HDMA
Healthcare Distribution
Management Association
Products, Services and Information for Your Health

Eric Schuss, Chairman of the Board

November 25, 2003

Mark B. McClellan, M.D., Ph.D.
Commissioner, Food and Drug Administration
Mail Code (HF-1/14-71/PKLN)
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

**RE: The FDA Counterfeit Drug Task Force Interim Report; October, 2003 [Docket No. 2003N-0361]**

Dear Dr. McClellan:

The Healthcare Distribution Management Association (HDMA) commends you and the Food and Drug Administration (FDA) staff who are working so diligently on developing strategies to combat the serious threat of counterfeit drugs. We appreciate the high level of professionalism and dedication among the agency's staff, as well as the insightful leadership among those ultimately responsible for the outcome.

HDMA is the national trade association representing pharmaceutical and healthcare product distributors. HDMA's 86 distributor member companies operate approximately 193 distribution centers throughout the country, serving every state, the District of Columbia, and U.S. territories. HDMA distributor members provide services to approximately 130,000 different customers, including: independent pharmacies; hospitals; chain drug stores and warehouses; government sites; pharmaceutical research companies; food stores and mass merchandisers; physicians' offices and clinics; long-term care facilities; home health providers, and mail-order pharmacies.

As government-licensed entities, it is the job of pharmaceutical and healthcare product distributors to manage distribution and ensure product safety, quality, integrity and availability. Counterfeit drugs entering the marketplace through any point in the supply chain is an issue of utmost concern to these companies, and HDMA is taking this opportunity to file detailed comments on the FDA Interim Report on behalf of its distributor members. These can be found in Attachment A. The following, however, is a brief synopsis of the most pertinent points and our position on these issues:

2003N-0361 C42

1. HDMA supports the intent of the Prescription Drug Marketing Act (PDMA) but believes modifications to the final regulation implementing its requirements are necessary. These modifications are necessary to accommodate the evolving improvements in the distribution system embodied in the HDMA *Recommended Guidelines for Pharmaceutical Distribution Integrity* (HDMA *Guidelines*) and the adoption of track and trace technology. In our estimation, this will be the most secure and productive approach to system-wide counterfeit prevention (See Attachment B).

2. HDMA recommends that the FDA expand its fundamental strategic anti-counterfeit goals when adopting anti-counterfeit policies as well as when selecting anti-counterfeit techniques. Specific suggestions are included in Attachment A.

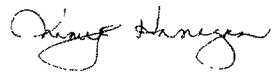
3. HDMA urges the FDA to work with other responsible federal agencies, Congress, the states, the National Association of Boards of Pharmacy, and other appropriate governmental entities not only to strengthen state licensure laws and increase criminal penalty provisions associated with pharmaceutical counterfeiting, but to also make them uniform nationwide. The laws and penalties for knowingly counterfeiting or trafficking in counterfeit drugs or knowingly committing related fraudulent acts should be commensurate with the nature of the serious patient harm that may come about as a result of their actions.

4. HDMA strongly believes that all members of the supply chain must share responsibility for preventing counterfeit pharmaceuticals from reaching the patients who use them.

5. HDMA believes that its recently approved HDMA *Guidelines* will serve as a very strong measure for helping reach our common goal of counterfeit prevention. We encourage other members of the supply chain to adopt similar guidelines.

Again, I extend my appreciation for the opportunity to share our views with you and your staff. If you have any questions, please do not hesitate to contact me or Sherry Haber at 703-787-0000.

Sincerely,



Nancy Hanagan
Executive VP and COO

*Attachments:*
Attachment A - Comments by the Healthcare Distribution Management Association on the FDA Counterfeit Drug Task Force Interim Report
Attachment B - HDMA *Recommended Guidelines for Pharmaceutical Distribution System Integrity,* November 5, 2003.
Attachment C - Suggested Criteria for Identifying Pharmaceutical Products at High Risk of Being Counterfeited

# Comments by
# The Healthcare Distribution Management Association on
# The FDA Counterfeit Drug Task Force Interim Report
# October, 2003
# [Docket No. 2003N-0361]

The Healthcare Distribution Management Association (HDMA) appreciates the opportunity to provide public comments on the FDA Counterfeit Drug Task Force Interim Report (Interim Report). In our testimony provided on October 15, 2003, we first outlined our major recommendations for anti-counterfeit efforts. However, we will take this opportunity to expand on the testimony by addressing the following topics:

**INTRODUCTION**
- Overview/HDMA Position
- Background
- Recommended Strategic Goals

**ISSUES/HDMA RECOMMENDATIONS**
- Stronger, Uniform Licensing Laws Needed
- Stronger, Uniform Enforcement and Penalties Needed
- Pedigree
- Migration Path to Track and Trace Solution
- Best Practices
- Repackaging
- Unit of Use
- Limitations on Transactions
- Rapid Alert and Response Systems

## INTRODUCTION

### Overview/HDMA Position

HDMA supports the intent of the Prescription Drug Marketing Act (PDMA) but believes modifications to the final regulation implementing its provisions are necessary to accommodate the evolving improvements in the distribution system embodied in the HDMA *Recommended Guidelines for Pharmaceutical Distribution Integrity* (see Attachment B) and the adoption of track and trace technology. In our estimation, this will be the most secure and productive approach to system-wide counterfeit prevention.

