March 9, 2020

Dockets Management Staff
(HFA–305)
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

RE: Food and Drug Administration 21 CFR Parts 1 and 251 [Docket No. FDA–2019–N–5711] RIN 0910–AI45 Importation of Prescription Drugs

Dear Dockets Management Staff:

The National Council for Prescription Drug Programs (NCPDP) is a not-for-profit, ANSI-accredited Standards Developer (ASD) consisting of more than 1,700 members who represent drug manufacturers, chain and independent pharmacies, drug wholesalers, insurers, mail order prescription drug companies, pharmaceutical claims processors, pharmacy benefit managers, physician services organizations, prescription drug providers, software vendors, telecommunication vendors, service organizations, government agencies, professional societies, and other parties interested in electronic standardization within the pharmacy services sector of the healthcare industry. NCPDP provides a forum wherein our diverse membership can develop solutions, including ANSI accredited standards, and guidance for promoting information exchanges related to medications, supplies, and services within the healthcare system.

NCPDP offers several concerns from our members resulting from the FDA proposed rule that would assign multiple NDCs to the same product for importation purposes. We not only offer our concerns but also provide steps that can be taken to mitigate said concerns and issues.

The following illustrates our concerns by subject/area:

1. Availability of new NDC numbers
    a. It has been estimated that at its current rate, the supply of unused NDC numbers will run out in approximately 8 to 10 years. Assignment of a different US NDC number to these imported products could adversely affect the run-down rate on currently available NDCs in the US, especially Labeler Codes since importers will have their own labeler codes. NCPDP requests the FDA work more closely with NCPDP to monitor the supply of available NDCs and act sooner to determine how the NDC will be changed or expanded to accommodate the need for more NDCs. To ensure patient safety and minimal impact to the industry, an 8-10 year transition period is required to transition to a new identifier.
2. Patient safety/confusion in pharmacy
    a. For patient safety, proper identification of a drug product is essential to ensure a patient receives the correct medication from a reliable source. The first step in accurate product identification is to have the imported product properly identified by the FDA, if not in Structured Product Labeling (SPL), then in another FDA managed database. The drug

compendia will require a unique FDA identifier to flag these products. The drug compendia must know that a product is imported and this said information must be easily identified. The drug compendia will require a process that ties the US approved product (manufacturer, NDC, NDA, ANDA) to the Canadian counterpart (manufacturer, Drug Identification Number (DIN), other Health Canada Health Products and Food Branch (HPFB) information) that will be the Section 804 Importation Project (SIP) imported product (new NDC). The industry also requires that the entity maintaining this information is appropriately identified and how the Product Identification as a repackaged product can be obtained, e.g., via CDER.

b. It is essential provisions be in place to prevent Canadian product from being passed as US product for billing and returns purposes. NCPDP understands US product and the Canadian counterpart can be identical in size, shape, color and imprint. Therefore, the market will need to know how a pharmacy system would properly identify the NDC to use for dispensing and billing if these products are identical. Identification of the correct NDC number is essential for a pharmacy to be able to dispense the correct drug and bill the payer for that product. The NDC is the key to the pharmacy system and provides the pharmacist with access to drug utilization review, adverse events and essential product specific information that can be communicated to the patient.
c. It is essential that the appropriate systems are in place to address situations that may arise when a Canadian product is associated with adverse events. If a Canadian version of a drug is dispensed to a US patient and an adverse drug event should occur, systems must be able to properly log the adverse event report and identify the US or Canadian source of the package. The new NDC given to an imported product should allow it to be traced back to the importer for the adverse event. Proper reporting of adverse events is critical to patient safety. NCPDP requests the FDA require any adverse events related to Canadian drugs be reported through the current US ADR/Medwatch system.
d. The industry requires direction on actions to take for situations where the active ingredient in a product is identical, but the inactive ingredients are not. NCPDP encourages the FDA to provide additional guidance to address this as many adverse reactions are caused by excipients as well.
e. The industry is unsure of what to expect from the importer/repackager when the US manufacturer updates the label/prescribing information and needs to understand the acceptable lag time between US and non-US labeling.
    - US products are labeled and packaged for compliance with the current FDA requirements.
    - If the manufacturer updates the label, package or prescribing information to be compliant in the US market, the industry needs to understand the procedures put in place to ensure the Canadian packaged goods comply with the latest US FDA approvals, or if the Canadian packaging is allowed to be different.
    - The industry seeks to understand which package insert (prescribing information) is to be included with the imported product (US or Canadian). There is also concern Canadian information may be in French instead of English.
    - The industry seeks to understand which patient package insert (i.e., instructions for use) will be provided.
    - The industry seeks to have imported products follow the same Risk Evaluation Mitigation Strategies (REMS) and programs involved for US REMS required products.

- MedGuide requirements for drugs are an important part of educating patients and caregivers of potential adverse events and would need to be required for any imported products.
- Safeguards must be put in place to ensure the Canadian packaged goods comply with the latest US FDA approvals.

