
Exemption and Exclusion From Certain Requirements of the Drug Supply Chain Security Act for the Distribution of FDA-Approved Naloxone Products During the Opioid Public Health Emergency Guidance for Industry

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**U.S. Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research (CDER)**

**September 2022
Procedural**

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Exemption and Exclusion From Certain Requirements of the Drug Supply Chain Security Act for the Distribution of FDA-Approved Naloxone Products During the Opioid Public Health Emergency Guidance for Industry¹

This guidance represents the current thinking of the Food and Drug Administration (FDA or Agency) on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the FDA office responsible for this guidance as listed on the title page.

I. INTRODUCTION

Combating the opioid overdose epidemic is an urgent public health priority for FDA. The Agency is committed to advancing solutions to reduce opioid overdose deaths in the United States, including by supporting efforts to increase public availability of and access to naloxone.

The opioid crisis was initially declared a public health emergency under section 319 of the Public Health Service Act on October 26, 2017, and the determination that a public health emergency exists has been subsequently renewed at 90-day intervals.² Naloxone hydrochloride (“naloxone”) is medication that rapidly reverses the effects of opioid overdose and is the standard treatment for opioid overdose.³ FDA believes that this lifesaving drug can help address the devastating consequences of the opioid overdose epidemic and supports efforts to make this emergency treatment more readily available and more accessible.

FDA understands that naloxone is being made available to underserved communities through entities such as harm reduction programs. FDA is issuing this guidance to support efforts by these entities to facilitate public availability of and access to FDA-approved naloxone products for emergency treatment of opioid overdoses, particularly in underserved communities. FDA is aware of concerns that harm reduction programs are having difficulty acquiring naloxone.⁴ The

¹ This guidance has been prepared by the Office of Compliance in the Center for Drug Evaluation and Research at the Food and Drug Administration.

² See the October 26, 2017, U.S. Department of Health and Human Services web page “Determination That a Public Health Emergency Exists,” available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/opioids.aspx>) and subsequent renewals of the determination, available at the Public Health Emergency Declarations web page at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>.

³ See FDA’s web page “Information About Naloxone,” available at <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/information-about-naloxone>.

⁴ A web link to the March 29, 2022, public meeting *Naloxone Access: Answering Questions*, hosted in collaboration with the Reagan-Udall Foundation for the FDA, is available on FDA’s web page at

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Agency is also aware that some stakeholders consider contributing factors to be the current availability of approved naloxone products only as prescription drugs and certain requirements under the Drug Supply Chain Security Act (DSCSA)⁵ for distribution of FDA-approved prescription drug products, e.g., being an “authorized” trading partner.⁶

To help facilitate the availability of naloxone to harm reduction programs, FDA is issuing this guidance to clarify the scope of the public health emergency exclusion and exemption under the DSCSA as they apply to the distribution of FDA-approved naloxone products indicated for the emergency treatment of opioid overdose to harm reduction programs during the opioid public health emergency. This guidance is limited to clarifying the applicability of this public health emergency exclusion and exemption only with respect to the distribution of such naloxone products to:

- (1) Organizations, referred to in this guidance as “harm reduction programs,” that provide harm reduction⁷ services to individuals at risk of experiencing an opioid overdose or those who might respond to an overdose, including providing FDA-approved naloxone products to such individuals
- (2) Entities/organizations, referred to in this guidance as “harm reduction suppliers,” that distribute FDA-approved naloxone products to harm reduction programs

The guidance does not address the applicability or FDA’s interpretation of the public health emergency exclusion or exemption under the DSCSA as they relate to the distribution of other products during the opioid public health emergency or the distribution of FDA-approved naloxone products among entities other than harm reduction programs or harm reduction suppliers during the opioid public health emergency. Further, the prescription status of drug products and prescription requirements under federal and state law are beyond the scope of this guidance.⁸ Therefore, this guidance does not address the prescription-only status of FDA-approved naloxone products.

<https://www.fda.gov/drugs/news-events-human-drugs/naloxone-access-answering-questions-03292022#event-information>.

⁵ Title II of Public Law 113-54 (November 23, 2013). The Agency has recently become aware of concerns related to naloxone distribution in light of certain DSCSA requirements.

⁶ Under sections 582(b)(3), 582(c)(3), 582(d)(3), and 582(e)(3) of the FD&C Act, respectively, the trading partners of a manufacturer, a wholesale distributor, a repackager, or a dispenser must be authorized trading partners. The term *trading partner* is defined in section 581(23) of the FD&C Act and includes manufacturers, repackagers, wholesale distributors, dispensers, and third-party logistics providers (which are respectively defined in sections 581(10), (16), (29), (3), and (22) of the FD&C Act). The term *authorized*, with respect to a trading partner, is defined in section 581(2) of the FD&C Act.

