

ing regulatory framework. While the root problems and many of their solutions are outside of the FDA's control, the agency has worked cooperatively with manufacturers to prevent or mitigate shortages by expediting review of certain regulatory submissions and adopting a flexible approach to drug manufacturing and importation regulations where appropriate. As a result, the FDA prevented 137 drug shortages in 2010 and 2011. Despite these successes, however, the problem of drug shortages has continued to grow.

Many different factors contribute to drug shortages, and solving this critical public health problem will require a multifaceted approach. An important factor in many of the recent shortages appears to be an increase in demand that exceeds current manufacturing capacity. While manufacturers are in the process of expanding capacity, one important step is ensuring that the FDA and the public receive adequate advance notice of shortages whenever possible. The FDA cannot begin to work with manufacturers or use the other tools at its disposal until it knows there is a potential problem. Similarly, early disclosure of a shortage can help hospitals, doctors, and patients make alternative arrangements before a shortage becomes a crisis. However, drug manufacturers have not consistently provided the FDA with adequate notice of potential shortages.

As part of my Administration's broader effort to work with manufacturers, health care providers, and other stakeholders to prevent drug shortages, this order directs the FDA to take steps that will help to prevent and reduce current and future disruptions in the supply of lifesaving medicines.

SEC. 2. *Broader Reporting of Manufacturing Discontinuances.* To the extent permitted by law, the FDA shall use all appropriate administrative tools, including its authority to interpret and administer the reporting requirements in 21 U.S.C. 356c, to require drug manufacturers to provide adequate advance notice of manufacturing discontinuances that could lead to shortages of drugs that are life-supporting or life-sustaining, or that prevent debilitating disease.

SEC. 3. *Expedited Regulatory Review.* To the extent practicable, and consistent with its statutory responsibility to ensure the safety and effectiveness of the drug supply, the FDA shall take steps to expand its current efforts to expedite its regulatory reviews, including reviews of new drug suppliers, manufacturing sites, and manufacturing changes, whenever it determines that expedited review would help to avoid or mitigate existing or potential drug shortages. In prioritizing and allocating its limited resources, the FDA should consider both the severity of the shortage and the importance of the affected drug to public health.

SEC. 4. *Review of Certain Behaviors by Market Participants.* The FDA shall communicate to the Department of Justice (DOJ) any findings that shortages have led market participants to stockpile the affected drugs or sell them at exorbitant prices. The DOJ shall then determine whether these activities are consistent with applicable law. Based on its determination, DOJ, in coordination with other State and Federal regulatory agencies as appropriate, should undertake whatever enforcement actions, if any, it deems appropriate.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an agency, or the head thereof; or
 - (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§ 356c-1. Annual reporting on drug shortages

(a) Annual reports to Congress

Not later than March 31 of each calendar year, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report, with respect to the preceding calendar year, on drug shortages that—

(1) specifies the number of manufacturers that submitted a notification to the Secretary under section 356c(a) of this title during such calendar year;

(2) describes the communication between the field investigators of the Food and Drug Administration and the staff of the Center for Drug Evaluation and Research's Office of Compliance and Drug Shortage Program, including the Food and Drug Administration's procedures for enabling and ensuring such communication;

(3) describes the coordination and alignment activities undertaken pursuant to section 356d(g) of this title;

(4) provides the number of reports that were required under section 374(b)(2) of this title to be sent to the appropriate offices of the Food and Drug Administration with expertise regarding drug shortages, and the number of such reports that were sent;

(5)(A) lists the major actions taken by the Secretary to prevent or mitigate the drug shortages described in paragraph (9);

(B) in the list under subparagraph (A), includes—

(i) the number of applications and supplements for which the Secretary expedited review under section 356c(g)(1) of this title during such calendar year; and

(ii) the number of establishment inspections or reinspections that the Secretary expedited under section 356c(g)(2) of this title during such calendar year;

(6) describes the coordination between the Food and Drug Administration and the Drug Enforcement Administration on efforts to prevent or alleviate drug shortages;

(7) identifies the number of and describes the instances in which the Food and Drug Administration exercised regulatory flexibility and discretion to prevent or alleviate a drug shortage;

(8) lists the names of manufacturers that were issued letters under section 356c(f) of this title; and

(9) specifies the number of drug shortages occurring during such calendar year, as identified by the Secretary.

(b) Trend analysis

The Secretary is authorized to retain a third party to conduct a study, if the Secretary believes such a study would help clarify the causes, trends, or solutions related to drug shortages.

(c) Definition

In this section, the term “drug shortage” or “shortage” has the meaning given such term in section 356c of this title.