3. Reimbursement/product coverage
    a. Multiple NDC numbers assigned to the exact same prescription product could impact patient care due to product selection, reimbursement and coverage issues. Payers and manufacturers are concerned about how importation may impact current contract rebate agreements. Payers will generally reimburse patients and pharmacies by product and not by NDC number for brand medications. If a drug is on formulary and multiple iterations of the drug with different NDCs are available, it will be difficult for payers to properly reimburse pharmacies for the product dispensed and then subsequently bill manufacturers for the correct rebate. The industry needs to understand which company is responsible for paying the rebate and how to determine which dispensed prescriptions qualify, and if both US and Canadian drugs will be on formulary and covered when the patient presents a prescription to the pharmacy. Additionally, there could be contractual issues that prevent a pharmacy from dispensing non-US, FDA approved products.
    b. Pharmacies may also have issues with therapeutic or generic substitution. A US prescription brand drug that is A-rated may be substituted with a US FDA approved generic equivalent. The industry seeks to understand if the therapeutic equivalency (i.e., an Orange Book Code A-rating) of the Canadian counterpart prescription generic product is implied, allowing it to be substituted for a US brand product. The plan coverage and dispensing processes require information on the product NDC and NDA/ANDA. A US brand will have its original NDC. The imported brand will have a different NDC using the labeler code of importer making adjudication and reimbursement complicated. The US FDA will need to establish Orange Book Therapeutic Equivalence Evaluations (TEE) Codes for imported Canadian generics. The industry will need a method to trace the TEE Code for a US approved generic with a Canadian counterpart that will be imported back to the US.
    c. NCPDP would also note that individual State Board of Pharmacy licensing requirements, patient safety-related regulations and state statutory language would likely need to be modified in order to support dispensing of foreign, imported or re-imported drug products. Any modifications of State Boards of Pharmacy requirements would trigger significant and lengthy modifications to existing trading partner and data exchange agreements related to product distribution.
4. Labeling Guidelines, Product traceability and Licensing Requirements
    a. Prescription drug products must be accompanied with proper US prescribing and product information. The FDA has set forth very specific guidelines to which a product insert must comply with segmented portions that contain product specific clinical information such as Indications, Drug Interactions, Side Effects and critical information such as Black Box Warnings.
    b. MedGuides are frequently required to be given to a patient taking a FDA approved medication. MedGuides are a US requirement that are not necessarily drug specific but can encompass an entire therapeutic class of drugs. These medication guides are necessary to prevent adverse events, educate patients on the seriousness of the medication they are taking and inform caregivers of potential warnings that may result in taking the medication. Therefore, the industry is concerned that the proper MedGuides

will not be available for imported products, making the dispensing pharmacy noncompliant with this requirement.

c. NCPDP requests all importations be required to follow the same labeling guidelines, product traceability and licensing guidelines that currently apply to US drugs.

5. Recalls and Returns
    a. The industry is concerned about the effects the importation program will have on product recalls (whether voluntary or not) or returns and the reverse logistics process. Definitive processes are required to understand how imported products will be removed from the market, how recalls will be handled and the proper methods for event reporting. There currently are specific requirements related to the announcement of recalls and how returned products are to be processed. Similarly, the entities that will absorb the associated costs must be identified. Dual sources for distribution of what is essentially the same drug will make the processing of returns and assignment of financial responsibility for crediting or replacement difficult. This could potentially create problems for pharmacies, wholesalers and distributors and negatively affect the supply chain process.
6. Drug Supply Chain Security Act (DSCSA) Trackability and Traceability of Product
    a. The proposed rule requires importers to comply with the DSCSA 2D barcode requirements. NCPDP is concerned with how the 2D barcode identifier will be able to identify from where the imported product originated. Without proper safeguards, importation will jeopardize patient safety and the security of the U.S. drug supply chain.
    b. There are no global serialization standards such as the US DSCSA requirements. Not all layers of packaging will require a 2D barcode. Until all of the pharmaceutical industry has the capability to read the 2D barcode or until DSCSA requires only the 2D barcode, imported products should be required to contain both linear and 2D barcodes. Without this, confusion will undoubtedly result for anybody trying to comply with standards which have not yet been a requirement for the entire industry.
    c. As mandated by the DSCSA in 2015, there is a requirement that any facility along the drug supply chain have the T3 (Transaction Statement, Transaction History, and Transaction Detail) information prior to receiving the inventory. This DSCSA requirement needs to be addressed in any final rule.
    d. The harmonization of product traceability is to ensure the products being distributed, sold and consumed within the US meet all national standards. Products being imported have not proven to meet all of these standards. For example, there is no global standard that links other country identifiers to US NDCs and FDA Drug approvals such as NDAs, ANDA, and BLAs. As a result, the industry will be unable to track product back to the source Active Pharmaceutical Ingredient (API), manufacturer and ultimate product transactional history.
7. License requirements to distribute product in the US
    a. NCPDP is concerned with compliance with existing licensing requirements and requests FDA address any changes required to existing statutes in the Final Rule:
        i. Any US product distributor would be breaking the law and subject to large fines if the products are not licensed for commerce. Licenses are only authorized for companies proven to have FDA-approved products, FDA-approved manufacturing facilities, background checks for executive management and random FDA facility inspections.
        ii. All 50 States, 1 US protectorate (Puerto Rico) and 1 District (DC – State Board of Pharmacy) are required to have some sort of licensing requirement. Any product

being imported into the US without licenses may not be distributed without an entity taking ownership and proving the product is an FDA-approved product.

iii. Each state has their own specific laws and requirements for manufacturers/distributors to obtain their license. It is not a single application for all 52 entities; each state has their own fees associated with obtaining the license. The one requirement that is consistent across the US is that of FDA approval.

In conclusion, NCPDP sees the importation process posing a significant challenge administratively and operationally throughout the industry and also impacting patient care and placing patients at risk. The industry is concerned about the disruption the importation process will cause to established procedures and current safeguards and wants to better ascertain the cost of the disruption and how to mitigate the impact to the marketplace. NCPDP looks forward to working with the FDA to find solutions for the concerns and issues raised in the above comments.

For direct inquiries or questions related to this letter, please contact:

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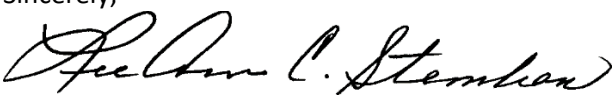
Sincerely,



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