## Background

HDMA has been highly supportive of the PDMA and accompanying regulations since their inception in 1988. Our involvement in this area has been both active and effective in alerting and educating the industry and state policymakers about their obligations under the law and making sure these obligations are met by the established deadlines. Specifically,

1. In the late 1980s, HDMA worked closely with the National Association of Boards of Pharmacy (NABP) to develop its Model Rules for Licensure of Wholesale Drug Distributors that were adopted by the FDA as the "minimum state licensing guidelines" for all states to use.
2. From the late 1980s through 1992, HDMA was the major force in ensuring that the "minimum guidelines" were adopted and implemented by states according to federal law by the deadline established in the PDMA. Support included a campaign among individual state legislative and regulatory bodies to educate them on the rules' structure, intent, and benefits, as well as drafting and working to have legislative and regulatory proposals enacted.
3. Through training meetings and the HDMA/PDMA Law Books on State Licensure, HDMA has, on an ongoing basis, provided continuing education to its members regarding requirements of PDMA and 50 state licensure laws.
4. More recent efforts include:
   - HDMA has been working with Florida's Department of Health and the state legislature to enact legislation that strengthened the state's licensing laws since early 2002;
   - In September 2002, HDMA established a Counterfeit Task Force to examine a broad range of anti-counterfeit methodologies;
   - In July 2003, the HDMA Board of Directors approved a Voluntary Pledge to Report Counterfeit Drugs;
   - On August 28, 2003, HDMA held the first meeting of a new cross-functional and cross-industry task force charged with the responsibility for examining and supporting the development of anti-counterfeit technologies. This task force has begun to develop the business requirements for the use of track and trace technology with a goal to define them by April 2004; and
   - HDMA and its members completed the development of a set of Best Business Practices, *Recommended Guidelines for Pharmaceutical Distribution System Integrity*[1] (HDMA *Guidelines*) that were approved by the HDMA Board of Directors on November 5, 2003.

## Recommended Strategic Goals

Based on our extensive efforts to address the problem of counterfeit drugs entering the pharmaceutical supply chain, HDMA has concluded that there are strategic principles that should guide the agency and the members of the supply chain when choosing specific anti-counterfeit

[1] HDMA *Recommended Guidelines for Pharmaceutical Distribution System Integrity,* November 5, 2003. See Attachment B.

methods. Many of these principles are briefly discussed in FDA's Interim Report[2], but we encourage the agency to expand and emphasize these objectives in determining an overall approach.

1. First, as the FDA has stated, any anti-counterfeit strategy should be **multi-pronged**. Given the increasingly complex drug manufacturing, distribution and dispensing system, no one solution will serve as the "magic bullet" for prevention.

2. Establishing an **electronic track and trace system** should be a primary focus as this has the strongest potential for protecting patients. Such a system is intended to measure the location of all products, to trace them as they travel through the supply chain, and to provide an immediate warning if there is a possible problem with the integrity of one of the products.

3. **Prevention should also be a top priority**. While some efforts may aid in finding counterfeiters or counterfeit drugs after they've entered the supply chain, we believe that patients will be far better served by **focusing on preventing their entry into the supply chain in the first place**.

4. Preventing the introduction of counterfeit drugs is the **responsibility of all members of the supply chain (e.g. manufacturers, distributors, pharmacies, and other sellers and purchasers).** As the FDA stated in its Interim Report, counterfeit drugs can be introduced at any point in the supply chain. Therefore, all those involved must remain both vigilant and pro-active in seeking out and implementing prevention measures.

5. Anti-counterfeit measures should be **evaluated for their potential costs vs. potential benefits** before they are adopted. This is particularly important for measures that will become enforceable laws and regulations. HDMA places a special emphasis on evaluating effectiveness. If an anti-counterfeit measure does not perform as expected, those depending on the safeguard may not have the level of security they had expected. In the meantime, ever increasingly sophisticated counterfeiters will quickly locate weaknesses in the system. Thus, an ineffective measure would not only waste resources, it may actually lead to *easing* the ability to introduce counterfeit drugs into the system rather than making it more difficult. As a result, the situation would worsen, not be improved.

6. **All government entities and agencies** (whether federal, state, or local regulatory, legislative or enforcement officials) should **recognize the extreme importance of addressing the counterfeit issue and work together to ensure consistent requirements and strategies**. We have already seen the beginnings of coordinated efforts to stem the counterfeit tide, but it is imperative that these efforts continue. Uniform national solutions are needed so that potential counterfeiters will not be able to avoid detection by migrating from state to state or exploiting legal loopholes.

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[2] FDA Counterfeit Task Force Interim Report, *"Commissioner McClellan...charged the Task Force with developing recommendations for achieving four fundamental goals: (1) preventing the introduction of counterfeit drugs, (2) facilitating the identification of counterfeit drugs, (3) minimizing the risk and exposure of consumers to counterfeit drugs, and( 4) avoiding the addition of unnecessary costs on the prescription drug distribution system, or unnecessary restrictions on lower-cost sources of drugs."* October 2003. (Page 1)

7. **All government entities and agencies should make coordinating efforts with the members of the supply chain a very high priority**. Involvement by all parties will ensure uniformity, speed, cost-effectives, and success of anti-counterfeit measures. Further, it will help avoid the potential for a patchwork approach that would only hamper the distribution of the safe drugs that patients depend on for maintaining their health and, in some cases, their lives.

## ISSUES/HDMA RECOMMENDAITONS

### Stronger, Uniform Licensing Needed

There is virtually unanimous agreement among all stakeholders that a stronger licensure program should be the foundation of anti-counterfeit measures. It is imperative that close scrutiny of all potential license holders become a very high priority in order to eliminate unqualified individuals and facilities from being able to obtain a license in the first place.

