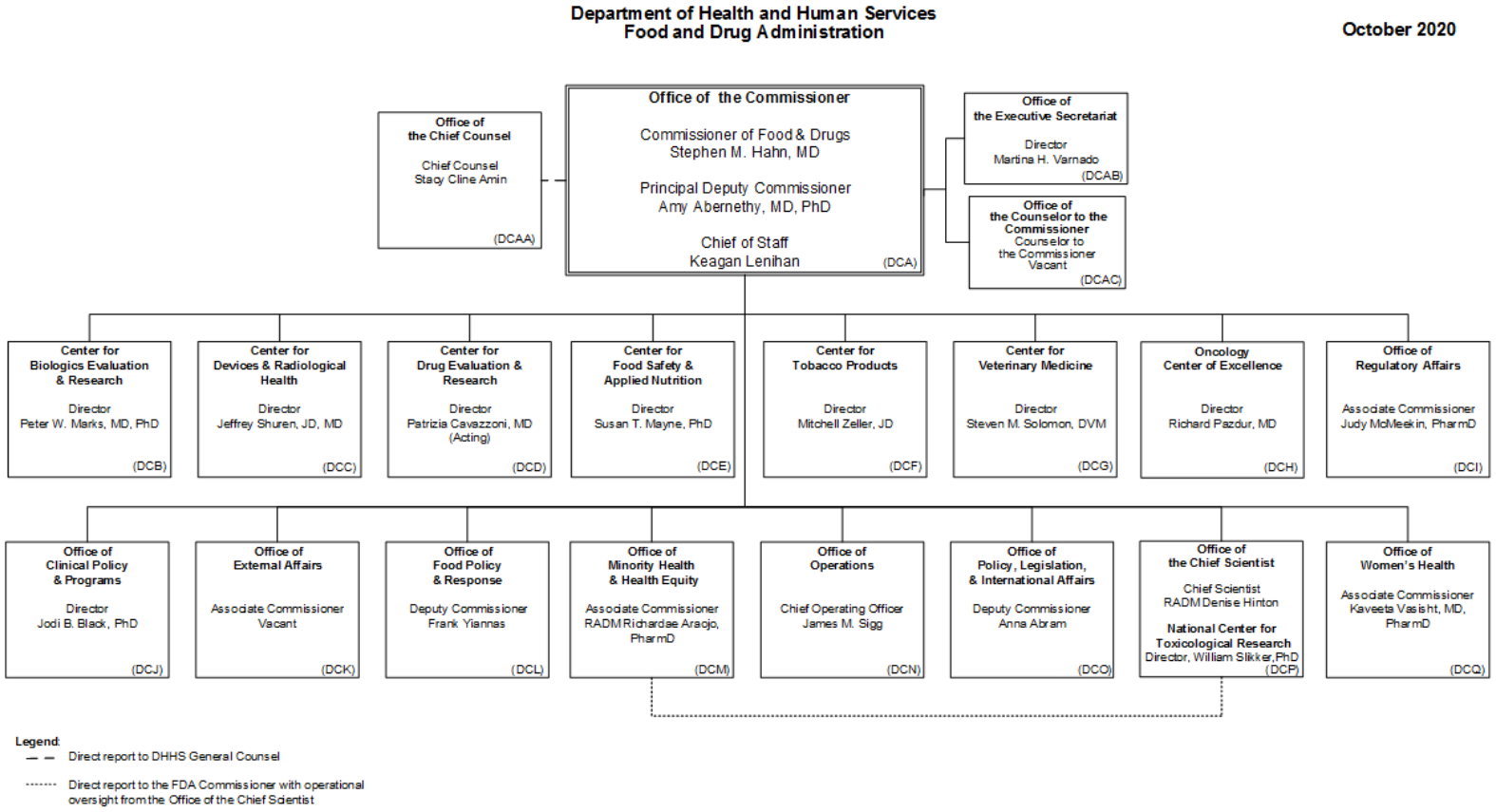
Introduction to FDA and Other Agencies

November 18, 2020
by Webinar

www.dlchesneyconsulting.com

FDLI
Food and Drug Law Institute

FDA Organization



FDA Organization Basics

- Large and complex!
- Office of the Commissioner – Many components
- Key "Centers" are product-based:
  - Center for Food Safety and Applied Nutrition (CFSAN) – includes cosmetics
  - Center for Drug Evaluation and Research (CDER)
  - Center for Biologics Evaluation and Research (CBER)
  - Center for Devices and Radiological Health
  - Center for Veterinary Medicine
  - Center for Tobacco Products
  - Office of Regulatory Affairs (District Offices throughout the US and some foreign countries) – Programmatically aligned, leadership HQ-based
    - Office of Criminal Investigations ("OCI") – full law enforcement capability
  - National Center for Toxicological Research (Jefferson, Arkansas)

FDLI
Food and Drug Law Institute

What's the difference between a law and a regulation?

