REPORT TO THE LEGISLATURE

DRUG MANUFACTURING, MEDICAL DEVICE MANUFACTURING, AND HOME MEDICAL DEVICE RETAILER LICENSING COSTS AND FEE ANALYSIS ANNUAL REPORT

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

CENTER FOR ENVIRONMENTAL HEALTH

DIVISION OF FOOD, DRUG, AND CANNABIS SAFETY

2017

To obtain a copy of the Division of Food, Drug, and Cannabis Safety's Report to the Legislature titled, "Drug Manufacturing, Medical Device Manufacturing, and Home Medical Device Retailer Licensing Costs and Fee Analysis Annual Report 2017," contact:

California Department of Public Health
Food and Drug Branch
P.O. Box 997435, MS 7602
Sacramento, CA 95899-7435
(916) 650-6500

Email: FDBINFO@cdph.ca.gov
Internet Address (www.cdph.ca.gov)

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DRUG MANUFACTURING, MEDICAL DEVICE MANUFACTURING, AND HOME MEDICAL DEVICE RETAILER LICENSING COSTS AND FEE ANALYSIS ANNUAL REPORT 2017

California Health and Safety (H&S) Code Section 111656.1 (e) requires the California Department of Public Health (CDPH) to annually publish a Report to the Legislature recommending the amount of license fees to be charged to drug manufacturers, medical device manufacturers, and home medical device retailer (HMDR) facilities for each Fiscal Year (FY) beginning July 1. Annual license fees are to be based on estimated program costs, taking into account the costs for inspections, investigations, enforcement, and other required activities. The fees collected will be deposited into the Drug and Device Safety (DDS) Fund 3018 to carry out and implement the licensing provisions of H&S Code, Division 104, Part 5, Chapter 6, Article 6.

The CDPH Food and Drug Branch (FDB) is responsible for licensing all drug and medical device manufacturers in California. Since 1970, CDPH has been mandated to license and inspect drug and medical device manufacturers, pursuant to H&S Code Section 111635, to ensure products are safe and effective, and to verify that firms are operating in compliance with the H&S Code and federal Good Manufacturing Practices (GMP) Regulations. Since 2000, FDB has also been responsible for the HMDR Program pursuant to H&S Code Section 111656 et seq. Through this program, CDPH licenses and inspects all HMDR facilities and warehouses in California that sell and rent home medical devices, and licenses HMDR exemptees (individuals who dispense prescription home medical devices). These inspections help verify that the businesses are engaging in sanitary practices to ensure the devices are being maintained in a manner that protects consumers.

This report describes the activities supported by the DDS Fund and the estimated program revenues and costs for FY 2017-18. The projected revenues for FY 2017-18 are $5.6 million. The program is projecting expenditures of $7.2 million, which will require the program to draw down DDS Fund reserves. Revenues in combination with the fund reserve are estimated to be sufficient to cover expenses for FY 2017-18. There will not be a fee increase in FY 2017-18. This illustrates that there is a structural imbalance of the fund which is not sustainable in future years. Ongoing revenue and expenditure levels will continue to be evaluated in future years for potential fee increases to alleviate the current structural imbalance of the fund.

I. INTRODUCTION

A. Background

The Food and Drug Branch (FDB) resides within the California Department of Public Health's (CDPH) Center for Environmental Health, Division of Food, Drug, and Cannabis Safety. FDB is responsible for regulating drug manufacturers, medical device manufacturers, home medical device retailer (HMDR) facilities, HMDR warehouses, and HMDR exemptees through inspections and maintenance of its licensing program under provisions of the Sherman Food, Drug, and Cosmetic Law (Sherman Law) under Health and Safety (H&S) Code Section 109875 et seq. In California, the safety, effectiveness, manufacturing, and labeling of drugs and medical devices have been regulated since the enactment of the California Pure Food and Drugs Act of 1906. Beginning in 1963, drug manufacturers and medical device manufacturers were required to obtain a license from CDPH before initiating manufacturing operations. Standards for medical devices were not separated from drug standards until 1978 when the Federal Government promulgated regulations differentiating drugs from medical devices. CDPH began licensing and inspecting HMDR facilities and licensing HMDR exemptees in January 2002, replacing licensing programs by the Board of Pharmacy (BOP) and the Bureau of Household Furnishing and Thermal Insulation pursuant to Assembly Bill (AB) 1496 (Olberg, Chapter 837, Statutes of 2000).