It is equally important that there be nationwide uniformity in the licensure requirements. Otherwise, we continue to deal with an uneven playing field of regulation and enforcement that creates the potential for unscrupulous individuals to simply migrate from state to state, depending on which ones have the more favorable laws. In addition, when multiple states choose to implement multiple regulatory and enforcement approaches, it makes it very burdensome and difficult for legitimate distribution wholesalers to conduct interstate commerce.

HDMA participated in the first meeting of the NABP Task Force on Counterfeit Drugs and Wholesale Distributors held on October 29, 2003, and presented its suggestions for strengthening the NABP *Model Rules for State Licensure of Wholesale Distributors*. We encourage this effort to continue and to include representatives from the FDA, the industry, and other stakeholders in a collaborative effort to continue to revise these model rules and have state Boards of Pharmacy adopt them. However, HDMA also recommends that stronger licensing requirements become part of the FDA minimum guidelines so that all states will be required to adopt them. Incorporation into the FDA minimum guidelines is needed to help in the effort to gain nationwide uniformity.

Our recommendations to the NABP and the FDA for strengthening licensing requirements are as follows:

1. It is critical that the regulations require uniform, consistent, and comprehensive information from license applicants (such as is included in the HDMA *Guidelines* mentioned above). Such financial and product information is needed in order for a licensing entity to be able to evaluate the applicants' financial integrity, the nature of the products they will handle, and therefore, the nature of the distribution business they will be involved in. It will also be useful information to have on hand prior to the initial inspection that we recommend be conducted. For example, if the applicant notes that he/she will distribute a pharmaceutical product that requires special storage, checking for the appropriate storage conditions should be included in the state's inspection prior to licensure.

2. HDMA also recommends that wholesale distributors be required to post a performance bond of a sufficient amount to ensure their financial solvency. HDMA recommends that a company be required to submit only one bond that will cover all of its facilities in all states. This will avoid inadvertently penalizing firms that have multiple facilities and that distribute products in multiple states.

3. HDMA also recommends that no state grant a license for wholesale distribution without first conducting criminal and financial background checks on the applicant. Questionable background findings could be the basis for either further investigation or licensure denial.

4. It is imperative that a thorough inspection **prior** to granting an initial license and inspection on a regular, periodic basis thereafter should be a requirement for **all** licensees. HDMA firmly believes that it is also imperative that a trained inspector enter the facility and ensure that the applicant is fully capable of operating the facility and that the facility has appropriate staff, equipment, storage space, etc. Therefore, it is our recommendation that all inspectors be certified under a national program approved by the FDA and the NABP with requirements for continuing education in order to keep up with changes in the laws and the industry **or** that an FDA-approved national inspection program be established with the responsibility for conducting all inspections for the states. A uniform standard format for inspections also should be established.

5. There also should be a system for states to notify, in real time, all appropriate parties when a wholesaler's license is suspended, revoked, expired or other relevant action is taken. This information is critical to determining whether an entity is eligible for a license in other states or whether another wholesale distributor can purchase a product from them.

6. We also urge that the dates of the first inspection and the most recent inspection be made readily and publicly available. Under the HDMA *Guidelines*, "purchasing" distributors may wish to verify the most recent inspection reports from "selling" distributors. Inspection dates obtained from the state will help verify the accuracy of the information given by the selling distributor. It also would be important to have this information as part of the license application review from a distributor located in another state. With this information, the state receiving an application would be able to use the home state's inspection information to help evaluate the license application.

7. Another recommendation is that each wholesaler would employ a high level staff member within the company or otherwise retain outside counsel or a consulting specialist with the authority to help ensure compliance. The referenced individual should have appropriate training, and/or continuing education in applicable state and federal laws.

8. HDMA firmly believes that government and industry should work cooperatively to ensure the best outcome in stemming the tide of counterfeiting. We believe the most effective way to do this is to establish Drug Wholesaler Advisory Councils in the states to advise licensing entities on matters related to licensure.

9. We encourage all segments of the supply chain to develop "best practices." Thus, we encourage the FDA to place guidelines or principles for developing best practices in its minimum guidelines.

## Stronger, Uniform Enforcement and Penalties Needed

Consistent with the need for stronger, more uniform licensure and inspections for license applicants is an urgent need for stronger and more consistent penalties for those who counterfeit the drugs. The penalties noted in FDA's report exemplify the need for making the punishment commensurate with the nature of the offense. Furthermore, equally important to increasing the penalties, particularly for those who counterfeit drugs, is an urgent need to seek uniformity in the penalties to help deter counterfeiters who intend to move from state to state.

## Pedigree

Since passage of the PDMA in 1988, a paper pedigree system has been in place for wholesale distributors other than an Authorized Distributor of Record (ADR). While there has been much discussion of the merits of **paper** pedigrees, they have proven not to be a very effective deterrent against counterfeiting. In fact, many counterfeit drugs have been discovered to have had a fraudulent pedigree associated with them. Paper pedigree is a dated, inefficient and ineffective way to stem counterfeiting. Therefore, HDMA strongly recommends that efforts be focused on modernizing the pedigree system to build on the rapidly developing track and trace capability rather than increasing a reliance on paper.

