FIELD ACTIVITIES - OFFICE OF REGULATORY AFFAIRS (ORA)

	FY 2004 Actual	FY 2005 Enacted [1/]	FY 2006 Estimate [/2]	Increase or Decrease
Program Level	**$528,853,000**	**$560,256,000**	**$590,444,000**	**+ $30,188,000**
Total FTE	**3,872**	**3,648**	**3,494**	**- 154**
Budget Authority	**$513,906,000**	**$540,144,000**	**$568,393,000**	**+ $28,249,000**
Food Defense	*$99,654,000*	*$121,425,000*	*$144,177,000*	*+$22,752,000*
Medical Device Review	*N/A*	*N/A*	*$4,200,000*	*+ $4,200,000*
GSA Rent and Other Rent-Related	*$64,416,000*	*$62,526,000*	*$65,001,000*	*+ $2,475,000*
Administrative Efficiencies			*-$715,000*	*-$715,000*
IT Reduction			*-$463,000*	*-$463,000*
Total FTE			*-155*	*-155*
User Fees	**$14,947,000**	**$20,112,000**	**$22,051,000**	**+ $1,939,000**
PDUFA	*$5,808,000*	*$7,506,000*	*$9,056,000*	*+ $1,550,000*
MDUFMA	*$676,000*	*$1,063,000*	*$1,371,000*	*+ $308,000*
MQSA	*$8,463,000*	*$11,543,000*	*$11,624,000*	*+ $81,000*
FTE	**55**	**66**	**67**	**+1**

FOR INFORMATIONAL PURPOSES

Office of Regulatory Affairs (ORA) - Field Activities Estimates [Non Add]				
Foods Program Estimate	*$262,686,000*	*$283,524,000*	*$305,408,000*	*+$21,884,000*
GSA Rent & Rent Related	*$36,655,000*	*$35,890,000*	*$37,290,000*	*+$1,400,000*
Human Drugs Program Estimate	*$81,290,000*	*$80,959,000*	*$80,726,000*	*-$233,000*
GSA Rent & Rent Related	*$12,235,000*	*$11,695,000*	*$12,044,000*	*+$349,000*
Biologics Program Estimate	*$26,089,000*	*$26,222,000*	*$26,145,000*	*-$77,000*
GSA Rent & Rent Related	*$3,932,000*	*$3,770,000*	*$3,907,000*	*+$137,000*
Animal Drugs & Feeds Program Estimate	*$28,928,000*	*$35,194,000*	*$35,194,000*	*0*
GSA Rent & Rent Related	*$4,152,000*	*$4,189,000*	*$4,325,000*	*+$136,000*
Devices & Rad. Health Program Estimate	*$50,497,000*	*$51,719,000*	*$55,919,000*	*+$4,200,000*
GSA Rent & Rent Related	*$7,442,000*	*$6,982,000*	*$7,435,000*	*+453,000*
Total FTE				

Includes structure changes to FDA's budget, which displays GSA and Other Rent and Rent Related Activities in the Program line, and the Office of Regulatory Affairs as its own program. ORA estimates are for information purposes only and are not included in the Center program level total.

[1]Contains budget authority rescission of 0.8 percent.

[2/] The FY 2006 budget authority lines without GSA or Other Rent and Rent Related Activities for ORA Field activities and CDRH total $220,961,000 which meets the second trigger required under the MDUFMA legislation.

Historical Funding and FTE Levels

Fiscal Year	Program Level	Budget Authority	User Fees	Program Level FTE
2002 Actual [1/]	$448,031,000	$432,724,000	$15,307,000	3,493
2003 Actual	$471,065,000	$456,148,000	$14,917,000	4,004
2004 Actual	$528,853,000	$513,906,000	$14,947,000	3,872
2005 Enacted	$560,256,000	$540,144,000	$20,112,000	3,648
2006 Estimate	$590,444,000	$568,393,000	$22,051,000	3,494

Does not contain GSA Rent or Other Rent and Rent Related Activities.
[1/]Includes FDA's FY 2002 Appropriation and the Counterterrorism Supplemental.

STATEMENT OF BUDGET REQUEST

The Office of Regulatory Affairs (ORA), Field Activities is requesting $590,444,000 in program level resources for accomplishing its mission activities including:

- Conducting investigational, inspectional and laboratory functions to ensure that FDA-regulated products comply with the laws and regulations that FDA is charged with enforcing;
- In conjunction with the Centers, identifying the public health risk of violations of the Food, Drug and Cosmetic Act and its implementing regulations so that appropriate action is taken;
- Responding rapidly to emergencies, and redirecting field efforts, as necessary, to respond to unforeseen events;
- Managing and conducting criminal investigations within the Agency's jurisdiction, including advising and assisting the Commissioner and other key officials on legislation and policy involving criminal justice matters;
- Monitoring clinical research and conducting inspections of FDA-regulated products before they are marketed to ensure that manufactured products will be safe and effective;
- Performing field examinations of imported products to determine whether import entries comply with FDA regulations; and,
- Serving as FDA's primary liaison with consumers, health professionals, the media, states, and the regulated industry and trade associations to disseminate information on the products the Agency regulates.

PROGRAM DESCRIPTION

ORA is the lead office for all FDA field activities. Each of FDA's five major program areas has a complementary field component responsible for supporting the Centers' in compliance with FDA regulations. ORA accomplishes this through the inspection of regulated products and manufacturers, conducting sample analysis on regulated products, maintaining import data entry systems, and advising key officials on regulations and compliance-oriented matters that have impact policy development and execution, and long-range program goals.

In FY 2005, ORA's budget will support approximately 3,500 people in the field and 170 people in the Office of Shared Services. Over 85 percent of ORA's staff works in five Regional Offices, 20 District Offices, 13 laboratories, and 150 Resident Posts and Border Stations. The Office of Criminal Investigations (OCI) personnel are located throughout the field organization in Field Offices, Resident Offices and Domiciles, which are located in 25 cities throughout the U.S. FDA maintains offices and staff in the District of Columbia, the U.S. Virgin Islands, Puerto Rico, and in all states except Wyoming. FDA also monitors imported products traveling through 13 international mail facilities and 14 courier ports.

ORA's work involves conducting foreign and domestic premarket and postmarket inspections. Premarket activities can include bioresearch monitoring of clinical research; preapproval inspections and laboratory method validations needed for premarket application decisions; and, inspections of manufacturing facilities to determine if the factory is able to manufacture the product to the specifications stated in the application. To complement these premarket activities, the largest portion of ORA's work involves postmarket inspections of foods, human drugs, biologics, animal drugs and feeds, and medical device manufacturers to assess their compliance with Good Manufacturing Practice and biennial inspection requirements. ORA's radiological health activities include inspecting certified mammography facilities for compliance with the Mammography Quality Standards Act as well as inspecting radiological health products such as lasers, sunlamps, and X-Ray equipment to ensure they are in compliance with performance standards. ORA also monitors and samples imports to ensure the safety of the food supply and medical products.

In addition to overseeing regulated products on a surveillance or "for cause" basis, ORA staff also respond to emergencies and investigates incidents of product tampering and terrorist events or natural disasters that may impact FDA regulated goods.

To complement the regular field force, the OCI investigates instances of criminal activity in FDA-regulated industries.

FDA relies heavily on its postmarket investigation, inspection, and compliance activities to assure the safety and quality of the products it regulates. The Field's role in FDA's Counterterrorism program includes safety and security of the food and feed supply; support of the development and manufacturing of vaccines and medical counter measures; the assessment of drugs and other medical products included in the Strategic

National Stockpile Program; and, participation in and support for exercises and security preparations for public events such as the Olympics and National political conventions. FDA's responsibilities for radiation safety and health give it a role in assessing x-rays used for security screening of packages and other radiation emitting products with medical or Counter Terrorism uses. The Field provides emergency responses to illness and an injury potentially linked to FDA regulated products; and, coordinates its activities with the CDC. In addition, the Field inspections and investigations are essential to human tissue safety; BSE feed contamination prevention; counterfeit drug, infant formula and other product investigations; and, dietary supplement safety enforcement.

The Field coordinates import activities with the Department of Homeland Security's Customs and Border Protection Agency. The number of FDA regulated imported products is increasing exponentially. This would challenge FDA's ability to provide an appropriate response even if security concerns were not taking an ever increasing role. In FY 2006, FDA is projecting a total of 17.8 million import lines. These are 65 percent food products; 8 percent cosmetic products; 2 percent human drugs and biologic products; 2 percent animal drugs and feeds products; and, 23 percent medical device and radiological health product. The Field uses a combination of electronic information technology for risk based screening and staff intensive surveillance; physical examinations; and, laboratory analysis to make import entry decisions.

ORA PERFORMANCE ANALYSIS

During FY 2004, which was the latest completed performance period, ORA successfully achieved or exceeded the targets for all 12 of its FY 2004 performance goals. For more detailed explanation of these goals and results, please see their respective section contained in the Detail of Performance Analysis under the Supporting Information tab.

