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Guidance for Industry

Distributor Labeling for New Animal Drugs

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For further information regarding this document, contact Dorothy McAdams, Center for Veterinary Medicine, Division of Surveillance (HFV-210), Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, 240-402-5763, email: dorothy.mcadams@fda.hhs.gov.

Additional copies of this guidance document may be requested from the Policy and Regulations Staff (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, and may be viewed on the Internet at either http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm or http://www.regulations.gov.

U.S. Department of Health and Human Services
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This guidance represents the current thinking of the Food and Drug Administration (FDA or Agency) on this topic. 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. To discuss an alternative approach, contact the FDA office responsible for this guidance as listed on the title page.

I. INTRODUCTION

This guidance describes FDA's current thinking with respect to the factors it considers in determining whether to take regulatory action against distributor labeling for new animal drugs that differs from the labeling approved as part of a New Animal Drug Application or Abbreviated New Animal Drug Application (NADA/ANADA) in ways other than those permitted in 21 CFR 514.80.

In general, FDA's guidance documents do not establish legally enforceable responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in Agency's guidances means that something is suggested or recommended, but not required.

II. BACKGROUND

'Distributor labeling' refers to the labeling[1] of an approved new animal drug marketed by a distributor[2] who distributes the product under its own labeling rather than the approved labeling. Unlike the approved labeling, which CVM reviews as part of NADA/ANADA approval process to ensure the safe and effective use of the drug and compliance with the Federal Food, Drug, and Cosmetic Act (FD&C Act) and its implementing regulations, distributor labeling does not ordinarily go through a pre-market approval process.

[1]Under section 201(m) of the FD&C Act, the term "labeling" means "all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article." In this document, the discussion of "labeling" is limited to immediate container labels, secondary container or carton labeling, all inserts (and outserts), Client Information Sheets (CIS) and other product packaging approved as part of the NADA/ANADA.

[2] For the purpose of this document, distributor means any person whose name or other identifying information appears on the label and who sells, offers to sell, delivers, or offers to deliver a new animal drug product to any recipient (e.g., another distributor, an individual person, a veterinary practitioner, or a veterinary hospital). However, no person shall be considered a distributor solely because their name appears on the label placed on the immediate container of the drug when it is dispensed as described in section 503(f)(2)(B) of the FD&C Act, 21 U.S.C. 353(f)(2)(B).

FDA regulations require that distributor labeling be identical to the labeling approved in the NADA/ANADA, except for a different and suitable proprietary name, if used, and the name and address of the distributor preceded by an appropriate qualifying phrase. See 21 CFR 514.80(b)(5)(iii)(A)(1). These requirements are meant to ensure that distributor labeling complies with the requirements of the FD&C Act and its implementing regulations and to prevent distributor label products from reaching the market with labeling that compromises the safe and effective use of the new animal drug.

If distributor labeling differs from the labeling approved in the NADA/ANADA in ways other than those permitted in 21 CFR 514.80, these differences may misbrand the product under section 502 of the FD&C Act and adulterate the product under section 501 of the FD&C Act.

It has become a common practice for distributors to develop labeling for purposes of branding that differs from the approved labeling with respect to font, color, and graphics. Such differences do not necessarily undermine public health, animal health, or the approval process – particularly when the differences are not false or misleading and do not decrease readability, alter the meaning, or otherwise inhibit the safe and effective use of the drug. This guidance describes FDA's current thinking with respect to factors it will consider in determining whether to take enforcement action against distributor labeling that differs from the approved labeling.

III. REGULATORY REQUIREMENTS

FDA regulations require applicants[3] to submit distributor labeling to CVM at the time of initial distribution of a distributor label product. Specifically, under 21 CFR 514.80(b)(5)(iii), applicants must submit a special drug experience report accompanied by a completed Form FDA 2301 containing the distributor's current product labeling and a signed statement by the distributor.

Under 21 CFR 514.80(b)(5)(iii)(B), the distributor's statement must state the following:

> *(1)* The category of the distributor's operations (e.g., wholesale or retail),
> *(2)* That the distributor will distribute the new animal drug only under the approved labeling,
> *(3)* That the distributor will promote the product only for use under the conditions stated in the approved labeling,
> *(4)* That the distributor will adhere to the records and reports requirements of this section, and
> *(5)* That the distributor is regularly and lawfully engaged in the distribution or dispensing of prescription products if the product is a prescription new animal drug. 21 CFR 514.80(b)(5)(iii)(B).

The regulations at 21 CFR 514.80 also have requirements for the content of distributor labeling. Specifically, they require the following:

[3] Applicant means a person or entity who owns or holds on behalf of the owner the approval for an NADA or ANADA, and is responsible for compliance with applicable provisions of the act and regulations. 21 CFR 514.3.

> *(1)* The distributor's labeling must be identical to that in the approved NADA/ANADA except for a different and suitable proprietary name (if used) and the name and address of the distributor. The name and address of the distributor must be preceded by an appropriate qualifying phrase as permitted by the regulations such as "manufactured for" or "distributed by."
> *(2)* Other labeling changes must be the subject of a supplemental NADA or ANADA as described under §514.8. 21 CFR 514.80(b)(5)(iii)(A).

The applicant's submission of distributor labeling to FDA at the time of initial distribution must include all labeling components required by FDA to accompany the product. For example, if the approved labeling for a new animal drug product includes labeling such as a secondary container or a client information sheet, the distributor labeling must also include these components and this labeling must be submitted to FDA. See 21 CFR 514.80(b)(5)(iii)(A).