Track and trace technology was discussed at length at the FDA public meeting on October 15, 2003 and is the central focus of the HDMA-led Product Safety Task Force (PSTF). The PSTF, which held its first meeting on August 28, 2003, is charged with providing a forum for the healthcare industry in which anti-counterfeiting strategies can be discussed and recommended; developing and recommending the business requirements necessary for track and trace functionality; and creating unified and comprehensive industry recommendations for submission to the FDA. HDMA agrees with the PSTF's strong support for this technology as the foundation of the FDA's anti-counterfeit strategy and as the basis of the pedigree requirement. As the PSTF stated:

> *... the key component of track and trace is the ability to uniquely identify individual items. It is this core system element that, in the opinion of the PSTF, makes track and trace the most powerful single strategy currently known for reducing the threat of counterfeiting. When products can be uniquely identified, with a serialized number that serves as a "fingerprint" for only that item, it creates a very high barrier for entry to counterfeit product.*
>
> *... The unique identifier simply points to a record in a database which contains other information about that particular item (e.g., lot number, expiration date, manufacturing location, etc.). This serves as a security feature onto itself as certain information is not carried on the package itself but rather in a controlled database...*[3]

[3] PSTF Comments on the FDA Anti-Counterfeiting Initiative; submitted to the FDA November 13, 2003.

The specific track and trace technology that we believe is most appropriate for pharmaceutical distribution is "*The Radio Frequency Identification (RFID) which identifies objects using radio waves. The RFID application works by storing a serial number on a microchip smaller than a grain of sand. Embedded on this tiny chip is an Electronic Product Code, an EPC* ™*.*"[4] The code on the chip identifies the product in varying degrees of detail. The information transmitted by the chip and its antenna (together referred to as the "tag") is detected by a reader. Thus, the same information that was previously transmitted on a piece of easily counterfeited paper, will, in the near future, be available electronically with a unique identification number that will immediately reveal if the product or the number has been tampered with.

HDMA recommends that the ultimate goal for the FDA, the states, and all other stakeholders should be that pharmaceutical manufacturers and packagers target deployment of caseloads with EPC tags by 2005 and for selling units by 2007, and that concurrently, wholesale distributors develop the appropriate infrastructure for tracking and tracing products utilizing the EPC tags.

## Migration Path to Track and Trace Solution

While the track and trace technology is being phased in, HDMA recommends that the current system of pedigree that has been in effect for over 15 years in accordance with the FDA *Letter to Industry and Other Interested Persons*, August 1, 1988, continue. Under this system, unauthorized distributors are required to pass a pedigree on prescription drugs tracing back to the last "Authorized Distributor of Record" (ADR). These transactions are fully traceable because the pedigree records, like all other records, are required to be kept by all distributors for a minimum of three years.

When determining who is considered to be an ADR, HDMA recommends the following definition, which is taken from the HDMA *Guidelines*:

- must be on the manufacturer's list
  - list to be updated monthly

    OR
- have a written agreement currently in effect with the manufacturer

  OR
- have a verifiable account[5] with the manufacturer and minimal transactional or volume requirement thresholds as follows:
  - 5000 sales units[6] per company within 12 months

    OR
  - 12 purchases (invoices) from manufacturer within 12 months.

This definition presents several choices for a distributor to be able to show a valid on-going business relationship with the manufacturer, and is a stringent standard upon which to be

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[4] *HDMA EPC, Protecting Safety and Improving Efficiencies in the Health Care Supply Chain Using Electronic Product Codes*, a White Paper Submitted by the HDMA Collaborative Commerce Committee, November 1, 2003.

[5] "Verifiable account" means 1) an account which the manufacturer confirms (in written or oral form) is assigned to the customer in question or 2) copies of manufacturers' invoices containing a printed account number and the name and address of the customer are obtained.

[6] A sales unit is the unit of measure the manufacturer uses to invoice its customer for the particular product.

measured. Additionally, manufacturers should be required to make their lists of ADRs readily available to supply chain partners either on their Web sites or in a centralized location. These lists should be updated on a regular basis. Finally, HDMA recommends clarification of the requirements for "written agreement" so that they may take the form of a line of credit, a purchase order, a verifiable credit account, a memorandum of understanding, or similar agreements in order to update the PDMA requirements to more fully reflect current forms of business arrangements and practices.

In addition to maintaining the current system of pedigree for unauthorized wholesale distributors, HDMA also supports having *all* wholesale distributors pass a pedigree tracing back to the manufacturer for a very limited list of products deemed to be "high-risk," or most susceptible to being counterfeited. This list of "high-risk" products should be established at the national level by the FDA with an advisory group made up of supply chain and government representatives. This list would supersede any lists established by a state(s).

HDMA wants to emphasize that in recommending pedigree for all distributors for "high-risk" products, our expectations are that this list would be limited and subject to a carefully selected criteria for determining whether a drug should be included. The criteria we recommend were developed using a risk-based approach (See Attachment C). Factors to consider include whether the drug is an injectable biological, whether the drug is high-priced and high-volume, if it's first to market, and/or if the drug is in short supply.

HDMA strongly believes that the above pedigree recommendations, together with

- Strengthening and standardizing licensing laws;
- Making inspections mandatory for all applicants and licensees and conducted by nationally certified inspectors according to uniform standards;
- Making laws more uniform and stiffening penalties for knowingly violating them; and
- Encouraging or even requiring all segments of the supply chain to adopt "best practices" similar to the HDMA *Guidelines*

will provide a very sound migration path to the availability and utilization of track and trace technology solutions.

