THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

SEP 27 2007

Edward M. Kennedy
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate
Washington, D.C. 20510

Dear Chairman Kennedy:

I want to congratulate you for completing action on the FDA Amendments Act, H.R. 3580. As you know, this bill contains the reauthorization of user fees for drugs and devices as well as other key provisions vital to the Food and Drug Administration. We appreciate your support and hard work on this legislation, the commitment of Members of the Committee in working out these measures, and the support shown by the full Senate.

I am including as enclosures to this letter the two commitment documents for the drug and device user fee programs which outline the agreements between the Agency and the industries with regard to application approval timeframes, issuance of guidances, post market program enhancements, and milestones for other activities to be supported by user fees. These documents cover fiscal years 2008 through 2012 and they represent the commitment of the Department and the FDA to carry out the goals under the mutual agreement with the industries.

Thank you again for successful enactment of the FDA Amendments Act. I look forward to working with you as we proceed with the implementation of this legislation.

Sincerely,

Michael O. Leavitt

Enclosures

cc: Senator Enzi

ENCLOSURE

MDUFA PERFORMANCE GOALS AND PROCEDURES

The performance goals and procedures of the FDA Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER), as agreed to under the medical device user fee program in the Medical Device User Fee Amendments of 2007, are summarized as follows:

I. REVIEW PERFORMANCE GOALS--FISCAL YEAR 2008 THROUGH 2012 AS APPLIED TO RECEIPT COHORTS

All references to "days" mean "FDA days."

A. ORIGINAL PREMARKET APPROVAL (PMA), PANEL-TRACK PMA SUPPLEMENT, AND PREMARKET REPORT SUBMISSIONS

FDA will issue a decision for 60% of non-expedited filed submissions within 180 days, and for 90% within 295 days.

B. EXPEDITED ORIGINAL PMA AND PANEL-TRACK PMA SUPPLEMENT SUBMISSIONS

FDA will issue a decision for 50% of expedited filed submissions within 180 days, and for 90% within 280 days.

C. PMA MODULES

FDA will take action on 75% of PMA modules within 90 days, and on 90% within 120 days.

D. 180-DAY PMA SUPPLEMENTS

FDA will issue a decision for 85% of 180-day PMA supplements within 180 days, and for 95% within 210 days.

E. REAL-TIME PMA SUPPLEMENTS

FDA will issue a decision for 80% of real-time PMA supplements within 60 days, and for 90% within 90 days.

F. 510(K) SUBMISSIONS

FDA will issue a decision for 90% of 510(k)s within 90 days, and for 98% within 150 days.

G. MAINTENANCE OF CURRENT PERFORMANCE

The agency will, at a minimum, maintain current review performance in review areas such as IDEs and 30-day Notices where specific quantitative goals have not been established.

H. INTERACTIVE REVIEW

The agency will continue to incorporate an interactive review process to provide for, and encourage, informal communication between FDA and sponsors to facilitate timely completion of the review process based on accurate and complete information. Interactive review entails responsibilities for both FDA and sponsors.

Interactive review is intended to: (a) prevent unnecessary delays in the completion of the review; (b) avoid surprises to the sponsor at the end of the review process; (c) minimize the number of review cycles and extent of review questions conveyed through formal requests for additional information; and (d) ensure timely responses from sponsors.

All forms of communication should be used as "tools" to facilitate interactive review. These include, but are not limited to, the following: (a) e-mail; (b) one-on-one telephone calls; (c) telephone conferences; (d) videoconferencing; (e) fax; and (f) face-to-face meetings.

Application of these tools for interactive review should remain flexible, balancing speed and efficiency with the need to ensure supervisory concurrence for significant information requests. In general, e-mail should be the preferred mechanism for informal communication because it creates a clear record of the interaction, with telephone calls used primarily for seeking clarification or answers to very limited questions. Conferencing, either by telephone, video, or face-to-face mechanisms, should be used at key milestones, such as those described below, in the review process.

A cornerstone of interactive review is that communication should occur as needed to facilitate a timely and efficient review process. In particular:

1. There should be regular, informal communication from FDA to seek clarification on issues that can be resolved without substantive review or analysis. When appropriate, FDA will also informally communicate substantive review issues if FDA determines that it will facilitate a timely and efficient review process.

   Because all reviewers will be active participants in the interactive review process established under this agreement, it should be a natural outcome that

reviewers will share issues with sponsors prior to incorporating them into formal letters.

2. Whenever FDA informally requests additional information, the sponsor and FDA will determine an acceptable timeframe for submission of the information. If the information is not received within the agreed upon timeframe or the information is incomplete, the application will be placed on hold (with a major deficiency letter or AI letter) until the information is received.

FDA will develop a guidance document that incorporates these general principles and should make them operational within the review processes for 510(k)s, PMAs, and PMA supplements. FDA will use this detailed interactive review summary as the basis for a guidance document which FDA will issue as a "final" guidance 6 months from the date an agreed upon legislative package is sent to Congress or 3 months from the date of enactment, whichever is later.

I. MEETINGS

FDA will make every effort to schedule both informal and formal meetings, both before and during the review process, in a timely manner and industry will make every effort to provide timely and relevant information to make the meetings as productive as possible. These meetings include, but are not limited to the following: pre-submission meetings, determination meetings, agreement meetings, and Day-100 meetings (for PMAs).

J. QUARTERLY PERFORMANCE REPORTS

The agency will report quarterly its progress toward meeting the quantitative goals described in this letter and will do so in a timely manner. In addition, for all submission types, FDA will track total time (time with FDA plus time with the company) from receipt or filing to final decision for approval, denial, SE, or NSE. FDA will also provide de-identified review performance data for the branch with the shortest average review times and the branch with the longest average review times for 510(k)s, 180-day supplements, and real-time supplements on an annual basis. Finally, in an effort to enhance accountability and transparency, the agency will meet with the industry informally on a semi-annual basis to discuss issues related to performance and expenditures. At that time, the agency will provide a qualitative update on how funding is being used for the device review process, including investments in information technology and training.

