



## **CITIZEN PETITION**

The undersigned hereby petition the Commissioner of Food and Drugs to publish the specific requirements for applications seeking approval to market therapeutically equivalent versions of insulin and human growth hormone ("HGH"). While the Food and Drug Administration ("FDA") recently approved Omnitrope, the first therapeutically equivalent form of HGH, it has not released the guidance documents it already has drafted that outline the approval requirements for insulin and HGH, which would significantly facilitate and expedite the entry of other therapeutically equivalent HGH products and the first such product for insulin.

We, the undersigned Petitioners, hereby request that the FDA use its statutory and regulatory authority to issue guidance that will facilitate the availability of more affordable, therapeutically equivalent versions of these drugs to help States reduce the burden of excessive pharmaceutical costs. Specifically, Petitioners request that the FDA promptly release the guidance documents it already has developed on these important topics. This petition is submitted under the citizen petition provision of the Code of Federal Regulations. 21 C.F.R. § 10.30.

### **I. BACKGROUND**

Petitioners are the Governors of the States of Kansas, Minnesota, Vermont and Wisconsin. In their official capacities, Petitioners are responsible for managing the costs that their respective States incur for prescription drugs in connection with State Medicaid programs, as well as other State programs that provide a drug benefit. Petitioners also are vitally interested in ensuring that high-quality, affordable healthcare is available to all citizens of their States who are not covered by a State prescription drug benefit and ensuring that pharmaceutical costs are as low as possible. Petitioners recognize that one of the best ways to keep pharmaceutical costs low is to foster competition in the marketplace.

Currently, American patients spend approximately \$1.5 billion on insulin products to treat diabetes and approximately \$433 million on HGH, which is used to treat a variety of conditions, including growth deficiencies in children and adults, chronic renal insufficiency, and AIDS wasting syndrome.<sup>1</sup> Having market competition for insulin and increased market competition for HGH products could save the American health care system hundreds of millions of dollars annually.

Under the Drug Price and Competition and Patent Term Restoration Act of 1984 ("the Hatch-Waxman Act"), FDA may approve therapeutically equivalent versions of drugs once applicable patents have expired. The abbreviated approval process created by the Hatch-

---

<sup>1</sup> See Christopher Rowland, *No Simple Generic Answer Biotech Industry Challenging Potential Review Process for Biogenerics*, BOSTON GLOBE, July 16, 2003, C1. See also Barry Davidson, *New Formulations and Indications Promise to Expand Worldwide Markets*, BIOVENTURE VIEW, Sept. 1, 1999, at 1.

Waxman Act allows the applicant to use existing clinical data without requiring the replication of all the safety and efficacy studies that were required before the original version of the drug was approved. Insulin and HGH are drugs regulated under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355. FDA, however, has yet to permit an applicant to seek approval of therapeutically equivalent versions of insulin under Section 505(b)(2) and has not described the standard by which any such application would be approved or disapproved. Only recently has FDA approved Omnitrope, a therapeutically equivalent version of HGH, and only after a federal judge issued a decision ruling that FDA had unlawfully delayed a decision on that application. *Sandoz v. Leavitt*, 2006 U.S. Dist. LEXIS 17549 (D.D.C. 2006). Moreover, while FDA approved Sandoz's application for Omnitrope on May 30, 2006, it still has not released the guidance documents regarding the approval requirements for such forms of HGH or insulin.

Unlike many biologic products, insulin and HGH have relatively simple biologic structures with a long history of safe use. There is a wealth of data available about these products. Several years ago, FDA determined that generic versions of insulin and HGH could be made available once the Agency determined and publicized the data requirements necessary to demonstrate safety and effectiveness. By 2002, FDA had identified the steps necessary to begin approving therapeutically equivalent versions of insulin and HGH. Nevertheless, FDA has not yet issued any documents providing this information.

