

Comments of the Generic Pharmaceutical Association for the Public Meeting on Proposed Changes to the National Drug Code System

Docket No. 2005N-0403
RIN 0910-AA49

November 24, 2006

The Generic Pharmaceutical Association (GPhA) is a non-profit trade association representing the manufacturers and distributors of finished generic pharmaceutical products, manufacturers and distributors of bulk active pharmaceutical chemicals, and suppliers of other goods and services to the generic pharmaceutical industry. Our members manufacture more than 90% of all generic pharmaceuticals dispensed in the United States and their products are used in more than one billion prescriptions every year. According to IMS Health, 56% of all prescriptions dispensed in the United States are filled with generic pharmaceuticals, yet they account for only 13% of the cost of all prescriptions dispensed. GPhA is the sole association representing this sector of the pharmaceutical industry.

GPhA supports FDA's ongoing effort to improve and protect public health and we also recognize the magnitude of undertaking a full revision of listing and registration processes. As major stakeholders in the pharmaceutical sector, it is in our best interests to see that FDA's efforts yield a more efficient system and result in the greatest public health benefits. Accordingly, the generic pharmaceutical industry is very concerned regarding the potential impact that the proposed rulemaking of August 29th may have on managing the production and distribution of medicines in the complex trade channels within the U.S. The proposals raise an array of logistics issues. Among numerous other issues, the generic industry is particularly concerned by the proposal "to designate the responsibility of assigning the NDC [National Drug Code] number to FDA." In light of the considerable impact the change would have on the fundamental day-to-day operations of drug development and labeling GPhA strongly urges FDA to reconsider this proposal.

Members of the generic industry share FDA's concerns that "[p]roduct and package codes are not always assigned appropriately, and industry practices for assigning codes are inconsistent" and that "manufacturers, repackers and relabelers may never list a product or may omit information or submit incorrect information to [the agency]." We proffer that current regulations establish sufficient authority to correct such inappropriate practices and oversights. Measures to improve compliance with listing requirements could include stricter enforcement of current rules, publishing of guidances, and educational workshops. Rather than committing the considerable administrative resources necessary to totally revamp the NDC system and dramatically altering the current practices of drug listing, the agency could increase its supervision of the system

already in place—a system for which the industry bears most of the cost and burden.

The pharmaceutical industry relies on well established conventions for assigning NDC codes which enable individual members of the industry to communicate internally, between different business units among business partners, insurers and CMS regarding details of each product. A major disruption in these practices would confound many of the refined business practices that support the infrastructure of the entire pharmaceutical industry. As such, GPhA believes that the current NDC system, when properly maintained, serves the purpose of the primary stakeholders and requests that the proposed changes to the NDC system not be implemented.

In the spirit of the Public Workshop, GPhA respectfully submits the following questions and comments regarding the proposed changes. As requested, the focus of these questions is limited to issues specifically related to the changes proposed for the NDC system. In the near future, GPhA will provide more extensive comments on the remaining issues related to drug listing and establishment registration implicated by the proposed rulemaking that are beyond scope of the December 11, 2006 meeting.

I. Assignment of NDC Numbers/Duplication

The Proposed Rule represents a major new burden to the pharmaceutical industry. This proposal appears to indicate that essentially any change to a drug products necessitates a new NDC number. GPhA wants to ensure that FDA has a full understanding of the proposal's impact to the supply chain. For example, requiring new NDC numbers for changes to active ingredients, a change in supplier of the active ingredient, a change in inactive ingredients, as well as changes in manufacturers or packagers, would exponentially increase the demand for resources from the industry.

A. Pre-existing or Multiple Codes

- How will the FDA prevent the issuance of an NDC number which exists prior to finalization of this Proposed Rule? For instance, will FDA's proposed database be accurate enough to determine that NDC 58458-001-01 has already been issued so that a duplicate number will not be assigned to a different drug?
- It is unclear how firms should measure whether or not their existing NDC numbers are compliant with the Proposed Rule. Please clarify the criteria needed to assess compliance.
- With many product codes already assigned to development projects that are several years away from marketing – how will FDA avoid assigning

those codes to another product? What if the number was requested by and assigned to a 3rd party manufacturer?