(June 25, 1938, ch. 675, §506C–1, as added Pub. L. 112–144, title X, §1002, July 9, 2012, 126 Stat. 1102; amended Pub. L. 114–255, div. A, title III, §3101(a)(2)(F), Dec. 13, 2016, 130 Stat. 1153; Pub. L. 117–328, div. FF, title III, §3616(b)(1), Dec. 29, 2022, 136 Stat. 5875.)

Editorial Notes

AMENDMENTS

2022—Subsec. (a)(3) to (5). Pub. L. 117–328, §3616(b)(1)(A), (B), added pars. (3) and (4) and redesignated former par. (3) as (5). Former pars. (4) and (5) redesignated (6) and (7), respectively.

Subsec. (a)(5)(A). Pub. L. 117–328, §3616(b)(1)(C), substituted “paragraph (9)” for “paragraph (7)”.

Subsec. (a)(6) to (9). Pub. L. 117–328, §3616(b)(1)(A), redesignated pars. (4) to (7) as (6) to (9), respectively.

2016—Subsec. (a). Pub. L. 114–255, in introductory provisions, substituted “Not later than March 31 of each calendar year,” for “Not later than the end of calendar year 2013, and not later than the end of each calendar year thereafter,” and inserted “, with respect to the preceding calendar year,” after “a report”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–328, div. FF, title III, §3616(b)(2), Dec. 29, 2022, 136 Stat. 5875, provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to reports submitted under section 506C–1 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356c–1) on or after March 31, 2024.”

§ 356d. Coordination; task force and strategic plan

(a) Task force and strategic plan

(1) In general

(A) Task force

As soon as practicable after July 9, 2012, the Secretary shall establish a task force to develop and implement a strategic plan for enhancing the Secretary’s response to preventing and mitigating drug shortages.

(B) Strategic plan

The strategic plan described in subparagraph (A) shall include—

(i) plans for enhanced interagency and intra-agency coordination, communication, and decisionmaking;

(ii) plans for ensuring that drug shortages are considered when the Secretary initiates a regulatory action that could precipitate a drug shortage or exacerbate an existing drug shortage;

(iii) plans for effective communication with outside stakeholders, including who the Secretary should alert about potential or actual drug shortages, how the communication should occur, and what types of information should be shared;

(iv) plans for considering the impact of drug shortages on research and clinical trials; and

(v) an examination of whether to establish a “qualified manufacturing partner program”, as described in subparagraph (C).

(C) Description of program

In conducting the examination of a “qualified manufacturing partner program” under subparagraph (B)(v), the Secretary—

(i) shall take into account that—

(I) a “qualified manufacturer”, for purposes of such program, would need to have the capability and capacity to supply products determined or anticipated to be in shortage; and

(II) in examining the capability and capacity to supply products in shortage, the “qualified manufacturer” could have a site that manufactures a drug listed under section 356e of this title or have the capacity to produce drugs in response to a shortage within a rapid timeframe; and

(ii) shall examine whether incentives are necessary to encourage the participation of “qualified manufacturers” in such a program.

(D) Consultation

In carrying out this paragraph, the task force shall ensure consultation with the appropriate offices within the Food and Drug Administration, including the Office of the Commissioner, the Center for Drug Evaluation and Research, the Office of Regulatory Affairs, and employees within the Department of Health and Human Services with expertise regarding drug shortages. The Secretary shall engage external stakeholders and experts as appropriate.

(2) Timing

Not later than 1 year after July 9, 2012, the task force shall—

(A) publish the strategic plan described in paragraph (1); and

(B) submit such plan to Congress.

(b) Communication

The Secretary shall ensure that, prior to any enforcement action or issuance of a warning letter that the Secretary determines could reasonably be anticipated to lead to a meaningful disruption in the supply in the United States of a drug described under section 356c(a) of this title, there is communication with the appropriate office of the Food and Drug Administration with expertise regarding drug shortages regarding whether the action or letter could cause, or exacerbate, a shortage of the drug.

(c) Action

If the Secretary determines, after the communication described in subsection (b), that an enforcement action or a warning letter could reasonably cause or exacerbate a shortage of a drug described under section 356c(a) of this title, then the Secretary shall evaluate the risks associated with the impact of such shortage upon patients and those risks associated with the violation involved before taking such action or issuing such letter, unless there is imminent risk of serious adverse health consequences or death to humans.

(d) Reporting by other entities

The Secretary shall identify or establish a mechanism by which health care providers and other third-party organizations may report to the Secretary evidence of a drug shortage.

(e) Review and construction

No determination, finding, action, or omission of the Secretary under this section shall—