K. NEW COMMITMENTS

All agency guidance documents will reflect commitments made in this goals letter, as appropriate. If a guidance document has not been updated, FDA will still act in accordance with the goals letter.

L. REVIEWER TRAINING

As resources permit, the agency will apply user fee revenues to support reviewer training that is related to the process for the review of devices, including training to enhance scientific expertise. FDA will provide summary information on the types of training provided to its staff on an annual basis.

M. GUIDANCE DOCUMENT DEVELOPMENT

The agency will continue to develop guidance documents to the extent possible without adversely impacting the timeliness of review of MDUFA-related submissions. Each year, FDA will post a list of guidance documents it is considering for development and provide stakeholders an opportunity to provide comments and/or draft language for those topics as well as suggestions for new or different guidances.

N. IMAGING DEVICES WITH CONTRAST AGENTS OR RADIOPHARMACEUTICALS

FDA will, after consultation with affected parties, develop a guidance document intended to ensure timely and effective review of, and consistent and appropriate postmarket regulation and labeling recommendations for, diagnostic imaging devices used with imaging contrast agents and/or radiopharmaceuticals approved for the same or different indications. Draft guidance will be published by the end of FY 2008, and will be subject to a 90-day public comment period. FDA will issue a final guidance within one year of the close of the public comment period.

O. IN VITRO DIAGNOSTICS

To facilitate the development of in vitro diagnostic (IVD) devices, FDA will continue to explore ways to clarify the regulatory requirements and reduce regulatory burden, as appropriate, by:

1. Issuing new or revised guidance on:
   (a) the conduct of clinical trials involving de-identified leftover specimens;
   (b) clinical trial design issues for molecular diagnostic tests;
   (c) migration studies;
   (d) Herpes Simplex Virus IVDs;
   (e) enterovirus IVDs; and
   (f) influenza testing.

2. Conducting a pilot program to evaluate integrating the 510(k) review and Clinical Laboratory Improvement Amendments (CLIA) waiver review processes for possible increased efficiencies. This pilot will

include only voluntary participants from industry, and the 510(k) applications involved in the pilot will not be counted toward the MDUFA performance goals.

3. Considering industry proposals on acceptable CLIA waiver study protocols, developing acceptable protocol designs, and making them available by adding appendices to the CLIA waiver guidance or by posting redacted protocols on the FDA website.

4. Tracking review times for CLIA waiver applications, sharing this information with industry annually and, at the end of year two of MDUFA, evaluating whether CLIA waiver user fees and performance goals should be considered for MDUFA III.

5. Reviewing a list of class I and II low risk IVD devices, to be provided by industry, to determine whether any of them could be exempted from premarket notification, and allowing interested parties to petition for exemptions consistent with section 510(m)(2) of the Federal Food, Drug, and Cosmetic Act (the Act).

6. Performing a review of its pre-IDE program for IVD devices. This review will be conducted during the first year of MDUFA and will focus on specific issues identified by industry that they would like to see addressed by the program review.

P. TRANSITION PERIOD

FDA will meet the performance goals established under MDUFA II beginning October 1, 2007. However, because, beginning October 1, 2007, FDA will be reviewing submissions under MDUFMA I goals and MDUFA II goals at the same time (due to submissions received in FY 2007 but acted upon in FY 2008), FDA will not manage to the MDUFMA I cycle goals for those submissions received in fiscal year 2007. FDA will meet the MDUFMA I decision goals for submissions received in FY07 and will apply the principles of interactive review.

II. DEFINITIONS AND EXPLANATIONS OF TERMS

A. FDA DECISION

PMA decisions are approval, approvable, approvable pending GMP inspection, not approvable, withdrawal, and denial. 510(k) decisions are substantially equivalent (SE) or not substantially equivalent (NSE).

Not Approvable decisions will generally not be issued on the first review cycle. The rare cases where a not approvable decision might be issued on the first review

cycle would include situations such as (1) the application is complete and there are no outstanding FDA issues, but the data do not demonstrate that the device provides reasonable assurance of safety and effectiveness, or (2) the PMA receives a not approvable recommendation from an advisory panel. Any "Not Approvable" decision will be accompanied by the rationale for its issuance.

Submission of an unsolicited major amendment to any original PMA, premarket report, panel-track supplement, or 180-day supplement extends the FDA decision goal date by the number of days equal to 75% of the difference between the filing date and the date of receipt of the amendment.

B. EXPEDITED REVIEW

The MDUFA II expedited review performance goals will apply only to devices for which expedited review has been granted in accordance with section 515(d)(5) of the Act.

If in any one fiscal year, the number of submissions granted expedited review equals 10 or more, FDA will be held to the expedited review performance goals for that fiscal year.

If in any one fiscal year, the number of submissions granted expedited review is less than 10, then it is acceptable to combine the submissions for the following year(s) in order to form a cohort of 10 submissions upon which FDA will be held to the performance goals. However, FDA will continue to report performance data on the cohort for each fiscal year.

C. PMA MODULES

Action on a PMA module includes accepting the module, request for additional information, receipt of the PMA, and withdrawal of the module.

D. 180-DAY PMA SUPPLEMENTS

Decisions for 180-day PMA supplements include approval, approvable, approvable pending GMP inspection, and not approvable.

FDA will implement a major deficiency letter process for 180-Day PMA Supplements (similar to that for PMAs).

E. REAL-TIME PMA SUPPLEMENTS

Decisions for real-time PMA supplements include approval, approvable, and not approvable.