CDPH is required to inspect and license drug and medical device manufacturers pursuant to California H&S Code Section 111635. The H&S Code adopts existing and future federal Good Manufacturing Practices (GMP) regulations for drugs and medical devices (H&S Code Section 110105) that establish basic quality assurance standards for manufacturers.

In 1988, a federal law, the Prescription Drug Marketing Act of 1987 (PDMA) (Pub. L. 100-293, 102 Statute 95), was enacted in response to serious public health and safety problems associated with the "diversion market" for prescription drugs. Congress found that adulterated, mislabeled, sub-potent, expired, or counterfeit drugs were easily introduced into the national distribution system due to the existence and operation of a wholesale sub-market, commonly known as the "diversion market," where drug products are obtained from sources outside of normal channels of distribution. In 1990, the U.S. Food and Drug Administration (FDA) published final regulations establishing state guidelines for the minimum requirements for prescription drug storage and security as well as for the treatment of returned, damaged, and outdated prescription drugs. Further, wholesale drug distributors were required to establish and maintain inventories and records of all transactions regarding the receipt and distribution of prescription drugs and make these available for inspection and copying by authorized federal, state, or local law enforcement officials. In 1992, California adopted emergency regulations conforming to these FDA requirements, and CDPH began inspecting prescription drug manufacturers for compliance with PDMA regulations.

The licensing inspection requirements for drugs and medical device manufacturers and HMDR facilities are different. Inspections for HMDR facilities are generally uniform and include pre-licensing inspections and annual inspections, whereas licensing functions for drug and medical device manufacturers fall into two general types:

- new license applicant evaluation or inspection; or
- for-cause investigations.

B. Statutory Requirements for Report to the Legislature

In 2000, AB 1496 (Olberg, Chapter 837, Statutes of 2000) was signed into law. This legislation required the licensing of HMDR facilities by CDPH. The H&S Code sets specific facility and operational performance standards and requires CDPH to perform inspections prior to licensing each facility. It also requires CDPH to provide an annual report to the Legislature recommending proposed license fee changes based upon the estimated licensing and inspection costs needed to support the program.

H&S Code Section 111656.1 (e) states:

> *Commencing January 1, 2003, the department shall, on or before January 10 of each year, provide the Legislature with a report recommending fee rates. The report shall describe the estimated licensing program costs for the next fiscal year to carry out the licensing, regulating, inspecting, and other duties and responsibilities of the department in carrying out the provisions of this article. The department shall describe the projected license fee amount so that license fee revenues cover the estimated licensing program costs. Projected fee amounts shall take into account the resources required for inspections and other activities to support licensing during the previous year and shall take into account projected workload and changes in department overhead costs during the upcoming year.*

II. LICENSE INSPECTION AND INVESTIGATIVE ACTIVITIES

A. Drug and Medical Device Manufacturing License Inspections and Investigations

The purpose of the Drug and Medical Device Manufacturing License Program is to prevent the sale and distribution of drug and medical devices that:

- have been improperly manufactured;
- are adulterated, misbranded, or falsely advertised;
- have not been shown to be safe or effective; or
- have not met medical device design validation requirements.

