

9094 COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY

4. What would be the maximum time products could be detained, especially perishable products which would have to be destroyed if detained too long?
5. What would be the penalty for violating the detention?

We recognize that these questions have merit and believe they should be considered in establishing detention authority.

CONCLUSION

FDA's lack of detention authority--coupled with the slowness of seizure actions--seriously hampers consumer protection. As a result of these limitations, FDA is unable to prevent substantial quantities of products suspected or known to be violative from being sold to and consumed by the public.

Both FDA and the Department of Justice have recognized the need for improving the speed of seizure actions, and both have requested additional manpower and resources for reducing the time required to take seizure actions.

Even with additional resources, detention authority is needed because the seizure process always takes a number of days to remove products from the market and because, during this time, products suspected or known to be violative should not be distributed to the public. Therefore we believe that FDA should have authority to temporarily detain products.

The House of Representatives is now considering legislative proposals, such as the proposed Pure Food Act of 1972, which, if enacted, would provide FDA with detention authority for food commodities. We believe that this authority should extend to all products under FDA's responsibility.

RECOMMENDATION TO THE SECRETARY  
OF HEALTH, EDUCATION, AND WELFARE

We recommend that the Secretary of HEW propose legislative changes to the FD&C Act and the Federal Hazardous Substances Act to provide FDA with authority to detain