American Pharmacists Association

**Via Electronic Submission to: www.regulations.gov**

September 2, 2021

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

**Re: Docket No. FDA-2020-D-2024: Enhanced Drug Distribution Security at the Package Level Under the Drug Supply Chain Security Act; Draft Guidance for Industry**

Dear Food and Drug Administration Staff:

The American Pharmacists Association (APhA) is pleased to submit our comments to the Food and Drug Administration (FDA) on the draft guidance for industry titled ''Enhanced Drug Distribution Security at the Package Level Under the Drug Supply Chain Security Act" (hereinafter "Draft Guidance"). Founded in 1852, APhA is the largest association of pharmacists in the United States representing the entire pharmacy profession. APhA members practice in community pharmacies, hospitals, long-term care facilities, specialty pharmacies, community health centers, physician offices, ambulatory clinics, managed care organizations, hospice settings, and government facilities. Our members strive to improve medication use, advance patient care, and enhance public health.

APhA strongly supports the purpose and goals of the Drug Supply Chain Security Act (DSCSA) to enhance the safety and security of the pharmaceutical distribution supply chain. APhA appreciates FDA's efforts in developing guidance, standards, and other information to assist pharmacists and pharmacies in complying with DSCSA's requirements.

APhA is a member of the Pharmaceutical Distribution Security Alliance (PDSA) and incorporates by reference PDSA's comments submitted to the docket. We will not repeat the points made in PDSA's comments, unless noted below.

1. **General Comments**

- **Use of the term "enhanced system."** Throughout this draft guidance and in other guidances and statements, FDA uses the term "enhanced system." As described on Page

1, lines 20-22, "enhanced system" refers to "*requirements for enhanced drug distribution security.*" Additionally, footnote 4 states *"For the purpose of this guidance, "enhanced system" refers to the interoperable, electronic, package-level product tracing systems and processes required by section 582(g) of the FD&C Act."* The draft guidance goes on to refer to elements, capabilities, properties, architecture, security, and other attributes of the "enhanced system." We respectfully ask that FDA refrain from using the term "enhanced system." It is a misnomer and is confusing stakeholders across the supply chain. Use of this term seems to imply there will be one grand interoperable system that is integrated, networked, and easily and readily communicates and exchanges data required under DSCSA. Although this may be ideal state for some, and one model envisioned in 2013 when the law was passed, the fact is that the requirements will be implemented in different ways by each trading partner and what will be in place to meet the requirements in November 2023 will not be a broad based "system." Sections 582(g)-(j) set forth requirements for interoperable, electronic tracing of product at the package level to enhance drug distribution security. It specifically does not require that there be one interoperable system for electronic tracing across the supply chain.

The term "systems" as used in sections 582(b)(4), (c)(4), (d)(4), and (e)(4) refers to systems in place for an individual manufacturer, wholesaler, dispenser, or repackager. The term "systems" as used in section 582(g)(1)(C)-(F) also refers to systems (and processes) used by a trading partner for verification, responding to a request from a government official, facilitating the gathering of information, and handling saleable returns. These are trading partners' individual systems, not a broad system across the supply chain.

We applaud FDA for the public workshops and opportunities for comment on "system attributes," as outlined on Pages 2-3, lines 66-96, and agree that these are important elements for enhanced supply chain security, as set forth in DSCSA. However, they are not *"system attributes…of the enhanced system that promote drug distribution security"* as described in lines 68-69. Rather, lines 68-70 should read "*System attributes are properties or capabilities that promote enhanced drug distribution security. Such system attributes are addressed in sections 582(g) and (h) of the FD&C Act and include:"* This change eliminates the concept of one enhanced system. Similar changes should be made throughout the document.

Dispensers are at different stages of implementing systems and processes for compliance with the requirements that go into effect in 2023. Many dispensers, including independent and chain pharmacies and health systems, have been focusing efforts and

resources on other urgent public health matters, such as COVID-19 response. When we speak with APhA members and other dispensers about DSCSA and mention terms such as "enhanced system," they become overwhelmed and intimidated, particularly at this point because clear guidance and information is not available, and it sounds like they will need to invest significant resources in order to comply and be a part of the enhanced system.