ORA has added two new performance goals to track performance of its Prior Notice Center and efforts to obtain laboratory accreditation for all of 13 laboratories:

- The Prior Notice Center (PNC) uses risk based modeling to identify high-risk food imports based on available intelligence and information gained from Prior-Notice requirements that collectively enable FDA to identify and interdict suspect products. The PNC will effectively supplement existing efforts applied to import exams; and,

- Laboratory accreditation will improve ORA's ability to provide high quality laboratory analysis on product samples, bring international recognition to FDA, and strengthen the laboratories' infrastructure so they may continue to provide excellent work products that are defensible and consistent. Laboratory accreditation will be sought from the American Association for Laboratory Accreditation and from the American Society of Crime Lab Directors for the Forensic Chemistry Center.

Performance Highlights:

Goal Target	Context	Results
Perform prior notice import security reviews on 38,000 food and animal feed line entries considered to be at high risk for bioterrorism and/or present the potential of a significant health risk.	FDA will continue to focus much of its resources on intensive prior notice import security reviews of products that pose the highest potential bioterrorism risks to the U.S. consumer and market. The Prior Notice Center will receive feedback from import field exams and filer evaluations and begin targeting those individuals that continuously violate the law. They will also target commodities based on immediate and potential threats to the integrity and security of the intact food supply chain.	This is a new goal starting in FY 2005, but the baseline for FY 2004 was 33,111 security reviews.

RATIONALE FOR BUDGET REQUEST

This request, for Budget Authority and User Fees, supports various activities that contribute to the accomplishment of program outputs and performance goals, and presents FDA's justification of base resources and selected FY 2004 accomplishments by strategic goals.

PROGRAM RESOURCE CHANGES

Program Account Restructuring

GSA Rent and Other Rent Activities Structure Change

To provide increased flexibility and accountability, eliminate the need for the many reprogramming requests to the Congress, place the accountability for rental costs within the operating program, and would better reflect the total cost of each program. This budget changes the way the GSA Rent and Other Rent-Related Activities budget lines are displayed by incorporating these resources into program level requests.

Office of Regulatory Affairs Estimate and Structure Change

This budget also establishes a single budget line item for the Office of Regulatory Affairs (ORA). To help the field program provide services more effectively, especially by providing much needed flexibility to respond shifting program priorities. This additional flexibility is essential to allow FDA to respond to emerging situations without being hindered in performing its mission critical activities. These activities have been removed from each program line and the Field estimates will be provided under the Office of Regulatory Affairs to reflect the planned spending for each program area.

Budget Authority

Food Defense: + $22,752,000 and 8 FTE
Funds implement HSPD-9 requiring research and development of new methods for detection, prevention technologies, agent characterization, and dose response relationships for high-consequence agents in the food.

- Establishing a national network known as the Food Emergency Response Network (FERN) to increase analytic surge capacity in the event of terrorist attack by developing adequate laboratory testing capacity for biological, chemical and radiological threats;

- Targeted food defense research efforts, including prevention technologies, methods development, determination of infectious dose for certain agents when ingested with food, and agent characteristics within specified foods; and,

- More effective targeted, risk-based analysis using data from FDA's Prior-Notice system as authorized in the 2002 BT Act.

Medical Device Review + $4,200,000 and 13 FTE
The requested increase in appropriated funding for the CDRH and Field programs will provide the resources needed to allow FDA to reach the required appropriation level for FY 2006 under the Medical Device User Fee and Modernization Act (MDUFMA). This increase in budget authority, coupled with the user fee funds collected for the review of medical device applications, will enable FDA to meet the aggressive Premarket performance goals committed to under the legislation. This increase will help cover the pay increases to maintain the current level of reviewers for the medical device review program and will ensure that FDA continues to meet the third party inspection trigger.

GSA Rent: +$2,475,000
To help meet the rising costs of GSA rent, a total increase of $4,100,000 is requested, of which $2,475,000 is for ORA – Field Activities. This increase will help cover inflation on FDA's current GSA leased facilities.

Management Savings: - $1,178,000 and -9 FTE
FDA will reduce spending on administrative and IT activities. Specifically, these reductions are:

- **Administrative Efficiencies: -$715,000 and -7 FTE**
  Administrative efficiency savings will total -$1,554,000 and -14 FTE, of which the Office of Regulatory Affairs share is -$715,000.

- **Information Technology Reduction: -$463,000 and –2 FTE**
  IT reductions will total -$5,116,000 and -15 FTE, of which the Office of Regulatory Affairs share is -$463,000 and -2 FTE.

User Fees

Prescription Drug User Fee Act III (PDUFA): + $1,550,000 and + 1 FTE

PDUFA authorized the FDA to collect fees from the pharmaceutical industry to augment appropriations spent on drug review. These fees expand the resources available for the process of reviewing human drug applications including reviewers, information management, space costs, acquisition of fixtures, furniture, equipment and other necessary materials so that safe and effective drug products reach the American public more quickly. The BT Act reauthorized the collection of user fees to enhance the review process of new human drugs and biological products and established fees for applications, establishments, and approved products. These amendments are effective for five years and direct FDA to strengthen and improve the review and monitoring of drug safety; consider greater interaction with sponsors during the review of drugs and biologics intended to treat serious diseases and life-threatening diseases; and develop principles for improving first-cycle reviews. The increases will contribute to meeting these mandated directives.

Medical Device User Fee and Modernization Act (MDUFMA): + $308,000

The FY 2006 request for the Devices and Radiological Health program meets the required trigger of $220,961,000 in the Devices and Radiological Health Program, enabling FDA to collect the MDUFMA user fees that supplement the appropriated portion of the medical device review program. The Agency will be able to continue its efforts to improve the quality and timeliness of the medical review process and promote the delivery of new medical technologies to the American public. The MDUFMA User Fees it collects will allow FDA to continue to:

- Promote public health though major improvements in the review of expedited submissions for medical devices;

- Meet MDUFMA's performance goals and achieve the other improvements prescribed by MDUFMA;

- Provide information system improvements and modernization for the device tracking systems, Image system, other essential systems; and,

- Provide training and professional development for employees and contract with outside experts to ensure that the Agency keeps pace with technological change and medical advancements.

Mammography Quality Standards (MQSA): + $81,000

Breast cancer is the most commonly diagnosed cancer and the second leading cause of cancer deaths among American women. Experts estimate that one in eight American women will contract breast cancer during their lifetime. The Mammography Quality Standards Act (MQSA), which was reauthorized in October 2004, addresses the public health need for safe and reliable mammography. The Act required that mammography facilities be certified by October 1994, and inspected annually to ensure compliance with

national quality and safety standards. The reauthorization codified existing certification practices for mammography facilities and laid the groundwork for further study of key issues that include ways to improve physicians' ability to read mammograms and ways to recruit and retain skilled professionals to provide quality mammograms. The increase of $81,000 will cover inflation.

JUSTIFICATION OF BASE

USING RISK-BASED MANAGEMENT PRACTICES

Base resources will be used to conduct science-based risk management in all agency regulatory activities, so that limited resources can provide the most health promotion and protection at the least cost for the public. These activities will support:

Information Technology

- ***Field Accomplishments and Compliance Tracking System (FACTS)****:* FACTS is a central data repository for workload management, sample collections, sample analyses, information about FDA regulated firms, investigative operations, and compliance operations. A goal of the FDA is to ensure that field sites are supported by systems that effectively automate the daily activities of FDA personnel. FACTS consists of five major, interrelated functional areas: manage firms, manage miscellaneous operations, manage investigative operations, manage compliance, and manage laboratory operations;

- ***Turbo EIR:*** Field investigators annually conduct approximately 21,000 establishment inspections. A requirement of the inspectional process is to report (in writing) certain types of adverse observations to the management of the inspected firm at the conclusion of the inspection. Turbo EIR will provide a standardized database of citations, and assists the investigator in preparation of the Establishment Inspection Report (EIR), and assists data collection on specific violations uncovered during the inspection. This data is then uploaded to a central database and available for analysis and trending;

- ***Operational & Administrative System Import Support (OASIS):*** OASIS automates the processing of FDA-regulated imports and reduces processing time. Delays in FDA processing of imports significantly increase product storage and interest costs; and degrade the quality of perishable products destined for U.S. consumers. FDA ensures that importers seeking to enter domestic commerce meet the same standards as U.S. manufacturers and growers. FDA evaluates products offered for import, and makes admissibility decisions whether those products meet the applicable provisions of the FFDCA;

- ***On-line Program Analysis System (OPAS):*** OPAS is a data warehouse containing statistical summaries of field activity data for the past 15 years. This data contains information on mostly domestic activities from FACTS and field data systems that preceded FACTS. Its internal data processing stores the information in

multidimensional cubes that can be accessed by field staff that are not skilled in specialized computer query languages. In addition to providing counts of inspections, sample analyses and other field activities, it tracks time and field FTEs for the PDUFA and MQSA user fee programs. This system permits risk based analyses that are timely and consistent. Ultimately, OPAS is designed to be shared with users in ORA and the Centers;

- ***ORA Reporting Analysis and Decision Support System*:** Designed to permit in-depth analyses of import data and to be shared across multiple systems and by users in ORA and the Centers. ORADSS is a repository of ORA data from OASIS that contains several years of data on import lines. This system Ultimately, ORA's data warehouse will contain features of both OPAS and ORADSS so that users can perform risk based analyses that are timely and consistent; and,

- ***Mission Accomplishment and Regulatory Compliance Services (MARCS):*** MARCS is a comprehensive redesign and reengineering of two core mission-critical systems: FACTS and the OASIS. OASIS primarily supports the review and decision-making process of imports, while FACTS supports the investigation, tracking of compliance, and laboratory operations related to domestic operations under FDA purview. Both legacy systems execute on client-server platforms.

