Food and Drug Administration
House, Senate Conference Report and Appropriations Bill
Significant Items

House Significant Items
Contained in House Report 110-258

Item 1 - Post Marketing Studies – The Committee is very concerned that FDA rejected OIG's recommendation that it tell companies to provide additional useful information in the annual status reports they submit to FDA, such as milestones to monitor progress in completing studies, merely because FDA would be required to change its regulations to do so. The Committee cannot accept FDA's reason for not implementing this recommendation and directs FDA to submit a report by November 1, 2007 explain why it believes it should not comply with this recommendation. (Page 97)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA takes very seriously its obligations under section 130(a) of Title I of the Food and Drug Administration Modernization Act of 1997 (FDAMA) to track and monitor the progress of Post Market Commitments (PMCs). We closely monitor the status of PMCs to ensure that companies initiate and complete studies in a timely manner. In the event that a significant safety issue or other compliance issue unrelated to the failure to conduct a voluntary study arose in a product, FDA would take appropriate action to address the safety or other compliance issue, including seizure, injunction, or revocation of approval if the standard was met. Since the FDA's response to the 2006 OIG report, FDA launched additional steps to improve the oversight of postmarketing study commitments. FDA is in the process of developing a report, as requested.

Item 2 - Office of Women's Health – The Committee provides $5,000,000 for the Office of Women's Health. The Committee requests quarterly reports on the expenditures and staffing levels of the Office to ensure that the resources provided are used exclusively for that Office.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to spend not less than $4,965,000 for program operation, salaries, and oversight of the Office of Women's Health. Page 98)

Item 3 - Ketek – The Committee requests a report from the agency by October 1, 2007, describing what FDA learned from the Ketek investigation. (Page 98)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for

this report to 60 days after the enactment of the bill. The Ketek review was particularly complex, and it underwent three cycles of review prior to approval. This complexity was due largely to the need for additional safety data, followed by the discovery of serious problems of data integrity in the large safety study (study 3014) conducted to address the Agency's safety concerns. As the Ketek investigation covered a broad range of issues, so have the lessons learned from this experience. FDA is in the process of developing a report as requested to describe what FDA learned from the Ketek investigation.

Item 4 - Bovine Spongiform Encephalopathy – The Committee remains concerned over the prolonged delay in the issuance of a new, upgraded rule regarding the prohibition of additional specified risk materials from ruminant and non-ruminant animal feed. Within 60 days of enactment of this Act, FDA is directed to submit a report to the Committee detailing the obstacles to the completion of this report, as well as any legislative activity that would assist in the resolution of this issue. (Page 98)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA is in the process of preparing a report detailing the obstacles undertaken in preparing a final rule, amending the 1997 animal feed regulations, to prohibit in all animal feed certain cattle origin materials that can potentially carry the BSE infectious agent.

Item 5 - Diacetyl – The Committee is concerned about potential health hazards posed by exposure to the chemical diacetyl, a butter flavoring agent used in microwave popcorns and other foods. Although, FDA codified diacetyl as `generally regarded as safe' (GRAS) in 1983, several recent investigations by the National Institute for Occupational Safety and Health (NIOSH) found diacetyl to have caused a rare and fatal lung disease (bronchiolitis obliterans). The Committee believes that the more recent safety information by NIOSH comprises compelling scientific evidence that diacetyl may not only pose a real threat to exposed workers, but also raises the possibility of harm to consumers of microwave popcorn. The Committee believes that this matter warrants reconsideration by the FDA of the GRAS status of diacetyl, but at minimum, the FDA should conduct further studies to examine the safety of diacetyl and the relationship between exposure to the chemical and consumption of food products containing the butter flavoring. The Committee directs that FDA submit a report on its plan to research this issue further to the House Committee on Appropriations within 90 days of enactment. (Page 98)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA is in the process of completing the report requested by the committee.

Item 6 - Microbial Resistance – In 2003, FDA released guidance for industry that outlines a comprehensive, evidenced-based approach to preventing antimicrobial resistance in humans that may result from the use of antimicrobial drugs in animals. However, the Committee is concerned that the guidance document does not assign enough weight to the impact of microbial resistance to drugs that are highly important to human medicine but are not used to treat foodborne illnesses. Transferred resistance from antimicrobials used in animals produced for food can also render critically important human antibiotics ineffective, including those used to treat foodborne illnesses. The Committee is concerned that simply satisfying the requirements of the guidance document is not adequate to protect human health. Therefore, the Committee directs FDA to reevaluate the basis on which it makes such decisions and to provide a report to the Committee by November 1, 2007. (Page 98)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA is in the process of preparing a report which discusses the FDA basis for the guidance on antimicrobial new animal drugs intended for use in food-producing animals.

Item 7 - FDA Enforcement – FDA recently issued an import alert about certain types of farm-raised fish from China. The Committee is dismayed that it took the agency so long to act. FDA's own time-line on this issue indicates that concerns about this problem go back more than five years. The committee expects FDA to act promptly to address violations of the alert and will monitor FDA's actions accordingly. (Page 99)

Action taken or to be taken

CFSAN, in conjunction with FDA's field force has developed teams of FDA experts to establish the scientific foundation needed to address this important issue.

Item 8 - Sunscreen Products – The Committee directs FDA to issue a comprehensive monograph for over-the-counter sunscreen products, including UVA and UVB labeling requirements, within three months of enactment of this Act. (Page 99)

Action taken or to be taken

In August 2007, FDA proposed a new regulation that sets standards for formulating, testing and labeling over-the-counter (OTC) sunscreen drug products with ultraviolet A (UVA) and ultraviolet B (UVB) protection. The proposed regulation creates a consumer-friendly rating system for UVA products designed to help consumers identify the level of UVA protection offered by a product. The FDA proposal provides a ratings system for UVA sunscreen products on a scale of one to four stars. One star would represent low UVA protection, two stars would represent medium protection, three stars would represent high protection, and four stars would represent the highest UVA protection available in an OTC sunscreen product. If a sunscreen product does not provide at least a low level (one star) of protection, FDA is proposing to require that the product bear a "no UVA protection" marking on the front label near the SPF value. In addition, a *"Warnings"* statement in the *"Drug Facts"* box will be required of all sunscreen product manufacturers. The warning will say: "UV exposure from the sun increases the risk of

skin cancer, premature skin aging, and other skin damage. It is important to decrease UV exposure by limiting time in the sun, wearing protective clothing, and using a sunscreen." The warning is intended to increase awareness that sunscreens are only one part of a sun protection program.

When finalized, the proposed regulation would amend the existing OTC sunscreen rule published in 1999 that established regulations related to UVB light and mandated that OTC UVB sunscreen products be labeled with an SPF. FDA also is amending its existing 1999 rule to increase the SPF from SPF30+ to SPF50+. Previously, FDA had recognized SPF values up to 30+. Under the proposed amendment, the range would be SPF2 to SPF50+. SPF50 provides more UVB protection than lower SPF values. FDA extended the deadline of the 90-day comment period on the new rule from November 26, 2007 until December 26, 2007. FDA is in the process of reviewing the comments received.

Item 9 - Eggs and Salmonella – The Committee recommends that the FDA encourage any facility that serves highly susceptible populations, including schools, hospitals, nursing homes, acute care facilities, day care centers, and hospice facilities to consider using eggs that have been pasteurized to destroy all viable salmonellae. (Page 99)

Action taken or to be taken
FDA intends to continue annually its food safety outreach activities, consumer advice and other programs aimed to insure safety issues relevant to the consumption of shell eggs is communicated to all sectors of the U.S. population.