## Best Practices

HDMA regards Supply Chain Best Practices, i.e., a systematic method or guidelines for identifying the legitimacy of suppliers and other entities, to be another key mechanism for addressing the threat of counterfeit products. As noted earlier, HDMA recently adopted a set of best practices which we call: *Recommended Guidelines for Pharmaceutical Distribution System Integrity.*

These guidelines set out a series of recommended actions to evaluate the integrity of our suppliers and are structured on the following basis:

- A legitimate business is structured as a "going concern";
- It demonstrates appropriate financial responsibility;
- It has robust operational standards;
- It has a rigorous compliance system, and
- It can demonstrate its corporate and compliance history.

HDMA believes that all members of the supply chain would considerably aid the effort to prevent potential counterfeiting by adopting similar Best Practices tailored to their individual circumstances and segment of the industry. Such practices would help establish due diligence recommendations to identify suppliers that do not meet the criteria listed above.

**Repackaging**

Repackaging pharmaceutical products has been discussed as a potential vehicle for introducing counterfeit drugs into the supply chain. However, legitimate repackagers provide considerable value to the health care industry. For example, they allow:

- Manufacturers and distributors to support the highly differing needs of the variety of patients and disease states, (for example, meeting the needs for child resistant to senior friendly packaging of the same product);
- Flexibility to provide the product in appropriate quantities where the manufacturer-supplied quantity exceeds the common prescriptive needs of a portion of the market;
- Better control of healthcare costs by providing product in multiple quantities and packaging formats only when needed;
- Improvements in dispensing time or reductions in dispensing errors, particularly in institutional settings; and
- For providing information in the form of specialized printing, inserts, and labeling to meet particular patient or provider communication needs.

As the FDA has previously indicated, repackagers are required to comply with the applicable sections of the Current Good Manufacturing Practices (CGMP) regulations as set forth in 21 CFR Parts 210 and 211. FDA's Draft Guideline on Repackaging of Solid Oral Dosage Form Drug Products, provides further guidance on how repackagers should comply with CGMP regulations. The established regulations and enforcement authorization provide the framework for a compliant drug repackaging industry. The FDA has the authority to inspect repackaging facilities and enforce the regulations. Thus, stringent requirements for repackaging are already in place.

In addition, HDMA believes that there should be transparency of sourcing and product flow, meaning that those products to be repackaged and the packing materials used should come from known sources which also follow appropriate quality assurance and manufacturing standards. HDMA also acknowledges that once track and trace technology is in place, repackaged product must be "re-tagged" to enable tracking back to the original product source(s). It will be necessary to consider appropriate application of track and trace technology to product repackaging as this technology becomes available. The HDMA-led Product Safety Task Force will include repackaging issues as they continue their development of business requirements for this technology.

HDMA also suggests that as other technologies are developed, the FDA work with HDMA and its members involved in repackaging pharmaceutical products to determine how such technologies may be incorporated into anti-counterfeit measures.

## Unit-of-Use

In its Interim Report, the FDA requested comments from the public on the value of unit-of-use packaging as an anti-counterfeit technique. First, to avoid confusion and create a common understanding of terminology, HDMA offers the following definitions of "unit-of-use," "unit dose," and "repackaging" since we have seen them used interchangeably.

- By "unit-of-use" we mean: "*pharmaceutical products enclosed in ready to dispense packages containing the most common prescribed course of therapy*;"

- Unit Dose refers to "*... the delivery of a single dose of a drug to the patient at the time of administration for institutional use, e.g., hospitals. The drug product is dispensed in a unit dose container -- a non-reusable container designed to hold a quantity of drug intended for administration (other than the parenteral route) as a single dose, directly from the container, employed generally in a hospital unit dose system,*"[7] and

- Repackaging means: "*taking pharmaceuticals that come from the manufacturer in large bulk containers and repackaging the product into smaller containers.*"

Unit-of-use packaging initially was used in Europe to help avoid dispensing errors. HDMA agrees that there are circumstances and products for which this form of packaging is useful -- even necessary -- to aid in pharmaceutical dispensing or administration, as well as to guard against medication errors in the clinical setting. There is also a wide variety of potential packaging sizes, patient needs, and dispensing circumstances, all of which must change rapidly to meet the needs of the patient population, and, in some instances, to meet Consumer Product Safety Commission (CPSC) safety regulations.

HDMA recommends that before there is further consideration of migrating to unit-of-use packaging, the FDA first conduct studies of the European system, and examine its effectiveness as an anti-counterfeit measure, as well as analyze the costs and benefits of this type of packaging.

## Limitations on Transactions

Although limiting the number of allowable transactions that a pharmaceutical product may pass through has been proposed as a possible anti-counterfeit measure, this solution is problematic. First, determining the magic number of transactions would be, at best, very difficult to do. HDMA does not know of a reasonable methodology for determining the transaction limit, much less have a suggested specific number of transactions.

Due to the highly complex pharmaceutical supply chain industry and the number and complexity of the products offered, transaction limits also raise a host of additional questions for which we

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[7] Sec. 430.100 *Unit Dose Labeling for Solid and Liquid Oral Dosage Forms* (FDA - CPG 7132b.10)

are unable to provide answers suitable for justifying limits as an anti-counterfeit technique. These questions include:

- Will the limitations result in product shortages?
- Will usable and potentially expensive products be discarded, even if there is a prospective buyer, just because they have reached the transaction limit?
- Will transaction limits be enforced in emergency circumstances?
- If not, what constitutes an "emergency?"
- How will the limitations be enforced?
- Do all drugs, even inexpensive, unlikely, counterfeit candidates, have the same limitations as those of "high risk?"
- If not, how do we create a "two-tiered" system for identifying transactions that doesn't overload the distribution system while we are attempting to meet patient needs?