Import Entry Evaluations, Investigations, and Laboratory Analyses

Since the emergence of the "global marketplace" imported foods have grown increasingly important to the U.S. food supply. At the current rate of increase, FDA estimates that by FY 2006 the number of imported food lines will have tripled since 1999. This rapid growth combined with the security concerns raised by terrorism and counterfeiting incidents has increased the need to electronically and physically assess the status of imported products. FDA electronically screens imports through OASIS, which is an automated FDA system used for processing and making admissibility determinations for FDA regulated products that are offered for import. Filers transmit information electronically which is then checked against automated screening criteria set by the Division of Import Operations & Policy. These criteria assign either "FDA Review" or "May Proceed" status to an entry. If a product is assigned FDA review status, then a field exam, which is a physical examination of the product to determine whether the product is in compliance with FDA requirements, may be performed. FDA's electronic screening of imports will be enhanced by the completion of MARCS.

Customs Import Blitz Exams on Mail Shipments of Foreign Drugs

FDA and the CBP conducted a series of import blitz exams on mail shipments of foreign drugs intended for U.S. consumers. Exams conducted in April, May, June and July 2004 in Chicago, Buffalo, New York, and Seattle revealed that the majority of the shipments contained unapproved, or otherwise illegal, drugs.

- Review more than 17 million import lines representing for admissibility into domestic commerce by the end of FY 2006;

- Focus analysis of OASIS import line data to expand use of information on manufacturer, supplier, source country, and past violations to make enhanced admissibility decisions;

- Develop rapid analytical methods of screening imports at the border and increase the number of import lines reviewed for admissibility into domestic commerce;

- Continue to conduct inspections of foreign establishments as part of the Foods, Human Drugs, Biologics, Animal Drugs and Feeds, and Devices and Radiological Health programs;

- Perform periodic filer evaluations in which the import data submitted electronically to OASIS is compared against the paper documents accompanying the imported product to ensure that the data being provided to FDA is accurate; and,

- Continue to work with industry to implement the food registration requirements of the BT Act for domestic and foreign food facilities ensuring that FDA has an official roster of foreign and domestic firms allowing timely notification and response in the event of a food safety threat.

Domestic Inspections and Laboratory Analyses

Inspections and surveillance are the primary means of assuring the safety of marketed products. Consumers rely on the FDA to prevent dangerous and unreliable products from entering commerce.

- Identify the food source and contaminant of food borne illness outbreaks ranging from chemical and microbiological, and physical hazards;

- Perform engineering, biological and chemical analysis to prevent the exposure of the public to potentially unsafe or ineffective medical devices, electronic products, radionuclides, and radiopharmaceuticals;

- Develop laboratory analytical methods to permit the analyses of products for chemical and microbiological hazards;

- Continue to analyze food samples for pesticides and environmental contaminants;

- Analyze market baskets of food products to assess the risks of contaminants;

- Conduct bioresearch monitoring inspections to support the drugs, biologics and device programs;

- Continue to fund state contracts, partnerships and grants related in order for FDA to inspect and monitor the food industry frequently enough to ensure application of appropriate preventive controls to ensure a safe, wholesome, and nutritious food supply for compliance and inspection activities;
- Conduct state contract audit inspections to ensure consistent application of regulations during FDA and state inspections of food and animal feed establishments;

- Share data with Federal, state and local partners to protect the food supply through the utilization of the Electronic Laboratory Exchange Network (eLEXNET);

- Provide criminal investigation of reported product tampering, counterfeit products and other fraudulent criminal activities involving regulated products; and,

- Continue surveillance of pharmacy compounding products.

EMPOWERING CONSUMERS FOR BETTER HEALTH

Base resources will be used to better enable consumers to make informed decisions weighing benefits and risks of FDA-regulated products. These activities include:

Health Fraud and Dietary Supplements

The Consumer Health Information for Better Nutrition (CHIBN) initiative is designed to foster two complementary goals concerning the labeling of food and dietary supplements: to encourage makers of conventional foods and dietary supplements to make accurate, science-based claims about the health benefits of their products; and, to help to eliminate bogus labeling claims by taking on those dietary supplement marketers who make false or misleading claims.

Ephedra

Effective April 12th, 2004, FDA banned the manufacture and sale of ephedra, which has been linked to over 150 deaths. The rule, which was the first ban of dietary supplement was published on February 11, 2004 in the Federal Register, declares dietary supplements containing ephedra adulterated because such supplements present an unreasonable risk of illness or injury. Ephedra has been linked to over 150 deaths. It marks the first ban of a dietary supplement.

On December 30, 2003, FDA issued 62 letters to manufacturers notifying them of our intent to publish the rule as well as a consumer alert warning the public of the dangers of ephedra and asking that they stop taking these products immediately. Effective April 12th, FDA stepped up Internet surveillance to determine whether anyone, including the original targeted firms, is continuing to actively promote and sell these products. FDA has already seen progress in its regulatory efforts, as most manufacturers to whom letters were sent ceased selling dietary supplements containing ephedrine alkaloids.

On July 13, 2004, ORA issued an Import Alert allowing for field offices to detain imported dietary supplements consisting of or containing botanical sources of ephedrine alkaloids without physical examination.

The Field will ensure that enforcement activities focus on products with the following marketing strategies. These are: herbal products illegally promoted as alternatives to illicit street drugs; unapproved new drugs containing prosteroids and precursor steroids as dietary supplements; items which are unapproved new drugs marketed as "natural" treatment for viruses, including the herpes virus, and for cold and flu protection; dietary supplements with unsubstantiated structure function claims (examples include treatments for autism, treatments for mental retardation and epilepsy, sports performance enhancement, and aging); and, dietary supplements containing prescription drug ingredients.

Information Technology

- ***Recall Enterprise System (RES):*** The implementation of RES will provide the District and Centers with a centralized, Agency-wide recall database, and will provide the public with access to timely recall information via FDA's homepage, and include information that provides detailed guidance for industry regarding developing and providing the District with background recall information.

PATIENT AND CONSUMER PROTECTION

Base resources will be used to promote improved patient and consumer safety by reducing risks associated with FDA-regulated products. These activities include Medical Product Safety, Premarket Activities, and Bovine Spongiform Encephalopathy (BSE):

Medical Product Safety

FDA believes that roughly half of the deaths and injuries associated with medical errors

can be avoided by fully implementing its strategies. Thousands of lives and billions of dollars can be saved by:

- Providing training for field staff to improve the information gathered through investigation of consumer complaints and reports of medical errors;

- Conducting investigations of reported errors and product recalls so that program managers can collect information needed to assess the error, and develop error reduction strategies with manufacturers and the medical community;

- Inspecting hospital device reprocessors to determine compliance with regulatory requirements; and,

- Reviewing adverse event and complaint files at manufacturers during inspections for compliance with FDA reporting regulations and to conduct follow up inspections on adverse event reports when information from the manufacturer is needed to evaluate the risks involved.

Premarket Activities

To speed the availability of new products to consumers and to the market, the FDA must continue to focus on developing mechanisms to effectively and efficiently complete the review process.

- Improve the quality and timeliness of product reviews by monitoring pre-approval inspections and expanding inspectional expertise in emerging technologies; and,

- Improve the scientific expertise of field investigators by providing training, information technology, and contract support. This training enables the investigators to conduct pre-market inspections that are essential to meeting pre-market review time frames.

Bovine Spongiform Encephalopathy (BSE)

FDA works closely with USDA and State agricultural and veterinary agencies to implement BSE regulations and control imported products that may put the public at risk for BSE contaminants. FDA regulates many products that could contain specified risk materials, including vaccines, cosmetics, animal drugs, and animal feeds, and has established a comprehensive monitoring system to identify products that may pose a health risk and ensure that they do not enter the U.S.

- Provide Federal and state inspectors with up-to-date information on the BSE feed regulation; EU regulatory issues; Animal Plant and Health Inspection Service authority; and best sampling practices;

- Leverage with state agencies by funding contract inspections of feed mills and renderers, and conduct compliance, follow-up, and audit inspections to State contracts;

- Collect and analyze domestic and import feed and feed component samples for BSE-related contaminants to ensure proper labeling of animal feeds and feed components;

- Conduct annual BSE inspections of all known renderers and feed mills processing products containing prohibited material. Any firm found to be in violation of the requirements of the regulation will be reinspected, and other potentially affected firms will be inspected to determine compliance with the regulation;

Bovine Spongiform Encephalopathy (BSE)

The main focus of the BSE-prevention program has been annual inspections of all renderers and feed mills in the U.S .that process with prohibited material. FDA continues to find a very high level of compliance with the 1997 rule that prohibits the inclusion of most animal protein in feeds for cattle and other ruminants. The effectiveness of FDA's surveillance was most recently confirmed by the fact that all of the firms involved in the December 2003, Washington State BSE investigation were found to be in compliance with the FDA rule, and that the agency working with state and industry was able to halt the distribution of all the meat and bone meal from the sick cow.