- **Phased-in Approach:** It is incredible how much has been accomplished by FDA and supply chain stakeholders in implementing DSCSA over the past eight years. There appears to be more confidence in who trading partners are doing business with and product they are purchasing. That said, there is more to be done to further secure the safety and integrity of the supply chain through interoperable, electronic tracing of product. Congress designed DSCSA as a stepwise approach for knowing who is in the supply chain, who trading partners are doing business with, what product is in the supply chain, and where it has been, from paper to electronic format.

  With slightly two more years until November 2023 and no final guidance on specific standards for interoperable, electronic tracing, it will be difficult to just flip a switch on November 27, 2023 and have all of the features FDA outlines in this draft guidance, whether required by DSCSA or "nice-to-have" elements. APhA strongly encourages FDA to assess the current and predicted state of readiness at all levels of the supply chain and use a tiered approach to implementing the full capabilities of interoperable, electronic tracing of product.

  For compliance and enforcement purposes, and any guidances or regulations that FDA intends to publish regarding the November 2023 requirements, APhA strongly recommends that FDA start with the basic requirements in the law in a manner that is achievable across all trading partners, large and small businesses. As systems, processes, experience, and technologies mature, and individual systems become more integrated across the supply chain, FDA should then reassess implementation and approaches.

**2. Comments Regarding Aggregation and Inference**

- **Aggregation.** Page 4, lines 128-149: The draft guidance describes examples of data aggregation and explains that a "data file" would contain information about aggregated product in a homogeneous case or a pallet. The draft guidance also states that the selling and purchasing trading partners should decide how they will share data files in a manner that allows the purchasing trading partner to use the information that is

associated with each product package. Although APhA appreciates the flexibility that FDA describes in leaving it up to trading partners to best identify how they will exchange data, the draft guidance does not describe the form, format, or standard for the data file. Data management systems vary, and a dispenser's system may only be able to accommodate certain types of data files. Data integration and access may impose significant financial burdens on independent pharmacies, particularly dispensers that are small businesses. It is essential that FDA's small business assessment required under section 582(g)(3) of the FD&C Act evaluate the economic impact, feasibility, and alternative methods for compliance for managing and using aggregated data, including the exchange of data files.

- **Physical Security Features.** Pages 4-5, lines 157-166: APhA appreciates the discussion about physical security features for packages. However, there is no requirement in DSCSA that packages contain physical security features. It is unclear why this discussion appears in the draft guidance. While a breach or failure to include a physical security feature can be a signal that a product might be suspect or illegitimate, there should be no expectation or requirement that a dispenser be familiar with all security features that are used on product packaging, particularly when covert features are used and not obvious.

- **Inference.** Page 5, lines 168-190: APhA recognizes that inference is a common business practice of trading partners upstream from the dispenser. We agree with FDA's view that a trading partner should only use inference when it receives pallets or homogeneous cases with aggregated data if the integrity of the unit is intact. Once a homogeneous case is opened or broken down, the trading partner who owns the product should not further infer information about the lower levels of individual packages or cases to the next partner. This provides an opportunity for a breach in the integrity of the data and contents of the now-opened case. We recommend that the final guidance recognize when inference should cease.

**3. Comments Regarding System Structure**

- **"Appropriate Access."** Pages 5-6, lines 197-202: The draft guidance recommends that the enhanced system enable *"the interoperable integration of…individual systems to the degree necessary to allow appropriate access, efficient information sharing, and data security. The enhanced system should allow FDA and other…officials to communicate with trading partners' individual systems and receive relevant information upon request."* It is unclear what this means and in what way officials would want access to individual systems. APhA

recognizes that prompt response by FDA and other Federal and State officials is essential to be able to contain the situation in the event of a recall or for purposes of investigating a suspect or illegitimate product. However, there are no provisions in DSCSA that provide FDA or other officials the authority to have access to individual trading partners' systems.

If FDA is developing IT capabilities to access trading partners' systems or electronically collect relevant information in some other way in the event of a recall or investigation, this should not be done in a vacuum and input from private sector stakeholders is essential. Stakeholders should be informed and consulted immediately.

