

COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY 9093

Products Inspection Act (21 U.S.C. 467), and section 23 of the Egg Products Inspection Act (21 U.S.C. 1052). USDA also has detention authority under these same acts. USDA officials have advised us that detention is a valuable tool and is used extensively in the enforcement of these acts. According to the officials, the 20-day detention period authorized by law allows USDA time to analyze the product and to prepare sufficient documentation to execute a seizure action without the risk of having some of the defective product sold to the public.

In this regard we noted that pending legislative proposals, such as the proposed Pure Food Act of 1972 (H.R. 12478), if enacted, would amend the FD&C Act to give FDA detention authority for food commodities.

The need for detention authority has also been recognized for use by EPA. Under the proposed Federal Environmental Pesticides Control Act of 1972 (H.R. 10729), EPA would be authorized to stop the sale and distribution of pesticide products which are violative. EPA officials stated that this provision was important to the successful enforcement of the EPA pesticide control program.

INDUSTRY AND MANUFACTURING ASSOCIATION COMMENTS

During our review we discussed the need for detention authority with officials from 20 firms. We also discussed our review and tentative conclusions with officials from five manufacturing associations. Although some of the officials agreed that detention authority was necessary, others were concerned with how FDA would implement this authority. The officials raised the following questions concerning the use of detention authority by FDA.

1. What scientific basis would be needed to justify the use of detention authority?
2. Who would be able to invoke detention authority?
3. When would detention be used--for serious hazards only, or for all violations?