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Expanded Conditional Approval Draft Guidance Issued

September 27, 2019

Animal Food and Drug

Yesterday, the U.S. Food and Drug Administration (FDA) Center for Veterinary Medicine (CVM) issued a draft guidance explaining the criteria it plans to apply when granting "expanded conditional approval" to new animal drugs not intended for minor uses or minor species that address a serious or life-threatening disease or condition or fill an unmet animal or human health need, and that require for approval one or more complex or particularly difficult studies. Expanded conditional approval would allow such drugs to be marketed before fully approved while the sponsor completes the approval process.

Conditional approval of an animal drug allows the sponsor to market the drug after demonstrating safety, manufacture in accordance with approval standards, and a reasonable expectation of effectiveness. The sponsor can market the conditionally approved new animal drug product for one year periods renewable up to five years while gathering the remaining data required to demonstrate efficacy. A conditionally approved drug must be intended either for a minor use (an indication in a major species targeting a condition or disease that occurs infrequently or in limited geographical areas and in only a small number of animals) or for use in a minor species (any species other than dogs, cats, horses, cattle, swine, chickens or turkeys), *i.e.*, a "MUMS" drug.

In 2018, Congress enacted legislation reauthorizing FDA's animal drug user fee program, which also amended section 571 of the Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. § 360ccc) to include provisions creating "expanded conditional approval." The amendments were intended to incentivize development of new animal drugs for serious or life-threatening conditions or unmet animal or human health needs where demonstration of effectiveness would require one or more complex or particularly difficult studies. "Expanded conditional approval" cannot be used for MUMS drugs. The amendments to Section 571 provided that FDA would issue guidance or regulations by September 30, 2019 clarifying the criteria for expanded condition approval. That draft guidance issued yesterday.

Expanded conditional approval extends the conditional approval option to new animal drugs intended either 1) to treat a serious or life-threatening disease or condition or address an unmet animal or human health need 2) when demonstration of effectiveness would require one or more complex or particularly difficult studies. A serious or life-threatening disease or condition is one associated with morbidity that has substantial impact on day-to-day functioning or is associated with mortality in the target animal. A disease or condition may be considered serious based on the magnitude of its effect on animals, its potential to affect humans if they were to contract the disease or condition, or its potential to adversely impact the food supply.

"Unmet animal or human health need" means a disease or condition for which the treatment, control, or prevention is not adequately addressed by available therapy. This includes when an available therapy does not exist for the same intended use proposed for the new animal drug, or the new animal drug product for which expanded conditional approval is sought is reasonably expected to provide a meaningful advantage over available therapy. "Available therapy" means a product that is FDA approved, licensed by the United States Department of Agriculture as an animal biologic, or registered by the Environmental Protection Agency, and is currently being marketed in the U.S. for the same intended use in the same species proposed for the new animal drug product for which expanded conditional approval is sought. Neither conditionally approved drugs nor extra label use of an approved drug can constitute available therapy in this context.

"Meaningful advantage" means that the new animal drug product for which expanded conditional approval is sought is reasonably expected to provide one or more of the following advantages over available therapy:

- Clinically relevant improved effectiveness or beneficial effect;
- Comparable effectiveness in animals that cannot tolerate the available therapy; and
- Effectiveness comparable to available therapy while improving safety, such as by 1) avoiding either serious toxicity or less serious toxicity that is common and causes discontinuation of treatment for a serious disease or condition, 2) reducing the potential for harmful drug interactions, or 3) providing for safe administration with other therapies that are necessary for an improved beneficial effect.

CVM will determine whether a study is complex or particularly difficult on a case-by-case basis based on:

- the nature of the disease or condition making it unusually time-consuming or difficult to enroll sufficient numbers of eligible animals, which can occur when the disease or condition arises sporadically or unpredictably and/or is difficult to diagnose;
- the demonstration of effectiveness is unusually difficult or complex due to logistical challenges, such as needing an unusually large number of animals in the study or studies or the need to use advanced or complicated tests;
- the necessity to develop and qualify effectiveness endpoints (e.g., clinical endpoints, biomarkers) to conduct the study or studies;
- the necessity to develop and validate or qualify novel methods to adequately evaluate effectiveness outcomes;
- the endpoint being evaluated being a delay in progression of a chronically progressive disease or condition, which takes an extended period of time;
- the need to evaluate the treatment of a disease or condition over a lengthy period of drug administration where evaluation of effectiveness for an individual animal will likely take an extended period of time; and
- whether the new animal drug will be indicated for mitigating transmission of a disease from animals to humans and the necessity to conduct one or more studies to evaluate the human aspect of effectiveness.

Expanded conditional approval is not available for transgenic animals or animal drugs containing an antimicrobial active ingredient.

Comments should be submitted to docket FDA-2019-D-3361 on www.regulations.gov beginning on September 30, 2019 and no later than January 28, 2020 to ensure FDA takes the comment into consideration when finalizing the draft guidance.

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

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