Regulatory Document Hierarchy

- Laws (statutes): Enacted by Congress, signed by the President; plain language may be fairly specific in some cases or require elaborate interpretation
- Brief FDCA history
- Regulations: Written by the FDA; laws empower FDA to write regulations that interpret and apply the statutory requirements.
  - Many regulations have the force and effect of law
  - Some regulations are policy interpretations and bind the FDA but not the public
- *Guidelines* are officially advisory (non-binding) but typically treated as if they were legally binding
- FDA "Good Guidance Practices" at 21 CFR 10.115
- Internal FDA documents provide further insight, e.g., Compliance Policy Guides; these are also not binding on the public but are helpful in understanding FDA policy

FDLI
Food and Drug Law Institute

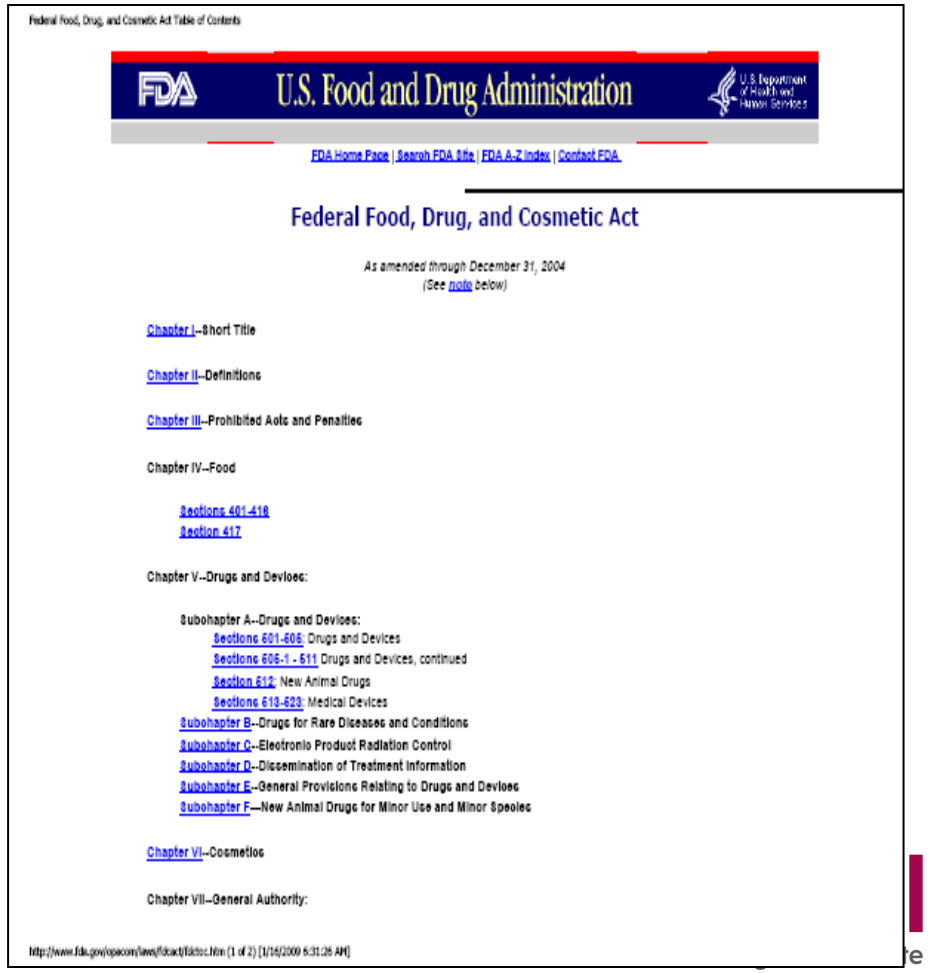
FDA Enforces Several Laws

- The primary law FDA operates under and enforces is the Federal Food, Drug and Cosmetic Act; this law applies to:
  - Foods
  - Drugs
  - Cosmetics
  - Medical Devices
  - It regulates products, not practices (such as the practice of medicine or pharmacy)
- Another law important to the pharmaceutical industry is the Public Health Service Act
  - Section 351 of this law provides for the licensure of biologics (drug or diagnostic products derived from living sources such as blood, blood components and derivatives, vaccines, and products made by biotechnology processes
  - Section 361 applies to certain human tissues and cells for transplantation

