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What Took So Long?

"THE TIME TO STOP taking this product is now," Health and Human Services Secretary Tommy G. Thompson said this week in announcing that the government would ban the sale of ephedra, the herbal weight-loss supplement. Actually, the time was years ago. The dangers of this amphetamine-like stimulant have been clear for years; the Food and Drug Administration, which is part of HHS, has been trying to restrict ephedra since 1997. Ephedra has been linked to some 155 deaths, including that of 23-year-old Baltimore Orioles pitcher Steve Bechler. It can cause heart attacks and strokes, even in healthy young adults.

But while the ban was a wise and necessary move, market forces had already largely worked in the case of ephedra. The combination of state laws banning or restricting ephedra sales, the threat of costly lawsuits, and bad publicity have all but killed the ephedra market -- though, sadly, not before the product killed some of its consumers. General Nutrition Corp., which runs the largest chain of dietary supplement stores, announced earlier this year that it would stop selling ephedra products, and Metabolife, the last major manufacturer of ephedra supplements, recently announced it would no longer sell ephedra. And so while we applaud the Bush administration's move, finally, to ban the product, the real questions raised by Tuesday's action are: What took so long? And, even more important, what can be done to safeguard the public from future ephedras, some of which are already on the market?

The answer to both those questions involves a truly terrible federal law, the 1994 Dietary Supplement Health and Education Act (DSHEA). The administration can be legitimately criticized for the unduly long time it took to get to yesterday's announcement, given the FDA's years-long effort to restrict ephedra. Even now, it will be months before the FDA's action takes effect. Mr. Thompson said he wanted to get the word out before dieters turned to ephedra to help fulfill their New Year's resolutions, but the new regulation won't be published for some weeks, and after that won't take effect for another 60 days -- and that's before the expected lawsuits from ephedra manufacturers.

But the fundamental fault lies with DSHEA. The law simultaneously makes it too easy to get dietary supplements on the market, and too hard to get them off. While manufacturers must show that ordinary drugs are safe and effective before they are allowed to sell them, dietary supplement makers face no such requirement before peddling their goods. If manufacturers develop information that calls into question their product's safety, they don't have to tell the FDA. And when there is an indication, as in the case of ephedra, that the product is dangerous, the law imposes a steep hurdle before the government can intervene: authorities must prove that the product presents a significant or unreasonable risk of injury.

Banning ephedra was a necessary step to protect the public, but not a sufficient one. The dietary supplement law is preventing government from fulfilling one of its bedrock functions: making sure unsafe products aren't foisted on unsuspecting consumers. It's time for Congress to stand up to the lavish contributions and relentless lobbying of the dietary supplement makers and fix this harmful law.