Common Issues Identified

During FDA's Scientific Evaluation of SE Reports

Summary Brief

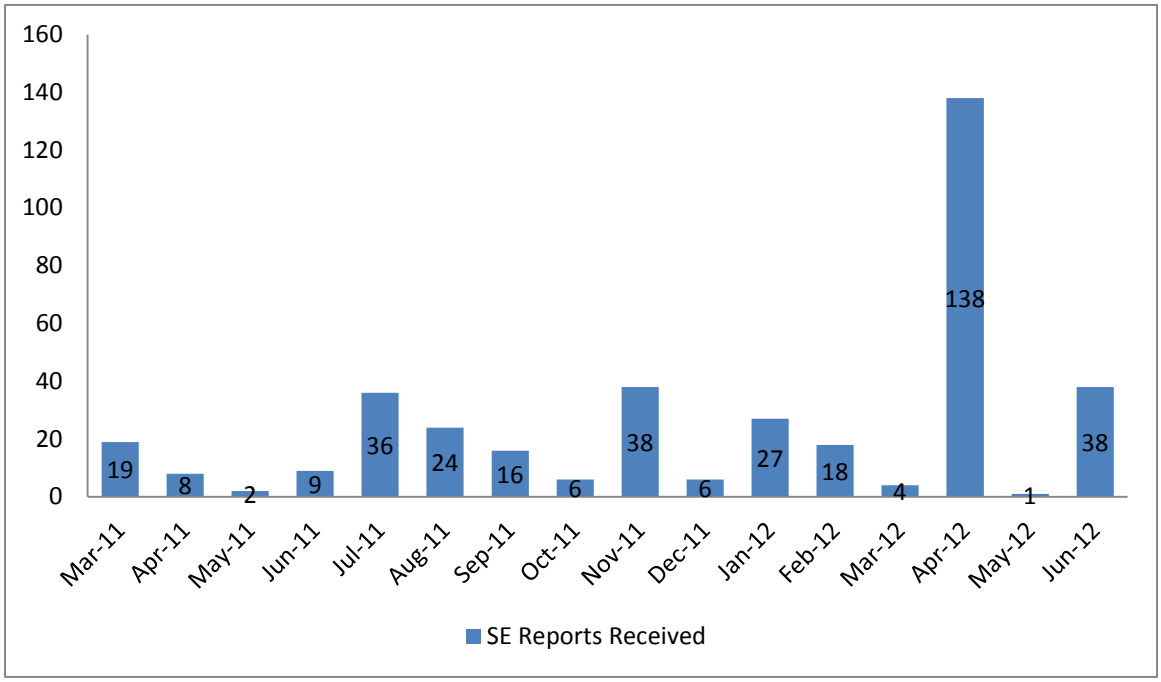
FDA received 3,126 provisional substantial equivalence (SE) reports before March 23, 2011. SE reports received before March 23, 2011, are considered *provisional* and the products covered by those reports **can** remain on the market unless FDA finds that they are "*not* SE."

Between March 23, 2011 and July 1, 2012, FDA received 390 SE reports. Those reports are considered *non-provisional or regular* reports and products covered by those reports **cannot** be marketed unless and until FDA issues a finding of SE.

As of July 1, 2012, FDA has completed the following steps in its review of these SE reports:

- completed jurisdictional review for 3,464 reports (including 338 of the 390 regular reports);
- provided information to 3,464 submitters about whether their product falls under the current jurisdictional authority of CTP;
- performed an initial "Completeness Review" on 133 SE reports received since March 23, 2011;
- sent 133 "Advice and Information Request" letters to those parties that submitted reports that FDA believes were missing information, asking that the parties either provide clarification or submit the missing information to facilitate FDA's review and received responses from 130 of the submitters.

Figure 1. Number of Regular SE Reports Received by CTP per Month



Common Deficiencies in SE Reports

In August, 2012 FDA completed the scientific review and mailed Scientific Advice and Information letters to submitters for the first batch of reports. There have been significant deficiencies in nearly all SE reports reviewed to date. Some of the common deficiencies include:

- Reports do not clearly state which category[1] of SE the product fits in or the reports contain contradictory statements. In some cases the information in the SE report does not support the stated category.
- SE reports identify unacceptable predicate products[2].
- SE reports listing numerous predicate products[3].
- Rationale given for selection of predicate product is unclear. In some cases, the predicate products do not seem appropriate e.g. filtered cigarette as predicate for unfiltered cigarette.
- New products and predicate products not well identified and many missing details about the product characteristics.
- Many reports are lacking information about tobacco blend, e.g. details about different reconstituted tobaccos are missing; information about additives being applied directly to tobacco blend is missing. In many cases, not enough information is provided to understand how tobacco differences affect product characteristics.
- Inadequate information to completely understand product composition.
- Missing specifications, such as tobacco grading system and ingredient grades, used by the manufacturers.
- Ingredients and additives are not always identified for each product component/material.
- Ranges in ingredient and additive quantities are not always provided.
- Many SE reports are unclear how different sources of ingredients and/or additives are used and there is often inadequate information provided to compare sources. For some products there appear to be interchangeable ingredients. It is unclear why and how ingredients are used and often there is inadequate information to compare ingredients.
- Information on HPHC's is either missing or where provided, no explanations are given for differences in the quantities provided[4].
- In reports where HPHC information was provided, often the number of replicate samples was too small and/or information to evaluate the data such as test method, test date, manufacture date, product storage conditions, was missing.
- HPHCs in smoke from multiple smoking regimens were often not provided.
- For many reports, information on product design was incomplete e.g. schematics of the product not provided; inadequate product attributes provided to understand product

[1] SE Reports can either claim to have the same characteristics of a predicate product or different characteristics but they do not raise public health questions.

[2] Predicate has to be a grandfathered product (on the market on February 15, 2007) or FDA has to have issued an SE order for a predicate.

[3] The SE guidance recommends one predicate.
http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm253273.htm

[4] HPHC information is not required but was recommended in SE Guidance
http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm253273.htm

engineering; product specifications not provided to understand product quality/consistency; testing data not submitted.

- Many reports lacking information on packaging and product stability such as not providing information on packaging materials/ingredients. In some cases stability data provided was based on consumer perception which is not a measurement of public health impact.

Industry Outreach Efforts

- Published Guidance for Section 905(j) Reports on January 5, 2011. http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm253273.htm
- Published Draft Guidance for Industry and FDA Staff Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions. http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm271242.htm
- As of July 1, 2012, FDA has received 78 requests for meetings from tobacco manufacturers or related trade associations and CTP has granted 59 of the requests.
- Met seven times with either individual manufacturers or multiple manufacturers on the general science of smoked and smokeless tobacco products.
- Met three times with individual manufacturers on science related to dissolvable tobacco products.
- In December 2011, CTP went on six manufacturing site tours at the invitation of industry to learn more about the manufacturing, marketing, and distribution of tobacco products, and is following this up with several more planned site tours.
- Sponsored two specific stakeholder discussion meetings for industry, the first held with large and small tobacco manufacturers and growers in December, 2010 and attended by more than 30 industry leaders, the second held in August, 2011 with tobacco distributors, wholesalers, importers, and retailers.
- At the request of the Tobacco Manufacturers Association, CTP leadership has presented at their last three annual meetings, in 2010, 2011, and 2012.
- Has held 4 webinars on SE to explain our processes and describe the kind of information needed.
- On August 7, 2012, launched a new website, “Tobacco Product Review and Evaluation” that explains the three pathways to legally market new tobacco products in the U.S.