FDLI
Food and Drug Law Institute

Federal Food, Drug and Cosmetic Act Basics

- Often abbreviated as the “FDCA” or FD&C Act
- Broken into Chapters
  - I - Short Title
  - II – Definitions
  - III – Prohibited Acts and Penalties
  - IV –Food
  - V – Drugs and Medical Devices
  - VI – Cosmetics
  - VII – General Authority
  - VIII – Imports and Exports
  - IX - Miscellaneous


Federal Food, Drug, and Cosmetic Act Table of Contents

U.S. Food and Drug Administration

FDA Home Page | Search FDA Site | FDA A-Z Index | Contact FDA

Federal Food, Drug, and Cosmetic Act

As amended through December 31, 2004
(See note below)

Chapter I--Short Title

Chapter II--Definitions

Chapter III--Prohibited Acts and Penalties

Chapter IV--Food

Sections 401-416
Section 417

Chapter V--Drugs and Devices:

Subchapter A--Drugs and Devices:
Sections 501-505: Drugs and Devices
Sections 505-1 - 511 Drugs and Devices, continued
Section 512: New Animal Drugs
Sections 513-523: Medical Devices
Subchapter B--Drugs for Rare Diseases and Conditions
Subchapter C--Electronic Product Radiation Control
Subchapter D--Dissemination of Treatment Information
Subchapter E--General Provisions Relating to Drugs and Devices
Subchapter F--New Animal Drugs for Minor Use and Minor Species

Chapter VI--Cosmetics

Chapter VII--General Authority:

http://www.fda.gov/opacom/laws/fdcact/fdctoc.htm (1 of 2) [1/16/2009 6:31:26 AM]

Federal Food, Drug and Cosmetic Act Basics

- Basic provisions:
  - Prevent **adulterated** products from entering interstate commerce
  - Prevent **misbranded** products from entering interstate commerce
  - Prevent products which **require, but lack, FDA approval** from entering interstate commerce
  - Control the **importation** of regulated products at point of entry into US commerce
- Other provisions include, but are not limited to:
  - Protect the rights of human subjects in medical research by controlling the conditions of use of experimental drugs and medical devices
  - Empower the FDA to write regulations to clarify and promote compliance with the law's requirements
  - Provide FDA with tools to enforce the requirements of the law

FDLI
Food and Drug Law Institute

Public Health Service Act Basics

- Regulates biologics via a licensing system – Biologics License Application (BLA)
- Biologics include, but are not limited to:
  - Blood and its components intended for transfusion
  - Plasma and fractionated plasma products
  - Vaccines
  - Allergenic extracts
  - Cellular and gene therapy products
  - Human tissue and tissue products (ie., Bone, Skin, Corneas, Ligaments, Tendons, Stem Cells, Sperm, Ova, Heart Valves) – Does *not* include vascularized organs for transplantation
  - Xenotransplantation – tissue from other species implanted into humans
  - Products of the biotechnology industry
- Does not include veterinary biologics, USDA regulates those

FDLI
Food and Drug Law Institute

FDA Regulations

- FDA regulations are codified in Title 21 of the Code of Federal Regulations, shorthand "21 CFR"
- In most cases, new or changed regulations are proposed via a notice in the *Federal Register*
- Public is given time to submit comments
- Following comments, FDA considers and then publishes final regulation with responses to comments in a *Preamble* in the *Federal Register*
- Rarely, typically in emergent matters, FDA may issue a "direct final rule" without prior public comment
- Most regulations have the force and effect of law, and are therefore enforceable
- Some regulations communicate policy; these bind the agency but not the public

FDLI
Food and Drug Law Institute

Dual Regulation of Biologics

- Biologics licensed under the PHS Act are also either drugs (or rarely, medical devices) under the FDCA, hence both laws apply
  - "Biological products subject to the PHS Act also meet the definition of drugs under the Federal Food, Drug and Cosmetic Act (FDC Act). Note that hormones such as insulin, glucagon, and human growth hormone are regulated as drugs under the FDC Act, not biological products under the PHS Act." – FDA Web site at https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/frequently-asked-questions-about-therapeutic-biological-products
- Wherever there is a conflict, the more specific law or regulation supersedes the more general
- Biologics that are medical devices are mostly *in vitro* diagnostic products; therapeutic biologic devices are uncommon (for more info see https://www.fda.gov/vaccines-blood-biologics/biologics-products-establishments)