FDA plans to expand its inspectional efforts by conducting additional inspections of farms, salvage operations, and pet food facilities. Additionally, FDA developed an advanced analytical procedure for detection of prohibited material in animal feed. This novel approach combines light microscopy with polymerase chain reaction to determine and detect DNA from ruminants and non-ruminant mammalian species, providing the necessary scientific evidence to support the ban on such materials in feeds.

- Conduct sampling program for animal feeds domestically and those detained at U.S. ports of entry that contain ingredients possibly derived from contaminated animals;

- Enhance the ability of our public health system to detect prohibited materials in animal feed, FDA will continue to support the development and evaluation of diagnostic tests to identify prohibited materials; and,

- Continue to develop regulations to help prevent the establishment or amplification of BSE in cattle and prevent the potential for development of vCJD in humans. The revisions banned a greater number of materials from FDA-regulated human food, including dietary supplements, and cosmetics, i.e., the use of any materials from "downer" or dead cattle.

Internet Drug Sales

At present, there are an exploding number of new web sites marketing FDA regulated products to the U.S. consumer and medical professionals. FDA currently conducts only minimal levels of web-based oversight.

- Monitor potentially fraudulent Internet sites to identify targets for investigation and sampling of products;

- Conduct "undercover only" purchases of prescription drugs from Internet sites suspected of engaging in illicit drug sales, distribution, and/or marketing; and,

- Provide oversight of mail and courier packages entering the U.S. from foreign sources.

RX Depot Agrees in Consent Decree to Cease Importing Unapproved Drugs from Canada

In August 2004, FDA announced the filing of a Consent Decree of Permanent Injunction against Rx Depot, Inc., Rx of Canada, LLC, and individual officers based on violations of the FD&C Act. In this decree, the firms and corporate officers, Carl Moore and David Peoples, admitted liability for causing the importation of unapproved new drugs and "U.S. manufactured" drugs in violation of the Act and agreed to permanently cease such activities.

The defendants caused the illegal importation of prescription drugs from Canada by accepting prescriptions from U.S. customers; sent these to a Canadian pharmacy partner; and, received a commission from the Canadian pharmacy when the pharmacy sent prescription drugs directly to the U.S. customers. "The defendants' illegal importation of drugs posed a significant public health threat," said the FDA Acting Commissioner. "This Consent Decree sends a clear signal that those who would put profit before safety will not be allowed to threaten the public health." The Decree provides FDA with inspection authority to ensure compliance and penalizes the defendants $4,000 per day for violating the Decree.

PROTECTING THE HOMELAND -- COUNTERTERROISM

Base resources will be used to strengthen FDA's capability to identify, prepare for, and respond to terrorist's threats and incidents.

New Regulations under the Bioterrorism Act of 2002

On May 27, 2004, FDA issued the final rule establishing procedures for administrative detention of food under the BT Act. This new authority applies to food for which the agency has credible evidence or information that it presents a threat of serious adverse health consequences or death to humans or animals. This act authorized FDA to administratively detain suspect food, and final regulation clarified FDA's administrative detention procedures and the process for appealing the detention order.

In addition, on December 6, 2004 FDA issued the final regulation of the BT Act. This regulation directs HHS to issue regulations requiring persons who manufacture, process, pack, transport, distribute, receive, hold, or import food to establish and maintain records. These records are crucial for FDA to deal effectively with food-related emergencies by providing FDA with the records to identify the immediate previous source of all food received and immediate subsequent recipient of all food released. These rules are part of the FDA's continuing effort to ensure the safety and security of the nation's food supply.

FDA must have the capacity to quickly and accurately identify and respond to potential terrorist events occurring at any point in the food chain, or in the distribution chain of other FDA-regulated products and take prompt action to mitigate their effects. In the event of an identified threat, FDA will work with other Federal, state, and local agencies to eliminate or contain the hazard, reduce public health risk, and identify those who perpetrated the attack.

The Food Emergency Response Network (FERN)

FERN integrates the nation's food-testing laboratories at the local, state, and Federal levels into a network that is able to respond to emergencies involving biological, chemical, or radiological contamination of food. A FERN Steering Committee consisting of representatives from state agriculture, environmental, public health, and veterinary diagnostic laboratories as well as federal partners from HHS, USDA, Customs, DOD, FBI, EPA, and DHS ensures federal and state interagency participation.

FERN continues to build networks through face-to-face Regional Coordination Center (RCC) meetings attended by representatives from regional federal, public health, agricultural, and veterinary diagnostic laboratories. The first meeting was held in April 2004 and three additional meetings were held in the Northeast RCC in July, Southwest RCC in mid September, and Southeast RCC in late September.

- Strengthen relationships with State partners through the FERN. A national laboratory network that enables FDA to test thousands of food samples within a matter of days if there is a food terrorism event, or a foodborne illness outbreak;

- Fund FERN state Cooperative Agreements for increased laboratory surge capacity and the National Surveillance Sampling Program and operate a National Sampling Surveillance Program using FERN to build the capacity to effectively monitor the food supply;

- Conduct training and proficiency testing of FERN laboratories to assure that these laboratories can achieve consistent testing results;

Electronic Laboratory Exchange Network (eLEXNET) Expansion

FDA continued the development and expansion of eLEXNET, the nation's first seamless data exchange system for food safety testing information. At present, there are 113 laboratories representing 50 states and the District of Columbia that are part of eLEXNET, 79 of which are actively submitting data into this system. eLEXNET serves as a platform for the FERN, which consists of 93 labs. In addition, Canada and Mexico participated in a pilot study which will ultimately contribute to the inclusion and integration of foreign laboratories into eLEXNET. While there are currently no direct linkages between eLEXNET, the LRN and PHIN, eLEXNET is seeking to develop the capability to generate messages according to departmentally recognized standards and OMB's consolidated health informatics initiative. These standards include: health level-7 (HL-7), SNOMED (Systemized Nomenclature of Medicine) and LOINC (Logical Observations Identifiers Names and Codes). This will allow eLEXNET to exchange standardized messages with other federal agencies. Linkage to FDA's Emergency Operations Network has also been identified as an option to be considered.

- Expand the use of eLEXNET which collects lab analytical data on chemical, microbiological, and other contaminants and links federal, state, and other laboratories. This data capture and exchange system provides the necessary infrastructure for an early-warning system that identifies potentially hazardous foods and enables health officials to assess risks and analyze trends;

- Develop effective prevention strategies to "shield" the food supply from terrorist threats, including the capacity for rapid, coordinated responses to a food borne terrorist attack;

National Special Security Events

At the request of the U.S. Secret Service and coordination with the HHS Secretary's Emergency Response Team and FDA's Office of Crisis Management, ORA field staff have provided food safety coverage at several National Special Security Events including the G8 Summit Meeting in Georgia in June 2004, the Democratic National Convention in July 2004, and the Republican National Convention in August 2004. The food safety coverage involved 24/7 coverage of food and beverage deliveries and food safety inspections of all kitchens and sites of service.

- Intensify the review of products offered for import into the US for safety and security issues;

- Expand field laboratory and contract activities to evaluate and develop existing and potential laboratory and field test kits for product contaminants;

- Inspect drug and vaccine manufacturers whose products may be stockpiled as part of the Governments counter terrorism efforts; and,
- Provide training, equipment, facilities, and information technology support to field staff to work on counterterrorism initiatives with a focus on imports.

Commissioning MOU With Customs and Border Protection

On December 3, 2003, FDA and CBP signed a Memorandum of Understanding between that allows FDA to commission CBP officers. These officers will assist FDA with examinations and investigations pursuant to, or based on information obtained under the prior notice requirements (21 U.S.C. 381(m)) and its implementing regulations, at ports or other facilities and locations subject to CBP jurisdiction. As of April 2, 2004, approximately 9,500 CBP officers have been commissioned.

While the requirements for submitting prior notice to FDA were effective beginning December 12, 2003, FDA and CBP elected to focus their resources on education to achieve compliance during the first eight months following the effective date. As such, the numbers of actual examinations and investigations conducted pursuant to the prior notice interim final rule have been minimal and have been handled by FDA personnel.

- ***FDA Unified Registration and Listing System (FURLS):*** FURLS supports the requirements of the BT Act of 2002 as it relates to Food Facility Registration, Drug Facility Registration and Listing, and Prior Notice of Food Shipments into the U. S. FDA began this effort by identifying opportunities for unification between the FDA Drug Facility Registration and Listing requirements with those of the Food Facility Registration Requirements.

- Continue to develop the Food Registration and Prior Notice systems that became operational in the first quarter of FY 2004;

- Collaborate with CBP to monitor the importation of regulated products and follow-up on the status of products refused entry; evaluate the accuracy of information import filers provide to the FDA automated entry review system regarding regulated products offered for entry into domestic commerce; and continue to conduct food import exams of food products offered for import into the country; and,

- Expand import surveillance at international mail facilities and courier hubs;

- ***ORA Enterprise Portal:*** ORA enterprise portal will consolidate all information needed by FDA Import Reviewers in one place, facilitate seamless access to multiple data systems, eliminating multiple logon points in this highly time critical mission.