Item 10 - Penicillin In Animal Feed – The Committee is concerned that the FDA has still not finished its review of the safety for people of the subtherapeutic use of penicillin in animal feed and, accordingly, directs FDA to finish this review and make the review public by June 30, 2008. (Page 99)

Action taken or to be taken
FDA is in the process of reviewing the information provided in the Citizen Petitions requesting the Agency withdraw the approval of subtherapeutic uses and nontreatment uses, respectively, of a number of antimicrobial drugs used in animal feed, including penicillin. Upon completing analyses of all of the relevant information, FDA will be able to make the necessary determinations related to the pending citizen petitions. FDA is working diligently to complete this process as soon as possible.

Item 11 - Food Import Entries – Last, year, in response to questions from the Committee, FDA indicated that they have implemented several actions to improve the processing food import entries. The Committee encourages FDA to consider establishing a formal process for tracking status inquiries. (Page 99)

Action taken or to be taken
In response to the Committee's encouragement to consider establishing a formal process for tracking status inquiries, FDA intends to examine all import procedures on a national basis, including all communications issues. Previous issues voiced to FDA concerned the regulation of

imported ethnic foods into the Los Angeles District and criticism of FDA's response time to inquiries regarding the status of these products. Los Angeles District implemented new procedures such as a single phone number for determining entry status and development of a paperless file system to increase efficiency. FDA determined that these changes adequately addressed these concerns and that the development of a nationwide system to address the issue of was not required. FDA considers communication with the importing community of vital importance to performing our public health mission and will continue to work towards strengthening this partnership.

Item 12 - Combat Methamphetamine Epidemic Act – The Committee requests FDA to submit a report to the Committee on the implementation of the Act within 90 days of the date of enactment. (Page 99)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. On March 9, 2006, President Bush signed the Patriot Act which incorporates the Combat Methamphetamine Epidemic Act of 2005. The Act bans over-the-counter (OTC) sales of cold medicines that contain pseudoephedrine, an ingredient commonly used to make methamphetamine. The sale of cold medicine containing pseudoephedrine is limited to behind the counter. The amount of pseudoephedrine that an individual can purchase each month is limited and individuals are required to present photo identification to purchase products containing pseudoephedrine. In addition, stores are required to keep personal information about purchasers for at least two years. The enforcement of the act is the responsibility of the Department of Justice and the Drug Enforcement Agency (DEA). The Food and Drug Administration's role is tangential by facilitating alternative products that do not contain pseudoephedrine. FDA is in the process of submitting a report to the Committee as requested.

Item 13 - Inspector General Recommendations – the Committee directs the agency to submit a report by October 1, 2007 on the status of all open audits and recommendations by OIG. The report must also include a plan for getting to resolution on all these open issues. (Page 99)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA intends to provide the report that the Committee requested.

Item 14 - GAO recommendations – The Committee directs FDA to report to the Committee by October 1, 2007 on the status of all open GAO recommendations and on its plan to reach closure on each of them. (Page 100)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for

this report to 60 days after the enactment of the bill. FDA intends to provide the report that the Committee requested.

Item 15 – High-Risk List —The Committee directs FDA and USDA to work with GAO on a plan whose implementation would result in food safety being removed from GAO's High-Risk List and to submit a report on that plan to the Committee by October 1, 2007.

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA will work with USDA and GAO to achieve the goal of removing Food Safety from GAO's High Risk List. FDA will work with other Federal stakeholders to provide the report the Committee requested.

In response to GAO's designation of Federal Oversight of Food Safety as a High-Risk item, the Office of Management and Budget, in concert with FDA, USDA, DHS, EPA, and other agencies, convened an inter-agency food safety working group to ensure effective, consistent, and efficient oversight of the nation's food supply to prevent or reduce the incidences of illness caused by contamination of the food supply. A key step in this process is to bring our food safety and security agencies more in line with the current state of the nation's food supply infrastructure.

On November 6, 2007, the administration released the Food Protection Plan, an integrated strategy to protect the nation's food supply. FDA believes that implementing the priorities in the Food Protection Plan and the closely aligned Import Safety Action Plan will advance the goal of removing Food Safety from GAO's high risk list. These plans contain thoroughly defined strategies to strengthen food protection for domestic and imported foods.

Finally, since the GAO release of the High-Risk Update on January 31, 2007, designating federal oversight of food safety as high risk, FDA has taken important actions to ensure the safety of the American food supply.

- FDA developed the Food Protection Plan which proposes a scientific and a risk-based approach to ensure the safety and security of domestic and imported foods.
- Participated in the President's Interagency Working Group on Import Safety to develop the Import Safety Action Plan which is a roadmap of short- and long-term recommendations to enhance product safety at every step of the import life cycle.
- FDA engaged with Chinese counterparts to develop agreements to increase cooperation and information sharing between the U.S. and Chinese governments. These agreements are aimed at protecting the public health and providing safe products to U.S. consumers.
- FDA responded to many food safety challenges by issuing guidance, identifying additional risk factors, and developing new methods for detecting contaminates.
- FDA released CARVER + Shock Software Tool which allows industry to conduct customized vulnerability assessments for food production facilities.
- FDA participated in The Strategic Partnership Program Agroterrorism Initiative and used the Assure/Look/Employees/Reports/Threats (ALERT) initiative to raise the awareness of State and local regulators and industry representatives regarding food defense issues and preparedness.

- FDA collaborated with USDA and over 45 states on the Food Defense Surveillance Assignment, simulating the response to an emergency.
- FDA continued efforts to foster better nutrition for all Americans by publishing rules and guidance on labeling and conducting outreach and education activities.
- FDA took steps to ensure that dietary supplements are processed in a consistent manner and meet quality standards.
- FDA focused on building capacity and capability at the state the local level for the Food Emergency Response Network (FERN).

Senate Significant Items
Contained in Senate Report 110-134

Item 16 - Office of Women's Health — The Committee recommendation includes $1,000,000 for the Office of Women's Health. (Page 132)

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to spend not less than $4,965,000 for program operation, salaries, and oversight of the Office of Women's Health.

Item 17 - Foreign Drugs – The Committee is concerned about recent reports that some human drugs are produced using active ingredients from countries that may have regulatory safeguards less stringent than the United States. The Committee requests that the Food and Drug Administration issue a report, using available data sources, within 120 days of enactment of this act, that outlines the location of the manufacturer of all drugs approved since January 1, 2000; the location of the manufacturer of the active ingredient in each of those drugs, only as submitted in the original application; the extent to which drugs manufactured overseas and commercially distributed in the United States are subject to different regulation than drugs manufactured and distributed in the United States; and the procedures taken when a manufacturer changes the procurement of active ingredients for their drugs. The Committee further directs that the FDA present this information in such as way as to not violate any commercial confidential, trade secret, or proprietary information. (Page 132)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA recognizes the concern of the Committee and is working to prepare the report requested. The work required to collect, assemble, and organize the information for this report cannot be completed in 60 days. Therefore, FDA intends to submit an interim report that provides a work plan for completing the request. FDA is committed to submitting the final report as quickly as possible.

Item 18 - Bovine Spongiform Encephalopathy — The Committee recommendation includes $29,260,000 for Bovine Spongiform Encephalopathy [BSE]. The Committee understands that this funding will be used to conduct yearly inspections of all renderers and feed mills processing products containing prohibited materials; extend BSE inspections into targeted segments of industries subject to the BSE Feed regulation but previously minimally inspected; validate test methods for the detection of bovine-derived proteins in animal feed; and continue to conduct research on Transmissible Spongiform Encephalopathies in FDA's product centers. (Page 133)

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to FY 2008 Appropriated Funding. In FY 2008, FDA intends to devote the amount specified by the Committee, including the reduction due to the rescission.

