



July 14, 2006

Docket Officer
Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, rm. 1061
Rockville, MD 20857

RE: Prescription Drug Marketing Act Pedigree Requirements; Effective Date and Compliance Policy Guide; Docket Nos. 1992N-0297, 1988N-0258, and 2006D-0226; [71 Fed. Reg. 34249, June 14, 2006]

Dear Docket Officer:

The Healthcare Distribution Management Association (HDMA) appreciates this opportunity to provide public comments on the Draft Compliance Policy Guide 160.900, *Prescription Drug Marketing Act – Pedigree Requirements under 21 CFR Part 203* (draft CPG) described in the June 14, 2006 issue of the Federal Register.

HDMA and its members are committed to patient safety by delivering life-saving health products and services through a secure and efficient healthcare distribution system. These primary, full-service healthcare distributors are responsible for ensuring that billions of units of medication are safely delivered -- to tens of thousands of retail pharmacies, nursing homes, clinics and providers -- in all 50 states. HDMA and its members are the vital link in the healthcare system that is responsible for medicine safety, quality, integrity and availability in the marketplace. HDMA and its members focus on providing value, removing costs and developing innovative solutions to deliver care safely and effectively.

HDMA supports and appreciates the FDA's effort to clarify how the agency intends to prioritize its Prescription Drug Marketing Act final rule (PDMA final rule or final rule) enforcement efforts through the issuance of a Compliance Policy Guide (CPG). We believe the final CPG will also be useful to distributors in their efforts to comply with the PDMA final rule. Specifically,

- HDMA believes that it is appropriate to develop a CPG to provide distributors and FDA field personnel with parameters to help focus compliance and enforcement efforts;
- HDMA agrees with the approach taken in the draft CPG, i.e., a risk-based approach; and
- HDMA also agrees that the risk factors found in the draft CPG are suitable for the final CPG.

HDMA offers the following comments regarding the draft CPG and compliance with the PDMA final rule.

Factor 2: Prior Indicators

“*Factor 2: Prior Indicators*” provides that whether a prescription drug has been previously counterfeited or diverted is a risk factor that should be considered when prioritizing the agency’s enforcement of the pedigree requirements.

HDMA requests that application of this risk factor take into consideration the distributors’ ability to identify drugs that meet this criterion. The draft CPG provides a short list of examples of previously counterfeited drugs, and notes that a longer list will be made available on the FDA website when the CPG is issued in final form. However, the draft CPG also states that: “*We note that this list is based on publicly available information and does **not** include all drugs that have a prior confirmed case of being counterfeited or diverted.*” [Emphasis added]

The dilemma that distributors face is that although they may use this factor to prioritize their pedigree implementation processes, to our knowledge, there is no other source of comprehensive information regarding drugs that have been counterfeited or diverted.

For example, the World Health Organization (WHO) requests submission of information on counterfeit drug instances to include in its data bases, but compliance is voluntary and therefore, incomplete, at best. Obtaining information from the press is also helpful, but not easily verified and often incomplete. Further, many counterfeit or diverted prescription drug cases are the subject of legal proceedings that are not necessarily revealed to the public (and certainly not in any uniform manner), even after they are completed and closed.

Other sources of information, such as FDA’s Counterfeit Alert Network (CAN) are helpful, but it is our understanding that the CAN will not necessarily highlight “diverted” drugs. Further, the statement quoted above appears to indicate that the FDA does not have comprehensive information about all counterfeit or diverted drug instances.

The absence of a comprehensive and publicly available source of this information places distributors in a difficult position because, despite their best efforts to prioritize their compliance with the pedigree requirement based on an analysis of the factors, including Factor 2, they may not be able to identify certain high priority drugs. Distributors would then be at risk of being cited for violating the Act and the rule due to lack of information, rather than for deliberate non-compliance.

At the same time that we question the ability to identify all previously counterfeited or diverted drugs, we continue to agree with the FDA that prior instances of counterfeiting should be used as one of the prioritization criteria. Thus, HDMA is not requesting elimination of this risk factor; rather, we request that the FDA clarify how they intend to apply it.