In addition to the requirements of 21 CFR 514.80, the provisions of the FD&C Act and its other implementing regulations for new animal drug labeling and proprietary names apply to distributor labeling. Under 21 CFR 201.1(h)(5), qualifying phrases that are permitted before the distributor's name and address as required by 514.80(b)(5)(iii)(A)(1) are limited to:

> "Manufactured for _____", "Distributed by _____", "Manufactured by_____ for _____", "Manufactured for _____by_____", "Distributor:_____", "Marketed by_____".

FDA regulations request but do not require that NDC numbers appear on all drug labels and in all drug labeling. 21 CFR 201.2. NDC numbers uniquely identify the particular product and firm marketing the product. Therefore, distributor labeling should not include the NDC number that appears in the approved product labeling. Rather, distributor labeling should include only the unique NDC number assigned to that particular distributor drug product. If a distributor label does include the NDC number assigned to that particular distributor drug product, the NDC number must be placed on the label as specified in 21 CFR 207.35(b)(3).

In addition, 21 CFR 201.10(g)(2) requires that on all drug labeling, the established name be printed in letters that are at least half the size of the proprietary name.

IV. CONTENT AND FORMAT OF DISTRIBUTOR LABELING

As discussed above, 21 CFR 514.80 requires distributor labeling to be identical to the labeling in the approved NADA/ANADA except for a different and suitable proprietary name, if used, and the name and address of the distributor preceded by an appropriate qualifying phrase as permitted by 21 CFR 201.1(h)(5), such as "manufactured for" or "distributed by." However, as discussed below, CVM is less concerned about differences from the approved labeling with respect to font, color, and graphics unless such differences decrease readability, are false or misleading, alter the meaning, or otherwise inhibit the safe and effective use of the drug.

In addition, CVM encourages distributor labeling to include the following statement on how to contact FDA for information about reporting side effects, even if the approved labeling does not contain such information: "For additional information about adverse drug experience reporting for animal drugs, contact FDA at 1-888-FDA-VETS, or http://www.fda.gov/AnimalVeterinary/SafetyHealth."

CVM is less likely to initiate regulatory action against distributor labeling when all of the following factors are present:

A. Wording and Other Content

- The distributor labeling uses the same wording and other content, including but not limited to dosage charts, boxes, and compressed arrows, in their entirety and in the same order and location as on the approved labeling. For example, wording and content from the front or primary display panel of a secondary container of the approved labeling appears in its entirety and in the same order on the front or primary display panel of a secondary container for the distributor labeling.

B. Font

- If the distributor labeling uses different font type, size or color than the approved labeling, and such differences:
  - do not alter the emphasis or meaning of a label statement;
  - do not adversely affect the ability of the user to read and understand the labeling; and
  - maintain the same relative prominence and emphasis as that used on the approved labeling.

  For example, if the font size of a statement on the approved labeling is 50% larger than the font size of other statements on the labeling, the font size of this statement on the distributor labeling is also 50% larger than that of other statements on the distributor labeling.

- The distributor labeling uses bolding, italicizing and other formatting effects for text, charts, boxes, etc., that have the same relative prominence and emphasis as that used on the approved labeling. For example, text that is bolded, italicized, or otherwise differentiated on the approved labeling is also bolded, italicized, or otherwise differentiated on the distributor labeling.

C. Graphics and Color

- If the distributor labeling uses different graphics and color other than the approved labeling, such differences:

  - are not false or misleading and do not otherwise suggest that the drug is safer, more effective, or useful in a broader range of conditions than those approved in the application;
  - do not adversely affect the reader's ability to read and understand the labeling; and
  - do not distract the reader from information on the approved labeling.

D. Proprietary and Established Names

- If the distributor labeling uses a different proprietary name than the one used in the approved labeling, the proprietary name used is suitable, as required by 21 CFR 514.80(b)(5)(iii)(A)(*1*).

- The established name is at least half the size of the proprietary name, as required by 21 CFR 201.10(g)(2).

E. Contact Information

- The distributor labeling includes the distributor's name and the address of its place of business, as required by 21 CFR 514.80(b)(5)(iii)(A)(1).

- If the approved labeling includes information providing access to technical support and adverse drug experience (ADE) reporting, the distributor labeling also includes information providing such access. For example, if the approved labeling includes a telephone number to call for assistance, the distributor labeling also includes a telephone number to call for assistance.

F. National Drug Code (NDC) Numbers

- If the distributor labeling includes an NDC number, it is the unique NDC number assigned to that particular distributor drug product, and not the NDC number that appears on the approved product labeling.

- If the distributor labeling includes the unique NDC number assigned to that particular distributor drug product, the NDC number is placed on the label as required by 21 CFR 207.35(b)(3).

G. Other Labeling Requirements

- The distributor labeling otherwise complies with applicable labeling requirements in the FD&C Act and its implementing regulations, including 21 CFR Part 201.

V. ADVISORY REVIEW PRIOR TO INITIAL DISTRIBUTION

Applicants may request an advisory review of distributor labeling prior to initial product distribution. This may allow the applicant to become aware of potential compliance issues with the labeling prior to initial distribution of the product. For this review, applicants should submit a special drug experience report accompanied by a completed Form FDA 2301 and a complete set of the distributor labeling. The submission should be identified as "Request for Pre-dissemination Review" and submitted at least 120 days prior to initial product distribution. Following review, CVM will respond to the applicant with comments explaining potential concerns CVM has regarding the labeling.

A submission requesting advisory review will not replace the requirement to submit a distributor statement as described in 21 CFR 514.80(b)(5)(iii).