- During the transition period, how will FDA prevent assigning a product code to a third party manufacturer that the firm has already assigned to an internally manufactured pending product?
- If companies have multiple labeler codes (a DBA or “Other Firms doing Business at this Site”), will FDA mandate that all products manufactured or sold from a specific site, or a specific company across multiple sites, change their existing NDCs to a single labeler code?
- The NDC numbering system currently allows for either 9,999 or 999 unique product codes per company code depending on format. Companies with large numbers of products must retire and later re-use numbers, maintain multiple company codes specific to separate business entities to expand available product codes or use some other means to avoid running short of numbers. How will FDA handle retirement/re-use/expansion of product codes under a limited field length for product codes? What is the process for retiring numbers? This may necessitate expansion of number length.
- The proposal raises questions regarding the format and integration into related systems. Is a modification to the number of digits being considered to expand capacity as part of the new system? If so, how will this change be implemented and how will it impact other data systems such as computer programs with limited field lengths or bar code based systems? If a new number structure is deemed necessary to expand capacity, how will a new format be implemented?

B. Requesting an NDC

- GPhA has concerns regarding the confidentiality of the information submitted in order to obtain a NDA number. There is substantial proprietary information provided in order to obtain the NDC number. Please clarify when this information could be disclosed under section 510(f).
- It is unclear from the proposed rule whether final commercial package presentations need to be provided at the time of the initial NDC number request. It would be impractical to assume that firms would have this information finalized at the time of the initial NDC number request.
- Will the FDA’s system allow a company to “request” a specific product code at the time of the NDC request?

- How far in advance can a firm request an NDC from FDA?

C. Business Practice

- Industry typically assigns package codes based on established numbers for specific packaging configurations and is used consistently across a product line. What logic will be used when FDA assigns product codes and package codes?
- A firm may have assigned NDC numbers for products under review by the Agency; however, they cannot drug list without an approval letter and final printed labeling. According to the proposed rule, the NDC numbers currently assigned to a drug prior to the effective date of the rule would remain unchanged provided those NDC numbers comply with the new regulations as finalized. Does this refer to only those drugs that have been listed with the Agency prior to the effective date, or does this also include those NDC numbers assigned internally by the firm?
- For manufacturers with extensive product portfolios, labeler codes may often be a critical component to organizing and managing several business units. The proposal to use only one labeler code for any new NDC numbers assigned by FDA unnecessarily eliminates the distinction of business units within a corporation.

D. Source Materials and Active and Inactive Ingredients

- Will new NDC numbers need to be assigned if an inactive ingredient is deleted from the formulation?
- The proposed rule requests that the DMF for active pharmaceutical ingredients be listed when submitting information for a new NDC number. Will a new NDC number need to be assigned if the corporation changes vendor of the active pharmaceutical ingredient and/or when multiple suppliers are approved for the active pharmaceutical ingredient at the time of ANDA approval or at a later date?
- Some ANDAs are filed with alternate sources of raw materials. Will the products need separate NDC numbers for each combination of approved alternate sources?

E. Packaging and Labeling

- Please clarify how FDA will assign package codes for bulk active pharmaceutical ingredient containers?

- There are a number of “kits” that are marketed. These kits may contain multiple drug product components from different approved manufacturers. How will NDC numbers for “kits” with multiple manufacturers (of the components) be determined?
- Currently, tablet/capsule imprint markings are assigned which are based on the “product code” portion of the NDC number. At an early stage in the product development, the determination of the ultimate manufacturing site for the commercial product may not yet be made. Yet, firms still need the product code number to finalize the trade dress. For this reason, the requirement in the proposed rule that NDC numbers be assigned to manufacturers instead of private label distributors is objectionable.
- FDA proposes the need for only 2 digits for package size and type. Will two digits be sufficient if each bottle type (i.e. glass, HDPE, PET, etc) and each blister type (packing foil, paper foil, aluminum foil, etc) is specified along with bottle size (30 cc, 50 cc, 100 cc, etc) and/or blister count (i.e. single, 28 day, 30 day etc), will this be adequate?
- If the individual container, blister, vial, etc., is too small for a human readable NDC number, will the “correct” drug listing submission to FDA and the product’s bar code, be sufficient to waive the readable NDC requirement?