- ***National Biosurveillance Integration System (NBIS)***: IT Development, specifically adding Health Level-7 (HL-7), the departmentally recognized standard for communication in the health arena, will allow eLEXNET to generate standardized messages and use other government recognized terminologies for health and laboratory information such as SNOMED (Systemized Nomenclature of Medicine) and LOINC (Logical Observations Identifiers Names and Codes).

IMPROVING FDA'S BUSINESS PRACTICES

The strategic goal to Improve FDA's Business Practices uses base resources to ensure a world-class professional work force; to maintain effective and efficient operations; and, adequate resources to accomplish the mission of FDA. With these resources, FDA will continue to utilize ORA-wide Quality Management System (QMS) to enhance the current approach to managing quality work processes and products. It relies on clear, uniform, and accessible criteria for work processes; quality control; and, feedback and system improvement. QMS focuses on the managers' responsibility to manage quality-related systems and is based on internationally accepted quality system standards.

SELECTED 2004 ORA ACCOMPLISHMENTS

COUNTER TERRORISM & FOOD DEFENSE FIELD ACTIVITIES

- National Special Security Events: At the request of the U.S. Secret Service and in coordination with the HHS Secretary's Emergency Response Team and the FDA's Office of Crisis Management, ORA field staff using base resources has provided food safety coverage at several National Special Security Events. The food safety coverage at all events was coordinated by FDA State Programs Directors in cooperation with local/state health departments using base resources. The event includes the G8 Summit Meeting in Georgia in June 2004, the Democratic National Convention in July 2004, and the Republican National Convention in August 2004. The food safety coverage involved 24/7 coverage of food and beverage deliveries and food safety inspections of all kitchens and sites of service. In addition, OCI coordinated efforts with the law enforcement and intelligence communities and deployed Special Agents to staff Operation Centers.

- Electronic Laboratory Exchange Network (eLEXNET): Continued developing and expanding of eLEXNET, the nation's first seamless data exchange system for food safety testing information. At present, there are 113 labs representing 50 states and the District of Columbia that are part of the eLEXNET system, 79 of which are actively submitting data into this system. The eLEXNET system serves FERN which consists of 93 labs. In addition, Canada and Mexico participated in a pilot study which will ultimately contribute to the inclusion and integration of foreign laboratories into eLEXNET.

- Training Course in Mexico: A training course regarding the CARVER + Shock risk assessment tool was delivered in Juriqilla, Mexico to government officials to assist in identifying vulnerabilities and risks that could compromise the safety and security of their food supply.

- FDA Private Laboratory Rule: A FDA Private Laboratory Rule was published in the Federal Register on April 29, 2004 which is intended to help assure the integrity and scientific validity of data and results submitted to FDA. This proposed rule will provide confidence for persons who use sampling services to collect and analyze samples of imported food and will assure that these samples are properly identified, collected, and maintained. In addition, private laboratories that are utilized will be required to use validated or recognized analytical methods, and to submit analytical results directly to FDA.

- Food Emergency Response Network (FERN): The FERN Surveillance assignment was issued on September 8, 2004 to 40 FERN laboratories. This assignment assessed and demonstrated the effectiveness and capabilities of the FERN chemical/microbiological and radiological laboratories and tested the operating mechanisms and protocols of the network. In addition, a short-term surveillance sampling activity was conducted in April of 2004. It included 18 federal (FDA and USDA) and state laboratories collecting and analyzing specific food/analyte combinations. The primary objective of this FERN surveillance activity was to evaluate the current organizational infrastructure and test its communication, coordination and electronic reporting capabilities based on the issuance of two check samples to selected laboratories. FERN also conducted two training courses in August for Real-time PCR and *Bacillus anthraces* and *Salmonella.*

- Emergency Preparedness and Response: ORA staff continues to participate in all emergency exercises coordinated by the Office of Crisis Management. In FY 2004, this included the Radiological Functional Exercise in March 2004, and the Chemical and Biological Functional Exercise in May 2004. The exercises included participation by FDA field and Headquarters offices and included extensive preparation in advance of the exercises by ORA.

- Prior Notice Center (PNC): FDA opened its first 24/7 operation at midnight on December 12, 2003 at the Prior Notice Center which is located at the Department of

Homeland Security-Customs & Border Protection's National Targeting Center. The PNC was established in response to regulations promulgated in conjunction with the Public Health Security and BT Act to prevent food that may be intentionally contaminated with biological, chemical, or radiological agents, or which may pose significant health risks, from entering the U.S. In FY 2004, PNC collaborated with CBP to direct field personnel to hold and examine 20 suspect shipments of imported food; responded to 20,430 inquiries; and conducted 33,111 intensive reviews of PN submissions out of the 6,294,821 PN submissions to the FDA in order to intercept contaminated products before they entered the domestic food supply.

- Mobile Laboratories: Under an interagency agreement with the U.S. Army's Edgewood Chemical Biological Forensic Analytical Center, ORA designed and constructed two mobile chemistry and microbiology laboratories to enhance counterterrorism testing and import food coverage at U.S. ports of entry. Construction has been completed and final preparations are being made for deployment in the first quarter of FY 2005.

- Bioterrorism Act Satellite Training Program: FDA employees and the public viewed the satellite program, "Final Regulations Implementing Title II of the BT Act of 2002: Registration of Food Facilities and Prior Notice of Imported Food Shipments." Viewers gained information on the new regulations and the requirements for registration of food facilities and prior notice of imported food shipments.

- Dissemination of Information: ORA distributed 685,000 copies of the Food Security Preventive Measures Guidance documents to the States and industry during inspections entitled: Importers and Filers; Dairy Farms and Processors; Food Producers, Processors and Transporters; Retail Food Stores and Food Service Establishments; and, Cosmetic Processors. In addition, 182,000 copies of the two documents: "What You Need to Know about PRIOR NOTICE of Imported Food Shipments" and "REGISTRATION of Food Facilities" were distributed to the States and industry. ORA personnel also distributed materials and presented updates on agency initiatives in the area of counterterrorism and food defense at FDA's Regional Retail Food Seminars and at a number of state and regional meetings sponsored by various food protection and environmental health organizations.

- Counter-Terrorism and Law Enforcement Intelligence Capabilities: The Office of Criminal Investigations continued the development, improvement and implementation of national security and law-enforcement intelligence capabilities to assess, deter, counter, and investigate potential acts of terrorism affecting the FDA or products regulated by the Agency. In addition, FDA has established a dedicated Counterterrorism Section within the OCI to combat the likelihood that an FDA regulated product could be used as the vehicle for a terror agent.

- Continuity of Operations Plans (COOP) for ORA: ORA has currently completed 35 compliant Continuity of Operations Plans (COOP) which provide an organized effort to ensure the continuance of essential functions of the ORA across a wide range of

potential emergencies. Five of the plans are located in Headquarters and 30 thought the various ORA field locations. Each COOP plan identifies the essential functions for each District/Resident Post/Office and the pre-identified and trained personnel that perform them. The COOP plan requires members to work at an alternate location if their primary work location is rendered unfit for occupancy.

BOVINE SPONGIFORM ENCEPHALOPATHY (BSE) FIELD ACTIVITIES

- Laboratory Response to BSE: FDA developed an advanced analytical procedure for detection of prohibited material in animal feed. This novel approach combines light microscopy with polymerase chain reaction (PCR) to determine and detect DNA from ruminants and non-ruminant mammalian species, supporting the BSE/Ruminant Feed Ban.

- BSE Surveillance: The main focus the BSE prevention program has been annual inspections of all renderers and feed mills in the U.S. that process with prohibited material. The effectiveness of this surveillance was confirmed when all firms involved in the December 2003 Washington State BSE investigation was found to be in compliance with the FDA rule and that the agency together with state and industry were able to halt the distribution of all the meat and bone meal from a sick cow.

- FACTS BSE WEB Reports: The FACTS BSE WEB produces weekly BSE reports that summarize inspection data for BSE monitoring.

- BSE Training Course: After attending the Molecular and Microscopic Analysis of Feeds for Processed Animal Proteins Course, 20 FDA Regulatory Analysts were able to discuss and prepare samples for PCR analysis to confirm the presence of processed animal proteins.

STATE & OTHER STAKEHOLDERS FIELD COLLABORATION

- Electronic State Access to FACTS (eSAF): The eSAF System that allows states conducting contract inspections to input data directly into FDA's data system will soon add Georgia, Wisconsin and Minnesota to the list of participating states. Currently, Texas, Rhode Island, Washington, Missouri and Massachusetts are actively using eSAF and by the end of FY2005, we anticipate 18 states to be in the program. This Web application saves resources by allowing states to input data, and allows information to be shared more quickly and conveniently among Federal, state and local governments.

- State Contracts Program: ORA awarded 40 contracts for states to conduct over 8,884 food inspections at a cost of $4.9 million; 35 feed manufacturing/BSE contracts for 3,305 inspections at a cost of $1.15 million; 3 tissue residue contracts for 430 inspections at a cost of $165,000; and, 47 MQSA contracts at a cost of $8.262 million.