Item 19 - Budget Justification – The Committee directs the agency to submit the fiscal year 2009 budget request in a format that follows the same account structure as the fiscal year 2008 budget request unless otherwise approved by the Committee. (Page 133)

Action taken or to be taken

This budget submission represents the new format requested by the Department but at the same time maintains the organizational structure approved by the Committee.

Item 20 - Childhood Obesity – The Committee is concerned about the rapidly growing rate of childhood obesity. Further, the Committee is aware that a predominance of food advertising to children is aimed at the purchasing and consumption of food products. While the Committee recognizes the efforts of the U.S. Department of Agriculture and the Food and Drug Administration to increase public awareness of health, such as My Pyramid and the Children's Food Pyramid, the Committee believes that to effectively aid the public in improving child nutrition and overall health, there should be a uniform scientifically based set of nutrition guidelines to better equip the public when making consumer food choices. Therefore, the Committee encourages USDA and FDA to create an inter-agency working group, consisting of all government institutions with jurisdiction over health and nutrition policy. Through this collaboration, a set of clear, concise, and uniform health standards for children such as proper portion sizes, healthy versus unhealthy nutritional content, and daily recommended amounts can be established and made easily available to the American public. (Page 134)

Action taken or to be taken

Pursuant to Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008, FDA intends to establish a working group to address this important public health issue.

Item 21 - Chloramphenicol – The Committee continues to have serious concerns regarding seafood safety issues posed by banned antibiotic contamination in farm-raised shrimp imports. In addition, the Committee is concerned that the FDA inspects less than 2 percent of shrimp being imported into the United States. Therefore, the Committee strongly encourages the FDA to develop, in cooperation with State testing programs, a program for increasing the inspection of

imported shrimp, possibly including cold-storage inventories, for banned antibiotics, including chloramphenicol. (Page 134)

Action taken or to be taken
CFSAN, in conjunction with FDA's field force, will continue to examine the sampling frequency and violation rates for imported shrimp, and closely monitor efforts to ensure that any shrimp that test positive for chloramphenicol will not be subsequently consumed or enter the U.S. food supply.

Item 22 - Codex Alimentarius – Within the total funding available, at least $2,495,000 is for FDA activities in support of *Codex Alimentarius*. (Page 134)

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to continue funding *Codex Alimentarius* at the level requested by the Committee, including the reduction due to the rescission.

Item 23 - Drug Safety – The Committee expects that the drug safety funding will be used to enhance FDA's ability to identify safety issues with products already on the market and communicate those safety issues to health professionals and the public as well as enhance the agency's ability to identify safety issues for products under review. The Committee understands that FDA will use this funding to upgrade and modernize the Adverse Events Reporting System [AERS]; access additional databases for drug and biologic safety surveillance and analysis; hire additional scientists to evaluate safety information in these databases; strengthen the involvement of safety experts throughout the drug lifecycle by identifying safety data needs prior to product approval and during the design and review of post marketing studies; and hire additional experts to review proposed risk management plans and evaluate the effectiveness of existing risk management plans. (Page 134)

Action taken or to be taken
FDA appreciates the support and understanding that the Committee has for the efforts required for the Agency to enhance its ability to identify safety issues with products and to communicate those issues to health professionals and the public. The Food and Drug Administration Amendments Act (FDAAA) of 2007 recognizes FDA's critical role in assuring the safe and appropriate use of marketed drugs. FDAAA gives FDA substantial new resources for medical product safety, as well as a variety of regulatory tools and authorities to ensure the safe and appropriate use of drugs. FDA intends to use the new resources to modernize AERS, access additional safety surveillance databases and other information, hire additional epidemiologists, safety evaluators, risk management and risk communications experts, and other scientists, and strengthen the involvement of safety experts throughout the drug lifecycle including during the design and review of post marketing studies.

Item 24 - Dietary Supplements – The Committee recommendation includes $5,360,000 for the CFSAN Adverse Events Reporting System [CAERS], of which approximately $1,500,000 is for dietary supplements. The Committee is encouraged by FDA's activities to enforce provisions

contained within the Dietary Supplement Health and Education Act of 1994 [DSHEA] (Public Law 103-417). The Committee has recommended funding to continue enforcement of the provisions contained in DSHEA. It is the Committee's intent that these funds be prioritized by the agency to step up activities against products that are clearly in violation of DSHEA. (Page 135)

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to continue funding for the CFSAN Adverse Events Reporting System [CAERS] at the level requested by the Committee, including the reduction due to the rescission.

Item 25 - The Committee encourages FDA to dedicate appropriate resources to fully implement Public Law 109-462, the Dietary Supplement and Nonprescription Drug Consumer Protection Act. The Committee believes the law, scheduled to take effect on December 22, 2007, will enhance FDA's efforts to identify potential public health issues associated with the use of dietary supplements and nonprescription drugs and will enable the government, manufacturers, and retailers to respond more quickly to potential public health issues. (Page 135)

Action taken or to be taken

In FY 2007, FDA actively pursued implementing the new Dietary Supplement and Nonprescription Drug and Consumer Protection Act, which requires mandatory reporting on adverse events associated with dietary supplements. FDA developed guidance on reporting adverse events associated with dietary supplements and used its post-market Safety Review program to monitor medical literature for signals of potential adverse reactions to dietary supplements and ingredients. FDA also published a final rule for dietary supplement current Good Manufacturing Practice requirements (cGMPS). These cGMPs require that proper controls be in place so dietary supplements are processed in a consistent manner and meet quality standards, including standards for identity, purity, strength, and composition.

Item 26 - Expedited Consideration of New Drug Combinations – The Committee directs the FDA to provide a report within 120 days of enactment of this act on the initiatives undertaken by the agency to expedite and support the filing of new drug applications seeking approval of new combinations of drug products, whose active ingredients have all previously been approved as safe and effective drugs under section 505(b) of the Federal Food, Drug, and Cosmetic Act, or novel single agents that would provide a replacement for or other therapeutic alternative to a drug currently on the market which is regulated by The Combat Methamphetamine Epidemic Act. (Page 135)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. On March 9, 2006, President Bush signed the Patriot Act which incorporates the Combat Methamphetamine Epidemic Act of 2005. The Act bans over-the-counter (OTC) sales of cold medicines that contain pseudoephedrine, the ingredient commonly used to make methamphetamine. The sale of cold medicine containing

pseudoephedrine is limited to behind the counter. The amount of pseudoephedrine that an individual can purchase each month is limited and individuals are required to present photo identification to purchase products containing pseudoephedrine. In addition, stores are required to keep personal information about purchasers for at least two years. The enforcement of the act is the responsibility of the Department of Justice and the Drug Enforcement Agency (DEA). The Food and Drug Administration's role is tangential by facilitating approval or substitution of alternative products that do not contain pseudoephedrine (PSE). FDA is in the process of developing the report that the committee requested.