We have been informed that there are no scientific reasons for delaying the issuance of the guidance documents FDA already has drafted. While such guidance unnecessarily languishes in the United States, the European Medicines Agency ("EMA") has adopted final guidelines on quality, non-clinical and clinical issues regarding similar biological medicinal products in December 2003 and a general regulatory guideline on such products in September 2005.<sup>2</sup> The EMA also issued final product-specific guidance documents on similar biological medicinal products (including one for insulin), in February 2006.<sup>3</sup> The EMA also has received three applications for similar biological medicinal products. According to the Reuters News Agency, European regulators expect to receive eight applications from generic drug makers wanting to sell similar versions of biotech medicines during 2006.<sup>4</sup> The EMA's scientific committee, the Committee on Medicinal Products for Human Use, issued its first recommendation for approval of a similar biological medicinal product, Omnitrope, at its meeting in January 2006.<sup>5</sup> The European Commission granted marketing authorization for Omnitrope in April 2006.<sup>6</sup>

---

<sup>2</sup> All of the EMA's final guidelines on similar biological medicinal products can be found at: <http://www.emea.eu.int/index/indexh1.htm>.

<sup>3</sup> The product-specific EMA guidelines can be found at the same website.

<sup>4</sup> Ben Hirschler, *EU Expects 8 Filings for Biosimilar Drugs in 2006*, REUTERS, Dec. 20, 2005.

<sup>5</sup> Press Release, European Medicines Agency, European Medicines Agency adopts first positive opinion for a similar biological medicinal product (Jan. 27, 2006) (available at <http://www.emea.eu.int/Press%20Office/presshome.htm>); Tom Wright, *European Regulator Recommends Generic Copy of Biotech Drug*, N.Y. TIMES, Jan. 27, 2006.

<sup>6</sup> See European Commission, Community register of medicinal products for human use (available at <http://ec.europa.eu/enterprise/pharmaceuticals/register/h332.htm>).

The authors of the Hatch-Waxman Act, Senator Orrin G. Hatch and Congressman Henry A. Waxman, implored the Agency to issue the guidance documents for insulin and HGH in a February 10, 2006, letter addressed to Acting Commissioner von Eschenbach ("Hatch-Waxman Letter"), in which they urged the Agency that these products "should be separated from the development of a larger regulatory framework because they do not raise the same scientific and regulatory issues as biological products." On March 17, 2006, the Agency responded in a letter stating that "FDA has decided that it would be more appropriate to publish guidances that are more broadly applicable to [therapeutically equivalent biologic products] in general."

In its letter of March 17, 2006, the Agency noted that despite the decision not to issue this guidance, it was nevertheless approving under section 505 individual product applications for therapeutically equivalent biological products approved under the Federal Food, Drug and Cosmetic Act.

There is no legal or regulatory obstacle to the immediate issuance of these guidance documents. In fact, the FDA has a legal obligation to address in a timely manner applications for these products under the statutory review standard. It is critical that the FDA take the few final steps necessary—steps that it repeatedly has committed to take—to facilitate the entry of therapeutically equivalent versions of insulin and additional therapeutically equivalent versions of HGH into the marketplace.

## **II. RELIEF REQUESTED AND SUPPORTING AUTHORITY**

### **A. Actions Requested**

Petitioners request that the FDA promptly issue guidance documents outlining the specific approval requirements for forms of insulin and HGH that are therapeutically equivalent to the brand products currently approved by the FDA. Petitioners also request that the FDA commit to working with drug companies developing such products and to expediting the application process so that these products may be approved and made available to patients as quickly as possible.

### **B. Statement of Grounds**

#### *1. FDA Is Ready to Issue Regulatory Guidance on the Development of Therapeutically Equivalent Versions of Insulin and HGH Products.*

In 2001, FDA recognized that generic companies needed formal guidance as to the approval requirements for therapeutically equivalent versions of insulin and HGH and that it would be scientifically and legally appropriate to provide such guidance. In March 2001, the Director of FDA's Office of New Drug Chemistry announced that the Agency was drafting

guidance documents for the approval of therapeutically equivalent versions of insulin and HGH drug products.<sup>7</sup>

While FDA drafted these documents, the brand industry launched a multi-pronged effort to delay and to block their issuance. In May 2001, it was widely reported that the Biotechnology Industry Organization ("BIO") had asked FDA to delay release of the insulin and HGH guidance documents until a new FDA commissioner had been appointed and confirmed by the Senate.<sup>8</sup>