- 50 State Conference Calls: The 50 State Call continues to be one of the most effective communication tools we have to share critical regulatory information with our state counterparts. Calls were held covering such topics as the registration regulations, egg safety regulations, Food Security and Surveillance Assignment, and foodborne illness risk factors.

- State Grants Program: A total of $151,000 was provided for 22 State Food Safety Task Force grants and $450,000 was provided to 10 State Health Fraud Task Forces this year. These task forces have resulted in the states' adoption of the FDA Food Code; enforcement of food regulations; establishment of dedicated funding for state food programs; and, implementation of health fraud task forces to combat deceptive health products and practices.

- State Partnership Program: The Agency and the States continued to develop new partnerships that have contributed to the exchange of inspection and sampling data and have facilitated the receipt of training and distribution of equipment to the states. To date, FDA has funded 180 partnerships with the states totaling $525,000.

- Mission Accomplishment and Regulatory Compliance System (MARCS): The project team completed the program requirements phase and initiated work on the technical system design. Fourteen workshops were held with field and headquarters experts to develop detailed program requirements.

- Identity and Trust Management System: Completed the ORA Identity and Trust Management System in October 2003. The system provides a high level of trust assurance to meet requirements by field inspectors and investigators. This system provides encryption, secure email, and digital signatures among others. This achieves the requirement for confidentiality, non-repudiation, and integrity of information where appropriate as required by the Federal Information Security Reform Act.

ENFORCEMENT FIELD ACTIVITIES

- Customs Import Blitz Exams: FDA and CBP conducted a series of import blitz exams on mail shipments of foreign drugs to the U.S. The exams were conducted in November 2003 at the international mail facilities in Dallas, Buffalo, Chicago, and Seattle and at the Memphis and Cincinnati courier hubs. An additional Chicago mail exam blitz was held in April 2004. In May 2004, CBP invited FDA to participate in a series of mail exam blitzes nicknamed 'Operation Safeguard.' These operations were scheduled to occur the third week of every month and rotate through most of the International Mail Facilities. These exams were conducted in Buffalo, New York (JFK Airport), Seattle, Chicago, and the Memphis and Louisville courier facilities in April through November 2004. The exams revealed that the majority of the shipments contained unapproved, or otherwise illegal, drugs.

- Alliance Wholesale Distributors/Local Repack Inc. /Phil & Kathy's: On April 8, 2004 Phil and Kathy's Inc. d.b.a. Alliance Wholesale Distributor and/or Local Repack, Inc. of Richton Park, Ill. signed a Consent Decree of Permanent Injunction agreeing to operate in compliance with FDA's regulations. Under this Decree, Phil and Kathy's is prohibited from manufacturing, labeling and distributing any article of drug until it meets certain conditions, the most important of which is the FDA's determination that the firm's repackaging operations comply with cGMPs. The firm also agreed not to repackage any foreign-labeled drugs or drugs that are inconsistent with FDA's standards for approval. The Decree follows a July 9, 2003, seizure of more than 4,500 bottles of prescription drugs that were being repackaged by Local Repack stemming from an investigation of counterfeit Lipitor; as well as a September 15, 2003 seizure of all drug products labeled in a foreign language and/or labeled as repacked by Phil and Kathy's, Inc.

- Kroger Security Office / Ralph's Grocery: On February 27, 2004, OCI was advised by FDA Emergency Operations of a tampering and extortion complaint received from the Kroger Security Office in Cincinnati, Ohio. Kroger's is the parent corporation of Ralph's Grocery store chain in California. On November 30, 2004, David Ian Dickinson, a 43-year old British citizen, was convicted of trying to extort $180,000 from the Ralph's supermarket chain by threatening to place contaminated baby food on store shelves. Dickinson was convicted of violating Title 18, U.S.C. Section 1951 (Interference with Commerce by threats or Violence-Hobbs Act) and Title 18, U.S.C. Section 1365 (Tampering with a Consumer Product). His sentencing is scheduled for February 18, 2005. Dickinson was arrested in March 2004 after sending a package to Ralph's headquarters that contained horseradish contaminated with boric acid, baby food containing glass shards and an infant juice drink laced with hydraulic fluid. A subsequent letter demanded $180,000. There was no evidence that any contaminated products were placed on store shelves.
- Mylan Laboratories, Inc. v. Thomson, (D.C. Cir). On November 30, the Court of Appeals unanimously affirmed the district court's order upholding FDA's letter decisions awarding pediatric exclusivity to ALZA and thereby delaying, by six months, Mylan's entry into the marketplace. Mylan had filed suit in the district court challenging FDA's administrative determination that Mylan's ANDA for a fentanyl patch to treat chronic pain was subject to ALZA's pediatric exclusivity for Duragesic. In January 2003, FDA had granted ALZA pediatric exclusivity. ALZA sued Mylan, and the patent court found ALZA's patent valid and infringed. The court enjoined Mylan from marketing its drug and ordered that the effective date of approval of the ANDA be no earlier than the expiration of ALZA's patent. Because of that decision, FDA converted Mylan's final approval to a tentative approval subject to ALZA's exclusivity. When ALZA's patent expired, FDA then determined that Mylan's ANDA could not be approved until the pediatric exclusivity expired. In affirming the district court, the D.C. Circuit held that FDA's letter decisions may be entitled to the *Chevron* deference because, among other things, the complexity of the statute, FDA's expertise in and care in applying the statute.

- Voluntary Counterfeit Program with PhRMA: Under a program established in April, 2003, member companies of the Pharmaceutical Research and Manufacturers of America agreed to voluntarily report suspected instances of drug counterfeiting to OCI within five working days of determining that there is a reasonable basis to believe that a product has been counterfeited. This formal collaborative agreement has strengthened FDA's ability to assure the safety and effectiveness of drugs used by U.S. consumers; and to target our law enforcement resources more effectively. The reporting program went into effect on May 1, 2003 and to date 35 voluntary counterfeit reports have been submitted to FDA.

- Androstenedione Warning Letters: In March 2004, FDA sent Warning Letters to 23 firms to cease their distribution of products labeled as dietary supplements that contain androstenedione, which is promoted for anabolic effects (building muscles) and for enhancing athletic performance. Androstenedione is a new dietary ingredient for which a premarket safety notification is required. Because no such notification has been submitted by any manufacturer or distributor who received a Warning Letter, these products are adulterated and their marketing is prohibited. On June 3, 2004 ORA issued an Import Alert which allowed field offices to detain imported androstenedione without physical examination.

- Ban on Ephedrine Alkaloid-Containing Dietary Supplements: FDA issued a final rule effective April 12, 2004, prohibiting the sale of dietary supplements containing ephedrine alkaloids because FDA determined they present an unreasonable risk of illness or injury. On July 13, 2004, ORA issued an Import Alert allowing for field offices to detain imported dietary supplements consisting of or containing botanical sources of ephedrine alkaloids without physical examination. Previously, in December 2003, FDA sent letters to more than 60 dietary supplement firms informing them about the impending rule, which was published in the Federal Register on February 11, 2004.
- Internet Storefront Drugs from Canada: On February 18, 2004 FDA issued a Warning Letter to Discount Prescriptions of Canada, Fairmont, WV, a storefront operation facilitating the Internet sale and importation of unapproved prescription drugs from Canada.

- Rx Depot Inc. DOJ and FDA filed an injunction on September 11, 2003, to stop Rx Depot Inc. from causing the importation of prescription drugs from Canada in violation of U.S. law. FDA brought the suit because the storefront chain posed a risk to public health by importing unapproved prescription drugs and drugs that may only be imported by the U.S. manufacturer. Earlier in the year, FDA issued a warning letter to Rx Depot, but the company's response was inadequate. Rx Depot and similar companies have incorrectly stated that FDA condones their activities and that their prescription medications are "FDA approved." On November 6, 2003, Federal U.S. District Court for the Northern District of Oklahoma granted a preliminary injunction to immediately prevent the defendants from importing prescription drugs from Canada, because the importation of such unapproved drugs was a clear violation

of the FD&C Act. The court stated that "unapproved prescription drugs and drugs imported from foreign countries by someone other than the U.S. manufacturer do not have the same assurance of safety and efficacy as drugs regulated by the FDA."

- United States v. Canada Care Drugs, Inc., (S.D.N.Y.). On December 16, U.S. District Judge Charles L. Brieant, issued an Order of Preliminary Injunction against the defendants, ordering them to stop causing the illegal importation of prescription drugs from Canada. In the Order, the Court found that the government was likely to succeed on the merits of its claims that the defendants violated the FDCA by causing the importation of unapproved new drugs and drugs that were originally manufactured in the U.S. The Order preliminarily enjoins the defendants from causing the importation of drugs, receiving commissions from the importation of drugs, and advertising or promoting any importation service. It also gives FDA inspection authority to ensure that the defendants do not continue to violate the FDCA and requires the defendants to send their customers a letter notifying them that their importation business violates the law and that the safety, purity, and efficacy of drugs obtained through the defendants cannot be assured.