FDLI
Food and Drug Law Institute

FDA and Other Agencies

To name just a few…

State, Territorial and Tribal Agencies

Interagency Cooperation

- FDA has an enormous mission
- Almost impossible to accomplish single-handedly
- Mission overlaps with many other agencies at the federal, state and local level and internationally
- Interagency cooperation takes place both formally and informally across all areas of FDA's mission
- We will concentrate on the drug regulatory responsibility of FDA and the interagency activity that is most predominant with key federal and state agencies, but there are other formal and informal working agreements in place also

FDLI
Food and Drug Law Institute

Other Agencies

- To accomplish its mission, FDA has ongoing formal and informal relationships with various other federal, state and some local agencies, such as:
  - U.S. Department of Health and Human Services
  - U.S. Public Health Service (PHS)
  - U.S. Department of Justice (DOJ)
  - U.S. Department of Agriculture (USDA)
  - Department of Homeland Security (Customs Service)
  - Securities and Exchange Commission (SEC)
  - Federal Trade Commission (FTC)
  - States
  - Agency for Healthcare Research and Quality (AHRQ)
  - Centers for Disease Control and Prevention (CDC)
  - Centers for Medicare and Medicaid Services (CMS)
  - National Institutes of Health (NIH)
  - Drug Enforcement Administration (DEA)

FDLI
Food and Drug Law Institute

U.S. Department of Health and Human Services

- DHHS is the parent organization of the FDA at the Cabinet level
- The FDA Commissioner reports to the Assistant Secretary for Health (ASH)
- In the FDCA, most authority is granted to "the Secretary", meaning the Secretary of HHS
- A formal Redelegation of Authority transfers the FDCA authority to the Commissioner of FDA

FDLI
Food and Drug Law Institute

U.S. Department of Agriculture (USDA)

- Most FDA-USDA interaction involves foods; FDA regulates the entire food industry other than domestic red meat and poultry, regulated by USDA's Food Safety and Inspection Service (FSIS); USDA also has a role in plant health protection, and economic grading of some commodities such as eggs and produce
- When USDA Inspectors identify illegal drug residues in animals offered for slaughter, FDA investigates the incidents and takes action against the producers when warranted
- In drug regulation, one FDA-USDA anomaly exists:
  - FDA regulates all veterinary drugs except for veterinary biologics
  - Veterinary biologics (mainly vaccines) are regulated by USDA's Animal and Plant Health Inspection Service (APHIS), see https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/veterinary-biologics
  - Human biologics are regulated by FDA

U.S. Public Health Service (PHS)

- The PHS is the part of DHHS headed by the Surgeon General
- It includes the Commissioned Corps, a uniformed service branch that is non-military but which uses military titles, uniforms, pay and benefits, and gives the outward appearance of being part of the military, but is not
- Many FDA employees are "deployed" on military-like "billets" (orders) to the FDA and function alongside their civil service colleagues as regular FDA employees, but using military titles and normally wearing military-like attire

FDLI
Food and Drug Law Institute

U.S. Department of Justice (DOJ)

- The DOJ's Office of Consumer Protection works closely with the FDA when civil judicial cases are brought (product seizures, injunctions)
- DOJ also works with FDA on misdemeanor and criminal prosecution matters
- FDA cases are filed and handled locally by United States Attorneys offices around the country

FDLI
Food and Drug Law Institute

Department of Homeland Security (Customs Service)

- FDA and the DHS/Customs and Border Protection jointly inspect incoming FDA regulated products offered for entry into US commerce at ports of entry, or via the US mail
- The import authority in the FDCA is delegated to the FDA via interagency agreement; statute assigns it to the "Secretary of the Treasury" (effectively, DHS/Customs) but the two agencies work closely in tandem

FDLI
Food and Drug Law Institute

FTC and SEC

- FDA has more overlapping authority with FTC, particularly on issues related to misbranding (false and misleading claims) and advertising when it is considered to be labeling
- There is an interagency working group that coordinates FDA-FTC activities; one controversial area has been regulation of genetically modified organisms (GMO) in connection with food production
- FDA also works closely with SEC on SEC's enforcement matters when necessary
- The FDA-SEC relationship was formalized in 2004 via interagency agreement
- From the SEC Web Site: "The FDA generally assists the Commission by: (1) providing technical assistance, when appropriate, to the Division of Corporation Finance in its review of Commission filings, and (2) providing documents and information to the Division of Enforcement."