In 2002, draft guidance documents on the approval of therapeutically equivalent versions of HGH and insulin awaited clearance by the Center for Drug Evaluation and Research after having been approved by two coordinating committees.<sup>9</sup> In October 2002, Dr. Mark McClellan was nominated as Commissioner of Food and Drugs. During his confirmation process, Dr. McClellan voiced his interest in addressing the biologic approval process, indicating a renewed interest in the issue at the very top of the Agency.<sup>10</sup>

In 2003, Commissioner McClellan and other FDA officials expressly articulated the multi-stage approach FDA intended to take with respect to therapeutically equivalent versions of approved biologics. First, FDA would proceed to develop guidance for certain biologics such as insulin and HGH, which later would be followed by "the more complicated issue" of therapeutically equivalent forms of other, more complex biological products.<sup>11</sup> In hopes of gaining the first approval for an application for generic HGH, Novartis's German division, Sandoz, filed its application for Omnitrope, which was accepted for review by FDA in July 2003.

In April 2003, BIO had acted on the possibility that FDA might approve therapeutically equivalent versions of HGH by filing a citizen petition demanding that FDA refrain from issuing any guidance documents regarding approval for therapeutically equivalent forms of insulin and HGH and, instead, conduct a broad examination into the approval of therapeutically equivalent biologics as a general matter.<sup>12</sup> Some brand manufacturers filed similar petitions shortly thereafter. Such petitions often delay agency action. Nevertheless, 2004 trade press reports

---

<sup>7</sup> *FDA Accepts Data Sets on Therapeutic Equivalence of Biotech Drugs*, FDA WEEK (Inside Washington Publishers, Washington, D.C.) Mar. 23, 2001, at 5-6.

<sup>8</sup> *BIO Asks HHS To Stall Release of 'Generic Biologics' Guidance*, FDA WEEK (Inside Washington Publishers, Washington, D.C.) May 4, 2001, at 1, 10.

<sup>9</sup> *Generic Somatropin NDAs Would Require Human Immunogenicity Tests--FDA*, THE PINK SHEET (F-D-C Reports, Chevy Chase, MD), April 22, 2002, at 14.

<sup>10</sup> *Hearing Before the Committee on Health, Education, Labor, and Pensions on Mark McClellan, of the District of Columbia, To Be Commissioner of Food and Drugs*, S. Hrg. 107-730, 107th Cong., at 29 (Oct. 7, 2002).

<sup>11</sup> *Generic Biologics on Fast Track?: Follow-On Process Under Debate*, THE PINK SHEET (F-D-C Reports, Chevy Chase, MD), May 26, 2003, at 9.

<sup>12</sup> See Docket No. 2003P-0176. The petition asked FDA to undertake and complete a protracted deliberative process before providing any guidance whatsoever or approving any application for a therapeutic protein that does not contain a full complement of data and that relies on information contained in another applicant's application.

continued to indicate that FDA's guidance documents on therapeutically equivalent insulin and HGH products were forthcoming.<sup>13</sup>

In March 2004, FDA Commissioner McClellan resigned to become Administrator of the Centers for Medicare & Medicaid Services. Continuing Commissioner McClellan's commitment to the development of guidelines for certain biologics, Acting Commissioner Lester Crawford confirmed in Congressional testimony in May 2004 that FDA was preparing to release guidance on the approval process for certain biologic products, including HGH.<sup>14</sup> Also in May 2004, Pfizer filed a citizen petition to block the Sandoz application's approval.<sup>15</sup> In August 2004, Pfizer supplemented its petition to ask FDA to delay its decision on the Sandoz application until comprehensive policies on the approval of all therapeutically equivalent biologics had been established. FDA at this time was being "bombarded with petitions from brand-name companies trying to prevent generic versions of their drugs."<sup>16</sup>

In the fall of 2004, the Agency halted preparation of the insulin and HGH guidance documents without articulating any justification for its decision. In September 2004, this shift crystallized when FDA failed to reach a decision on the Omnitrope application. At that time, FDA indicated to Sandoz that while the agency did not find a deficiency in the application, it had unspecified "uncertainty regarding scientific and legal issues."<sup>17</sup> On September 13, 2005, Sandoz filed its suit in federal court against FDA for the Agency's failure to act on its Omnitrope application in accordance with its statutory obligations. As noted above, the court found that FDA had unlawfully delayed its review of the application. *See Sandoz Inc. v. Leavitt, supra*. On May 30, 2006, FDA approved Omnitrope, but did not issue a guidance document outlining the approval requirements for such a product.