Item 27 - Folic Acid Fortification – The Centers for Disease Control and Prevention [CDC] estimates that up to 70 percent of neural tube defects [NTDs], such as spina bifida, could be prevented if all women of childbearing age consume 400 micrograms of folic acid daily, beginning before pregnancy. About 10 years ago, FDA revised several standards of identity for enriched cereal-grain products to require the addition of folic acid and the rate of NTDs has decreased significantly. A recent analysis by the CDC found that folate concentrations in the blood among non-pregnant women of childbearing age declined slightly from 1999-2000. This slight decline follows a substantial increase in folate concentrations following the initiation of the fortification program. The decline has not been associated with an increase in rates of NTDs. However, the Committee is concerned that some women may not be receiving an adequate level of folate to prevent NTDs, and some studies conducted since the FDA fortification program began have suggested that the current levels of folic acid in enriched cereal-grain products should be increased and that such an increase might achieve a higher rate of birth defect prevention. The Committee is interested in having FDA review the folic acid fortification level for enriched grain products and the fortification of corn products with folic acid. The Committee requests a report, within 120 days of the enactment of this act, on FDA's current folic acid fortification standards, the need to review, and possibly revise, folic acid standards, and the aspects of the fortification issue that FDA would consider in revising the standards. (Page 135)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA intends to FDA to complete a report on its review of folic acid fortification level for enriched grain products and the fortification of corn products with folic acid including FDA's current fortification standards, the need to review, and possibly revise, folic acid standards, and the aspects of the fortification issue that FDA would consider in revising the standards.

Item 28 - Food Safety – The Committee directs FDA to provide detailed quarterly reports on the expenditure of these funds, including the numbers of additional staff hired and research contracts let. (Page 136)

Action taken or to be taken

FDA is in the process of developing quarterly reports, as the committee requested.

Item 29 – Rapid Response Teams — The Committee further directs that no less than $11,000,000 should be used to create both Federal and State rapid response teams to respond to food safety problems throughout the United States. These teams should consist of staff trained specifically to rapidly trace back an outbreak to its root cause and stationed in significant produce growing areas in the United States, so that any time an outbreak occurs, the source can be identified as quickly as possible, preventing further distribution of the contaminated product. Further, when these teams are not actively responding to a food safety occurrence, they should be working with growers, processors, packers and State and local officials to ensure that FDA guidelines for safe food production are understood and implemented. (Page 136)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the amount for this activity to $8,000,000. This amount is subject to the 0.7 percent rescission under section 752 of the Act. FDA intends to support rapid response teams at the level requested by the Committee, including the reduction due to the rescission.

Item 30 – Foodborne Illness —The Committee directs the Food and Drug Administration to enter into a contract with the National Academy of Sciences, specifically with the Institute of Medicine and the National Research Council, for a comprehensive study on gaps in the public health protection provided by the food safety system and opportunities to fill those gaps. This study should identify and analyze specific gaps in protection to illustrate the causes of foodborne illness and cost-effective preventive measures and be based on credible estimates (using available data and analyses) of the incidence, severity, and direct costs and economic consequences of foodborne illness. The study should include consultation with high-level representatives from the government, food industry, consumer groups and other stakeholder groups, and should include legislative, regulatory and administrative recommendations and estimates of costs of such recommendations. The Committee directs that this report be completed within one year of funds being made available to the National Academy of Sciences. (Page 137)

Action taken or to be taken

In FY 2008, the FDA intends to contract with the National Academy of Sciences' Institute of Medicine and the Nation Research Council, for a peer review of the November 2007 "FDA Food Protection Plan, *An Integrated Strategy for Protecting the Nation's Food Supply.*" The review will include the identification and analysis of any specific gaps in the Plan in addressing the causes of foodborne illness or in the Plan's proposed preventive measures, including legislative, regulatory and administrative actions. Consultation with high-level representatives from the government, food industry, consumer groups and other stakeholder groups will be built-in to the peer review process.

Item 31 - Legacy Drugs – The Committee supports the FDA's review of a means by which drugs marketed outside the present approval process, which have been in clinical use for the past 25 years, and have no safety concerns, may be more efficiently vetted by the agency. Also known as `Legacy Drugs', these medicines are manufactured in FDA licensed and inspected facilities that utilize current Good Manufacturing Practices, are composed of FDA approved ingredients, and have been prescribed by doctors for decades to alleviate common ailments at a

fraction of the cost to patients and government programs such as Medicare and Medicaid. The Committee encourages FDA to work toward the development of a system to certify this unique class of drugs. (Page 138)

Action taken or to be taken

FDA believes that the "legacy" of a drug is not a substitute for drug approval and for this reason does not recognize the term "legacy drug." Individual experience, anecdotal evidence, and marketing history are not bases for concluding that a drug is safe and effective. In fact, drugs marketed without required FDA approval have an increased risk of drug quality deficiencies, drug labeling deficiencies, and poor post-marketing surveillance.

Instead of relying on the "legacy" of a drug, the Federal Food, Drug, and Cosmetic Act (FD&C Act) generally requires that drugs marketed in the United States be shown to be both safe and effective prior to marketing and wide-spread use. The drug approval and over-the-counter monograph systems are essential means by which FDA ensures that drugs meet FD&C Act's requirements. The drug approval process provides a review of product-specific information that is critical to ensuring the safety and efficacy of a finished drug product. Our evidence-based system of drug approval provides great public health benefits to consumers and health professionals because patients are able to rely on the medications that they take and avoid ineffective therapies or those for which the risks may not outweigh the benefits.

FDA is committed to proactive action to facilitate voluntary compliance by firms that market drugs. Generally, firms can legally market drugs with an applicable new drug application (NDA) or abbreviated new drug application (ANDA), or pursuant to an over-the-counter (OTC) monograph. FDA understands the need to assist firms unfamiliar with the drug approval process and to help them secure approval for any unapproved drugs they are currently marketing. As part of this commitment, FDA appointed an unapproved drugs coordinator in the Office of New Drugs and offered a workshop in January, 2007, to educate companies about the drug application and OTC monograph processes, and to provide direction on how to bring their products into compliance with approval requirements. As a result of this outreach, FDA has received approximately 85 phone calls from interested parties, and an estimated 31 INDs and 5 NDAs from marketers of previously unapproved drugs.

Item 32 - Mammography – The Committee recommends no less than the fiscal year 2007 level in appropriated funds for activities related to the Mammography Quality Standards Act. Appropriations for this program fund research grants and various activities to develop and enforce quality standards for mammography services, including a Federal advisory committee, accreditation bodies, inspections of government entities and facilities that provided 50 percent or more mammography screenings with grants provided through the Center for Disease Control's National Breast and Cervical Cancer Early Detection Program, issuance and renewal of certificates, appeal procedures, certification of personnel, and imposing sanctions for noncompliance. The Committee directs the FDA to provide a report within 120 days of enactment of this act detailing how the administration will implement the recommendations made in the Institute of Medicine report entitled `Breast Imaging Quality Standards'--released on May 23, 2005, and the congressionally mandated Government Accountability Office [GAO]

report entitled, `Mammography: Current Nationwide Capacity is Adequate, but Access Problems May Exist in Certain Locations' (GAO-06-724)--released in July 2006. (Page 138)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA is in the process of developing the report that the committee requested.

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 rescinded an amount equal to 0.7 percent of the budget authority provided for fiscal year 2008 for discretionary accounts for each item of budget authority including program, project, and activity. This includes the appropriated part of the Mammography Quality Standards Act (MQSA) program, whose funds are incorporated into the Devices and Radiological Health line of the FDA budget. FDA intends to spend not less than it spent in fiscal year 2007, reduced by the rescission amount, for program operation and oversight of MQSA.