Inspections and investigations of manufacturers allow for the identification and correction of defective products that put California's population at risk. FDB ensures drug and medical device manufacturers meet good manufacturing practices requirements and comply with all applicable statutory and regulatory provisions to prevent unqualified and unprepared firms from placing dangerous drugs and medical devices into the hands of medical practitioners and consumers. Firms cannot legally manufacture without a valid license. If the firm is not able to provide the documented evidence as prescribed under H&S Code Section 111635, CDPH is required to inspect the place of manufacture prior to issuing a new drug and medical device manufacturing license. After the initial license is issued, CDPH can inspect or investigate a manufacturer for-cause when the Department makes the determination that the public health and safety is at risk. Inspections and investigations may additionally be

conducted due to complaints, product recalls, or upon request by the FDA to assist with enforcement activities. A license may be denied, suspended, or revoked by CDPH if the manufacturer is found in violation of any applicable part of the Sherman Law.

CDPH drug and medical device manufacturer licensing inspections/investigations ensure:

- new manufacturers have effective systems in place before they manufacture and ship drugs and medical devices;
- firms have qualified personnel performing critical process steps;
- all critical drug manufacturing processes, such as purification operations and potency testing, are validated to be appropriate, effective, reproducible, precise, and that firms consistently follow validated processes;
- medical devices are designed and processed with proper validation;
- critical process steps such as sterilization are validated to be effective and that firms consistently follow validated procedures;
- firms investigate all problems that are identified during manufacturing or reported by customers and that corrective and preventive actions are taken to prevent future problems;
- education is provided as needed to help industry understand and comply with manufacturing requirements;
- CDPH has a means to identify when enforcement action is needed to prevent the distribution of unsafe or ineffective drugs; and
- divergent market drug products are not introduced into the national distribution system.

B. Home Medical Device Retailer License Inspections and Investigations

Provisions of the Sherman Law under H&S Code Section 111656 require that HMDR facilities be inspected prior to licensure and annually thereafter. The licensing of HMDR facilities is important to protect California consumers from unsafe, contaminated medical devices, and adulterated prescription medical oxygen. Mandated license inspections ensure that competent and knowledgeable persons (HMDR exemptees) dispense, repair, calibrate, and maintain prescription devices, and sell prescription medical oxygen. The wide variety of medical devices and how they are assembled, maintained, cleaned, sanitized, and utilized requires regulatory oversight. CDPH oversight of HMDR facilities ensures the safety of medical devices sold to consumers who use them to treat or convalesce at home. Such medical devices include ventilators, oxygen concentrators, drug delivery systems for home medication, hospital beds, traction equipment, and other home medical devices. Prescription medical oxygen is also inspected by CDPH to ensure it is suitable for life support. CDPH coordinates its inspection findings with the California Department of Health Care Services (DHCS)

Medi-Cal Provider Enrollment Branch, the Medi-Cal Fraud Prevention Bureau, and the Audits and Investigations Division, which includes the Medical Review Branch and the Investigations Branch, to eliminate fraud by identifying HMDR facilities that falsely bill for products never sold or utilized.

III. LICENSE FEES AND COST ANALYSIS

Program License Fees, Revenue, and Program Costs

H&S Code Sections 111625, 111630, and 111656.1 authorizes CDPH to establish and adjust fees for drug manufacturer, medical device manufacturer, and HMDR licenses. The DDS Fund (3018) was established to deposit fees to fund the Drug and Medical Device Safety Program.

This report describes the activities supported by the DDS Fund and the estimated program revenues and costs for FY 2017-18. The projected revenues for FY 2017-18 are $5.6 million. The program is projecting expenditures of $7.2 million, which will require the program to draw down DDS Fund reserves. Revenues in combination with the fund reserve are estimated to be sufficient to cover expenses for FY 2017-18. There will not be a fee increase in FY 2017-18. This illustrates that there is a structural imbalance of the fund which is not sustainable in future years. Ongoing revenue and expenditure levels will continue to be evaluated in future years for potential fee increases to alleviate the current structural imbalance of the fund.