As such, HDMA feels that this is an individual company decision and does not recommend this approach. Instead, we recommend, as stated in our HDMA *Guidelines*, that additional due diligence should be exercised when more than three transactions appear on a pedigree.

**Rapid Alert and Response Systems**

In the Interim Report, the FDA asked if *"there is a need to strengthen the systems used for reporting by, and alerting of, stakeholders and the public as to the existence of counterfeit drugs."* HDMA agrees that those who may be in the most responsible positions for acting on reports of potentially counterfeited drugs must have accurate and timely information.

To that end, in June of 2003, HDMA initiated a program designed to assist the FDA in carrying out its responsibilities to protect the public health and the manufacturers whose product may have been counterfeited. HDMA members pledged to report to the FDA and manufacturers any suspected counterfeit product within five working days of verifying the information that the product may have been counterfeited.

HDMA believes that expanding communication processes to help ensure timely and accurate information may benefit all those responsible for providing drugs to patients who need them, as well as benefiting the patients themselves. Thus, we encourage all members of the supply chain to adopt similar reporting measures. We also encourage the FDA and supply chain stakeholders to evaluate cost-effective means to conduct such communications while assuring security of information and accessibility to that information as well as consistency in receiving and disseminating information to appropriate recipients. We also urge sensitivity to the need for communicating in such a manner as to avoid unnecessary alarm for consumers.

## Conclusion

HDMA again reiterates its appreciation for the strong leadership that the FDA is showing in addressing the problem of counterfeit pharmaceutical products and reaching out to industry as a partner in helping to solve this critical issue. Again, we urge that strong emphasis be placed on:

1. Technology-based solutions;
2. Strengthening and making uniform licensing procedures and enforcement;
3. Stiffer penalties for knowingly trafficking in counterfeit drugs and committing related fraudulent acts; and
4. A commitment to "best practices" by all members of the supply chain.

Should you have any follow-up questions please contact Nancy Hanagan, Sherry Haber, or Anita Ducca at 703-787-0000.


Attachment B

# Recommended Guidelines for Pharmaceutical Distribution System Integrity

## Preamble

Prescription drug wholesalers, like all nongovernmental entities, do not have the investigative powers and resources to guarantee that certain products are not counterfeit. But they are uniquely situated to perform due diligence in order to protect the integrity of the pharmaceutical distribution system. Even with due diligence, in today's fast paced, just-in-time market, it is not always possible to determine the authenticity of specific prescription drugs being offered for sale. But rigorous due diligence can establish whether the sources of those prescription drugs meet certain criteria which provide a greater level of assurance that those sources are legitimate and present no reasonable probability of distributing counterfeit prescription drugs.

Experience with counterfeit drug distributors indicates that they are distinctly different from legitimate prescription drug wholesalers. Therefore, the first step in defining due diligence criteria is to identify the pertinent characteristics shared by legitimate prescription drug wholesalers. Once identified, these pertinent characteristics are the basis for the due diligence requirements contained herein. The logical nexus between the characteristics of legitimate prescription drug wholesaler and the due diligence criteria is an important safeguard to help assure the integrity of the prescription drug distribution system without disadvantaging law abiding wholesalers.

Legitimate prescription drug wholesalers share the following pertinent characteristics:

1. Their business is structured as a "going concern"
2. They demonstrate appropriate financial responsibility
3. They have robust operational standards
4. They have rigorous compliance systems
5. They can demonstrate their corporate and compliance history

An entity that does not display these characteristics may be identified as a suspect source of prescription drugs, or a source that may present an unreasonable risk to the integrity of the pharmaceutical distribution system and the public health.

The due diligence criteria and due diligence best practices in this guideline have been designed to identify facts and information about an entity that would demonstrate whether that entity displays the characteristics of a legitimate prescription drug wholesaler or, in the alternative, is reasonably likely to be a suspect source of prescription drugs. It is recommended that a prescription drug wholesaler:

1. Independently apply these Guidelines when evaluating proposed purchases from prescription drug wholesaler;
2. Use the due diligence best practices to determine whether the source of the prescription drugs meets the due diligence criteria; and
3. Purchase prescription drugs from sources that substantially demonstrate the characteristics of a legitimate prescription drug wholesaler in accordance with 2, above.

These Guidelines, therefore, outline best practices for the exercise of due diligence by prescription drug wholesalers to enhance the detection and elimination of illegitimate sources which market counterfeit products.

The public interest in drug product safety and efficacy is well served by this industry effort to detect and prevent counterfeit products from entering the prescription drug distribution pipeline in the United States.

## I. Initial Information Request

When a prescription drug wholesaler is considering making purchases from another prescription drug wholesaler for the first time, it is recommended that a completed information request be obtained from the prospective selling wholesaler prior to the purchase. The information request should include the following information and it is recommended that this information request be updated annually:

1. A listing of states the company is domiciled in and shipping into and copies of all current state/federal regulatory licenses/registrations including license/registration number(s). (Note: purchaser is advised to check to ensure expiration dates have not passed);
2. The company's most recent site inspection(s) dates and inspection reports or resolutions (both state and federal inspections);
3. The minimum liability insurance limits the company maintains including general as well as product liability insurance;
4. All other "doing business as" (d/b/a's) names, and formerly known as (f/k/a's), including all affiliated businesses;
5. A complete list of all corporate officers;
6. A complete list of all owners of greater than 10 percent of the business unless it is a publicly-held company;
7. A list of all disciplinary actions by state/federal agencies against the company as well as principals, owners or officers over the last ten years, or since the company was first licensed, or any of the listed individuals were first in the prescription drug wholesale business;
8. The number of employees at the facility and screening procedures for hiring;
9. A full description of each facility/warehouse. Include all locations utilized for drug storage and/or distribution), including:
    a. Square footage;
    b. Security and alarm system description;
    c. Terms of lease/own;
    d. Address; and
    e. Temperature and humidity controls.
10. A description of prescription drug import/export activities, including:
    a. A listing of all countries importing from and exporting to;
    b. A listing of what products are being imported/exported from each country identified in 10a;
    c. The nature of the company's import/export activities pertaining to prescription drugs (i.e., repackaging, re-labeling, etc.); and
    d. How are products designated for import/export separated from domestic inventory?
11. A description of the process the company uses to validate and certify its suppliers and purchases including the supplier's ADR status, (particularly if the process differs from the Recommended Guidelines for Pharmaceutical Distribution System Integrity).

12. A list of the classes of trade (e.g., manufacturer, wholesale, retail, hospital, institutional, clinics, etc.) the seller is purchasing from or selling his/her product from or to.
13. Available financial statements or SEC filings.
14. Systems and procedures in place for prompt reporting of any suspected counterfeit, stolen or otherwise unlawful prescription drug products or buyers or sellers of same to the appropriate state and federal authorities and manufacturer(s) of the product(s).

## II. Certification of ADR Status

If the selling prescription drug wholesaler claims to be an ADR, it is recommended that the purchaser obtain a written statement from the seller stating that it is an ADR and on what basis. It is also recommended that the purchaser independently verify the seller's ADR status on the initial purchase and then at least annually thereafter.

## III. Background Check

It is recommended that the purchaser conduct a background check of any prescription drug wholesaler it conducts business with prior to the initial transaction. This background check should include:

1. Subject to the requirements of the Fair Credit Reporting Act:
    a. A criminal background and criminal and civil litigation check of all company officers, key management, principals and owners with 10 percent or greater interest in the company (the latter applying to non-publicly held companies only);
    b. A driver's license and social security verification of all company officers, key management and owners;
    c. Before completing a background check on the referenced individuals in 1a and 1b above, the purchaser must obtain the written consent of each such individual, clearly indicating how the information will be used. If the purchaser decides not to purchase from the prescription drug wholesaler based on the background information obtained, the purchaser must notify the individual (orally or in writing) in accordance with the notice requirements of the Fair Credit Reporting Act, 15 U.S.C. §1681(a);
2. A credit history maintained by an independent third party credit evaluation organization;
3. A check of the national database of licensed prescription drug wholesalers (if such a database is created);
4. A check to determine if civil/criminal litigation exists against the company; and
5. Verification of the date of incorporation and years in business, place of incorporation and form of entity.

## IV. Physical Site Inspection

It is recommended, prior to an initial purchase, that a purchaser conduct a physical site inspection(s) of any prescription drug wholesaler seller it intends to do business with to ensure that the company's facility (ies) is/are in compliance with appropriate storage and operational conditions and practices. These inspections should be conducted on a biannual basis. A third party, so long as not a prescription drug wholesaler, may be used to conduct the inspections on behalf of the purchaser. A standard checklist for site inspections should be utilized and incorporate the following:

Administrative/Management
It is recommended that the purchaser:

1. Establish the authority, training, and experience of each individual providing the required information to them on behalf of the seller and each individual who controls and is responsible for the direct supervision of all persons who inspect, handle or have access to prescription drug products;
2. Request and examine the seller's organizational chart to identify key management and structure of the company; and
3. Verify the number of employees at the facility.

Building *(size, physical conditions, etc.)*
It is recommended that the purchaser check the

1. Structural appearance and general integrity based on a visual inspection;
2. Square footage;
3. Year of construction;
4. General security and alarm system;
5. Climate control; and
6. Surrounding area (e.g., zoning)

Operations
It is recommended that the purchaser examine the following:

1. Documentation of PDMA compliance status including receipt and provision of "identifying statements," ADR status, requirements for PDMA compliance guarantees, recordkeeping and compliance with state and federal laws relating to the purchase and sale of prescription drugs.
2. Procedures for stock rotation;
3. Policies and procedures for conducting inspections of samples of product purchases;
4. Visually inspect a sample of the seller's product;
5. Temperature monitoring program and documentation;
6. Systems/procedures for detecting adulterated/misbranded product, including systems and procedures to verify that manufacturer-identified anti-tampering devices are intact;
7. Systems/procedures for validating Identifying Statements;
8. Condition of medical product inventory in the warehouse;
9. Compliance with 21 CFR 1304.22 DEA recordkeeping requirements; and
10. Form of payment the seller uses to purchase product.

## V. Seller Qualification

Once the site inspection has been completed, the results should be discussed with those employees or representatives of purchaser who are responsible for approving new suppliers. If the seller's background check, the completed information request, and the site inspection are determined to be satisfactory and the purchaser obtains the appropriate internal approval of the new supplier, the seller should execute signed agreements or contract provisions with language specific to PDMA compliance and compliance with all state and federal laws relating to the purchase and sale of pharmaceuticals and that the purchaser will be notified if the seller receives information that the integrity or legal status of prescription drugs sold to purchaser has been called into question by the manufacturer, retailers, wholesalers, or state or federal authorities. The signed agreements should include language stating that the seller agrees to notify the purchaser of any changes in its information request within 30 days.