- Warnings for Fraudulent Health Claims: FDA sent Warning Letters to 41 firms that marketed over 70 products with fraudulent or unsubstantiated claims to prevent, treat, or cure serious diseases such as cancer, HIV/AIDS, Alzheimer's, SARS, and Parkinson's diseases.

- Information Sharing with the U.S. Federal Securities and Exchange Commission: FDA developed and implemented for the first time streamlined procedures for FDA components to share non-public information with the Securities and Exchange Commission.

- Office of Criminal Investigations Enforcement: Global Agreement Reached in Off-Label Promotion of Drug Neurontin: Warner-Lambert agreed to pay more than $430 million to resolve criminal charges and civil liabilities in connection with its Parke-Davis division's illegal and fraudulent promotion of unapproved uses for Neurontin. Neurontin is approved solely for adjunctive or supplemental anti-seizure use by epilepsy patients.

- OCI Enforcement: Sentencing on Internet Website Selling Prescription Drugs: A defendant who operated the website onlinepillbox.com was sentenced to 37 months incarceration. The website advertised prescription drugs for sale without a physician's prescription.

- OCI Enforcement: Defendants Sentenced for Unlawfully Selling Male Impotence Products: Two defendants were each sentenced to 51 months incarceration for selling unlawful male impotence products through the Internet and mail order companies.

- OCI Enforcement: Internet Training Provided to Foreign Laws Enforcement Officers: The OCI provided a four-day training course on Internet Investigations.

Attendees included law enforcement officers from Singapore, Ireland, Great Britain and Italy.

- OCI Enforcement: Indictment for Internet Distribution of Prescription Drugs: Ten individuals and three companies were indicted for the illegal sale of controlled and prescription drugs over the Internet through a variety of websites including www.get-it-on.com. Customers ordered drugs online, choosing the type, quantity, and dosage without physician review.

- OCI Enforcement: Recovery of Drugs from Latin American Countries: The OCI recovered thousands of suspect prescription pharmaceuticals from several Latin American countries. The suspect pharmaceuticals were allegedly ultimately intended for illegal distribution and sale in the U.S.

INSPECTIONAL, INVESTIGATIONAL, & LABORATORY FIELD ACTIVITIES

- Registration Verification: A pilot program has been established with Canada and Mexico, under the existing information sharing MOUs that involves sharing firm related inspectional and compliance information. This project allows each government to issue up to 10 assignments annually to the receiving government, who will subsequently research, possibly inspect, and provide feedback. Under this pilot all three countries have agreed on a standard reporting format. In addition, FDA has requested and received feedback on three firms from Health Canada.

- Rapid Methods/Test Kits: A contract was renewed with earmark funds provided by Congress to the New Mexico State University to evaluate test kits to determine their suitability in FDA regulatory labs.

- Denver Laboratory Accreditation: The first Field Laboratory (Denver) received third-party accreditation from the American Association for Laboratory Accreditation. Accreditation to the ISO/IEC 17025 standard provides assurance to a laboratory, its peers and industry leaders that the laboratory's processes and procedures are consistent with current best practices in testing.

- Regulatory, Science and Computer Training Courses: Over 2,300 ORA employees attended 56 classroom courses in the regulatory, science, and computer strategic systems areas. These courses were offered in a variety of disciplines that included the use of computers in regulatory activities, emergency response, and data gathering and analysis to better target FDA enforcement strategies and consumer protection efforts.

- Satellite Pharmaceutical GMP Program: The satellite program, "Quality Systems and Risk Based Approaches and Application to FDA's Pharmaceutical Product Quality Regulation," and "The Risk Control Art" delivered to FDA staff brought employees up to date on the Agency's pharmaceutical GMP activities.

- Dispute Resolution: As part of the Pharmaceutical GMP Initiative, ORA established a Pilot Program allowing for the rapid, objective resolution of scientific and technical questions or issues that may arise either during an inspection or as the result of an inspection. This program has been designed to promote integrity, neutrality, consistency, transparency, fairness and scientific soundness in the dispute resolution process.

- Application of the Basics of Inspection/Investigation Initiative: FDA is developing a certification program that could reach over 30,000 state, local and tribal regulators which will result in an equivalency of regulation between FDA and the states, locals, tribal and maintenance/improved uniformity at the local level.

Risk Management

- International Mail Facility and Air Courier SOPs: ORA developed and implemented new Standard Operating Procedures for drug shipments coming through international mail facilities and courier hubs which will streamline operations and promote consistency, and guide risk based enforcement decisions regarding imported drugs.

- Workplanning, Inspections, and Compliance/Enforcement Efforts: FDA initiated a critical, comprehensive review of its practices relative to: planning and prioritizing its inspectional work based upon a risk-based model; conducting inspections as efficiently and as effectively as possible; and achieving compliance with the Act. The progress that is being made reflects FDA's commitment to the consistent adoption of risk management principles. This will result in an inspection and enforcement program that will provide the foundation for a strong, robust agency centered on the protection of the public health.

- Medical Device User Fee Modernization Act (MDUFMA): FDA has established and implemented a precedent and novel third party inspection program as mandated by MDUFMA which will allow accredited persons to inspect qualified medical device manufacturers, thereby helping focus limited inspection resources on higher-risk inspections, and allowing companies to more effectively operate in a global marketplace.

- Pharmaceutical Inspectorate: In conjunction with the Pharmaceutical GMP Initiative, ORA and CDER established a Pharmaceutical Inspectorate, a state of the art, first of its kind inspection cadre consisting of a dedicated, highly trained staff within the FDA Field force which will devote the majority of its time to conducting highly complex or high risk drug inspections. Approximately 80 FDA employees were trained in the Level III Pharmaceutical Inspectorate Certification Program.

FOODS FIELD PROGRAM OUTPUTS- DOMESTIC INSPECTIONS	FY 2004 Actuals	FY 2005 Estimate	FY2006 Estimate
Domestic Food Safety Program Inspections	6,034	3,875	3,680
Imported and Domestic Cheese Program Inspections	654	500	475
Domestic Low Acid Canned Foods/ Acidified Foods Inspections	639	400	400
Domestic Fish & Fishery Products (HACCP) Inspections	2,887	3,120	2960
Import (Seafood Program Including HACCP) Inspections	657	500	455
Juice HACCP Inspection Program (HACCP)	550	375	355
Interstate Travel Sanitation (ITS) Inspections	1,432	1,790	1,700
State Contract Food Safety (Non HACCP) Inspections	6,674	8,130	8,130
State Contract Domestic Seafood HACCP Inspections	914	1,135	1,135
State Contract Juice HAACP	37	35	35
State Partnership Inspections	1,398	2,000	2,000
Total FDA and State Contract Inspections	**21,876**	**21,860**	**21,325**
State Contract and Grant Foods Funding	$5,729,500	$6,825,000	$7,081,000
FERN State Cooperative Agreements	$300,000	$9,920,000	$22,920,000
Total State Funding	**$6,029,500**	**$16,745,000**	**$30,001,000**
Domestic Field Exams/Tests	3,087	5,000	4,750
Domestic Laboratory Samples Analyzed	14,970	15,460	14,685
All Foreign Inspections	153	200	190
Import Field Exams/Tests	70,926	60,000	60,000
Import Laboratory Samples Analyzed	24,480	33,185	33,185
Import Physical Exam Subtotal	95,406	93,185	93,185
Import Line Decisions	7,503,917	9,300,000	11,500,000
Percent of Import Lines Physically Examined	1.52%	1.21%	0.81%
Prior Notice Security Import Reviews (Bioterrorism Act mandate)	33,111	38,000	38,000

COSMETICS FIELD PROGRAM OUTPUTS- DOMESTIC INSPECTIONS	**FY 2004 Actuals**	**FY 2005 Estimate**	**FY2006 Estimate**
All Inspections	118	100	95
PROGRAM OUTPUTS-			
IMPORT/FOREIGN INSPECTIONS			
Import Field Exams/Tests	3,822	2,000	2,000
Import Laboratory Samples Analyzed	268	200	200
Import Physical Exam Subtotal	4,090	2,200	2,200
Import Lines	939,893	1,200,000	1,400,000
Percent of Import Lines Physically Examined	0.44%	0.18%	0.16%

DRUGS FIELD PROGRAM OUTPUTS- DOMESTIC INSPECTIONS	**FY 2004 Actuals**	**FY 2005 Estimate**	**FY2006 Estimate**
Pre-Approval Inspections (NDA)	189	140	130
Pre-Approval Inspections (ANDA)	79	175	165
Bioresearch Monitoring Program Inspections	596	580	550
Drug Processing (GMP) Program Inspections	1,232	1,430	1,355
Compressed Medical Gas Manufacturers Inspections	176	150	140
Adverse Drug Events Project Inspections	78	100	95
OTC Monograph Project Inspections	12	30	28
Health Fraud Project Inspections	37	50	45
State Partnership Inspections: Compressed Medical Gas Manufacturers Inspections	93	110	110
State Partnership Inspections: GMP Inspections	53	50	50
Total FDA and State Partnership Inspections	**2,545**	**2,815**	**2,668**
Domestic Laboratory Samples Analyzed	1,884	2,160	2,050
PROGRAM OUTPUTS-			
IMPORT/FOREIGN INSPECTIONS			
Foreign Pre-Approval Inspections (NDA)	151	155	150
Foreign Pre-Approval Inspections (ANDA)	87	75	70
Foreign Bioresearch Monitoring Program Inspections	105	65	60
Foreign Drug Processing (GMP) Program Inspections	200	195	185
Foreign Adverse Drug Events Project Inspections	11	25	20
Total Foreign FDA Inspections	**554**	**515**	**485**
Import Field Exams/Tests	5,225	4,495	4,495
Import Laboratory Samples Analyzed	141	355	355
Import Physical Exam Subtotal	5,366	4,850	4,850
Import Lines	220,354	270,000	340,000
Percent of Import Lines Physically Examined	2.44%	1.80%	1.43%

