Origins and Overview of the Organizational Structure of FDA and Drug Regulation

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FDA Mission: FDCA Section 903(b) (21 U.S.C. § 393(b))

The Administration shall—

(1) Promote the public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner;

(2) With respect to such products, protect the public health by ensuring that—

(A) foods are safe, wholesome, sanitary, and properly labeled;

(B) human and veterinary drugs are safe and effective;

(C) there is reasonable assurance of the safety and effectiveness of devices intended for human use;

(D) cosmetics are safe and properly labeled; and

(E) public health and safety are protected from electronic product radiation;

(3) Participate through appropriate processes with representatives of other countries to reduce the burden of regulation, harmonize regulatory requirements, and achieve appropriate reciprocal arrangements; and

(4) As determined to be appropriate by the Secretary, carry out paragraphs (1) through (3) in consultation with experts in science, medicine, and public health, and in cooperation with consumers, users, manufacturers, importers, packers, distributors, and retailers of regulated products.

FDA's Multiple Roles

- Review Processes
- Consumer Protection
- Civil and Criminal Enforcement
  - Adulteration and Misbranding, other violations
- Scientific
- Education
- International Harmonization
- Not Coverage and Reimbursement, Pricing
  - Although coordination to increase?

FDA: Organization

- FDA
  - Part of the Executive Branch
  - NOT an independent agency
  - Part of the Department of Health and Human Services (HHS)
    - "Secretary" of HHS serves at the pleasure of the president, but is subject to confirmation by the Senate
  - Commissioner of FDA is appointed by the president, but must be confirmed by the Senate (term of 5 years)
- Leadership and Areas of Emphasis Significantly Influenced by Political Changes and Congressional Oversight

Organization

- FDA "operating divisions" or "centers"
  - Each center—CDER, CBER, CDRH, CFSAN, CVM, CTP—regulates a specific class of "articles" and has some unique policies and procedures
    - New center as of August 2009: Center for Tobacco products ("CTP")
  - OCC, ORA and NCTR—non-product specific mandates

Center For Drug Evaluation & Research (CDER)

- Definition of Drug
  - Articles:
    - recognized in the United States Pharmacopeia, Homeopathic Pharmacopeia of the United States, or National Formulary,
    - intended for use in the *diagnosis, cure, mitigation, treatment, or prevention of disease* in man or other animals, and articles (other than food)
    - intended to affect the structure or any function of the body of man or other animals.

  21 U.S.C. § 321(g)(1)

- Product Jurisdiction
  - Drugs
    - New drugs, including pioneer (NDA) and generic drugs (ANDA)
    - Over-the-counter (OTC) monograph drugs
  - Therapeutic biologic products
  - Biosimilars

Center for Biologics Evaluation & Research (CBER)

- Definition of Biologic Product
  - any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man; 42 U.S.C. § 262(i)
  - also a “drug”; 21 U.S.C. § 321(g)(1)
- Product Jurisdiction
  - Vaccines
  - Blood products
  - Tissue and gene therapy products

Center for Devices & Radiological Health (CDRH)

- Definition of Device:
  - an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

    (1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

    (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

    (3) intended to affect the structure or any function of the body of man or other animals, *and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes*. 21 U.S.C. § 321(h)

CDRH (cont'd.)

- Definition of "electronic product radiation"
  - any ionizing or non-ionizing electromagnetic or particulate radiation, or any sonic, infrasonic, or ultrasonic wave which is emitted from an electronic product as a result of the operation of an electronic circuit in such product; 21 U.S.C. § 360hh
- Product Jurisdiction
  - Devices (Class I, Class II, Class III), including *in vitro* diagnostic devices (IVD)
  - Products emitting electronic product radiation, including medical devices

Center for Food Safety & Applied Nutrition (CFSAN)

- Definition of “food”
  - articles intended as food or drink for man or other animals, (2) chewing gum, (3) articles used as components, also includes
  - “dietary supplements”
    - A product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any ingredient above
      - Separate statutory framework
      - Separate definition for “dietary ingredients” used in dietary supplements

CFSAN (cont'd.)

"Components" include food ingredients such as:

- Food additives
  - Any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in it becoming a component or otherwise affecting the characteristics of any food, if such substances are not generally recognized as safe (GRAS), excluding pesticides, color additives, certain USDA prior sanctioned ingredients, animal drugs, and ingredients in dietary supplements
- Color additives
  - (1) a dye, pigment or other substance, synthesized, extracted or isolated, from a vegetable, animal, mineral or other source and
  - (2) when added or applied to a food, drug or cosmetic, or when applied to the human body, is capable of imparting color thereto

CFSAN (cont'd.)

- Cosmetics
  - (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and
  - (2) articles intended for use as a component of any such articles; except that such term shall not include soap
- 21 U.S.C. § 321(f) (food); 21 U.S.C. § 321(gg) (processed food); 21 U.S.C. § 321(ff) (dietary supplement); 21 U.S.C. § 321(s) (food additive); 21 U.S.C. § 321(t) (color additive)

Center for Tobacco Products (CTP)

Family Smoking Prevention and Tobacco Control Act (FSPTCA), P.L. 111-31, signed into law June 22, 2009, establishes new center at FDA.