## VI. Ongoing PDMA Compliance Review

It is recommended that the purchaser conduct ongoing compliance reviews and document all findings. These reviews should include:

1. Verifying that the seller is meeting the requirements for obtaining an "Identifying Statement", and that the "Identifying Statements" contain the required information;
2. Verifying that the seller has an effective process in place to authenticate the accuracy and integrity of the "Identifying Statement."
3. Performing appropriate supplemental review actions when:
    a. The "Identifying Statement" has more than three entities on it; or
    b. The price of the product being sold is substantially less than the prevailing market prices.

## VII. Additional Purchaser Responsibilities

In addition to all the previous steps, it is also recommended that the purchaser:

1. Maintain an internal company list of non-complying/at risk companies that are not reputable, or otherwise suspect, whose products prescription drug wholesaler would not purchase, based upon prior experience or other criteria;
2. Maintain an internal list of non-complying/at risk products (i.e. biologics, previously counterfeited drugs) that the prescription drug wholesaler would not purchase from a non-manufacturing vendor (NMV) or non-ADR;
3. Have systems and procedures in place for prompt reporting of any suspected counterfeit, stolen or otherwise unlawful prescription drug products or buyers or sellers of same to the appropriate state and federal authorities and manufacturer(s) of the product(s).
4. Cooperate with state and federal regulatory authorities by promptly providing copies of requested records and other information relevant to administrative, civil and criminal investigations related to prescription drug products.

**Definitions for the**
**Recommended Guidelines for**
**Pharmaceutical Distribution System Integrity**

1. *ADR* means Authorized Distributor of Record as defined in

   A. 21 CFR 203.3 or as defined under appropriate FDA guidances (e.g., FDA *Letter to Industry and Other Interested Persons*, Aug. 1, 1988) in the absence of final regulatory specification;

   OR

   B. state laws;

   OR

   C. The HDMA recommended guideline for the definition of the Authorized Distributor of Record[1] which is as follows

      - must be on the manufacturer's list
        - list to be updated monthly

        OR
      - have a written agreement currently in effect with the manufacturer

        OR
      - have a verifiable account[2] with the manufacturer and minimal transactional or volume requirement thresholds as follows :
        - 5000 sales units[3] per company within 12 months

          OR
        - 12 purchases (invoices) from manufacturer within 12 months

**whichever is more stringent.**

**(Note: It is recommended that your legal counsel be consulted to ensure that the most stringent definition is being applied)**

2. *Identifying Statement* is defined as specified in 21 CFR 203.50 or as defined under appropriate FDA guidances (e.g., FDA *Letter to Industry and Other Interested Persons*, Aug.1,1988) in the absence of final regulatory specification. In addition, any state laws that may include additional qualifications are included in this definition of Identifying Statement when doing business in or with entities located in those states.

3. *Prescription Drug Wholesaler* means state licensed Non-Manufacturer Vendors including both ADRs and non-ADRs.

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[1] There is a consensus that the definition of Authorized Distributor of Record should be enhanced from the 1988 Food and Drug Administration PDMA Guidance to incorporate elements of the Food and Drug Administration's 1999 regulation and objective criteria that can be met based on transactions with the pharmaceutical manufacturer. Usage of the HDMA definition is optional.

[2] "Verifiable account" means 1) an account which the manufacturer confirms (in written or oral form) is assigned to the customer in question or 2) copies of manufacturers' invoices containing a printed account number and the name and address of the customer are obtained.

[3] A sales unit is the unit of measure the manufacturer uses to invoice its customer for the particular product.

**Suggested Criteria for Identifying Pharmaceutical Products at High Risk of Being Counterfeited**

As noted earlier, HDMA believes that part of the anti-counterfeit strategy is to develop a set of criteria for determining high risk drugs. HDMA recommends the following criteria.

Any drug can be placed on the list if one of the conditions in A *and* one of the conditions in B below, exists. It may also be placed on the list if any three of the conditions in B exists.

A.

- There has been a seizure or a stop sale notice issued on the prescription drug because of the adulteration, counterfeiting, or diversion of the prescription drug from the legal channels of distribution for prescription drugs,

**or**

- A manufacturer, a wholesale distributor, a law enforcement agency, or a government agency responsible for regulating the sale or distribution of prescription drugs in another state has notified the FDA department in writing or through a Web site operated by one of said entities that the prescription drug has been adulterated, counterfeited or diverted from the legal channels of distribution for prescription drugs.

B.

- The prescription drug is high cost;

**or**

- The prescription drug is used extensively for patients with human immunodeficiency virus, acquired immune deficiency syndrome, cancer, or other serious, life threatening conditions, where drug non-responsiveness would not be considered to be medically unusual;

**or**

- The prescription drug is an injectable drug;

**or**

- The prescription drug is subject to a special, limited distribution process and is not generally sold to wholesale distributors by the manufacturer of the prescription drug;

**or**

- The FDA has reliable information indicating that there have been five or more instances where required identifying statements (pedigrees) for the prescription drug were not passed on other than because of unintentional oversight,

**or**

- The FDA has reliable information indicating that the required identifying statements have been passed on by or to a wholesale distributor and such statements were fraudulent;

**or**

- A shipment of a prescription drug has been reported to a law enforcement agency as having been stolen or as missing.

HDMA also recommends developing a process and criteria for determining when a drug is no longer at "high risk" of being counterfeited and removing it from the list. The final determination of whether the drug should be placed on or removed from the list should be subject to a review by an FDA Advisory Committee that includes drug wholesale distributors.