Over the past two years, the FDA has failed to issue either an insulin or HGH guidance document. Moreover, the more ambitious project of developing a broader framework for all therapeutically equivalent biologics has proceeded at a predictably slow pace. The Agency conducted a workshop in September 2004, solicited comments on several preliminary issues related to developing therapeutically equivalent biologics generally, and held a second workshop

---

<sup>13</sup> *Generic Biologics Guidance on Scientific Challenges Out Soon*, WASHINGTON BUSINESS INFORMATION, Mar. 10, 2004, at 1; *Generic Biologics Guidance to Focus on Scientific Challenges*, THE FOOD & DRUG LETTER, June 4, 2004, at 1.

<sup>14</sup> James N. Czaban and Natasha Leskovsek, *Trying to Sell Same: Lack of Approval Process for Generic Biologics Sets Stage for Regulatory Battle*, LEGAL TIMES, May 17, 2004, at 38.

<sup>15</sup> See Docket No. 2004P-0231. The petition argued that FDA cannot rely on, reference, or otherwise use clinical data from the brand name's NDA and that the Omnitrope data was insufficient to support approval.

<sup>16</sup> Christine Hines, *The Biologic Clock Ticks*, CORPORATE COUNSEL, Sept. 2004, at 136.

<sup>17</sup> See Media Release, Sandoz, Inc., "FDA Defers Decision on Omnitrope Application" (Sept. 2, 2004); see also *Agency Defers Approval Decision for Omnitrope*, LAB BUSINESS WEEK, Sept. 26, 2004, at 65.

in February 2005.<sup>18</sup> A workshop is a preliminary step to considering regulatory action and signals that a regulatory decision is not imminent.

In May of 2005, *Business Week* noted that therapeutically equivalent biologics are “in regulatory limbo” since “the momentum has been lost.”<sup>19</sup> Subsequently, the head of FDA’s Office of Pharmaceutical Science announced that FDA would issue a “white paper” on the broad issue of generic biologics in the fall of 2005.<sup>20</sup> Even though the “white paper” was expected only to provide general principles and an historical context for therapeutically equivalent biologics rather than to establish the requirements for any particular products, FDA still has not even agreed to its release. It is clear that the Agency’s effort to inform manufacturers as to the requirements for insulin and HGH is stalled.

This state of affairs was confirmed in October 2005 by Dr. Scott Gottlieb, Deputy Commissioner for Medical & Scientific Affairs, who asserted that the “question [of therapeutically equivalent biologics] remains very much open both from a legal and regulatory standpoint, from a policy standpoint.”<sup>21</sup> Deputy Commissioner Gottlieb continued that “I don’t think the agency is in a position to have anything to say on that in the near future.”<sup>22</sup> This position was restated in the March 17, 2006, response to the Hatch-Waxman letter, in which the FDA indicated that it has reversed its earlier plan to issue product-specific guidance in favor of broader guidance applying to all therapeutically equivalent biologics. These statements are dramatically different from the previous statements made by the Agency indicating its intent to issue promptly guidance documents for insulin and HGH.

2. *The FDA Should Not Delay Issuance of the Completed Guidance Documents on Approval of Therapeutically Equivalent Insulin and HGH Products as It Wrestles with Broader, More Complicated Questions Applicable to Other Therapeutically Equivalent Biologics.*

Insulin has been available in the United States since the early 1920s, and the FDA has regulated it under the Federal Food, Drug and Cosmetic Act (“FFDCA”) or its predecessor, the Pure Food and Drug Act of 1906, since that time. HGH has been available since 1950 and is also regulated under the FFDCA. Recombinant versions of both of these drugs were approved by the FDA in the 1980s. Quite simply, we know of no legitimate scientific or legal bases for the FDA’s refusal to issue guidance documents on the approval of therapeutically equivalent insulin and HGH products. Concerns related to the approval of therapeutically equivalent biologics

---

<sup>18</sup> See, e.g., *FDA Schedules Long-Awaited Public Meeting on Generic Biologics*, FDA WEEK (Inside Washington Publishers, Washington D.C.), Aug. 13, 2004, at 10.

