notwithstanding any other provision of law, following the enactment of an appropriation for fees under this section for fiscal year 2010, or any portion thereof, obligations for costs of tobacco regulation activities during the start-up period may be incurred in anticipation of the receipt of offsetting fee collections through procedures specified in section 1534 of title 31.

(3) Authorization of appropriations

For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

(d) Collection of unpaid fees

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

(e) Applicability to fiscal year 2009

If the date of enactment of the Family Smoking Prevention and Tobacco Control Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the ''quarterly fee amounts'').

(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).

(June 25, 1938, ch. 675, § 919, as added Pub. L. 111–31, div. A, title I, § 101(b)(3), June 22, 2009, 123 Stat. 1826.)

REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (c)(2)(A), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of this title.

The date of enactment of the Family Smoking Prevention and Tobacco Control Act and such date of enactment, referred to in subsec. (e), is the date of enactment of Pub. L. 111–31, which was approved June 22, 2009.

§ 387t. Labeling, recordkeeping, records inspection

(a) Origin labeling

(1) Requirement

Beginning 1 year after June 22, 2009, the label, packaging, and shipping containers of tobacco products other than cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement ''sale only allowed in the United States''. Beginning 15 months after the issuance of the regulations required by section 1333(d) of title 15, as amended by section 201 of Family[1] Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement ''Sale only allowed in the United States''.

(2) Effective date

The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

(b) Regulations concerning recordkeeping for tracking and tracing

(1) In general

The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

(2) Inspection

In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

(3) Codes

The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

[1] So in original. Probably should be ''the Family''.