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FDA Releases Guidance on Reporting Potential Disruptions in Supply During COVID-19 Pandemic

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Food, Drugs, and Devices

On Friday, March 27, 2020, the U.S. Food and Drug Administration (FDA) released updated guidance to ensure that drug manufacturers notify FDA as soon as possible of potential interruptions in manufacturing that could lead to drug shortages. The Guidance, titled "Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing Under Section 506C of the FD&C Act," was published for immediate implementation, in light of the importance of working with FDA on potential supply disruptions and drug shortages during the COVID-19 pandemic.

In the Guidance, FDA notes that the Agency is "closely monitoring the medical product supply chain" in response to the COVID-19 pandemic, and is aware of the heightened risk of product shortages posed by the pandemic. FDA underscores the importance of early notification to FDA, provides timelines for manufacturers to follow when notifying FDA of potential supply chain disruptions, and recommends details for drug companies to include in their notifications to FDA.

Notification to FDA of Potential Drug Shortages

Section 506C of the FD&C Act requires manufacturers of certain medically necessary drugs to report to FDA a decision to permanently discontinue manufacturing the products or an interruption in manufacturing that is likely to lead to a meaningful disruption in the supply of the product in the United States.

The mandatory reporting provisions in Section 506C apply to drugs that are life-supporting, life-sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including drugs used in emergency medical care or during surgery. FDA's regulations further define the types of drugs that fall into these categories and provide additional details about the timing and content of the information that must be provided to FDA. (*See* 21 C.F.R. 314.81(b)(3)(iii) (drugs approved under Section 505(c) of the FD&C Act), 21 C.F.R. 600.82 (biological products approved under Section 351 of the PH&S Act); 21 C.F.R. 310.306 (marketed unapproved drugs).)

In addition to summarizing the requirements in the statute and the regulations, the Guidance recommends additional actions that manufacturers can take on a voluntary basis to assist the Agency in preventing or mitigating drug shortages related to the COVID-19 pandemic. For example, FDA requests that manufacturers notify FDA of other situations that may interrupt manufacturing, including "a sudden, unexpected spike in demand." This may be particularly relevant in the context of COVID-19, in light of unanticipated increases in demand for approved products that are being used off-label to treat COVID-19.

Contents of the Notification

Section 506C and its implementing regulations outline the minimum information manufacturers must include in a notification, including the name of the product, the name of the application holder or manufacturer, the reason for the discontinuance or interruption, and the estimated duration of the interruption. In addition to these baseline requirements—and to expedite FDA's response to an anticipated shortage—FDA asks that manufacturers also provide additional information about the potential supply disruption or interruption in manufacturing, including:

- The underlying reason or root cause of the potential interruption of supply (e.g., supply chain disruption);
- The estimated date of onset of the potential supply disruption or interruption in manufacturing:
- The estimated duration of the disruption in supply;
- The estimated market share for the product and estimated volume of your historic monthly sales, usage, and/or demand (to help FDA assess the overall impact of the potential disruption);
- Whether the product is manufactured on multiple lines or in multiple facilities;
- Current inventory of product available in your facilities/warehouses;
- When the last batch of finished product will be released for distribution;
- Based on the current demand, how long you expect the supply to last in the marketplace;
- Whether you have emergency or reserve supply of this product;
- Potential for allocation of supply on hand;
- Whether you have released information about the potential shortage to stakeholders (*e.g.*, Dear HCP Letters, supply or shortage information posted on your website); and
- Whether there is anything that FDA can do to help prevent or mitigate a supply disruption, including any proposal that you might have for FDA to review to expedite availability of your product.

The Guidance notes that if you are unable to provide all of the information that FDA has requested, you should provide FDA with an initial notification and supplement the notification as more information becomes available (*i.e.*, manufacturers should not delay their notification in order to be able answer all of FDA's questions at once).

When and How to Notify FDA

The Guidance reminds manufacturers that they are required to notify FDA of a permanent discontinuance or interruption in manufacturing at least six months in advance, or, if that is not possible, as soon as practicable. FDA reiterates the requirement in the regulations that any permanent discontinuance or interruption in manufacturing must be reported no later than five business days after the interruption or discontinuance. FDA underscores, however, the Agency's strong preference for receiving notifications of potential shortages as early as possible.

The Agency reminds manufacturers that mandatory and voluntary notifications of potential shortages should be submitted electronically to the appropriate Center (Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER)) pursuant to the instructions of the relevant Center. For CDER-regulated products, the current options for electronic submission are via email to drugshortages@fda.hhs.gov or through the portal at https://edm.fda.gov/wps/portal/. CBER notifications should be sent via email to cbershortage@fda.hhs.gov.

Note that FDA posts non-confidential information about drug shortages on its website, here for CDER-regulated products and here for CBER-regulated products.

Failure to Notify FDA

If a manufacturer fails to notify FDA in accordance with the mandatory reporting requirements, the Agency will send the manufacturer a noncompliance letter. Manufacturers have 30 days to respond to a noncompliance letter, and FDA will post both the noncompliance letter and the manufacturer's response on the Agency's website within 45 calendar days of sending the noncompliance letter. FDA will not post the noncompliance letter if it determines that it was sent in error or that the manufacturer had a "reasonable basis" for not providing timely notification.

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The Guidance is effective immediately, but comments may still be submitted to the Agency for consideration. FDA that this version of the Guidance will remain in effect for the duration of the public health emergency declared by the Secretary of Health and Human Services, but the Agency plans to revise and replace the Guidance with a generally applicable version when the public health emergency is over. FDA may incorporate changes in the revised guidance, based on public comments received in response to this Guidance.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Food, Drug, and Device Practice:

Denise Esposito	+1 202 662 5562	desposito@cov.com
Thomas Cosgrove	+1 202 662 5260	tcosgrove@cov.com
Paula Katz	+1 202 662 5050	pkatz@cov.com
Cory Trio	+1 202 662 5181	ctrio@cov.com