Item 33 - Medical Device Identification – Currently, there is no standardized, unique identifying system for medical devices. This gap makes it difficult to recognize compatibility and interoperability issues for medical devices, to conduct device recalls, and to identify specific devices in adverse event reports. The rising number of medical device recalls as well as the rapid development of new, complex medical devices, speaks to the need to develop a unique device identification system. The Committee notes that FDA is exploring implementation of unique device identification [UDI] system. FDA published a Request for Comment on August 11, 2006, on how a national UDI system should be structured and how it will improve patient safety, reduce medical errors, facilitate device recalls, and improve device adverse event reporting. The Committee also recognizes that because devices are quite different in their use and distribution from drugs, the UDI system needs to include information to adequately identify the device through distribution and use. The Committee is also aware of interest in the development of a public-accessible UDI database. The Committee encourages FDA to continue to work on the development of an appropriate method of identifying medical devices to ensure patient safety throughout the life cycle of the device. (Page 139)

Action taken or to be taken

The docket for the August 11, 2006, Notice closed on November 9, 2006. The notice asked the device industry, health care facilities, and device users about the current use of unique device identification (UDI) systems, the need for a comprehensive, standardized UDI system and what FDA's role should be in the development of such a system. The notice also asked about the potential costs and benefits of such a system. FDA received over 100 comments. FDA also held a public meeting on October 25, 2006, with over 150 attendees. Since the issuance of the notice and public meeting, the Food and Drug Administration Amendments Act of 2007 (FDAAA) was enacted. FDAAA requires FDA to promulgate regulations to establish “a unique device identification system for medical devices requiring the label of devices to bear a unique identifier.” FDA is carefully considering the information it obtained from the comments and public meeting as it develops a proposed regulation that would implement this FDAAA

provision. In addition, FDA continues to work with its international regulatory partners to help ensure a harmonized approach to device identification. Finally, FDA is working with the U.S. and international medical device industry, the U.S. health care industry, and its federal partners (particularly CMS and DoD) to assure that the approach it takes will be beneficial to its stakeholders and will help protect the public health.

Item 34 - Nutrition Information – The Committee directs FDA to gather information on the various guidance systems, including nutritional criteria currently in use by the food industry, trade organizations, and nonprofit organizations, that use front-label logos, such as symbols, signs, emblems or other graphic representations that are intended to provide simple, standardized nutrition information to the public in graphic form. Further, the Committee directs FDA to provide a report, within 120 days of the enactment of this act, that describes the nutrition symbols and accompanying guidance systems for consumers and the current scientific and consumer research on the use and effectiveness of such symbols. (Page 139)

Action taken or to be taken

The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 changed the due date for this report to 60 days after the enactment of the bill. FDA intends to complete a report on various guidance systems that use front-label logos, such as symbols, signs, emblems or other graphic representations that are intended to provide simple standardized nutrition information to the public.

Item 35 - Pharmacy – The Committee encourages the FDA to work with the American Association of Colleges of Pharmacy to develop and implement strategies for the integration of pharmacy faculty and Doctor of Pharmacy students into patient safety initiatives including post-market surveillance, counterfeit drug detection, and medication risk/benefit communication. (Page 140)

Action taken or to be taken

The Office of Surveillance and Epidemiology (OSE), CDER, held a teleconference with the American Association of Colleges of Pharmacy (AACP) on October 29, 2007, to hear about their ideas for a national drug surveillance program, which would include developing and implementing strategies for the integration of pharmacy faculty and Doctor of Pharmacy students into FDA patient safety initiatives. OSE is currently having internal discussions to determine how this effort dovetails with other ongoing and planned initiatives with outside organizations to determine where such collaboration might fit within OSE's postmarketing drug safety programs. This year, FDA is planning to attend both AACP and National Association of Boards of Pharmacy (NABP) annual meetings to seek opportunities to further the discussion on the topic of developing strategies for the integration of pharmacy faculty and students into FDA drug safety initiatives.

Item 36 - Office of Women's Health – The Committee believes that it is imperative for FDA to pay sufficient attention to gender-based research, ensuring that products approved by the FDA are safe and effective for women as well as men. The Committee recommendation includes $5,000,000 for the Office of Women's Health. The Committee encourages FDA to ensure that

the Office of Women's Health is sufficiently funded to carry out its activities, and to enhance its funding if necessary. (Page 1140)

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to spend not less than $4,965,000 for program operation, salaries, and oversight of the Office of Women's Health.

Item 37 - Orphan Products Grants – The Committee recommendation includes $16,772,000 for the Orphan Products Grants Program within the Center for Drug Evaluation and Research. (Page 140)

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. This adjusted appropriation will allow FDA to continue funding for pivotal clinical studies of potential treatments for rare diseases in the U.S. The studies funded with the amount for grants will be those with the most outstanding technical merit and the most likely to lead to a marketed treatment for serious and life-threatening rare diseases. FDA also use program amounts to carry out the rare disease drug designation, humanitarian device designation, rare disease outreach, and orphan grant program administration, in accordance with the President's Budget.

Item 38 - Premarket Reviews –The Committee is aware that FDA has begun to enforce the Federal Food, Drug, and Cosmetic Act's device requirements, including premarket review, for diagnostic multivariate index assays for breast cancer and other diseases. The Committee encourages FDA to work to ensure that the transition to enforcing the act's requirements does not inhibit development of products that are important to public health. (Page 140)

Action taken or to be taken

The FDA is proceeding in a very deliberate and transparent manner to ensure that manufacturers of in vitro diagnostic multivariate index assays have ample time to comply with the device requirements of the Federal Food, Drug, and Cosmetic Act. The FDA announced a draft guidance on the subject on September 7, 2006, held the comment period open on the draft guidance for 180 days, and convened a public meeting on February 8, 2007, where more than 30 stakeholders spoke on the issues raised by the draft guidance. FDA then announced a revised version of the draft guidance on July 26, 2007. The revised draft guidance includes enforcement policies intended to prevent unreasonable disruption in the development or marketing of these devices. These policies include an exclusion from premarket review of those assays that meet the definition of humanitarian use devices (such as assays for rare diseases) and a transition period for manufacturers to begin submitting premarket notifications or applications. The FDA intends to finalize the guidance document in 2008.

Item 39 - Seafood Economic Integrity – The Committee recognizes the importance of seafood to a healthy diet, but is concerned that FDA does not focus sufficient attention on economic

integrity issues, particularly with respect to mislabeling of species, weights, country of origin, and treatment. The Committee encourages FDA to work with States to more aggressively combat fraud in parts of the seafood industry. (Page 140)

Action taken or to be taken
FDA intends to continue important program activities addressing economic deception or fraud in the sale of seafood in interstate commerce to prevent fraud and prohibited misbranding under the Federal Food Drug and Cosmetic Act Section 403.

Item 40 - Seafood Products –The Committee is concerned that certain imported cockle-based seafood products being marketed in the United States are mislabeled for species to the detriment of U.S. based firms that label correctly and according to FDA guidance. The Committee encourages the FDA to enforce their guidance to prevent cockles from being imported into the United States mislabeled as clams or clam chowder. (Page 141)

Action taken or to be taken
FDA has been receiving inquiries concerning species substitution with increasing frequency and has exchanged letters with industry representatives regarding the misbranding of cockles as clams. In our efforts to protect the consumer, however, we have many competing priorities and species substitution has not been among our greater concerns for the safety of the food supply. We do take it seriously though, especially when these substitution cause food safety hazards to be overlooked or incorrectly identified. We investigate these incidences whenever we can and we welcome additional information regarding their occurrence.
Such information could be useful as we decide what course of action to take in enforcing the HACCP regulation, such as when a species-related hazard poses a human health risk as a result of species substitution. While resource constraints have forced FDA to prioritize food safety issues above issues of economic fraud, the Agency continues to discourage any form of species substitution or other fraudulent activity and engages in regulatory enforcement as conditions warrant.

