Suspect and Illegitimate Product Requirements and Verification Systems Under the DSCSA

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Verification Systems

- January 1, 2015: Manufacturers, wholesalers, repackagers, and dispensers must have "**systems** in place to enable [them] to comply" with the following:
  - Identifying, investigating, and quarantining suspect or illegitimate products;
  - Making a notification to FDA and/or trading partners;
  - Responding to a notification from FDA and/or trading partners; and
  - Clearing a product for distribution (as appropriate)
    - 21 U.S.C. §§ 360eee-1(b)(4), (c)(4), (d)(4), and (e)(4).
- FDA Final Guidance: Identification of Suspect Product and Notification (Dec. 2016)
- FDA Draft Guidance: Definitions of Suspect Product and Illegitimate Product for Verification Obligations Under the DSCSA (Mar. 2018)
- FDA Grandfathering Policy, Product Identifier Final Guidance (Sept. 2018)
- FDA Draft Guidance: Verification Systems Under the DSCSA for Certain Prescription Drugs (Oct. 2018)

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Suspect & Illegitimate Product

- **Suspect Product**: a product which there is "reason to believe" is potentially
  - Counterfeit, diverted, or stolen;
  - Intentionally adulterated such that its consumption would result in serious adverse health consequences or death to humans;
  - The subject of a fraudulent transaction; or
  - Appears otherwise unfit for distribution such that it would cause human death or adverse consequences
- **Illegitimate Product:** a product which "credible evidence" shows is:
  - Counterfeit, diverted or stolen;
  - Intentionally adulterated;
  - The subject of a fraudulent transaction; or
  - Otherwise unfit for distribution

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Suspect Product Verification: Manufacturers

- If a manufacturer determines that a product in its **control or possession** is a suspect product, or **FDA makes such a determination**, the manufacturer must:
  - Quarantine the suspect product from other products intended for distribution until such product is cleared or dispositioned
  - Promptly conduct an investigation in coordination with other trading partners to determine whether the product is illegitimate
  - Validate all applicable TH/TI possessed
- If manufacturer determines suspect product is not illegitimate, the manufacturer must notify FDA promptly of the results (cleared product) and the product may be distributed.
  - Form FDA 3911
- By 2017, manufacturers must also verify the product at the package level, including the standardized numerical identifier (subject to FDA enforcement discretion period)

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Illegitimate Product Verification: Manufacturers

- If the manufacturer determines the product is illegitimate, it must:
  - Quarantine the product (physical separation);
  - Dispose of the product (remove from supply chain);
  - Take reasonable and appropriate steps to assist trading partners with the product's disposal;
  - Retain a sample of the product for further physical examination or laboratory analysis as necessary and appropriate;
  - Notify FDA and immediate trading partners within 24 hours (Form FDA 3911)
- Similar systems, SOPs for products with "high risk of illegitimacy"
- Once a manufacturer determines a notification is no longer necessary, in consultation with FDA, the manufacturer must promptly notify immediate trading partners that the notice has been terminated
- Maintain records for at least six (6) years following the investigation's conclusion (all trading partners)

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Requests for Verification: Manufacturers

- By Nov. 2017 (subject to FDA enforcement discretion period), manufacturers must comply with "requests for verification"
  - An authorized repackager, wholesale distributor, or dispenser that is in possession or control of a product requests the manufacturer to **verify that the product identifier** corresponds to the standardized numerical identifier or lot number and expiration date assigned to the product by the manufacturer or the repackager.
  - FDA may also request verification to a trading partner
- Manufacturers must respond within 24 hours or "in other such reasonable time"
- If the product identifier does not correspond, manufacturer must treat such product as suspect and conduct an investigation.
  - The manufacturer must also notify the requestor if it has reason to believe the product is illegitimate
- Manufacturers may use or create an electronic database to handle verification requests, records, samples, notifications, etc.
- Timing of product identifier verification requirements varies for other trading partners

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Verification Systems: Draft Guidance