FDLI
Food and Drug Law Institute

State Counterpart Agencies

- FDA has a long standing tradition of fostering close working relationships with state (and some larger municipal) counterpart agencies
  - FDA-state interactions are governed by FDA Field Management Directive 50, on line at https://www.fda.gov/ICECI/Inspections/FieldManagementDirectives/ucm056669.htm
- Most of these relationships involve food regulation, where states traditionally play a stronger role than in drug regulation
- Few states have true "FDA-like" drug agencies; FDA contact points ordinarily involve Boards of Pharmacy and professional licensing boards at the state level
  - An example of an exception is the California Food and Drug Branch, see https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FoodandDrugBranch.aspx
- The Association of Food and Drug Officials (AFDO) is a key coordinating partner of FDA at the state level; see www.afdo.org

FDLI
Food and Drug Law Institute

Centers for Disease Control and Prevention (CDC)

- FDA and CDC work jointly on many crisis level events impacting FDA jurisdiction; for example, the Ebola and Zika virus outbreaks
- CDC and FDA also collaborate on large scale foodborne disease outbreak investigations, antibiotic resistance in microorganisms and other topics of mutual interest and responsibility

FDLI
Food and Drug Law Institute

Centers for Medicare and Medicaid Services (CMS)

- FDA and CMS coordinate formally and informally on overlapping issues
- An approved NDA or other FDA approved submission is a predicate for listing on the CMS drug
- FDA also assists CMS with device categorization for reimbursement issues

FDLI
Food and Drug Law Institute

National Institutes of Health

- FDA and NIH collaborate on a variety of scientific and research issues
- NIH funds or sponsors clinical trials, some of which are not part of FDA applications (INDs or IDEs); the "Common Rule" for informed consent and IRB oversight of federally funded clinical trials at 45 CFR 46 et.seq. is almost exactly the same as the parallel FDA requirements for regulated clinical trials at 21 CFR 50 and 56
- NIH is also regulated by FDA when its research forms part of an IND or PMA submission, or when NIH manufactures drugs to be used in clinical trials
- On July 26, 2016 the FDA sent an "Untitled Letter" (a low level regulatory enforcement action) to the National Institutes of Health Clinical Center Pharmacy Department in Bethesda alleging violation of good manufacturing practices (GMP) in the production of investigational drugs (an unusual step)
- FDA's Center for Biologics Evaluation and Research (CBER) can trace its lineage back to its prior existence as NIH's Division of Biologics Standards

FDLI
Food and Drug Law Institute

Drug Enforcement Administration (DEA)

- Historical DEA "roots" go back to FDA:
  - In the early 60s, FDA operated the "Bureau of Drug Abuse Control" (BDAC), using unarmed FDA investigators to make undercover buys of illegal drugs and conduct other covert anti-drug abuse investigations
  - In April of 1968, the Bureau of Narcotics and Dangerous Drugs (BNDD) was formed as a subsidiary of the United States Department of Justice, combining the Bureau of Narcotics (from the United States Department of the Treasury) and Bureau of Drug Abuse Control (from the FDA) into one agency.
  - In 1973, another reorganization resulted in the formation and renaming of the Drug Enforcement Administration, or DEA
- FDA and DEA collaborate on enforcement actions involving controlled substances
- FDA approves drugs for medicinal use; DEA "schedules" abuse-prone drugs in a tiered system according to their risk and abuse potential

FDLI
Food and Drug Law Institute

FDA Criminal Investigations

- FDA's Office of Criminal Investigations (OCI) is responsible for the investigation and prosecution of crimes involving intentional violations; OCI is fully integrated into the federal-state-local and international (Interpol) law enforcement community. OCI operations are out of scope to today's discussion; see https://www.fda.gov/ICECI/CriminalInvestigations/default.htm for details.

FDLI
Food and Drug Law Institute

Congressional Oversight

- Like all Executive Branch agencies, FDA receives oversight from several Congressional committees; FDA officials frequently testify before these committees on a variety of issues
- The sensitivity and importance of FDA's mission always attracts Congressional interest
- This has never been more obvious than in recent times, due to the Coronavirus pandemic and the intense interest in vaccines, therapeutics and the "warp speed" initiative
- GAO investigations of various FDA activities are nearly constant and have been for decades
- For a listing of recent FDA testimony on a wide array of issues, see https://www.fda.gov/news-events/congressional-testimony

FDLI
Food and Drug Law Institute

Summary

- FDA is a large and complex agency with a unique mission which combines science, public health and law enforcement in one agency
- Due to the scope, cross cutting impact and importance of FDA's mission, close coordination and communication with counterpart state agencies, and federal agencies with overlapping responsibilities is essential
- Congressional oversight is extensive and of high public interest
- FDA has both formal and informal working relationships with a wide variety of agencies at the Federal, State, local, Territorial and Tribal level for coordination of overlapping responsibilities
- Within FDA, the Division of Federal-State Relations (DFSR) in the Office of Regulatory Affairs is the key contact point for state agencies

FDLI
Food and Drug Law Institute

…for your kind attention!