Plasma Protein Therapeutics Association

August 11, 2014
Reference No. FDAA14008

Division of Dockets Management (HFA-305) **VIA WEB**
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

SUBJECT: Draft Guidance for Industry on Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification; Availability [Docket No. FDA–2014–D–0609]

Dear Sir or Madam:

The Plasma Protein Therapeutics Association (PPTA) thanks FDA for the opportunity to participate in the guidance development process and is pleased to provide these comments on the Draft Guidance for Industry – Drug Supply Chain Security Act Implementation: Identification of Suspect Product and Notification (June 2014).[1] PPTA understands that section 202 of the Drug Supply Chain Security Act (DSCSA) adds section 582 to the Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360eee-1), which requires, under section 582(b)(4)(B)(ii), that manufacturers, beginning not later than January 1, 2015, have systems in place to enable the manufacturer, upon determining that a product in the possession or control of the manufacturer is an illegitimate product (or that there is a high risk that such product is an illegitimate product), to notify FDA (and immediate trading partners that the manufacturer has reason to believe may have received such illegitimate product) of such determination not later than 24 hours after making such determination (or being notified by FDA or a trading partner that there is a high risk that such product is an illegitimate product).[2]

PPTA appreciates that FDA issued the Draft Guidance, as required by FD&C Act section 582(h)(2), to aid manufacturers in the identification of a suspect product and notification termination, i.e. to identify specific scenarios that could significantly increase the risk of a suspect product entering the pharmaceutical distribution supply chain, to provide recommendation on how manufacturers may identify such product and make a determination on whether the product is a suspect product as soon as practicable, and to set forth the process by which manufacturers shall terminate notifications in consultation with FDA.[3] PPTA also appreciates that, though not required by FD&C Act section 582, the Draft Guidance addresses how manufacturers should notify FDA of illegitimate product.[4]

[1] *See* FR Notice, 79 Fed. Reg. 33564 (June 11, 2014)
[2] *See id.*
[3] *See id.*
[4] *See id.*

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About PPTA

PPTA is the international trade association and standards-setting organization for the world's major collectors of Source Plasma and manufacturers of plasma-derived products and recombinant analogues, collectively referred to as plasma protein therapies, which are used in the treatment of a number of rare diseases. These diseases are often genetic, chronic, life-threatening conditions that require patients to receive regular infusions or injections of plasma protein therapies for the duration of their lives. Plasma protein therapies include clotting-factor therapies for individuals with hemophilia A and B and other bleeding disorders; immunoglobulins to treat a complex of diseases in individuals with immune deficiencies; therapies for individuals who have alpha-1 anti-trypsin deficiency, which typically manifests as adult onset emphysema and limits substantially life expectancy; and albumin, which is used in emergency-room settings to treat individuals with shock, trauma, burns, and other conditions. PPTA members are committed to assuring the safety and availability of these medically needed, life-sustaining therapies.

Jurisdiction

PPTA asks that FDA confirm that FD&C Act section 582 only pertains to incidents where the illegitimate product is found *within* the borders of the United States and its territories. By way of example, a lot number of product which originated and was distributed in the U.S. which makes an appearance in Latin America, should not fall under the reporting requirements of section 582, even if it is confirmed, unless the presence of a like illegitimate article is confirmed within U.S. borders.

Comments

Draft Guidance lines:	FD&C Act section:	Comment:
61-63. *Illegitimate product* is defined in section 581(8) of the FD&C Act as a product for which credible evidence shows that it is (A) counterfeit, diverted, or stolen … .	**581(8)(A).** Illegitimate product.—The term "illegitimate product" means a product for which credible evidence shows that the product … is counterfeit, diverted, or stolen … .	**Diversion and theft.** PPTA suggests that FDA consider the work of the *Pharmaceutical Cargo Security Coalition* (PCSC), which has been instrumental in quickly spreading the word of cargo theft, and in assisting law enforcement at all levels with the prompt recovery of stolen pharmaceutical cargos. Credible evidence of theft may emerge immediately or may take time to confirm, while evidence of diversion often emerges over the course of weeks. It is appropriate that the identifiers of stolen product be published and disseminated as rapidly as possible following the discovery of the theft, although the provenance of actual stolen articles may take time to determine.
61-66. *Illegitimate product* is defined in section 581(8) of the FD&C Act as a product for which credible evidence shows that it … (D) appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences or death to humans.	**581(8)(D).** Illegitimate product.—The term "illegitimate product" means a product for which credible evidence shows that the product … appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences or death to humans.	**Unfit for distribution.** PPTA asks that FDA provide guidance on the meaning of "appears otherwise unfit for distribution" in FD&C Act section 581(8)(D). The language is vague and may give FDA power to define after the fact what constitutes an illegitimate product. PPTA asks that FDA either tighten what is meant by "appears otherwise unfit for distribution" in the Draft Guidance or be willing to apply section 581(8)(D) conservatively until such time that industry better understands what will make an article "unfit for distribution."

Draft Guidance lines:	FD&C Act section:	Comment:
68-75. Starting January 1, 2015, section 582 of the FD&C Act requires trading partners, upon determining that a product in their possession or control is illegitimate, to notify FDA and all immediate trading partners (that they have reason to believe may have received the illegitimate product) not later than 24 hours after making the determination. Manufacturers are additionally required under section 582(b)(4)(B)(ii)(II) to notify FDA and immediate trading partners (that the manufacturer has reason to believe may possess a product manufactured by or purported to be manufactured by the manufacturer) not later than 24 hours after the manufacturer determines or is notified by FDA or a trading partner that there is a high risk that the product is illegitimate.	**582(b)(4)(B)(ii).** Making a notification.— (I) Illegitimate product.—Upon determining that a product in the possession or control of the manufacturer is an illegitimate product, the manufacturer shall notify [FDA] and all immediate trading partners that the manufacturer has reason to believe may have received such illegitimate product of such determination not later than 24 hours after making such determination. (II) High risk of illegitimacy.—A manufacturer shall notify [FDA] and immediate trading partners that the manufacturer has reason to believe may have in the trading partner's possession a product manufactured by, or purported to be a product manufactured by, the manufacturer not later than 24 hours after determining or being notified by [FDA] or a trading partner that there is a high risk that such product is an illegitimate product.	**24 hours.** PPTA asks that FDA clarify what constitutes 24 hours. *Proposed language:* "Information shall be forwarded to FDA within one business day, but no more than three calendar days if received before a weekend or holiday, from the time a determination is made." **Start of clock.** PPTA asks that FDA confirm that the clock on the 24-hour reporting requirement begins "after making the determination" (*see* Draft Guidance at line 71). As delineated in Draft Guidance lines 61-63 above, "illegitimate product" includes a product for which credible evidence shows that it is counterfeit, diverted, or stolen. Credible evidence takes several forms depending on what is being confirmed. Credible evidence of counterfeiting generally requires either a photo, or better yet, a sample to be compared, by the manufacturer, to the manufacturer's batch release data. Conducting this analysis takes several days to up to more than a week. Reporting a "potential" counterfeit prior to confirmation contributes to confusion, not clarity.

Conclusion

PPTA appreciates the opportunity to comment on the Draft Guidance and looks forward to continued work with FDA on manufacturer identification of suspect product, notification to the Agency of illegitimate product, and termination of notification in consultation with FDA for the purposes of FD&C Act section 582. PPTA welcomes from FDA any questions regarding these comments.

Thank you for your consideration.

Respectfully Submitted,

Mary Gustafson
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Plasma Protein Therapeutics Association