- Provides FDA's interpretation of verification systems guidance
  - A "system" is a "coordinated body of processes and procedures that forms an organizational scheme"
- Recommendations for
  - "[R]obust verification system" on quarantine, investigation, notification
    - Systems should ensure "**consistent, effective, and timely**" suspect product determinations
  - Trading partner submission to FDA of cleared product notifications
  - Verification requirements, including saleable returns
- FDA reminds industry of other FDCA obligations
  - E.g., product may be "adulterated" and prohibited from introduction into interstate commerce, but may not meet the DSCSA definition of "suspect"

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Verification Systems: Suspect Product

- **Systems for Suspect Product:** When designing systems, focus on definitions of "suspect product"
  - Counterfeit, diverted, stolen, intentionally adulterated, subject to fraudulent transaction, or unfit for distribution
    - Definitions from FDA Draft Guidance (Suspect/Illegitimate Definitions Guidance)
    - List of scenarios, recommendations from FDA Final Guidance on Suspect Product/Notification
- **Systems for Suspect Quarantine**
  - Physically separated or other SOPs (e.g., electronic)
  - "[R]obust enough" to ensure suspect product not "inadvertently distributed"
  - Authority to terminate quarantine assigned to appropriate person(s)(e.g., Quality)

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Verification Systems: Suspect Product (cont'd)

- **Systems for Suspect Investigation**: Robust investigations should include
  - Validate TH/TI
  - "[A]ctive" communication, coordination with trading partners
  - Use appropriate lab standards, controls, techniques for suspect product testing
    - Trading partners can rely on manufacturer's testing if performed in a "timely manner" and trading partner receives "adequate assurances" from manufacturer the results are "reliable"
  - After investigation, capture "lessons learned" for what worked will and what did not to make "appropriate adjustments" to the verification system
  - If trading partner determines product is illegitimate, conduct a "root-cause analysis" of how product came in its possession/control;
  - Assess ways to strengthen procurement process "to avoid future acquisition of illegitimate products"

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Verification Systems: Suspect Product (cont'd)

- **Systems for Notification of Cleared Suspect Product**
  - "Cleared Product Notification" (include in subject line)
    - Submitted to FDA only if suspect product is subject of an FDA request for verification
      - drugnotifications@fda.hhs.gov
    - If not an illegitimate product, trading partner maintains records of investigation, cleared notice
  - Notification should include
    - Identify of product (name, strength, NDC, lot, serial numbers, etc.)
    - Reason product determined suspect, summary of investigation why not illegitimate
    - Date product cleared
    - Name/position and signature of employee/officer who cleared suspect product
    - Details about distribution or disposition, including dates
    - Include date of FDA verification request, name of FDA office/employee who made request
  - Records kept for 6 years after investigation

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Verification Systems: Illegitimate Product

- Similar requirements as suspect product
  - **Quarantine**: physically separated from products intended for commerce
  - **Disposition:** written SOPs for disposition
    - Ensure public health hazards of product are "appropriately controlled"
    - Audit any contractors hired to disposition product; records kept for 6 years after disposition
  - **Retention of Samples:** samples should be
    - Representative of illegitimate product
    - Of a "sufficient amount, if available, to permit proper" lab examination by manufacturer, FDA
    - Appropriately labeled, stored to preserve identity, integrity of sample
    - Handled, identified, sealed in manner ensuring proper custody procedures maintained
      - E.g., record/log identifying each person who handled product, date they handled, and manner in which they handled it should be maintained, accompany sample when submitted for testing
  - **Illegitimate/High Risk Notifications:** follow FDA Final Guidance (Dec. 2016)

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Verification Systems: Illegitimate Product (cont'd)

- **Systems for Verification Requests:** systems should
  - Allow manufacturer/repackager to respond by required timeframe with "clear statement" of whether identifier is verified
  - Be integrated with system to identify suspect, illegitimate product
    - E.g., inclusion of product identifiers
- **Systems for Saleable Returns**
  - Manufacturers, wholesalers, repacakagers must have systems to process, verify product identifiers of saleable returns
  - Cannot further distribute until product identifier is verified
    - If not verified, should be handled as suspect product (quarantine, investigated)

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