- **Protecting Confidential Commercial Information (CCI) and Trade Secrets (TS).** Page 7: DSCSA recognizes the importance of protecting CCI and TS. The draft guidance on lines 236-241 states that the attributes of the enhanced system must ensure the protection of CCI and TS. As described in the General Comments above, if Congress intended "system" to refer to individual trading partners' systems for meeting the requirements, and not a broad-based enhanced system, then the attributes in the guidance required under section 582(h)(3) should be directed at system attributes for individual trading partners' systems. Consequently, the law directs that the guidance "shall…ensure the protection of [CCI] and [TS]." As currently written, the draft guidance says that trading partners *should use* systems and procedures that protect CCI and TS and *expects* that trading partners maintain confidentiality of product tracing information. Terms like "should" and "expects" do not ensure protection of relevant information by trading partners, as intended in DSCSA. This guidance should explicitly state the binding nature of the section 582(h)(3) requirement to ensure protection of CCI and TS.

- **System Access and Data Retrieval.** Page 7: APhA agrees that only authorized trading partners should request relevant data related to a product sold or purchased by another authorized trading partner. Currently, there is no mechanism across the supply chain to ensure authenticity or credentials of authorized trading partners and we are not aware of any system being established nationally that will do this across the supply chain.

  We request that FDA clarify the statement at lines 254-255: *"…DSCSA requires that trading partners provide applicable transaction information, including that which facilitates the gathering of transaction information going back to the manufacturer…"* It is unclear what a trading partner is expected to provide for "including that which facilitates the gathering." Please clarify and provide examples.

**4. Comments Regarding Enhanced Product Tracing**

- **Incorporating Product Identifier into Product Tracing Information.** Page 8, lines 276-279: Please clarify the sentence in lines 276-279. It is unclear what FDA means when it expects trading partners to use *"…steps and technical functions to enhance security that accommodate the inclusion of the [SNI], expiration date, and lot number in the transaction information to meet this requirement."*

- **Reconciling the Transaction Information and Transaction Statement with Product Received**, Page 9: The draft guidance establishes steps that the purchasing trading partner should take in reconciling received product with the product tracing information. Lines 328-349 contain a number of steps that most dispensers will not be able to accomplish by November 27, 2023. We expect that a majority of dispensers will not have systems or processes or sufficient resources to 1) automate reconciliation of electronic data with product received, 2) reconcile each product package and physically check the product identifiers, and 3) be able to read a barcode and automatically upload information into their individual system.

  Not only would this be extremely resource intensive, but for many dispensers the electronic transaction documentation will be held with a third party and the systems likely will not be able to talk to each other to seamlessly automatically reconcile and/or upload information into a system based on a barcode read.

  Currently, dispensers do check what they receive when they get totes or cases from the wholesaler against the packing slip and invoice to ensure it contains what they ordered and there is no shortage in the order. This check is oftentimes a manual process for independent dispensers. Adding an additional step of checking against product information, including the product identifier, would be significantly resource intensive, particularly since the transaction documentation may be electronically held by a third party. If there was reason to believe that the product may be suspect or illegitimate, then verification or reconciliation would be appropriate.

  As individual trading partner systems for enhanced drug distribution security mature and technology advances, automated reconciliation may be easier and less resource intensive to accomplish. As described above, FDA could revisit this in a later implementation phase.

- **Handling Aggregation Errors and Other Discrepancies**. Pages 9-11: APhA appreciates FDA's recognition that clerical or data errors occur. However, resolving such an error or discrepancy within 3 business days may not be possible. Additionally, most dispensers receive orders daily from their wholesaler in order to manage inventory in real time. When an order is received it typically does not sit on the shelf for very long since it is likely needed for a patient. The draft guidance states that products with data or clerical errors should not be sold until the error or discrepancy is resolved. Although not stated, we assume that FDA also means that the product should not be dispensed until such error is resolved. If that is the case, then a 3-day time frame is unacceptable and could impact patient care.

  The selling trading partner is responsible for providing the resolution/reconciliation documentation, so the dispenser would have to wait for corrected documentation and is at the whim of the trading partner. Meanwhile, the patient is at the pharmacy counter waiting for their medicine. We recommend that there be no pre-determined time limit and FDA should develop criteria for when it would be appropriate for product subject to data or clerical errors to be dispensed.