BIOLOGICS FIELD PROGRAM OUTPUTS- DOMESTIC INSPECTIONS	**FY 2004 Actuals**	**FY 2005 Estimate**	**FY 2006 Estimate**
Bioresearch Monitoring Program Inspections [1]	101	145	135
Blood Bank Inspections	1,303	1,175	1,120
Source Plasma Inspections	215	190	180
Pre-License, Pre-Approval (Pre-Market) Inspections	8	10	9
GMP Inspections	37	40	35
GMP (Device) Inspections	12	45	40
Human Tissue Inspections	284	365	345
Total Domestic Inspections	**1,960**	**1,970**	**1,864**
PROGRAM OUTPUTS-			
IMPORT/FOREIGN INSPECTIONS			
Blood Bank Inspections	0	20	20
Pre-License Inspections	1	0	0
GMP Inspections	15	15	14
Total Foreign FDA Inspections	**16**	**35**	**34**
Import Field Exams/Tests [1]	138	100	100
Import Lines	36,071	45,000	55,000
Percent of Import Lines Physically Examined	0.38%	0.22%	0.18%

Note:

1. Includes MedWatch, Foreign reports, and VAERs reports.

ANIMAL DRUGS & FEEDS FIELD PROGRAM OUTPUTS- DOMESTIC INSPECTIONS	**FY 2004 Actuals**	**FY 2005 Estimate**	**FY2006 Estimate**
Pre-Approval /BIMO Inspections	74	150	150
Drug Process and New ADF Program Inspections	255	220	220
BSE Inspections	2,395	3,760	3,526
Feed Contaminant Inspections	22	60	60
Illegal Tissue Residue Program Inspections	318	225	225
Feed Manufacturing Program Inspections	416	255	255
State Contract Inspections: BSE	3,416	4,100	4,920
State Contract Inspections: Feed Manufacturers	396	360	360
State Contract Inspections: Illegal Tissue Residue	365	660	660
State Partnership Inspections: BSE and Other	993	900	900
Total FDA and State Contract Inspections	**8,650**	**10,690**	**11,276**
State Animal Drugs/Feeds Funding	$1,156,300	$1,300,000	$1,731,000
BSE Grant Increase		$3,000,000	$3,000,000
State Contract for Tissue Residue	$170,700	$220,000	$220,000
Total State Funding	**$1,327,000**	**$4,520,000**	**$4,951,000**
Domestic Laboratory Samples Analyzed	1,999	1,790	1,700
PROGRAM OUTPUTS-			
IMPORT/FOREIGN INSPECTIONS			
Foreign Pre-Approval/Bioresearch Monitoring Program Inspections	36	50	45
Foreign Drug Processing and New ADF Program Inspections	10	10	10
Total Foreign FDA Inspections	**46**	**60**	**55**
Import Field Exams/Tests	5,931	5000	5000
Import Laboratory Samples Analyzed	768	1075	1025
Import Physical Exam Subtotal	6,699	6,075	6,025
Import Lines	191,764	238,000	295,000
Percent of Import Lines Physically Examined	3.49%	2.55%	2.04%

DEVICES FIELD PROGRAM OUTPUTS- DOMESTIC INSPECTIONS	**FY 2004 Actuals**	**FY 2005 Estimate**	**FY 2006 Estimate**
Bioresearch Monitoring Program Inspections	349	280	280
Pre-Approval Inspections	69	100	100
Post-Market Audit Inspections	69	70	70
GMP Inspections (Levels I, II, III and Accredited Persons)	1,573	1,600	1,600
Total Domestic Inspections: Non MQSA	**2,060**	**2,065**	**2,065**
Inspections (MQSA) FDA Domestic (non-VHA)	352	370	370
Inspections (MQSA) FDA Domestic (VHA)	32	35	35
Inspections (MQSA) by State Contract	7,903	7,735	7,735
Inspections (MQSA) by State non-Contract	530	545	545
Total Domestic MQSA	**8,817**	**8,685**	**8,685**
State Contract Devices Funding	$1,350,000	$1,350,000	$1,350,000
State Contract Mammography Funding	$9,888,000	$9,800,000	$9,800,000
Total State Funding	**$11,238,000**	**$11,150,000**	**$11,150,000**
Domestic Radiological Health Inspections	119	185	185
Domestic Field Exams/Tests	1,007	1,390	1,390
Domestic Laboratory Samples Analyzed	176	220	220
PROGRAM OUTPUTS-			
IMPORT/FOREIGN INSPECTIONS			
Foreign Bioresearch Monitoring Inspections	5	15	15
Foreign Pre-Approval Inspections	26	60	60
Foreign Post-Market Audit Inspections	29	30	30
Foreign GMP Inspections	293	160	160
Foreign MQSA Inspections	14	15	15
Foreign Radiological Health Inspections	24	25	25
Total Foreign FDA Inspections	**391**	**305**	**305**
Import Field Exams/Tests	5,187	5,000	5,000
Import Laboratory Samples Analyzed	1,266	1,470	1,470
Import Physical Exam Subtotal	6,453	6,470	6,470
Import Lines	2,724,349	3,400,000	4,200,000
Percent of Import Lines Physically Examined	0.24%	0.19%	0.15%

PERFORMANCE GOALS AND TARGETS

The following table of performance goals and FY 2006 targets is presented to compliment the sequential display of this program's "outputs" by more closely linking the traditional budget presentation of base and increased activities and workload outputs contained in the Program Activity Data (PAD) charts. Activities discussed throughout this narrative support the accomplishment of outputs (PAD and performance goals) which in turn contribute to the accomplishment of long term outcome and strategic goals. Full cost information for these goals as well as other historical information has been provided in their respective sections in the Detail of Performance Analysis contained in the supporting information tab.

Performance Goals	Targets
Perform prior notice import security reviews on 38,000 food and animal feed line entries considered to be at high risk for bioterrorism and/or present the potential of a significant health risk.	FY 06: 38,000 reviews
Perform 60,000 import food field exams on products with suspect histories. (11036)	FY06: 60,000 exams
Perform at least 1,000 Filer Evaluations under new procedures. (19015)	FY 06: 1,000 Filer Evaluations
Conduct 2,000 examinations of FDA refused entries as they are delivered for exportation to ensure that the articles refused by FDA are being exported. (19016)	FY 06: 2,000 examinations
Conduct postmarketing monitoring, food surveillance, inspection, and enforcement activities to reduce health risks associated with food, cosmetics and dietary supplements products. (11020)	FY 06: Inspect 95% of estimated 6800 high-risk domestic food establishments once every year.
Increase federal/state/local involvement in FDA's eLEXNET system by having 105 laboratories participate in the system. (19013)	FY 06: 105 laboratories
Increase risk-based compliance and enforcement activities to ensure product quality (12020) ***Formerly: Inspect 55% of registered high-risk human drug manufacturers.***	FY 06: Inspect 65% of the establishments identified as high-risk.

Performance Goals	Targets
Meet the biennial inspection statutory requirement by inspecting 50% of the approximately 2,600 registered blood banks, source plasma operations and biologics manufacturing establishments to reduce the risk of product contamination. (13012)	FY 06: 50% of approximately 2,600 establishments
Ensure the safety of marketed animal drugs and animal feeds by conducting appropriate and effective surveillance and monitoring activities. (14009)	FY 06: 1. Maintain biennial inspection coverage by inspecting 50% of 1,390 registered animal drug and feed establishments. 2. Conduct targeted BSE inspections of 100% of all known renderers and feed mills processing products containing prohibited material.
Conduct 295 domestic and foreign BIMO inspections with an emphasis on scientific misconduct, data integrity, innovative products, and vulnerable populations. (15025)	FY 06: 295
Utilize Risk management to target inspection coverage for Class II and Class Ill domestic medical device manufacturers at 20% of an estimated 5,540 firms. (15005.01)	FY 06: 20%
Utilize Risk management to target inspection coverage for Class II and Class Ill foreign medical device manufacturers at 7% of an estimated 2,500 firms. (15005.02)	FY 06: 7%
Establish and maintain a quality system in the ORA Field Labs which meets the requirements of ISO 17025 (American Society for Crime Lab Directors for the Forensic Chemistry Center) and obtain accreditation by an internationally recognized accrediting body (American Association for Laboratory Accreditation).	FY 06: Achieve and maintain accreditation for 13 laboratories