The Drug and Medical Device Safety Program issues various license types for drug manufacturers, medical device manufacturers, HMDR facilities, and HMDR exemptee licensees under the current licensing fee schedule. Table I provides the current license types and the current license fees for FY 2017-18. Table II provides the estimated number of applications, the renewal frequency, and estimated revenue for each type of license for new and renewal applicants for FY 2017-18.

Table I – Drug and Medical Device Safety Program License Types, Fees and Totals*

License Type	Number of Licensees	FY 2017-18 Fee	License Renewal Frequency
Drug Manufacturing License	467	New $2,080 Renewal $3,380	One-time Biennial
Prescription Drug Marketing Act	312	New $100 Renewal $200	One-time Biennial
Medical Device Manufacturing License	1,387	New $2,080 Renewal $3,380	One-time Biennial
Home Medical Device Retailer	1,149	$1,105	Annual

Home Medical Device Retailer Out of State	310	$195	Annual
Home Medical Device Retailer Warehouse	22	$553	Annual
Home Medical Device Retailer Exemptee	2,475	New $325 Renewal $195	One-time Annual

*Inventory totals are point-in-time

Table II – Drug and Medical Device Safety Program Projected Revenue by License Type

Revenue Source (by License Type)	Projected Incoming Applications	License Fee	Estimated FY 2017-18 Revenue
Estimated New Applications FY 2017-18			
Drug Manufacturing License	46	$2,080	$95,680
Medical Device Manufacturing License	207	$2,080	$430,560
Home Medical Device Retailer	181	$1,105	$200,005
Home Medical Device Retailer Out of State	74	$195	$14,430
Home Medical Device Retailer Warehouse	6	$553	$3,318
Home Medical Device Retailer Exemptee	634	$325	$206,050
Total - New	1,148		$950,043
Estimated Renewal Applications FY 2017-18			
Drug Manufacturing License	212	$3,380	$716,560
Drug Manufacturers with Prescription Drug Marketing Act Fees	156	$200	$31,200
Medical Device Manufacturing License	673	$3,380	$2,274,740
Home Medical Device Retailer	1,108	$1,105	$1,224,340

Home Medical Device Retailer Out of State	331	$195	$64,545
Home Medical Device Retailer Warehouse	22	$553	$12,166
Home Medical Device Retailer Exemptee	1,769	$195	$344,955
Total - Renewal	4,271		$4,668,506
Total	**5,419**		**$5,618,549**

To support all licensing and inspection activities, as well as operational activities, the program requires 35.5 staff and associated budget of $7.2 million in FY 2017-18. The number of field and office staff and the cost of the Drug and Medical Device programs are based on the estimated time to complete inspections, compliance investigations, and enforcement activities. In addition to CDPH's requirements to inspect and license drug and medical device manufacturers pursuant to California H&S Code Section 111635, the Department is required to follow-up on Drug, Medical Device, and HMDR complaints, alerts, referrals, and recalls. During FY 2015-16, these consisted of approximately 240 additional follow-up activities.

Investigators will complete and conduct drug, medical device, and home medical device retailer for-cause inspections, complaint referrals, and investigations of a firm's overall compliance with California laws and regulations. Pre-license inspections of drug manufacturers will require an extensive examination of the facility, quality control, employee qualifications, process validation, packaging, labeling, and documentation. For-cause inspections and investigations generally are more in-depth than a new license inspection and consist of examining corrective actions from previous inspections, following up on product failures, auditing newly established production processes and resulting records, and evaluating changes and new products. Additional time is necessary to investigate fraudulent activities and develop legal and administrative actions.

In addition, program staff will review and analyze licensing applications and other required documents, provide technical assistance, provide support to the program, and oversee financial operations. Table III reflects the operational budget detail for the Drug and Medical Device Safety Program for FY 2017-18.