F. Repackagers, Relabelers and Private Label Distributors

- If the manufacturers are to be responsible drug listing products for private labeler distributors, which labeler code is to be used: private distributor’s labeler code, U.S. distributor’s labeler code for the foreign establishment or the manufacturer’s labeler code?
- When a manufacturer requests and receives an NDC assignment for a private label distributor, is the manufacturer also responsible update the DEA’s ARCOS dictionary with that NDC number – if applicable?
- FDA has proposed that the NDC number on a drug product be that of “the last manufacturer, repackage or relabeler or private label distributor responsible for the drug immediately before it is received by the wholesaler or retailer” (see P. 88). Does this mean that both the manufacturer and the repackager or relabeler NDC number needs to be on the label material?
- A contract repackager or relabeler may be used on a temporary or infrequent basis. Will new labeling material with the repackager or relabeler NDC number need to be added if under normal circumstances no relabeler or repackager number would be used and only the

manufacturer's NDC number would be on the label material (i.e., would the product be considered misbranded)?

G. *Miscellaneous*

- Will the FDA assign an NDC number to a prescription product which does not have an application number (such as a DESI drug or grandfathered drugs that still remain in the marketplace)?
- Could a finished dosage product, manufactured under the same ANDA, with the exact same physical appearance be drug listed by two different manufacturing sites at the same time under the same NDC number? What if the sites are in two different countries, but under the same ownership and control?

II. Timing

The generic industry is also concerned with the length of time it will take for FDA to assign NDC numbers. Please comment on the Agency's timeline for issuance of newly requested NDC numbers.

GPhA is concerned about potential delays in marketing of drug products upon approval. Clearly, such delays would have an adverse impact on the efficiency of the drug distribution system, availability of medicines, and the public health. How will FDA address these concerns?

- Would a firm update the database and still have 3 years to update the labeling in accordance with the database? For example, if a firm changes an NDC number in the database (to correct assignment process), would the firm have 3 years to change that NDC number on the labeling?
- It is unclear whether the 3 year time frame, given to the phase-in process for NDC numbers on labeling, is only for placement of NDC numbers on labeling or also for updating NDC numbers to be compliant with the proposed rule. Please advise.
- Would being compliant with the proposed rule within 9 months of the effective date include creating NDC numbers for the packaging levels? If so, this would increase industry burden tremendously by requiring 2 or 3 times the number of NDC numbers.

III. Databases/Electronic Interfacing

- How will FDA effectively communicate newly assigned NDC numbers to its various components, such as, the Import Branch and the various Ports of Entry? Will their database be updated accordingly? Will FDA monitor

NDC numbers when they have changed, in terms of shipments being released at Ports of Entry?

- How will the requestor access the FDA database? With multiple companies attempting to access the same information in high volume (to meet the proposed compliance date), will the system overload, lock up, or prevent user access?

IV. Reimbursement

- With regard to CMS price submissions for Medicaid reimbursement, AMP will have calculations at the case count compared to states submitting for prescription level reimbursement. How will FDA address this issue?
- With additional NDC numbers for the case pack, shipper pack, etc., it will be necessary have to ensure that pricing is designated at each level. This would include a substantial new layer of report pricing reports based on the particular pack size to pricing services as well as the contract pricing in both the manufacturer and customer systems. This will create a major new burden for the supply chain.
- Significant increase in the administration of setting and maintaining accurate chargeback and rebate accrual rates.