⁷ See <https://www.samhsa.gov/find-help/harm-reduction>. Harm reduction services can include distribution of opioid overdose reversal medications (e.g., naloxone) to individuals at risk of overdose, or to those who might respond to an overdose; lessening harms associated with drug use and related behaviors that increase the risk of infectious diseases, including HIV, viral hepatitis, and bacterial and fungal infections; and reducing overdose deaths, promoting linkages to care, and facilitating co-location of services as part of a comprehensive, integrated approach.

⁸ The public health emergency exclusion and exemption addressed in this guidance have no impact on the status of a drug product as a prescription drug.

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In general, FDA's guidance documents do not establish legally enforceable responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in Agency guidances means that something is suggested or recommended, but not required.

This guidance is being implemented without prior public comment because FDA has determined that prior public participation for this guidance is not feasible or appropriate (see section 701(h)(1)(C) of the Federal Food, Drug and Cosmetic (FD&C) Act (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)). There is an urgent public health need to facilitate and expedite access to naloxone for emergency medical reasons under the opioid public health emergency. FDA has determined that the clarifications set forth in this guidance will help to address this need. This guidance document is being implemented immediately, but it remains subject to comment in accordance with the Agency's good guidance practices.

II. BACKGROUND

A. Naloxone

On October 26, 2017, the Acting Secretary of Health and Human Services (HHS) issued a determination,⁹ in accordance with section 319(a)(2) of the Public Health Service (PHS) Act (42 U.S.C. 247d(a)(2)), that a public health emergency exists as a result of the continued consequences of the opioid crisis. The declaration has been subsequently renewed at 90-day intervals and remains in place as of the publication date of this guidance. Addressing opioid overdose continues to be one of the most urgent public health priorities for FDA.

Naloxone is a critical drug to help reduce opioid overdose deaths. There are three FDA-approved forms of naloxone (injectable, auto-injector, and nasal spray) and all three currently require a prescription. FDA understands that naloxone is being made available to underserved communities through harm reduction programs, but that access to naloxone continues to be limited in some communities.

FDA is issuing this guidance to clarify the applicability of an exemption and exclusion from certain DSCSA requirements, with respect to the distribution of FDA-approved naloxone products to harm reduction programs and to harm reduction suppliers during the opioid public health emergency. We believe clarifying the applicability of this exemption and exclusion will help facilitate and expedite the distribution of naloxone to harm reduction programs on the front lines of the opioid overdose crisis, and thus directly aid in addressing this public health emergency.

B. DSCSA

The DSCSA (Title II of Pub. L. 113-54) was signed into law on November 27, 2013. Section 202 of the DSCSA added section 582 to the FD&C Act (21 U.S.C. 360eee-1), establishing the

⁹ See footnote 2.

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product tracing, product identifier, authorized trading partner, and verification requirements for manufacturers, repackagers, wholesale distributors, and dispensers to facilitate the tracing of products through the pharmaceutical distribution supply chain.

The DSCSA outlines critical steps to build an electronic, interoperable system by November 27, 2023, that will enable the identification and tracing of certain prescription drugs as they are distributed within the United States. For example, since 2015, for each transaction¹⁰ of product,¹¹ trading partners (manufacturers, wholesale distributors, dispensers, and repackagers) are required under section 582 of the FD&C Act to capture, maintain, and provide subsequent purchasing trading partners with transaction information, transaction history, and a transaction statement (product tracing information) and to notify FDA and certain immediate trading partners when they have determined that a product in their possession or control is an illegitimate product. By 2018, manufacturers and repackagers were required to begin affixing or imprinting a product identifier to each package and homogenous case of a product intended to be introduced in a transaction into commerce.¹² Once products have product identifiers affixed or imprinted on them, manufacturers and repackagers are required to verify products using the product identifiers in circumstances specified in section 582. In addition, sections 583 and 584 of the FD&C Act (21 U.S.C. 360eee-2 and 360eee-3), as added by the DSCSA, direct FDA to establish national licensure standards for wholesale distributors and third-party logistics providers and require that these entities report licensure and other information to FDA annually.

Under the DSCSA, specific activities are automatically excluded from certain DSCSA requirements upon the declaration of a public health emergency under section 319 of the PHS Act. The distribution¹³ of a product for emergency medical reasons, including a public health emergency declaration pursuant to section 319 of the PHS Act, is exempted from the definition of a *transaction*¹⁴ and excluded from the definition of *wholesale distribution*¹⁵ under the DSCSA.