Table III - Drug and Medical Device Safety Program Operational Costs FY 2017-18

Position	Function	Complete cost per FTE	FTE	Total Cost
Staff Services Analyst	Oversee financial operations and provide program support. Review and analyze licensing applications and other required documents. Search existing master data file for information on the licensee and analyze data for consistency with new application. Identify and notify applicants of deficiencies and/or other	$125,004	2.0	$250,008

	outstanding violations identified by the investigators via written correspondence. Verify license eligibility based on compliance with statutory and regulatory requirements, licensing criteria and knowledge of the H&S Code. Prepare Drug and Medical Device Manufacturer licenses and Home Medical Device Retail licenses in accordance with Unit procedures. Monitor license status by gathering confidential information from a variety of sources. Analyze personal disclosure statements submitted by Drug Manufacturer applicants.			
Staff Services Manager I	Perform analysis of program data collected. Provide technical assistance requiring high level of program knowledge and expertise. Oversee maintenance of complex databases. Develop and maintain a tracking system for FDB to track and monitor retail outlets dispensing medical devices for home use for compliance with licensure requirements and individuals licensed to dispense these products. Analyze program data and prepare management reports. Oversee and coordinate development and establishment of licensing and registration processes with written procedures for new and renewal licensing, issuance/denial criteria, and administrative processes. Discuss denied licenses with applicants and issue denial letters when appropriate. Track program budget to monitor all revenue and expenditures. Coordinate the revenue monitoring and solvency of the Drug and Device Safety Fund. Respond to the most complex budgetary issues within the Program. Prepare reports for management.	$167,951	0.5	$83,976
Investigator	Complete/conduct drug, medical device, and home medical device retailer for-cause inspections, complaint referrals and investigations of firm's overall compliance with California law and regulations, facility, products, procedures, labels, ingredients or components; check quality control, review employee training and experience, issue notices of violation, draft compliance actions when necessary. Complete referral inspection/investigation of firm's overall compliance, facility, products, procedures, labels, ingredients or components; check quality control, review employee training and experience, issue notices of violation, draft compliance actions when necessary.	$179,176	14	$2,508,464

Environmental Scientist	Inspect drug and medical device manufacturers and HMDR facilities. Perform preliminary and secondary analysis, research, and surveys of typical drug and medical device manufacturing and HMDR practices. Prepare for inspection activities and complete license inspection to determine ownership, adequacy of facilities, personnel qualifications, and compliance with applicable regulations.	$137,912	8.0	$1,103,296
Senior Environmental Scientist	Provide supervision and training related to surveys and investigations of drug and medical device manufacturing and HMDR practices. Prepare Environmental Scientist work assignments. Evaluate Inspection Reports. Audit/Review employee performance. Prepare Individual Development/Employee Appraisal Plans and probation reports. Supervise and conduct the most highly technical and complex inspections. Provide Environmental Scientist field training. Evaluate results of preliminary and secondary analysis, research, surveys, and investigations of typical medical device manufacturing and Home Medical Device Retailer practices.	$247,041	1.0	$247,041
Supervising Food and Drug Investigator	Provide supervision and training, evaluate inspection and license reports, and coordinate investigations and enforcement. Prepare investigator work assignments. Evaluate inspection reports. Audit/Review employee performance. Prepare Individual Development/Employee Appraisal Plans and probation reports. Evaluate inspection data entry. Provide investigator field training. Conduct complex compliance investigations. Prepare investigation reports. Complete complex compliance actions. Prepare regulatory letters. Conduct hearings and other enforcement actions. One supervisor oversees the drug program, one the medical device program, and the other the HMDR program. Two are based in Northern California and the other in Southern California.	$202,141	3.0	$606,423
Food and Drug Program Specialist	Oversee, coordinate, and facilitate investigations, inspections, evidence collection and sampling, and enforcement activities to ensure overall statewide goals and objectives for program areas are being met. Identify strengths and deficiencies of such programs and provide administrative and technical consultation to improve and correct program deficiencies. Review and evaluate monthly	$219,647	4.0	$878,588