<sup>19</sup> Amy Barrett, et al., *Biotech Drugs: Where Are the Generics?* BUSINESS WEEK, May 9, 2005, at 98.

<sup>20</sup> Ben Hirschler, *FDA Aims To Issue Guidance on Biogenerics in Fall*, REUTERS, June 21, 2005.

<sup>21</sup> *Follow-Ons Off? FDA Shelves Near-Term Plans for Biologics Documents*, THE PINK SHEET, (F-D-C Reports, Chevy Chase, MD), October 10, 2005, at 14.

<sup>22</sup> *Id.*

more generally do not apply to the approval of such forms of insulin and HGH, as evidenced most clearly by the recent Omnitrope approval.

First, there is no legal obstacle to the approval of therapeutically equivalent versions of insulin and HGH products. Although the FDA regulates most biologic drug products (including blood products, vaccines, and anti-toxins) under a different statute, the Public Health Service Act ("PHS Act"), insulin and HGH are regulated under the FFDCA. The Agency's use of the PHS Act for most biologics has raised an issue, according to the brand companies, about the appropriate framework for therapeutically equivalent versions of those products and about whether the Agency has the legal authority to permit such generic versions. In contrast, since 1994, the FFDCA has contained a framework and Congressional mandate to the FDA to make therapeutically equivalent versions of drugs available, once applicable patents have expired or have been challenged as set forth under the Hatch-Waxman Act.

The Hatch-Waxman Act created two separate regulatory authorities for the approval of generic products: section 505(j) and section 505(b)(2). Under section 505(j), the FDA may approve a drug that is bioequivalent to a brand name product while allowing the manufacturer to rely on the safety and effectiveness data originally submitted by the brand manufacturer. Under section 505(b)(2), the FDA may approve applications that rely in part on the brand manufacturer's data, but also require additional data to demonstrate the safety and effectiveness of the product. The FDA has indicated that its guidance documents would have provided for the approval of therapeutically equivalent versions of both HGH and insulin under section 505(b)(2) of the FFDCA.<sup>23</sup> Moreover, in its March 17, 2006, response to the Hatch-Waxman Letter, the Agency noted several "follow-on protein products," the Agency's name for therapeutically equivalent biologics, for which the sponsors have met the statutory and regulatory approval requirements under the FFDCA. And, of course, the Agency's recent approval of Omnitrope further acknowledges that there is no legal barrier to approving therapeutically equivalent versions of products approved under section 505.

Second, we know of no scientific reasons for delaying the issuance of the product-specific guidance documents. Insulin and HGH are well-known and well-understood products for which therapeutically equivalent versions can be developed. Unlike many biologics, insulin and HGH are relatively simple biologic structures. Their long histories provide much data upon which they can be evaluated. The products are appropriate candidates for guidance documents because, as former FDA Office of New Drug Chemistry Director Yuan-Yuan Chiu has noted, they are well understood and have been widely used: "[i]nsulin has been around since 1920 and growth hormone has been used for therapies since 1950. . . . [There are] extensive human data available from multiple manufacturers."<sup>24</sup> For many years, physicians have prescribed insulin and HGH,

---

<sup>23</sup> *Generic Biologics on Fast Track*, *supra* note 11, at 9; *Generic Somatropin*, *supra* note 9, at 14.

<sup>24</sup> *Generic Somatropin*, *supra* note 9, at 14..



and neither drug has produced any significant safety issues.<sup>25</sup> In addition, both drugs are widely acknowledged to be well-characterized, meaning that it is possible to fully understand and to document their different components and characteristics. As Dr. Chiu recognized, "human insulin and human growth hormone have several characteristics which make demonstrating equivalence easier than with other recombinant protein drugs."<sup>26</sup>

Even though the agency now has approved Sandoz's application for Omnitrope, it is important that FDA issue the guidance for HGH so that other applicants can understand the regulatory requirements. The States and their citizens have a right to have those documents released in order to facilitate the approval of safe, effective, and less expensive versions of insulin and HGH.

