

9092 COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY

EFFECTIVENESS OF AND PRECEDENCE
FOR DETENTION AUTHORITY

We found that, in some seizure actions, FDA requested a State or local official to use his embargo authority to detain products pending removal. In those cases the percentage of the product removed from the market was significantly increased. We noted that 34 States had embargo authority which authorized their inspectors to detain questionable products until they were proven safe or removed from the market.

We reviewed seven seizure actions where FDA requested the States or local officials to detain the product. In five of the actions, 100 percent of the products identified for seizure were removed; in the other two actions, 97 percent and 45 percent of the products were removed. We believe that the use of embargo authority resulted in a significant improvement over cases where embargo authority was not used and that having such authority could improve FDA's consumer protection activities.

FDA has stated that using State and local detention authority in lieu of Federal authority is not satisfactory because:

- It results in duplication of effort. Although the FDA inspector has identified a problem, the State inspectors must also observe the problem.
- FDA cannot always contact State officials when necessary.
- Some States have no, or only limited, detention authority.

FDA has stated also that the lack of authority to detain products has been detrimental to effective enforcement of consumer protection laws and has resulted in the sale of defective products.

We note that FDA already has detention authority for meat, poultry, and eggs only under section 409 of the Wholesale Meat Act (21 U.S.C. 679), section 24 of the Poultry