Item 41 - Standards of Identity – The Committee is aware of the ongoing debate surrounding increased importation and use of milk protein concentrate. The Committee remains concerned with FDA's current lack of enforcement of standards of identity as it relates to the potential use of milk protein concentrate in standardized cheese and the labeling thereof. (Page 141)

Action taken or to be taken
FDA continues to monitor to ensure that milk protein concentrates are not being used in standardized cheeses and cheese products. As the Committee may be aware, FDA has taken enforcement action in the past against manufacturers who used milk protein concentrates in standardized cheese products. In response to complaints about this practice, FDA conducted inspections at specific cheese manufacturing sites to determine compliance with the cheese standards and to document the use of milk protein concentrates in standardized cheeses and cheese products. As a result of these inspections, FDA sent warning letters to two cheese manufacturers, Kraft Foods North America, Inc. and Lactoprot USA, advising them that standardized cheeses and cheese products containing milk protein concentrates are in violation of

the misbranding provisions of the FD&C Act. Both firms responded to the warning letters outlining the actions they were taking to address the issue. In the case of Kraft Foods, the firm indicated that it would no longer label products containing milk protein concentrates as a standardized cheese. Lactoprot USA announced that it would remove milk protein concentrate as an ingredient in its standardized cheese products.

Item 42 - Therapies for Type 1 Diabetes –The Committee commends the FDA for including the development of therapies for type 1 diabetes in its Critical Path Initiative, and recognizing major advances that have given new hope for the rapid development of innovative devices and drugs for the management and treatment of type 1 diabetes. A fully automated artificial pancreas has the potential to alleviate the burden of daily diabetes management, and greatly improve patients' health and quality of life. Promising new drugs are in clinical trials that, for the first time, might halt the progression of new-onset diabetes. The Committee strongly encourages the FDA to continue collaborative, open discussions with public and private stakeholders committed to accelerating the discovery and development of therapies to prevent, manage, and cure type 1 diabetes to ensure that new therapies are made available to the public in a timely manner. (Page 141)

Action taken or to be taken

In addition to our regulatory review and approval of new medical treatments for diabetes, the FDA has identified development of the artificial pancreas as one of its critical path initiatives and has formed the Interagency Artificial Pancreas Working Group. This group collaborates with stakeholders, including private organizations, patient groups, academic researchers, product developers, industry, and other government groups to find ways to accelerate and optimize research and development efforts. Members of the working group recently published an article in Drug Discovery Today on FDA's proactive role in the development of the artificial pancreas. The article titled "*FDA's Proactive Role in the Development of an Artificial Pancreas for the Treatment of Diabetes Mellitus*" describes FDA's efforts to accelerate the development and availability of a safe and effective artificial pancreas for the treatment of diabetes mellitus. As an example of working with stakeholders, FDA is providing scientific and regulatory expertise to an initiative of the Juvenile Diabetes Research Foundation (JDRF) to accelerate the development of artificial pancreas technologies. This work includes re-evaluation of clinical research designed to assess continuous glucose sensors for new clinical outcome measures, and development of outcome measures for reportable real time use of continuous glucose sensors and a closed-loop artificial pancreas. FDA is planning a public workshop for the first half of 2008 to openly discuss the unique scientific, clinical, and regulatory challenges pertaining to the development of an artificial pancreas.

Item 43 - Unified Financial Management System – The Committee recommendation includes no more than $5,729,000 for the Unified Financial Management System. The Committee reminds FDA that this amount is subject to the reprogramming requirements outlined in the general provisions of this act. (Page 141)

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in

the report. FDA intends to spend at the level requested by the Committee, including the reduction due to the rescission, for the Unified Financial Management System. FDA will adhere to the reprogramming requirements outlined in the general provisions.

Conference Report – Significant Items Contained in House Report 110-497

Item 44 - Generic Drug Review — Within the total amount for the Food and Drug Administration, the following increases are provided…$6,000,000 for generic drug review.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA recognizes the importance of CDER's generic drug review program to public health. With the additional resources, FDA intends to improve the generic drug review process to increase the predictability and transparency of decisions using the best available science. FDA expects to increase and sustain review performance of generic drug Abbreviated New Drug Applications (ANDAs) 20 percent above its baseline performance level. That performance will result in an increase of 300 actions, or approximately 1,800 actions from the baseline of nearly 1,500 actions on ANDAs submitted to FDA. These actions include ANDA approvals, tentative approvals, and actions for not approvals.

Item 45 - Pandemic Influenza — Within the total amount for the Food and Drug Administration, the following increases are provided…$4,000,000 for pandemic influenza preparedness.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to facilitate the rapid development, evaluation and availability for a new pandemic influenza vaccine, including the development of a method for evaluating the safety, potency or immunogenicity of influenza vaccines. FDA will also work to provide one international workshop or conference to harmonize standards, including manufacturing processes to increase compliance.

Item 46 - Direct to Consumer Advertising — Within the total amount for the Food and Drug Administration, the following increases are provided… $4,000,000 for the review of direct-to-consumer advertising.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. With the additional resources, FDA intends to improve its ability to track review activities associated with the review process of draft television advertisements. FDA will hire additional experts to review and monitor promotional material and will develop and implement a

management system to aid in the timely and efficient review of draft television advertisements. FDA will develop and issue guidance for industry on best practices of submitting draft television advertisements for efficient review by FDA.

Item 47 - Office of Women's Health — Within the total amount for the Food and Drug Administration, the following increases are provided…$1,000,000 for the Office of Women's Health.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to spend not less than $4,965,000 for program operation, salaries, and oversight of the Office of Women's Health.

Item 48 - Cosmetics — Within the total amount for the Food and Drug Administration, the following increases are provided…$1,000,000 for the review of cosmetics.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to increase the review of cosmetics with the funds provided.

Item 49 - White Oak — Within the total amount for the Food and Drug Administration, the following increases are provided… $13,256,000 for FDA's consolidation at the White Oak campus.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to use this funding for the installation of information technology equipment and cabling at the CSU II, CDRH and OC/ORA office buildings, and for security for the North and Southwest parking structures.

Item 50 - Rent and Rent Related — Within the total amount for the Food and Drug Administration, the following increases are provided…$14,504,000 for GSA rent and other rent and rent related activities.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to pay for increased costs in rent, security and utilities at headquarters and across the nation and ensures that mission-related program areas will not have to fund increasing infrastructure costs.

Item 51 - Program and Center/Field Split - The Conference Report requires FDA to "include in its annual budget request, beginning with fiscal year 2009, previous year, estimated current year, and estimated budget year central account charges by FDA program area and center/field split for each charge applied. In addition, the budget should include a narrative summary of each central account charge including how the funding is used and how the charge is assessed to the program areas."

Action taken or to be taken

FDA is including the required exhibits in this budget submission.

Item 52 - Drug Safety – products already on the market and under review - The amended bill includes an increase of $21,200,000 for drug safety, of which not less than $10,000,000 is for the Office of Surveillance and Epidemiology. The Committees expect that FDA will use this funding to enhance the agency's ability to identify safety issues with products already on the market and under review.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA appreciates the importance of identifying drug safety issues and to communicate those issues to health professionals and the public. The Food and Drug Administration Amendments Act (FDAAA) of 2007 recognizes FDA's critical role in assuring the safe and appropriate use of marketed drugs. FDAAA gives FDA substantial new authorities for medical product safety, as well as a variety of regulatory tools and authorities to ensure the safe and appropriate use of drugs. FDA intends to use the new resources to modernize AERS, access additional safety surveillance databases and other information, hire additional epidemiologists, safety evaluators, risk management and risk communications experts, and other scientists, and strengthen the involvement of safety experts throughout the drug lifecycle including during the design and review of post marketing studies.

