GPhA
GENERIC PHARMACEUTICAL ASSOCIATION

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

September 12, 2008

Dear Chairman Dingell:

We are writing to you on behalf of the Generic Pharmaceutical Association's ("GPhA's") member companies to request that Congress promptly amend the definition of "applicable drug clinical trial" at PHS Act § 402(j)(1)(A)(iii) to specifically exclude bioequivalence studies, with respect to § 801 of the FDA Amendments Act of 2007 ("FDAAA").

Certain types of clinical studies – called bioequivalence studies – that generic drug companies typically conduct to obtain FDA approval of a marketing application do not qualify as "applicable drug clinical trials" that must be registered at ClinicalTrials.gov pursuant to FDAAA § 801. Nevertheless, GPhA's members are concerned that FDA will incorrectly interpret the statute to include bioequivalence studies as "applicable drug clinical trials." Such an interpretation likely would have significant negative consequences on the generic industry and on the public health.

FDAAA § 801 amended § 402 of the Public Health Service Act ("PHS Act") to expand the clinical trial registry data bank. "Applicable" clinical trials must be registered at ClinicalTrials.gov. Under the statute, an "applicable drug clinical trial" is "a controlled clinical investigation, other than a phase I clinical investigation, of a drug subject to section 505 of the Federal Food, Drug, and Cosmetic Act." Congress passed FDAAA § 801 to give physicians and consumers greater access to the safety and efficacy data generated on drug products. Indeed, in large part, FDAAA § 801 came about because of the belief that pharmaceutical companies did not always make public all available safety or efficacy data regarding their drug products. Proponents often cited to Vioxx® as an example of a drug where public access to additional, available safety or efficacy data could have been important to physicians and consumers. Importantly, bioequivalence studies, which are not studies of safety and effectiveness, were never mentioned during Congress' consideration of FDAAA § 801, or in any of the predecessor bills to this legislation going back to the 108th Congress. Instead, the clinical trial registration requirements were explicitly limited to studies of "safety and effectiveness."

Generic companies conduct bioequivalence studies to demonstrate equivalence between the brand and a proposed generic product. Such studies, which are typically performed in 24-36 healthy volunteers and not in patients, are used to demonstrate that the proposed generic drug is absorbed into the blood stream at the same rate and extent (amount) as the brand product. If the blood levels of the brand and the proposed generic product are the same then FDA determines that the proposed generic product is "bioequivalent" to the brand, and therefore is presumed to have the same safety and efficacy profile as the brand drug. If the proposed generic product is not found to be bioequivalent, then FDA is precluded from approving it. Thus, bioequivalence studies do not generate new or additional meaningful safety or effectiveness information about a drug product.

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Likewise, because bioequivalence studies are usually performed in healthy volunteers rather than in patients with a particular medical condition, enrolling subjects in these studies does not provide patients with opportunities to try new experimental therapies. Hence, there is no public health benefit by publishing bioequivalence study information. Consequently, requiring generic companies to publish the results of bioequivalence studies does nothing to advance Congress' goals for FDAAA § 801. This likely is why there is no indication in the legislative history that Congress ever intended the ClinicalTrials.gov registration requirement to apply to bioequivalence studies. Indeed, the language of FDAAA § 801 bears this out. For example, the bulk of information that must be provided with respect to an "applicable clinical trial" under PHS Act § 402(j)(2)(A)(ii) simply is not generated as part of a bioequivalence study. Nevertheless, it is GPhA's understanding that FDA will likely conclude that FDAAA § 801 applies to bioequivalence studies.

The fact that the public receives no benefit from the publication of bioequivalence study results is reason enough to make clear that such studies do not have to be submitted. Indeed, such information, if anything, likely would prove to be an unwelcome distraction to anyone seeking to use the database to assess safety and efficacy. There is, however, a compelling reason to exclude such studies; namely, applying FDAAA § 801 to bioequivalence studies could severely harm consumers and taxpayers, as well as the generic industry. First, publishing bioequivalence studies will give brand companies a significant new "heads up" regarding the existence of a generic filer. With this advanced notice, brand companies will have even more time to game the system to delay generic market entry. Such delays without question harm consumers and taxpayers by delaying access to far more affordable medicines, and would frustrate a primary goal of the 1984 Hatch-Waxman Amendments – to encourage generic competition and make generic drugs available to consumers in a timely manner. Second, publishing bioequivalence studies under FDAAA § 801 would force generic companies to disclose their pipelines, which creates a significant competitive disadvantage vis-à-vis other generic companies. Such a disadvantage would create a disincentive to invest in certain products, which in turn, harms consumers and taxpayers as fewer affordable medicines come to market.

GPhA does not believe that Congress intended FDAAA § 801 to adversely affect the generic industry or consumer access to more affordable medicines. Yet, absent Congressional action, this almost certainly will be the result if FDA considers bioequivalence studies to be "applicable drug clinical trials." Thus while GPhA believes that any such interpretation by FDA would run afoul of the current legislative language and Congress' intent, GPhA strongly urges Congress to amend the definition of "applicable drug clinical trial" at PHS Act § 402(j)(1)(A)(iii) to specifically exclude bioequivalence studies.

GPhA looks forward to working with Congress to achieve this goal.

With best regards,

Kathleen Jaeger

Kathleen Jaeger
President & CEO
Generic Pharmaceutical Association