¹⁰ *Transaction* is defined as the transfer of product between persons in which a change of ownership occurs (section 581(24)(A) of the FD&C Act (21 U.S.C. 360eee(24)(A)). For specific exemptions, see section 581(24)(B) of the FD&C Act.

¹¹ *Product* is defined as a prescription drug for human use in a finished dosage form for administration to a patient without further manufacturing (section 581(13) of the FD&C Act). See section 581(13) of the FD&C Act for specific exclusions.

¹² Sections 582(b)(2)(A) and (e)(2)(A) of the FD&C Act.

¹³ In section 581(5) of the FD&C Act, *distribute* or *distribution* is defined as “the sale, purchase, trade, delivery, handling, storage, or receipt of a product, and does not include the dispensing of a product pursuant to a prescription executed in accordance with section 503(b)(1) [of the FD&C Act (21 U.S.C. 353(b)(1))] or dispensing of a product approved under section 512(b)” of the FD&C Act (21 U.S.C. 360b(b)).

¹⁴ Section 581(24)(B)(iii) of the FD&C Act exempts from the definition of *transaction* “the distribution of a product for emergency medical reasons[,] including a public health emergency declaration pursuant to section 319 of the Public Health Service Act, except that a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason.”

¹⁵ *Wholesale distribution* is defined as “distribution of a drug . . . to a person other than a consumer or patient, or receipt of a drug . . . by a person other than [a] consumer or patient” (section 503(e)(4) of the FD&C Act). Section 503(e)(4)(C) excludes from the definition of wholesale distribution, “the distribution of a drug or an offer to distribute a drug for emergency medical reasons, including a public health emergency declaration pursuant to section 319 of the Public Health Service Act, except that . . . a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason.”

III. SCOPE OF THE EXEMPTION AND EXCLUSION DURING THE OPIOID PUBLIC HEALTH EMERGENCY

A. DSCSA Statutory Exemption and Exclusion for Public Health Emergency

The declaration of the opioid public health emergency pursuant to section 319 of the PHS Act automatically triggered two statutory provisions in the FD&C Act under which, for the duration of the declaration, certain DSCSA requirements do not apply to a range of product distribution activities to address the public health emergency.¹⁶ These automatically-triggered statutory provisions are as follows:

- The exemption of certain product distribution activities from the definition of *transaction* under FD&C Act section 581(24)
- The exclusion of certain product distribution activities from the definition of *wholesale distribution* under FD&C Act section 503(e)(4)

FDA interprets the above exemption and exclusion to apply to the distribution of FDA-approved naloxone products to harm reduction programs and to harm reduction suppliers to address the opioid public health emergency during the public health emergency.

This exemption and exclusion provided under the DSCSA during the opioid public health emergency strike a balance between the need to facilitate the effective distribution of lifesaving FDA-approved naloxone products to harm reduction programs and harm reduction suppliers under emergency conditions while helping to protect consumers from exposure to products that may be counterfeit, stolen, or otherwise harmful.

The scope of this guidance is limited to FDA's interpretation of the DSCSA exemption from "transaction" and the exclusion from "wholesale distribution," for emergency medical reasons including a public health emergency, only as they apply to the distribution of FDA-approved naloxone products to harm reduction programs and to harm reduction suppliers during the opioid public health emergency. This guidance does not address the distribution of other products during the opioid public health emergency. It also does not address the distribution of FDA-approved naloxone products among entities other than harm reduction programs or harm reduction suppliers during the opioid public health emergency.

1. Exemption From Certain Product Tracing and Product Identification Requirements Under Section 582 of the FD&C Act

Because the statutory definition of *transaction* explicitly exempts the distribution of "a product for emergency medical reasons including a public health emergency declaration pursuant to section 319 of the [PHS] Act,"¹⁷ the product tracing and product identification requirements in

¹⁶ See sections 581(24)(B)(iii) and 503(e)(4)(C) of the FD&C Act.

¹⁷ See section 581(24)(B)(iii) of the FD&C Act.

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section 582 of the FD&C Act that are triggered¹⁸ by a “transaction” do not apply to the distribution of FDA-approved naloxone products to harm reduction programs or harm reduction suppliers during the opioid public health emergency. This means that trading partners engaged in the distribution of FDA-approved naloxone products to harm reduction programs and harm reduction suppliers, and the harm reduction programs and harm reduction suppliers obtaining naloxone through such distribution, are not required to comply with the product tracing and product identification requirements in section 582 of the FD&C Act that are triggered by a “transaction” during the opioid public health emergency.¹⁹

However, if a trading partner is also distributing product during the opioid public health emergency for purposes unrelated to addressing the public health emergency, then that trading partner must comply with all applicable DSCSA requirements with respect to distribution of such product.

