



4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. FDA-2018-D-0338]**

**Definitions of Suspect Product and Illegitimate Product for Verification Obligations Under the Drug Supply Chain Security Act; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled “Definitions of Suspect Product and Illegitimate Product for Verification Obligations Under the Drug Supply Chain Security Act.” The draft guidance is intended to describe FDA’s interpretation of terms used in the definitions of “suspect product” and “illegitimate product” in the Drug Supply Chain Security Act (DSCSA), for purposes of trading partners’ verification obligations (including notification). The draft guidance lays out FDA’s current understanding of the following key terms for such purposes: *counterfeit*, *diverted*, *fraudulent transaction*, and *unfit for distribution*.

**DATES:** Submit either electronic or written comments on the draft guidance by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2018-D-0338 for “Definitions of Suspect Product and Illegitimate Product for Verification Obligations Under the Drug Supply Chain Security Act.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff office between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Sarah Venti, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301-796-3130, [drugtrackandtrace@fda.hhs.gov](mailto:drugtrackandtrace@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Definitions of Suspect Product and Illegitimate Product for Verification Obligations Under the Drug Supply Chain Security Act.” On November 27, 2013, the DSCSA (Pub. L. 113-54) was signed into law.

Section 202 of the DSCSA added section 581 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360eee), which sets forth definitions for the DSCSA. “Suspect product” is defined in section 581(21) of the FD&C Act, and “illegitimate product” is defined in section 581(8).

FDA is announcing the availability of this draft guidance to describe the Agency’s interpretation of terms used in the definitions of “suspect product” and “illegitimate product” in the DSCSA, for purposes of trading partners’ verification obligations (including notification) under section 582(b)(4), (c)(4), (d)(4), and (e)(4), respectively of the FD&C Act (21 U.S.C. 360eee-1(b)(4), (c)(4), (d)(4), and (e)(4)). The draft guidance lays out FDA’s current understanding of the following key terms for such purposes: *counterfeit*, *diverted*, *fraudulent transaction*, and *unfit for distribution*.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on definitions of suspect product and illegitimate product for verification obligations under the DSCSA. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

## II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <https://www.regulations.gov>.

Dated: February 23, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

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