The additional resources will allow FDA to expand its capabilities within the Office of Surveillance and Epidemiology (OSE). OSE will expand its access to drug-related health care data on general and special populations and to enhance the rigor and timeliness of drug safety evaluations. OSE will conduct epidemiologic studies accessing data from four to five data sources that represent approximately 25 million lives. FDA will acquire access to new outpatient prescription and patient data, as well as drug use data in additional settings of care, to expand FDA's understanding of drug use. FDA expects to increase access to data on the use of over-the-counter drug products and data on the use of drugs administered in outpatient clinics and infusion centers. FDA will collaborate with VA, DOD, and AHRQ to gain access to new sources of health data to conduct novel research and to investigate drug safety issues of common interest to these departments and agencies.

Item 53 - Critical Path - The amended bill includes an increase of $7,500,000 for the critical path initiative, of which $2,500,000 shall be available, on a competitive basis, for contracts or grants to universities and non-profit organizations to support individual critical path projects.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to make the post-rescission amount available on competitive basis for grants or contracts to universities and nonprofit organizations to support individual critical path projects.

Item 54 - Food Safety Activities – The amended bill includes an increase of $56,000,000 above the fiscal year 2007 level for food safety activities of the FDA for improvements to agency procedures, to enhance inspection capabilities for the protection of consumers, and to help the agency recover from the administration's low budget estimates of recent years. Of the increase provided for food safety, the Committees direct that no less than $18,317,000 shall be available immediately to hire additional domestic and import food inspectors, including $8,000,000 for the deployment of inspectors with rapid response capabilities who will be responsible for immediate attention to outbreaks of food-related disease as well as providing technical assistance to states and others, as appropriate, to support overall practices to increase the safety of food and food products.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amounts identified in the report. FDA intends to hire new investigative FTE to increase FDA's capability to conduct surveillance of foreign and domestic foods and perform more rapid trace backs of food borne illness outbreaks. To target inspection and sampling effectively FDA needs a robust risk-based approach. Thus FDA will continue to develop risk-based information system technology to increase FDA's capabilities to monitor high-risk shipments of FDA regulated food products before they are released into U.S. commerce. Additionally, this funding will allow FDA to award new cooperative agreements with States to develop and maintain rapid response teams and will support the hiring, equipping, training and coordination of new Emergency Response Coordinators to monitor related State contract programs, identify and manage current food safety issues, work with State and local officials and industry populations, and conduct rapid response team building, when not actively involved in an emergency.

Item 55 - Report on Research Priorities - The Committees have provided an increase of $3,000,000 to the National Research Initiative for this purpose and fully expect the Commissioner of the FDA and the Secretary of Agriculture to work together to identify food safety research priorities of importance to the regulatory functions of the FDA and food safety generally. The Committees expect a report on· the conclusions of an agreement between the Commissioner and the Secretary that describes the research priorities identified and the awarding of research grants to meet those needs.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to work with the Secretary of Agriculture to work together to identify food safety research priorities of importance to the regulatory functions of the FDA and food

safety generally. A report on the conclusions of an agreement between the Commissioner and the Secretary will be issued that describes the research priorities identified and the awarding of research grants to meet those needs.

Item 56 - National Academy of Sciences Report -- The Committees expect the FDA to contract with the National Academy of Sciences for a comprehensive study of gaps in public health protection provided by the food safety system in this country. The report should address the recommendations of the FDA Food Protection Plan released in November 2007.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to work with the Secretary of Agriculture to identify food safety research priorities of importance to the regulatory functions of the FDA and food safety generally. A report on the conclusions of an agreement between the Commissioner and the Secretary will be issued that describes the research priorities identified and the awarding of research grants to meet those needs.

Item 57 - Benchmarks for Food Safety -- Of the increase provided for food safety, the amended bill includes $28,000,000 available from July 1, 2008 to September 30, 2009. The Committees direct the agency to provide, concurrent with the fiscal year 2009 budget justification, a plan that describes a method to improve the national food safety system, including clear, measurable benchmarks for concrete improvements in the performance of its food safety mission.

As stated in the House report, "the plan must set forth clear, definitive goals over a multiyear period to comprehensively overhaul FDA's food safety operations, covering both domestic and imported foods. The plan must include a detailed description of any organizational, managerial, statutory and regulatory changes necessary to achieve them, as well as an assessment of the budgetary resources needed. If statutory changes are proposed, the plan must include the statutory language. The plan must be approved by the Office of Management and Budget." The Committees suggest that standards for food safety, HAACP-like systems, and a process for reviewing the food safety systems in countries that export food to the United States should be considered as key parts of the building blocks of such a plan.

Action taken or to be taken

FDA is submitting the plan requested in the Committee report is an exhibit in this budget document.

Item 58 - GAO Report — FDA is directed to submit a plan to the Committees that fully address the weaknesses in the food safety system that led GAO to list food safety on its January 2007 high-risk list.

Action taken or to be taken
The explanatory statement that accompanied the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 established a due date for this report of 60 days after the enactment of the bill.

FDA will work with USDA and GAO to achieve the goal of removing Food Safety from GAO's high-risk list. FDA will also provide the report that the Committee requested.

Item 59 - Drugs marketed outside the U.S. –The Committees support FDA's review of a means by which drugs marketed outside the present approval process, which have been in clinical use for the past 25 years and are prescribed by doctors, may be more efficiently vetted by the agency. FDA is encouraged to work toward the development of a system to review this unique class of drugs.

Action taken or to be taken
In June 2006, the Agency issued a final guidance document outlining its enforcement policies and priorities aimed at efficiently and rationally bringing all drugs marketed outside the present approval process into compliance. FDA is committed to proactive action to facilitate voluntary compliance by firms that market drugs. Generally, firms can legally market drugs with an applicable new drug application (NDA) or abbreviated new drug application (ANDA), or pursuant to an over-the-counter (OTC) monograph. The Agency understands the need to assist firms unfamiliar with the drug approval process and to help them secure approval for any unapproved drugs they are currently marketing. As part of this commitment, the Agency appointed an unapproved drugs coordinator in the Office of New Drugs and offered a workshop in January, 2007, to educate companies about the drug application and OTC monograph processes, and to provide direction on how to bring their products into compliance with approval requirements. As a result of this outreach, FDA has received approximately 85 phone calls from interested parties, and an estimated 31 INDs and 5 NDAs from marketers of previously unapproved drugs.

Item 60 - MedGuide Program – The Committees encourage FDA to ensure that the MedGuide program is assisting patients in understanding the risks associated with certain medications to the greatest degree possible. The Committees encourage FDA to work with patient groups, manufacturers and national pharmacy groups to address improvements in the program. The Committees request a report on the progress it is making toward these improvements within one year of the enactment of this Act.

Action taken or to be taken
FDA held a public hearing on June 12 and 13, 2007 to solicit information and views from interested persons on specific issues associated with the development, distribution, comprehensibility, and accessibility of Medication Guides. In 2008, FDA will convene an FDA-wide group to consider the means to improve the efficiency of the Medication Guide process by:

- Promoting consistency in the FDA's selection, format and content needs of Medication Guides
- Addressing the needs of industry with regard to content and format requirements and also issues relating to electronic distribution and access and

- Partnering with patient groups, healthcare professional groups and State Boards of Pharmacy to promote awareness and ensure compliance with the Medication Guide requirement.

Item 61 - Conflict of Interest Waivers – The Committees were encouraged by FDA's March 2007, announcement that the agency was going to significantly limit the number of financial conflict of interest waivers granted to advisory committee members. In September 2007, Congress passed, and the President signed, the Food and Drug Administration Amendments Act of 2007 (FDAAA). FDAAA placed a cap on the number of waivers that can be issued annually and reduced them by 25 percent over the life of the Act. The Committees note that the waiver limits passed in FDAAA were less stringent than those proposed by FDA in March 2007. The Committees remind FDA that the FDAAA limitations are a ceiling and strongly encourage FDA to continue its efforts to limit the use of financial conflicts of interest waivers to greatest extent possible.