2. Exclusion From Wholesale Distribution Under Section 503(e) of the FD&C Act

The statutory definition of wholesale distribution under section 503(e)(4) of the FD&C Act explicitly excludes “the distribution of a drug . . . for emergency medical reasons, including a public health emergency declaration pursuant to section 319 of the [PHS] Act.”²⁰ As a result, DSCSA requirements related to wholesale distribution do not apply to the distribution of FDA-approved naloxone products to address the opioid public health emergency. This means that harm reduction suppliers that are distributing FDA-approved naloxone products are not required to comply with the DSCSA’s licensure provisions and reporting requirements under section 503(e) of the FD&C Act or the wholesale distributor requirements under section 582 of the FD&C Act during the opioid public health emergency, for such distribution activity. For example, an organization that obtains FDA-approved naloxone products from a manufacturer and distributes them to harm reduction programs during the opioid public health emergency would not be required to be licensed as a wholesale distributor and would not be subject to DSCSA requirements related to wholesale distribution, with respect to such distribution activity. However, if a harm reduction supplier is also distributing product unrelated to addressing the public health emergency, then that trading partner must comply with all applicable DSCSA requirements with respect to wholesale distribution of that product.

¹⁸ Id. As noted above, this section specifies that “a drug shortage not caused by a public health emergency” does not constitute an emergency medical reason. The exemption provided under section 581(24)(B)(iii) of the FD&C Act does not apply to DSCSA requirements under section 582 of the FD&C Act that are not triggered by a “transaction.” For example, the requirements that trading partners conduct verification as required by section 582(b)(4), (c)(4), (d)(4), and (e)(4) of the FD&C Act and investigate suspect or illegitimate product are not triggered by a “transaction.” *Suspect product* and *illegitimate product* are defined in section 581(21) and (8) of the FD&C Act, respectively.

¹⁹ To the extent that compliance with DSCSA requirements covered by an exemption or exclusion is not a barrier to timely distribution of FDA-approved naloxone products, entities should continue to comply with those requirements during the opioid public health emergency.

²⁰ See section 503(e)(4)(C) of the FD&C Act.

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B. Authorized Trading Partner Requirements—Compliance Policy During the Opioid Public Health Emergency

Although the authorized trading partner requirements still apply in most circumstances during the opioid public health emergency, FDA generally does not intend to take enforcement action against trading partners during the opioid public health emergency for engaging in either of the following activities:

- (1) Distribution of FDA-approved naloxone products to harm reduction suppliers that would otherwise meet the definition of *wholesale distributor* under the DSCSA, except that—as a result of the exclusion from the definition of *wholesale distribution* for emergency medical reasons—these entities would not be considered wholesale distributors because they are currently engaged in distributing FDA-approved naloxone products for emergency medical reasons resulting from the opioid public health emergency.
- (2) Distribution of FDA-approved naloxone products directly to harm reduction programs that are not authorized trading partners, including through product donations.

C. Time Frame

The policies described in this guidance, including the compliance policy and interpretation of the exemption and exclusion from certain DSCSA requirements, apply only during the opioid public health emergency. The opioid public health emergency will last until the HHS Secretary declares that the public health emergency no longer exists or until it expires 90 days after the date of an opioid public health emergency determination, whichever occurs first.²¹ The HHS Secretary may extend the opioid public health emergency determination for subsequent 90-day periods for as long as the public health emergency related to the opioid epidemic continues to exist.²²

IV. BUSINESS WITH TRUSTED SOURCES

Some people and companies may try to profit from the opioid epidemic by selling unproven and illegally marketed products with false claims, such as claims that the products are effective in the diagnosis, treatment, or prevention of opioid overdoses. Some of these products may result in serious adverse health consequences. FDA cautions harm reduction programs against obtaining naloxone from untrusted sources.²³ Buying drugs from untrusted sources could put patients at risk of receiving drugs that may be ineffective or harmful such as counterfeit, stolen, diverted, or intentionally adulterated products.

²¹ See section 319(a)(2) of the PHS Act.

²² *Id.*

²³ FDA provides information to help educate health care providers about buying medicines from licensed sources, which may be a helpful resource for harm reduction programs. See FDA's "Know Your Source" web page, available at <https://www.fda.gov/drugs/information-health-care-professionals-drugs/know-your-source-protecting-patients-unsafe-drugs>.