- CTP officially launched on August 19, 2009 with appointment of director, Lawrence Deyton, M.D. M.S.P.H
- Product jurisdiction:
  - The term “tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, among other products, cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.
  - The term “tobacco product” does not apply to raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product. Nor does it mean something that is defined as a drug, device, or combination product under the Federal Food, Drug, and Cosmetic Act.

Center for Veterinary Medicine (CVM)

- Definition: “drug” intended for use for animals other than man
  - 21 U.S.C. § 321(g)
- Product Jurisdiction
  - Animal drugs (excludes veterinary biologics; regulated by USDA/APHIS under the Virus, Serum and Toxin Act)
  - Animal feed and feed ingredients
  - Veterinary medical devices (not actively regulated)

Other Offices/Centers

- Office of Chief Counsel (OCC)
  - Provides legal oversight and guidance to FDA
  - Directs agency legal actions
- Office of Regulatory Affairs (ORA)
  - Jurisdiction
    - Criminal investigations
    - Compliance and Enforcement
    - Regional/Field Operations

Relationship to Other Agencies

- **Federal Trade Commission** (FTC)
  - False and misleading advertising
    - OTC drugs, non-restricted medical devices, foods, cosmetics
  - Federal Trade Commission Act; 15 U.S.C. §§ 52-55
  - "Competent and reliable scientific evidence"; "prior substantiation"; "material misrepresentation"

- **Drug Enforcement Administration** (DEA)
  - Scheduling of Controlled Substances
  - Controlled Substances Act; 21 U.S.C. §§ 801 et. seq.

- **U.S. Department of Agriculture** (USDA)
  - Virus-Serum-Toxin Act; 21 U.S.C. §§ 151-159 [animal biologics]
  - Inspection acts (meat, poultry, eggs); see generally 21 U.S.C. §§ 601, 451, 1031

Relationship to Other Agencies (cont'd.)

- **Center for Medicare and Medicaid Services** (CMS)
  - Clinical Laboratory Improvement Act, 42 U.S.C. §§ 263a (as amended) (CMS/CDC/FDA)
  - Medicare/Medicaid, coverage and reimbursement
- **U.S. Department of Justice** (DOJ)
  - Main Justice, U.S. Attorneys
  - Represents FDA in court
- **Environmental Protection Agency**
  - Pesticides (FIFRA, 7 U.S.C. §§ 136-136y)
- **Securities and Exchange Commission** (SEC)
  - SEC filings/disclosure
- **The States**
  - State FDA laws and State Attorneys General (consumer protection)

FDA: Evolving Jurisdiction

- Federal Food, Drug, and Cosmetic Act (FDCA)
  - 21 U.S.C. §§ 301 et seq.
  - 52 Stat. 1040 (1938), as amended
- Public Health Service Act (PHSA)
  - 42 U.S.C. § 351

Themes in Evolving FDA Jurisdiction

- Repeated legislative actions, often triggered by disasters or scandals
- Congress increases FDA's powers and its responsibilities – but typically not its resources
- Burdens shifted to manufacturers

FDCA: Outline

- FDCA, 21 U.S.C. §§ 301 et seq.*
  - Chapter II, "Definitions"
  - Chapter III, "Prohibited Acts"
  - Chapter IV, "Food"
  - Chapter V, "Drugs"
  - Chapter VI, "Cosmetics"
  - Chapter VII, "General Authority"
  - Chapter VIII, "Imports and Exports"
  - Chapter IX, "Miscellaneous"
- All regulations at 21 CFR Parts 1 – 1299

* Note, parallel citations to Pub. L. No. 75-717 (1938), as amended

FDA Jurisdiction—Threshold Elements

- FDA has jurisdiction over
  - "**articles**" (and actions related thereto),
  - with an "**intended use**,"
  - as a "**drug** [including biological product]", "**medical device**", "**food**", "**color additive**", "**food additive**" "**tobacco**" or "**cosmetic**" for man or other animals*
  - as determined by the "**labeling**" of the article,
  - and over "**radiation emitting products**" (including both medical and non-medical products)
  - involving "**interstate commerce**"

* Excluding animal biological products (USDA)

Labels, Labeling and Advertising

- Label - 21 U.S.C. § 321(k)
  - ". . . written, printed or graphic matters upon the immediate container . . . ."
- Labeling - 21 U.S.C. § 321(m)
  - ". . . all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article." (emphasis added)
- Advertising
  - FDA Jurisdiction over Rx drug and restricted device advertising
  - FTC Jurisdiction over other advertising

Interstate Commerce

- Prohibited acts include "introduction or delivery for introduction into interstate commerce" of an adulterated or misbranded article; adulteration or misbranding of an article "in interstate commerce"; "receipt in interstate commerce" of an adulterated or misbranded article; "introduction or delivery for introduction into interstate commerce" of and adulterated or misbranded article and the delivery or proffered delivery thereof for pay or otherwise; "introduction or delivery for introduction into interstate commence" of any article in violation of section 404 (foods) or 505 (drugs and devices). 21 U.S.C. § 331 (a)-(d)
- Broadly construed to reach most products, including imports and exports, territories, reservations and trade zones
- "Component Jurisdiction"