KEEP ANTIBIOTICS WORKING

The Campaign to End Antibiotic Overuse

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Sierra Club

Union of Concerned Scientists

Waterkeeper Alliance

December 12, 2005

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Docket No. 2005N-0329

Dear Sir or Madam:

Keep Antibiotics Working (KAW) appreciates this opportunity to submit comments concerning FDA's proposed rule for Designation of New Animal Drugs for Minor Uses or Minor Species under the Minor Use and Minor Species (MUMS) Animal Health Act of 2004 (70 Federal Register 56394). Keep Antibiotics Working (www.KeepAntibioticsWorking.com) is a coalition of health, consumer, agricultural, environmental, humane and other advocacy groups with more than nine million members dedicated to eliminating a major cause of antibiotic resistance: the inappropriate use of antibiotics in farm animals.

Our comments concern the Food and Drug Administration's (FDA's) definition of "minor use" under the MUMS Act. The Act establishes incentives for development and approval of drugs falling under the MUMS Act. Among them, the Act allows conditional approval of drugs that have "minor uses" in "major" animal species – defined by the Act as cattle, swine, chickens, turkeys, dogs, cats, and horses. FDA must interpret the Act's definition of "minor use" as "the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually."

FDA states that "The agency intends at some time in the future to propose that "small number of animals" be defined in regulations as a specific number for each of the seven major species." (70 FR 56396) KAW believes that this is a reasonable approach, but urges that FDA chose numbers that are sufficiently small as to truly represent uses where there is no reasonable expectation that a manufacturer would seek drug approval without the favorable provisions of the MUMS Act.

More detailed comments are presented below.

1. FDA should establish different criteria for determining "small" numbers of food animals versus dogs, cats, and horses

FDA requests comment on criteria the agency should use to determine that the number of animals that is "small." KAW urges that FDA establish different sets of criteria for major species of food animals (cattle, swine, chickens, and turkeys) and for major species of companion and working animals (dogs, cats, and horses). Economic criteria play differently into decisions to administer drugs to these two types of animals. Food animals are destined for slaughter (either immediately upon reaching slaughter weight, or at the end of their useful life, for example as dairy cows), and decisions to administer drugs are driven by economic considerations. Decisions to administer drugs to dogs, cats, and horses, on the other hand, are generally a mix of economic and personal factors, as these animals are frequently valued as individuals and even as family members.

In addition, the safety tradeoffs involved in drug approval are different for food animals than for dogs, cats, and horses. Although drugs approved by FDA for use in food animals must meet a legal standard of safety, many scientists as well as consumers are concerned about the potential human health, animal welfare, and environmental impacts of widespread drug use in food animals. There is not a comparable safety tradeoff for dogs, cats, and horses. In fact, most consumers would likely favor the availability of a new drug for minor conditions in dogs, cats, and horses, even if the drug has not yet been shown to be efficacious.

2. FDA should determine what constitutes a "small" number of food animals based on the anticipated numbers of animals to which a drug will be administered and the duration of use

As FDA points out, drugs are often administered to large groups of food animals – for example, all 30,000 chickens in a chicken house -- even if only some of the animals are or may become ill. Thus, the market for a drug is represented by the number of animals that will be potentially administered a drug, not the number that may become ill. Even if a condition only affects a small number of animals, approval of a drug under the MUMS Act may not be warranted if a far larger number of animals are likely to be given the drug.

The number of animals treated can also increase greatly if a drug is used extralabel. FDA should consider the potential of a drug to be used extralabel when making a minor use designation. This potential could be particularly high if the approval is for a new chemical entity or new dosage form. The extralabel market may include other major species not included in the proposed label greatly expanding the number of animals treated. All reasonably anticipated uses, both label and extralabel, must be considered when determining whether a "small" number of animals will be affected.

Similarly, long term use of a drug, even in a small number of animals, would constitute a much larger market than for shorter term use, and application of the MUMS Act would be less warranted as a means to motivate companies to seek drug approvals. As a simple

means to address this issue, we urge that FDA not consider animal numbers as “small” if food animals are to receive drugs for a long duration – perhaps for a period longer than 21 days. A 21-day cutoff is consistent with FDA's prior definition of long-term use of antimicrobials under FDA’s Guidance #152 (see page 23).

Another justification for such a restriction is that the MUMS Act should not be used as a vehicle to approve additional drugs for use in food animals in order to compensate for the crowded, stressful or unhealthy living conditions found on many industrial-style farms. Because these animals too often live under conditions conducive to disease, food animals on industrial-style farms are given commonly prophylactic drugs over long periods of time. Such prophylactic drug us is outside the intention of the Act as expressed in Section 102 (a) (2), which finds that:

> There is a severe shortage of approved new animal drugs for treating animal diseases and conditions that occur infrequently or in limited geographic areas.

Thus FDA should establish criteria for “minor use” that preclude the use of conditional approvals under the MUMS Act for drugs for long-term prophylactic use, even if the drugs are intended to prevent diseases that occur infrequently or in limited geographical areas.

3. FDA should consider whether data has already been generated as part of an approval in another country before determining whether US incentives are appropriate.

Given that the goal of the MUMS legislation is to overcome insufficient economic incentives to develop data to support approvals, FDA should consider the world market for a drug before giving it a MUMS designation. The US is actively working with many of its trading partners to harmonize regulatory requirements for new animal drugs. Although there are still differences between regulatory systems around the world, much of the data required for approvals in other countries is identical to data required by FDA. A manufacturer of a drug that is already approved in countries with substantially the same approval requirements as the US does not need incentives to develop data and should not be given a MUMS designation.

4. FDA should monitor post-approval sales of MUMS designated drugs to ensure accountability in the MUMS program.

FDA is making a prediction about the future market for a drug if the agency designates or conditionally approves that drug for a minor use. In order to monitor whether the MUMS rule is fulfilling its intended goal to increase the availability of drugs for minor uses, FDA should require annual reports on quantities sold of each designated and conditionally approved drug. This information is essential to determine if the predictions made prior to approval are correct and to insure that the MUMS rule is serving its intended purpose.

Thanks you for your consideration.

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