Repeatedly over the past few years, FDA officials have supported separating HGH and insulin from a larger initiative on therapeutically equivalent biologics, and with good reason. The March 17, 2006, response to the Hatch-Waxman Letter offers no reasoned explanation for the Agency's failure to issue the insulin and HGH guidance documents. Resolution of the issues raised by the larger initiative may take several years because they involve newer, potentially more complex and less understood products. If the scientific issues pertaining to insulin and HGH have been resolved, as appears to be the case, then the guidance documents should be released to the public so that companies may begin obtaining approval of and marketing these products, and so that consumers and healthcare providers (including the States represented by petitioners) can begin saving money.

3. *FDA's Failure to Issue the Insulin and HGH Guidance Documents Violates the Administrative Procedure Act.*

FDA has the legal authority under the FFDCA to approve applications for therapeutically equivalent insulin and HGH products. Despite the fact that FDA staff have drafted these documents and FDA officials repeatedly have indicated that these documents will be forthcoming, the Agency has abandoned the product-specific guidance documents and apparently has decided to address the approval process for therapeutically equivalent insulin and HGH only in the context of guidance for all therapeutically equivalent biologic products. This new undertaking is a vastly broader endeavor that involves an entirely different statute, the PHS Act, and a dramatically different class of biologics, which, at the current pace, will take many years to complete.

FDA made this decision without offering any justification, and Petitioners are not aware of any justification that could support the Agency's decision. Despite the demonstrated need for

---

<sup>25</sup> See MEDICAL ECONOMICS CO., INC., PHYSICIANS' DESK REFERENCE at 1926-1930; 1934-48, 2420-30 (insulin); 1417-25, 1930-34, 2419-21, 2818-20, 3225, 3229-31 (HGH) (2002) (insulin, HGH product labeling does not detail any significant safety events).

<sup>26</sup> *Generic Somatropin*, *supra* note 9, at 14.

market competition that would lower the cost of these drugs, FDA's reluctance to issue these guidance documents keeps cost-effective alternatives of insulin and additional alternatives to HGH off the market and away from the consumers who need them. FDA's unsubstantiated decision was arbitrary and capricious and in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

In *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983), the Supreme Court held that an agency action is arbitrary and capricious if the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." In other words, "an agency must cogently explain why it has exercised its discretion in a given manner." *Id.* at 48 (citations omitted). Here, Petitioners respectfully submit that there is no cogent explanation that the Agency has given or could give for its failure and refusal to issue the guidance documents for insulin and HGH and to permit therapeutically equivalent versions of those products.<sup>27</sup>

The FDA's failure to issue the insulin and HGH guidance documents has a significant impact on Petitioners and citizens in their States. Without guidance as to the approval requirements applicable to therapeutically equivalent forms of insulin and HGH, such products will not be affordable to some of the patients who need them, and patients will not be reaping the full impact of having multiple lower-cost generic HGH products. Moreover, without regulatory guidance in this area, valuable resources will be spent unnecessarily on brand name drugs--resources that could be used to help Petitioners and their citizens in other, pressing ways. Without explanation and despite the numerous reasons warranting issuance of separate guidance documents for insulin and HGH, the Agency has decided not to issue such documents. FDA promptly should issue the guidance documents and permit companies to market therapeutically equivalent versions of these two important products.

### **C. Environmental Impact**

This petition qualifies for a categorical exclusion from the requirement for submission of an environmental assessment. See 21 C.F.R. §25.30(h) (categorical exclusion for documents

---

<sup>27</sup> See also *A.L. Pharma, Inc. v. Shalala*, 62 F.3d 1484, 1492 (D.C. Cir. 1995) (lacking any attempt to "cogently explain" refusal to rescind ANDA approval, FDA decision arbitrary and capricious); *Public Citizen v. Heckler*, 653 F. Supp. 1229, 1239-40 (D.D.C. 1986) (FDA decision not to promulgate rule banning intrastate raw milk sales arbitrary and capricious because "the Secretary lacked a reasoned basis for that decision"). Compare *Henley v. FDA*, 77 F.3d 616, 620-21 (2d Cir. 1996) (based on information cited and reasons proffered, FDA labeling determination not arbitrary and capricious); *Arent v. Shalala*, 70 F.3d 610, 616-17 (D.C. Cir. 1995) (FDA's regulations defining "substantial compliance" under NLEA not arbitrary and capricious in light of evidence that FDA considered relevant factors and articulated explanation for rule-making decision).

