

# Chinese Government Initiates Significant Drug and Device Regulatory Reforms

November 6, 2017

Food, Drugs, and Devices

---

China has recently announced several initiatives to reform its regulation of drugs and medical devices that could have a significant impact on pharmaceutical and medical device companies doing business in China. On October 8, 2017, the General Office of Chinese Communist Party's Central Committee and the General Office of China's State Council jointly announced an Opinion on Strengthening the Reform of the Drug and Medical Device Review and Approval Process to Encourage Drug and Medical Device Innovation (Decree No. 42, 2017) ("[Opinion No. 42](#)" or "Innovation Opinion"). The Innovation Opinion follows the State Council's 2015 Opinion on Reforming the Drug and Medical Device Review and Approval Process (known as "Document No. 44"). The Innovation Opinion contains 36 specific provisions and is an important blueprint for reform of China's drug and device regulatory system endorsed at a very high level of the government and political system.

The China Food and Drug Administration ("CFDA") issued a decision and multiple implementation proposals shortly after the issuance of the Innovation Opinion. Specifically, on October 10, 2017, CFDA issued a [decision](#) removing certain restraints on clinical trials and registrations in China for imported drugs (CFDA, Notice No. 35). On October 20, 2017, the Center for Drug Evaluation ("CDE") under CFDA issued a [draft guidance](#) on acceptance of foreign clinical trial data. On October 23, 2017, CFDA released [draft amendments](#) to specific provisions in China's primary drug statute—the Drug Administration Law ("DAL"), and more comprehensive [draft amendments](#) to the regulations covering drug development and approval—the Drug Registration Regulations ("DRR").

On October 27, 2017, CFDA released another [draft rule](#) on the regulation of clinical trial sites. Finally, on October 31, 2017, CFDA issued [draft amendments](#) to the device framework regulation—the Medical Device Supervision and Administration Regulation ("MDSAR"). If these draft rules are implemented, it would significantly change the landscape of China's drug regulations and possibly pave the way for other reforms in both the drug and device spaces.

This alert discusses some of the key reform measures in the Innovation Opinion and the subsequent decision and draft proposals.

## Key Reform Measures

---

The Innovation Opinion's 36 provisions focus on 6 important areas: (1) reforming clinical trial management, (2) accelerating drug and device review and approval process, (3) balancing the development of innovative drugs and generic drugs, (4) life-cycle management of drugs and

devices, (5) enhancing drug and medical device review and enforcement force, and (6) implementation of the Innovation Opinion and coordination among the relevant administrative agencies.

The 36 items largely overlap with the CFDA's proposed policies in May. (See our translations of the drafts of [Circular No. 52](#), [Circular No. 53](#), [Circular No. 54](#), and [Circular No. 55](#); see also, our prior [alert](#) that discussed these proposals). The Innovation Opinion now makes what were proposals under the circulars concrete reforms that will happen. CFDA's subsequent decision and proposals show just how fast some of these reforms may be implemented in practice.

## **Reform of Clinical Trial Management**

---

### **Establishing A Notification System for Clinical Trial Sites**

The Innovation Opinion formally adopts a notification system for clinical trial sites. The system allows institutions that meet relevant criteria to carry out clinical trials after registering on CFDA's website. Currently, all the institutions have to go through a more stringent accreditation process—including passing CFDA's pre-approval inspection—in order to conduct clinical trials. The new system could ease these burdens and open the door for more qualified institutions to conduct clinical trials in China.

In order to implement this reform, CFDA has proposed to remove the accreditation requirements for clinical trial sites in the draft DAL. Proposed Article 29 of the draft DAL incorporates the Innovation Opinion's provision on the notification system.

CFDA's draft rule on the regulation of clinical trial sites requires only an online filing via CFDA's system before the trial begins. The site will also be required to update its information if any changes occur, and to furnish an annual report. Notably, the draft rule requires the registered site to file an update when the site receives an inspection notice from an overseas regulatory authority, and to upload the foreign authority's inspection findings within 3 business days of the completion of the inspection. Under the draft rule, clinical trial sites' online registration information will be available for public inspection. However, it is unclear how much of the registered information will be publicly available. This draft rule, if finalized, will replace the current Accreditation Measures for Clinical Trial Sites (CFDA, No. [2014] 44).