Action taken or to be taken

Section 701 of the FDAAA establishes a cap on waivers that FDA may issue in FY 2007 and increases the stringency of the cap in subsequent years through FY 2012. Section 701 emphasizes recruitment strategies to encourage a broad search for qualified advisory committee members that appear to have few or no potential conflicts of interest. FDA is committed to finding advisory committee members who are free of potential conflicts and to granting waivers only where necessary and appropriate. We are reviewing the draft guidance on waiver criteria issued in March 2007 in light of the FDAAA in order to ensure that the final guidance is consistent with the legislation and is informed by the public comments that we received.

Item 62 - Food Products from Cloned Animals – The Committees strongly encourage FDA to continue the voluntary moratorium on introducing food products from cloned animals into commerce until FDA completes a review and analysis of comments and evaluates the need for additional studies recommended during the public comment period. The Committees direct the Food and Drug Administration to enter into an agreement with the Economic Research Service at USDA to study the domestic agricultural and international trade economic implications of permitting commercialization of milk and meat from cloned animals and their progeny into the food supply.

Action taken or to be taken

On January 15, 2008, FDA released three final documents concerning the safety of food produced by animal clones. After years of detailed study and analysis, the Food and Drug Administration has concluded that meat and milk from clones of cattle, swine, and goats, and the offspring of clones from any species traditionally consumed as food, are as safe to eat as food from conventionally bred animals. The science-based conclusions agree with those of the National Academy of Sciences, released in a 2002 report. The assessment was peer-reviewed by a group of independent scientific experts in cloning and animal health. There was insufficient information for the agency to reach a conclusion on the safety of food from clones of other animal species, such as sheep.

The U.S. Department of Agriculture (USDA) will convene stakeholders to discuss efforts to provide a smooth and orderly market transition, as industry determines next steps with respect to an existing voluntary moratorium, established in 2001. USDA's Economic Research Service is working with FDA on the proposed study of the domestic and international trade implications.

The details of the FDA announcement on Food Products From Cloned Animals appear at http://www.fda.gov/cvm/cloning.htm.

Item 63 - National Center of Natural Products Research — The amended Bill includes… $1,725,000 for research on dietary supplements at the National Center of Natural Products Research in Oxford, Mississippi.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to support this activity with the post-rescission amount for FY 2008.

Item 64 - The Interstate Shellfish Sanitation Commission (ISSC) — The amended Bill includes…$149,000 for the Interstate Shellfish Sanitation Commission (ISSC).

Action taken or to be taken

In FY 2008, FDA intends to continue to work cooperatively with all relevant states. These joint efforts include actions to encourage the use of post-harvest treatment by the shellfish industry such as improvements in validation of treatment methods and marketability studies, education of at-risk consumers on the risks posed by the organism, and monitoring of the frequency of occurrence of *Vibrio vulnificus* illnesses.

Item 65 – Vibrio Vulnificus — The amended Bill includes…$186,000 for ISSC *Vibrio Vulnificus.*

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to support education and outreach on *Vibrio vulnificus* with the post-rescission amount for FY 2008.

Item 66 - Warehousing Education and Research Council — The amended Bill includes… $74,000 for the Warehousing Education and Research Council.

Action taken or to be taken

Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the $74,000 identified in the report. FDA intends to fund this activity at the post-rescission amount for FY 2008.

Item 67 - National Center for Food Safety and Technology — The amended Bill includes…$2,228,000 for the National Center for Food Safety and Technology.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to support this activity with the post-rescission amount for FY 2008.

Item 68 – Food Technology Evaluation Laboratory —The amended Bill includes…$1,769,000 for the Food Technology Evaluation Laboratory at New Mexico State University.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to support this activity with the post-rescission amount in FY 2008.

Item 69 – Critical Path Institute and the University of Utah — The amended Bill includes…$563,000 for collaborative drug safety research with the Critical Path Institute and the University of Utah.

Action taken or to be taken
Section 752 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008 directed a 0.7 percent rescission to the amount identified in the report. FDA intends to make the proportionate amount available to the C-Path Institute and the University of Utah for innovative research efforts to develop more efficient tools for medical product development and drug safety. The research will continue to involve innovative research, such as identifying candidate genes and proteins in University of Utah databases, designing and conducting genomic and proteomic biomarker validation experiments by the C-Path Institute, the University of Utah, FDA and manufacturers, and determining which biomarkers identify heart failure patients who are most likely to respond favorably to drug therapy and those at highest risk of adverse events. This research will enhance patient safety, reduce the number of patients necessary for clinical testing, and enable manufacturers to accelerate drug development and bring safer, innovative life-saving drugs to market more quickly. FDA intends to support this activity with the post-rescission amount in FY 2008.

Item 70- Streamline Information – The Committees are aware, and appreciate, that FDA is currently working to update the format of its Explanatory Notes in an attempt to streamline information provided and make it more useful to Congress. The Committees direct FDA to ensure that all changes to the Explanatory Notes reflect the comments made by the Congress.

Action taken or to be taken
In this budget submission, FDA has updated the format of the Explanatory Notes in order to streamline information, consistent with the comments that we received from the committee.

Item 71 - Qualified Health Claims for Conventional Foods – The Committees request a report from the Government Accountability Office (GAO) on qualified health claims and ask that GAO

work with the Committees on Appropriations of the House and Senate on the parameters of the report. The Committees also urge the FDA not to use funds provided in this bill to review requests for qualified health claims for conventional foods or to issue letters permitting such claims through exercises of enforcement direction until the independent analysis is completed.

Action taken or to be taken
FDA will work with the General Accounting office on the report on qualified health claims. FDA will provide comments to the GAO in response to the GAO draft report.

Item 72 - Budget Justification for Research Activities – In House Report 109-255, the conference report accompanying the fiscal year 2006 appropriations bill, Congress directed FDA to "provide the same level of budget justification for its research activities in the fiscal year 2007 budget as it does other activities, including a justification of both base spending and any proposed increases by activity with center or office." FDA has not fully complied with this requirement to date and is directed to meet this requirement in the fiscal year 2009 budget submission.

Action taken or to be taken
FDA is meeting this request by including an exhibit that justifies research activities.

Title VI— Bill Language – FDA Significant Items

Item 73 - Division of Pharmacy Analysis (Bill Language—Section 717) – None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri. (Page 73)

Action taken or to be taken
FDA has no plans to close or relocate or to plan to close or relocate the FDA Division of Pharmaceutical Analysis in St. Louis, Missouri.

Item 74 - ORA Transformation (Bill Language — Section 747) — None of the funds made available in this Act may be used- (1) to terminate any of the 13 field laboratories that are operated by the Food and Drug Administration as of January 1, 2007, or 20 District Offices, or any of the inspection or compliance functions of any of the 20 District Offices, of the Food and Drug Administration functioning as of January 1, 2007; or to consolidate any such laboratory with any other laboratory, or any such District Office, or any of the inspection or compliance functions of any District Office, with any other District Office. (Page 87)

Action taken or to be taken
FDA has no plans to consolidate or terminate any of the Office of Regulatory Affair's (ORA) 13 existing laboratories or any of its 20 existing Districts. As ORA moves forward with

implementing the requirements of the Import Safety Action Plan, the Food Protection Plan, and the Food and Drug Administration Amendments Act of 2007, FDA will evaluate the need for adjustments to the operational structure of the Office of Regulatory Affairs. FDA will notify the Committee of any such changes being considered.