	activity and inspection reports to determine patterns or trends in the drug, medical device manufacturing industry. Collect, analyze, and report significant findings to Section Chief. Coordinate and oversee special projects and survey activities with Branch scientific staff. Complete complex FDA referral investigations of firm's overall compliance, facility, products, procedures, labels, ingredients or components; check quality control, review employee training and experience, issue notices of violation, prepare narrative reports, travel and draft compliance actions when necessary. Act as the statewide CDPH expert on drug, medical device manufacturing, and home medical device retailer issues. Develop correspondence and publications that clarify or explain laws, regulations, and FDB enforcement policies and distribute to local health jurisdictions, industry, legislators, other state and federal agencies, special interest groups, consumers and the public. In addition, prepares correspondence and training materials and makes presentations regarding FDB policies, laws, and regulations.			
Unit Chief	Second line supervisor of regulatory and law enforcement personnel. Manage program staff performing activities specific to the drug safety and medical device units and its licensing program. Coordinate the licensing activities assuring resources are available to implement the licensing program and identify unlicensed and non-compliant firms. Prepare performance evaluations, probation reports, and oversee staff development. Oversee the legal, investigative, educational and enforcement activities specific to the drug and medical device safety units. Track and forecast emerging public health trends affecting the licensed industries, and develop regulatory strategies to address them. Develop and direct staff specifically to respond to: 1) adulterated, misbranded, falsely advertised or otherwise unsafe drugs and medical devices; 2) unsafe or otherwise improper production and processing practices; and 3) drug and medical device recalls and complaint investigations. Organize and confer on the coordination of technical activities to assure consistency of investigative, inspectional, law enforcement, and other activities with other departmental, local, state, and federal agencies and programs. Assure	$243,527	2.0	$487,054

	utilization of state-of-the-art scientific and technical developments that can detect and prevent consumers being exposed to unsafe products and production practices. Evaluate and audit statewide drug licensing program plans, policies, procedures, budgets, training, education efforts, and all other activities necessary to assure product safety. Collaborate with the FDA, Board of Pharmacy, Medical Board of California, and other regulatory agencies to develop work plans and share issues and concerns to protect public health. Supervise staff of the Unit, implement and monitor the activities specific to the drug, medical device safety and HMDR unit and its licensing program. Coordinate work planning with FDA and allied agencies; manage licensing activities; assure resources and expertise are available to support enforcement activities and implement the licensing program. Manage the identification of unlicensed and non-compliant firms. Oversee the scientific, legal, investigative, educational, and enforcement activities specific to the work of the drug, medical device safety and HMDR units. One of the positions supervises the medical device and HMDR programs while the other supervises the drug program.			

Section Chief	Manage investigative, scientific, administrative support and second-level supervisory section staff of law enforcement personnel; responsible for implementing and monitoring the activities specific to the drug and medical device safety sections and its licensing program. Coordinate the licensing and enforcement activities assuring resources and expertise are available to implement the licensing program and identify unlicensed and non-compliant firms. Prepare performance evaluations, probation reports and oversee staff development. Organize and direct the coordination of scientific and technical activities to assure consistency of investigative, inspectional, law enforcement and other activities with other departmental, local, state and federal programs. Assure utilization of state-of-the-art scientific and technical developments that can detect and prevent unsafe medical devices and production practices. Develop, maintain, and carry out statewide medical device and home medical device retailer program plans, policies, procedures, budgets, training, education efforts and all other activities necessary to assure product safety. Provide CDPH technical and public health input to regulatory processes including development of proposed regulations and response to public comment; assess effectiveness of implemented processes for addressing public health concerns. Provide advice and consultation to CDPH and other state, local, and federal agencies regarding technical matters related to medical devices; represent CDPH at relevant intradepartmental, interagency, and/or public meetings.	$265,397	1.0	$265,397
Total Personal Services				$6,430,247
Operating and Overhead expenses (equipment, pro-rata)				$736,753
Total Staff and Programmatic Estimated Cost			**35.5**	**$7,167,000**