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Fact Sheet

FDA Globalization Act of 2009: Drug Safety Provisions

The Pew Prescription Project promotes consumer safety through reforms in the approval, manufacture, and marketing of prescription drugs

"FDA needs additional tools to move our oversight capabilities into the 21st century. FDA needs to access regulatory information quickly, hold all parties responsible for the quality of products in the supply chain, and have reasonable and reliable options for enforcement." (Principal Deputy Commissioner Joshua M. Sharfstein, 2010)

At least 80% of the active ingredients in U.S. prescription drugs now originate overseas. (US Government Accountability Office, 2007)

Regulatory demands placed on the Food and Drug Administration far exceed its ability to respond. (FDA Advisory Board, Subcommittee on Science and Technology, 2007)

The Food and Drug Administration Globalization Act of 2009 (H.R.759) seeks to secure the safety of imported prescription drugs and active pharmaceutical ingredients through greater FDA authority and manufacturer responsibility, and increased inspections of prescription drug and active pharmaceutical ingredient manufacturing sites abroad.

Introduced: February 4, 2009 by Mr. Dingell (D-MI), Mr. Stupak (D-MI), and Mr. Pallone (D-NJ)

Why is this legislation needed?

The past decade has witnessed both a rapid growth in foreign manufacturing of pharmaceuticals, with no corresponding increase in FDA resources. As a result, FDA inspections and regulation have not kept pace with the increasingly globalized drug supply. In some cases, such as heparin in 2007 and 2008, adulterated drugs have entered the US drug supply with lethal consequences.

The past decade has witnessed rapid growth of overseas pharmaceutical manufacturing.[i] At least 80% of the active ingredients in U.S. prescription drugs now originate overseas,[ii] often in countries with weak enforcement of quality standards.

The number of drugs manufactured at foreign sites has doubled since 2001.[iii] The use of foreign independent suppliers of raw materials, excipients (non-active ingredients) and active ingredients have created increasingly complex supply chains that are difficult to track and secure. Globalization and outsourcing in the pharmaceutical sector is projected to increase further.[iv]

Will the bill increase foreign inspections?

The FDA Globalization act would require all manufacturing sites that must register with the FDA[v] to be inspected every two years, or every four years if the FDA deems it appropriate after balancing risks and other factors. (Currently the FDA must inspect domestic manufacturing sites every two years, but there is no such requirement for inspections of foreign sites.) In addition, all establishments producing new products or products that have undergone a major change must be inspected, according to the bill, before the product is introduced into interstate commerce.

The bill also directs the secretary to maintain a dedicated foreign inspectorate in sufficient number to ensure foreign inspection rates match their domestic counterparts.

Does the bill address manufacturing supply chain safety and transparency?

The bill would require manufacturers to have in place quality risk management plans (QRMPs) which would dictate internal quality assurance processes for drugs and drug ingredients as they are manufactured, processed, and moved by different entities along the supply chain. These plans would include assessment by the company of suppliers prior to contracting, as well as ongoing quality assurance through periodic site audits and component testing. The FDA may audit QRMPs during inspections.

In addition to the above, the FDA Globalization Act mandates that drug makers be able to produce, upon request, an electronic statement documenting every step in the supply chain of a drug. This statement must include suppliers and manufacturers of raw materials and other drug ingredients, as well as distributors and shippers. The statement must certify that all drugs, materials and ingredients were processed and conveyed under appropriate conditions.

Finally, the bill requires manufacturers to identify the country of origin of their drugs and active pharmaceutical ingredients on their websites.

Does the bill address the distribution supply chain for finished products?

The bill requires importers of any food, drugs, devices or cosmetics to register with the Secretary and be assigned a unique identification number. Importers not already registered with FDA as manufacturers would be subject to an importer fee of $10,000.

The bill also gives FDA the authority to hold and destroy, at the point of importation, drugs that are deemed a health risk. For product valued over $2,000, an opportunity for an informal hearing would be provided before destruction.

There are no distribution pedigree or serialization requirements in the bill.

What other new authorities would be given to the FDA?

FDA would have the authority to review both QRMPs and electronic supply chain documentation during inspections.

FDA would also be given the authority to order a recall or cessation of distribution of drugs and other products if an adulteration has occurred and the manufacturer does not take voluntary action.

Finally, the bill would give FDA the authority to subpoena witnesses, testimony and documents for investigations, hearings and procedures regarding violations of FDCA.

Would the bill improve tracking of drugs and foreign manufacturing sites?

The Globalization Act would attempt to harmonize multiple tracking systems by assigning a unique identification number to any entity registering with the FDA.

By requiring manufacturers to be able to produce electronic documentation of their supply chains, the Act would improve the tracking of drugs and drug ingredients.

How will increased inspections be funded?

The bill would assess a fee at manufacturer registration to fund good manufacturing practice (GMP) inspections. Fee levels would be set by the Secretary of HHS to cover necessary costs, and would be annually adjusted based on inflation, FDA inspection workload, and other considerations.

The bill stipulates that the user fees will be allocated only if other appropriations to the FDA also reflect the adjustment factors noted above, ensuring at a minimum that other appropriations also increase with inflation.

Under the provisions of this bill, the FDA would levy fees on all entities required to be registered with FDA, including sites manufacturing finished pharmaceutical products and active ingredients. However, entities engaged in the production of inert "excipient" ingredients are exempted from the fee.

How would this bill affect generic drug manufacturers?

In addition to the registration fee above, levied on all manufacturers, the bill establishes a new fee for generic drug applications (ANDAs) to fund pre-approval generic drug inspections. Like the drug and device registration fee, the ANDA fee would be set by the Secretary of HHS to cover necessary costs, and would be annually adjusted by the same factors. These application fees would take effect in 2010, and would sunset in 2014.

Penalties

For general violations of the FDA Globalization Act, maximum penalties are $100,000 for an initial violation and $200,000 for a subsequent violation of the same requirement. Maximum penalties for entering false data on importation-related documents are $200,000, and maximum penalties for failing to comply with ordered actions (such as recall) are $250,000 per day.

The bill also significantly increases penalties for counterfeiting. Imprisonment limits for convicted counterfeiters would increase from 3 to 20 years. If the counterfeit causes death, prison terms may be up to life.

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[i] Woodcock, Janet. 2008. "The FDA's Response to Biogenerics, QA and Globalization." *Unbranding Medicines: The Politics, Promise, and Challenge of Generic Drugs.* Harvard Interfaculty Initiative on Medications and Society.

[ii] U.S. Government Accountability Office. (2007, November). Drug Safety: Preliminary Findings Suggest Weakness in FDA's Program for Inspecting Foreign Drug Manufacturers. (Publication No. GAO-08-224T)

[iii] Woodcock, Janet. 2008. "The FDA's Response to Biogenerics, QA and Globalization." *Unbranding Medicines: The Politics, Promise, and Challenge of Generic Drugs.* Harvard Interfaculty Initiative on Medications and Society.

[iv] Shahani, Shalini. "Contract Pharmaceutical Manufacturing, Research and Packaging". BCC Research, Wellsley, MA. October 2009.

[v] This would include sites producing finished drugs as well as active pharmaceutical ingredients (APIs.) The FDCA requires registration of "every person who owns or operates any establishment … engaged in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs or a device or devices shall register with the Secretary his name, places of business, and all such establishments." The Act further clarifies that a registrant must also register: "any additional establishment which he owns or operates in any State and in which he begins the manufacture, preparation, propagation, compounding, or processing of a drug or drugs or a device or devices" FDCA Section 510(b) and (d) (21 U.S.C. 360)