### **Establishing A Notification System for Clinical Trial Applications**

The Innovation Opinion also establishes a notification (or implicit approval) system for the clinical trial applications. This is a significant change from the current system which requires express approval for clinical trial applications, which has been a cause for delay in the clinical development process in China. Specifically, under the new notification system, after the sponsor submits the clinical trial application, the application would be deemed approved if the review agency fails to object or raise questions on the application within a certain period of time.

The draft DAL provides that CFDA has 60 business days to conduct its review for new drug clinical trial applications, and then the application will be deemed approved if no objection or question is raised. Article 64 of the draft DRR also incorporates this notification procedure. The same notification requirements also apply to the amendment to clinical trial applications

under the draft DRR (Article 71). If these provisions are incorporated in the final rules, it could substantially reduce delays in the approval of clinical trial applications.

### **Acceptance of Foreign Clinical Data**

The Chinese government also took a clear stance on the acceptance of foreign data in the Innovation Opinion. The Innovation Opinion confirms the position from draft Circular No. 52 that clinical data generated in an overseas multi-center clinical trial can be used to support a marketing authorization application in China, provided that the data satisfy CFDA's requirements. The Innovation Opinion also notes that if the overseas data are used for first-time drugs and devices application in China, the sponsor must submit clinical data to show differences in races or ethnicities. These provisions have been incorporated into the drafts of the DAL and DRR. The proposed amendments to the MDSAR also contain provision on the acceptance of foreign data.

The CDE's draft guidance on acceptance of foreign clinical data provides more detailed requirements. Specifically, the draft guidance states that foreign clinical data used to support a marketing authorization application in China should be complete and meet the requirements under the ICH Good Clinical Practice (GCP) guidelines and China's GCP. The data set should at least contain data related to, among other areas, clinical pharmacology, safety, and efficacy of the drug product. The safety and efficacy data should contain an analysis showing that the results for a Chinese patient group are consistent with those for the global patient population. Based on the review of the data, CDE could choose to accept, partially accept, or reject the foreign data.

### **Removing Restrictions on Clinical Trials and Registrations for Imported Drugs**

The Innovation Opinion allows foreign companies and research entities to conduct new drug clinical trials in China and other regions outside China simultaneously. Related to this, CFDA's decision cancels the requirement in the current DRR that a drug must be in a Phase II or Phase III clinical study or has received marketing authorization abroad before it can begin an international multi-center trial ("IMCT") in China. The relevant provisions have also been removed in the draft DRR.

Now, a sponsor can begin a Phase I IMCT for a drug (other than a preventive biological product) in China in step with the rest of the world. Upon the completion of the IMCT in China, the applicant can also directly apply for a marketing authorization in China without submitting a separate application to waive the requirement for a local China-based trial.

Additionally, the CFDA's decision eliminates certain marketing authorization barriers for certain types of imported drugs. For example, the decision removes the restriction that an imported new chemical drug or innovative therapeutic biologic must be approved overseas before it can obtain approval for development and marketing authorization from CFDA. As a transitional measure, the decision also allows CFDA to grant a marketing authorization to a pending application that is currently seeking waiver of a local trial after completion of an IMCT abroad. These reforms could speed up the development process for certain imported drugs.

## **Accelerating Review and Approval Process**

---

The Innovation Opinion offers important reforms to the review and approval process for drug and medical devices. This includes a conditional approval pathway for certain drugs and medical devices that (1) meet urgent clinical needs, such as treating serious life-threatening diseases where no effective therapies exist, and (2) have early and intermediate phase clinical trials that show positive results. In those cases, CFDA may allow the product to come onto the market on the condition that the applicant conducts the appropriate post-approval study or studies. CFDA requires that the applicant develop a risk evaluation and mitigation plan, and conduct a confirmatory clinical trial after the approval is granted. The draft DRR incorporates this system into its Article 113, which also states that if the applicant fails to meet the conditions agreed on, CFDA may withdraw the approval.