5. **Comments on Gathering of Relevant Product Tracing Information**

- **Gathering of Information in a Single Request.** Pages 11-12: Based on the language in the draft guidance at lines 432-439, it sounds like FDA expects that at a push of a button or in a single request, all the relevant product tracing information related to a recall or investigation will be generated in a consolidated manner on a screen or response in some other way. The draft guidance states that FDA expects that upon request, officials will be able to view *"…information from all trading partners involved in transactions related to a specific product."* Further, *"… trading partners' individual systems and processes should be able to collect the relevant [information]…in a rapid, electronic manner from all trading partners that were involved in a transaction for a product being investigated,"* and it would be initiated from *"…a single targeted request for information…via the enhanced system."* Realistically, this cannot be accomplished by November 27, 2023. As stated above, there is no broad system being developed that will allow systems to talk in such a way that this information can be requested and appear in a similar manner as a list of results in a seemingly simple internet Google search.

  Additionally, after November 27, 2023, the transaction history sunsets. Trading partners will only be receiving TI and TS. They will not be receiving any information about who owned the product prior to the selling trading partner. Unless there is reason to believe

that the product is suspect or illegitimate, dispensers will be relying on the attestation in the TS that the selling trading partner received TI and a TS from the prior owner of the product, as well as the information listed in the TS. Therefore, trading partners will only be able to provide information about who they bought the product from and who they sold it to, if applicable.

APhA recognizes that for public health protection, FDA will want information rapidly and in a single request. As individual trading partner systems for enhanced drug distribution security mature and technology advances, as described above, FDA could consider revisiting this in a later implementation phase.

- **Responding Within 1 Business Day.** Pages 11-12, lines 443-446: The draft guidance states that authorized trading partners should respond to a request from a Federal or State official within 1 business day of a request with the relevant information. As footnote 28 points out, this only applies to manufacturers, wholesalers, and repackagers. The guidance should also recognize that pursuant to section 582(d)(1)(D), dispensers shall respond no later than 2 business days of receiving a request or in a reasonable time as determined by the Secretary. DSCSA also provides that the dispenser can respond in either paper or electronic format.

6. **Comments on Enhanced Verification**

- **Verification of Distributed Product.** Page 12, lines 466-470: The draft guidance reiterates in this section that a trading partner's individual system should be integrated into the enhanced system so that officials and other trading partners can submit a verification request and receive the response in an electronic, interoperable, and standardized manner. As stated above, because there is no supply chain integrated system in development at this time, it is unclear what this means.

  That said, a prompt response to a verification request from a dispenser is essential so as not to hold up dispensing of the product to the patient. We support FDA's efforts to minimize the response time for verification requests and automate the process across the supply chain.

- **Alerts for Recalled and Illegitimate Product.** Page 13: As the last trading partner to own product before it is dispensed, having a flag or alert that a product has been identified as recalled or illegitimate would be very helpful in furthering patient safety. However, currently there is no supply chain wide mechanism to systematically convey

this information and there is no requirement in DSCSA that such a mechanism or system be implemented. This is a "nice-to-have" element that could be considered if and when such a mechanism exists or when individual systems become more integrated across the supply chain. Currently, this information is conveyed through the supply chain by different approaches using manual, paper, and electronic communications and this flexibility should be maintained.

Lines 512-514 state that *"The alerts in the enhanced system can be retrieved when a trading partner scans the product identifier upon receipt or as the product is being processed for sale or shipment."* The draft guidance also states that trading partners should integrate these alerts into their individual systems. It is unlikely that many dispensers' individual systems will be able to integrate these features for alerts, or at the very least, by November 2023. We recommend that FDA further explore how alerts can be communicated in a more systematic way and revisit in the future as processes and technologies mature and individual systems become more integrated.

**Conclusion**

APhA appreciates FDA's efforts in developing guidance, standards, and other information to assist pharmacists and pharmacies in complying with DSCSA's requirements. We look forward to supporting FDA's efforts and working to improve the safety and security of the drug supply chain using practical and feasible implementation approaches. If you have any questions or need additional information, please feel free to contact me at ibernstein@aphanet.org or (202) 429-7533.

Sincerely,

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