Specifically, we urge the FDA to clarify that if a prior instance of counterfeiting or diversion is being used as the sole factor for taking enforcement action, then the FDA will limit such enforcement action to the drugs on the list that the agency creates and places on their future website. Further, we recommend that if a drug has been previously counterfeited or diverted, and does not appear on the FDA list, the drug should meet at least one other risk factor before the FDA were to take enforcement action.

Finally, regarding the agency's plan to publish a list of counterfeited or diverted drugs, HDMA suggests that the FDA update the list on a fixed cycle to enable distributors to efficiently update their own processes accordingly.

Factor 3: Reasonable Probability (for newly-approved drugs)

Under Factor 3, the draft CPG discusses newly approved drugs that may not have sufficient market history to assess the risk that they may vulnerable to counterfeiting or diversion. HDMA agrees that newly approved drugs should be considered when determining enforcement priorities, but is uncertain as to how this factor will be applied.

In particular, the draft CPG states that the FDA field staff should ask "*Is there a reasonable probability that the drug may be counterfeited or diverted based on Factors 1 and 2?*" However, the agency's intent in this part of Factor 3 is not explained further. This is particularly confusing as it references Factor 2, which could only be determined for drugs with a prior history of being counterfeited or diverted, and, as pointed out in the draft CPG, new drugs do not have such a prior history.

HDMA recommends that the FDA further clarify its intention in Factor 3. It is possible, for example, that the agency referenced Factors 1 and 2 so that field staff are reminded to examine new drugs that are intended for the same, or similar, clinical indications and are of the same dosage form and strength as a previously existing drug with a market history. If the comparable existing drug has a previous history of counterfeiting or diversion (Factor 2), and the new drug has a high market value (Factor 1), this may be an indication that Factor 3 is met. Thus, the draft CPG may expect comparisons between the value and previous counterfeiting or diversion experience of a new drug that does not have a market history to that of a comparable existing drug that does have a market history.

HDMA requests either clarification that this is the FDA's intent, or further explanation if this is not a correct interpretation.

Additional Comments

Although not discussed in the draft CPG, HDMA would like to suggest an element of the PDMA final rule for which further FDA clarification would be beneficial. Specifically, we are referring to §203.50(d) that requires manufacturers to keep a list of their “Authorized Distributors of Record” (ADRs) and to make the list available to the public.

Although this has been a statutory requirement since enactment of the PDMA, it is of greater importance now that §§203.3(u) and 203.50 are going into effect. For example, a distributor may wish to verify the ADR (or non-ADR) status of a seller in order to determine whether it should receive a pedigree from the seller. In those instances, it would be helpful to have a rapid and reliable method to verify the seller’s claim. Comparison of a firm’s claim to be an ADR with the manufacturer’s list may be the best and most reliable verification method. Reassurance that these lists are being kept up-to-date would be appreciated. Thus, there is a need for greater clarity regarding the FDA’s expectations of manufacturers and/or how the agency will enforce this requirement.

One suggestion for the FDA’s consideration is to indicate in the final CPG that the FDA would consider placement of the manufacturer’s list of ADRs on a secure website owned and operated by the manufacturer to be the recommended method for compliance with this section of the final rule. Another suggestion is for the FDA to provide guidance to its field inspection staff on including audits of the manufacturers’ lists of ADRs in their routine compliance inspections of manufacturers’ facilities.

Conclusion

In conclusion, HDMA commends the FDA and its Counterfeit Drug Task Force for their work on completing review of the PDMA final rule and the development of this draft CPG. We appreciate the opportunity to provide our perspectives and our support for implementation of the rule. Should you have any questions about this letter, please feel free to contact me at 703-885-0240 or at aducca@hdmanet.org.

Sincerely,



Anita T. Ducca
Senior Director, Regulatory Affairs & Healthcare Policy

cc: Ilisa Bernstein, Pharm.D., J.D.