related to the issuance, amendment, or revocation of procedural or administrative regulations and guidance documents, including procedures for submission of applications for product development, testing and investigational use, and approval).

**D. Economic Impact**

According to 21 C.F.R. § 10.30(b), information on economic impact is to be submitted only when requested by the Commissioner following review of the petition.

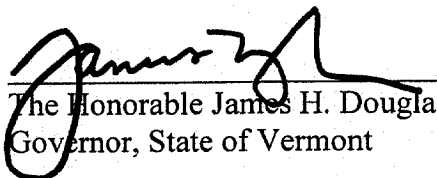
**E. Certification**

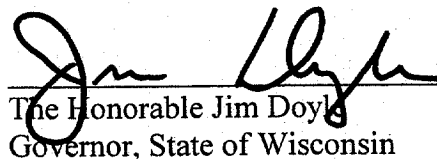
The undersigned certify that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies and that it includes representative data and information known to the Petitioners that are unfavorable to the petition.

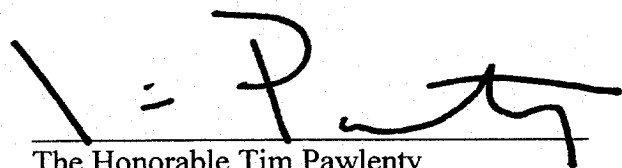
**III. CONCLUSION**

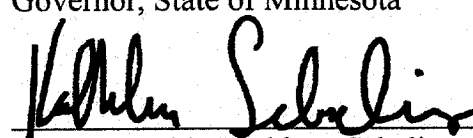
The FDA's delay in informing manufacturers of the requirements for obtaining approval of therapeutically equivalent versions of insulin and HGH has cost the States and other healthcare providers hundreds of millions of dollars. Accordingly, Petitioners request that the FDA *immediately* issue guidance documents that outline the specific approval requirements under the FFDCA for therapeutically equivalent forms of insulin and HGH. Petitioners also request that the FDA commit to working with the manufacturers developing such products and to expediting the application process so that these products may be approved and made available to patients as quickly as possible.

Respectfully submitted,

  
The Honorable James H. Douglas  
Governor, State of Vermont

  
The Honorable Jim Doyle  
Governor, State of Wisconsin

  
The Honorable Tim Pawlenty  
Governor, State of Minnesota

  
The Honorable Kathleen Sebelius  
Governor, State of Kansas

August 3, 2006

**Jaffe, Lyle D**

---

**From:** Jason Rohloff [Jason.Rohloff@state.mn.us]  
**Sent:** Thursday, August 03, 2006 2:49 PM  
**To:** Jaffe, Lyle D  
**Cc:** Jason Rohloff; Carolyn Jones  
**Subject:** Citizens Petition

Mr. Jaffe:

It was a pleasure to speak with you this afternoon regarding the citizen petition that was signed by Governors Pawlenty, Doyle, Sebelius and Douglas and filed today with the FDA.

Per your request, please send correspondence regarding the aforementioned to me at the address below and I will ensure that information is forwarded onto the other gubernatorial offices as well.

Should you have any questions, please contact me at 202.624.3642. Thank you very much for your assistance.

Jason D. Rohloff  
Director of Federal Affairs  
Office of Governor Tim Pawlenty  
400 North Capitol Street, Suite 380  
Washington, D.C. 20001  
Tel. 202.624.3642  
Fax. 202.624.5425

*The information contained in this e-mail is intended for the use of the person or entity named above. If you are not the intended recipient or if you have received this e-mail in error, you are to refrain from reading this e-mail or examining any attachments to the e-mail. Please notify the person sending this message of the mistaken delivery immediately.*

8/3/2006