The Innovation Opinion also cancels the separate reviews and approvals for a drug, its active pharmaceutical ingredients (“API”), and its excipients. These separate reviews have been criticized for years. Instead, the Innovation Opinion now requires that the application for the drug and its API, excipients and packaging material should be linked and reviewed together. The draft DAL and DRR implement this new measure. For example, the draft DAL removes the drug license number requirements for the API and proposes for CFDA to review the API and excipients as part of the drug application.

## **New Incentives for Innovation**

---

The Innovation Opinion adopts the patent linkage and regulatory data protection (“RDP”) systems that CFDA proposed in the draft Circular No. 55. For patent linkage, it proposes that the applicant submit a statement of patent rights with a drug marketing application. The applicant must provide notice to the patent right holder within a specific period of time, and during any suit that follows, CFDA may continue to review the application but may determine it will not approve it until the end of the patent litigation or for a certain period of time.

Similarly for RDP, the Innovation Opinion state that China will protect undisclosed trial data for innovative drugs, drugs that treat orphan diseases, pediatric drugs, innovative therapeutic biologics, and drugs that launch a successful patent challenge. RDP will run from the time of approval for marketing. The draft DRR includes similar basic provisions on the patent linkage and RDP. However, the draft DRR states that CFDA will issue more detailed provisions on both the linkage and RDP systems separately.

In addition, the Innovation Opinion has for the first time introduced a pilot patent term restoration program. It states that the government will select certain pioneer drugs for this program. Under the program, the government will provide appropriate compensation for the loss of patent term due to delays caused by the clinical trial and drug review process.

## **Expansion of the Marketing Authorization Holder (“MAH”) Program**

---

The State Council began to implement a drug Marketing Authorization Holder pilot program in 2016, which allowed research organizations and individual Chinese citizens to hold a marketing authorization without possessing any manufacturing facilities. As authorized by the National People’s Congress Standing Committee (“NPCSC”), the pilot program has been implemented in ten major provinces and cities, including Beijing, Shanghai, Guangdong and Tianjin.

The Innovation Opinion requires the agencies to roll out the drug MAH program across the country and also expand the MAH program into the medical device area. In order to expand it this way, the government would either need to request that the legislators remove the restricting provisions for the drug applicants from the existing DAL or seek special authorization from NPCSC again.

The draft DAL adds provisions regarding the MAH program. A new Article 5 adds that China shall establish a marketing authorization holder program. Article 31 confirms that the drug license applicant is deemed a marketing authorization holder. Article 32 clarifies that marketing authorization holder would be responsible for safety and quality issues during the full life-cycle of the drug, including pre-clinical studies, clinical trials, manufacturing, distribution and pharmacovigilance. The draft DAL also adds the corresponding penalty provisions for marketing authorization holders.

In addition, the amendments to the MDSAR include provisions that expand the MAH system to device registration and filing holders. Amendments and new proposed articles allow the license and filing holders to set up their own manufacturing/distribution or contract out and make them responsible for, among other things, the safety and quality of the product and post-marketing surveillance activities.

## Implications and Further Reforms

---

The Innovation Opinion, the subsequent decision and draft rules could substantially reshape certain parts of the current drug and device development, review and approval processes. Drug and device companies doing business in China could consider submitting comments to the draft rules. The comment period on the draft DAL ended on October 30, 2017. Comments on the MDSAR are due on November 12, 2017. Comments for the draft DRR and the draft guidance on acceptance of foreign data are due on November 25, 2017. Comments for the draft rule on the regulation on clinical trial sites are due on November 30, 2017. It is likely that the Chinese government will release more implementation measures in the future, covering areas such as patent linkage and regulatory data protection.

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

**[John Balzano](#)**

+1 212 841 1094

[jbalzano@cov.com](mailto:jbalzano@cov.com)

**[Shaoyu Chen](#)**

+86 10 5910 0509

[schen@cov.com](mailto:schen@cov.com)

**[Weishi Li](#)**

+1 650 632 4725

[wli@cov.com](mailto:wli@cov.com)

**[Anna Zhao](#)**

+1 202 662 5449

[azhao@cov.com](mailto:azhao@cov.com)

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to [unsubscribe@cov.com](mailto:unsubscribe@cov.com) if you do not wish to receive future emails or electronic alerts.