

(8) Such drug induces cancer when ingested by man or animal or, after appropriate tests for evaluation of the safety of such drug, induces cancer in man or animal, except that this subparagraph shall not apply with respect to such drug if the Commissioner finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice:

(i) Such drug will not adversely affect the animal for which it is intended; and

(ii) No residue of such drug will be found (by methods of examination prescribed or approved by the Commissioner by regulations) in any edible portion of such animal after slaughter or in any food yielded by, or derived from the living animals.

(9) The applicant fails to submit an adequate environmental assessment under §25.40 of this chapter or fails to provide sufficient information to establish that the requested action is subject to categorical exclusion under §25.30 or §25.33 of this chapter.

(10) The drug fails to satisfy the requirements of subpart E of part 500 of this chapter.

(11) Any nonclinical laboratory study that is described in the application and that is essential to show that the drug is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling, was not conducted in compliance with the good laboratory practice regulations as set forth in part 58 of this chapter and no reason for the noncompliance is provided or, if it is, the differences between the practices used in conducting the study and the good laboratory practice regulations do not support the validity of the study.

(b) The Commissioner, as provided in §514.200 of this chapter, shall expeditiously notify the applicant of an opportunity for a hearing on the question of whether such application is approvable, unless by the 30th day following the date of issuance of the letter informing the applicant of the intention to issue a notice of opportunity for a hearing the applicant:

- (1) Withdraws the application; or
- (2) Waives the opportunity for a hearing; or

(3) Agrees with the Commissioner on an additional period to precede issuance of such notice of hearing.

[40 FR 13825, Mar. 27, 1975, as amended at 43 FR 22675, May 26, 1978; 44 FR 16007, Mar. 16, 1979; 50 FR 7517, Feb. 22, 1985; 50 FR 16668, Apr. 26, 1985; 52 FR 49588, Dec. 31, 1987; 54 FR 18280, Apr. 28, 1989; 62 FR 40600, July 29, 1997; 63 FR 10770, Mar. 5, 1998; 64 FR 40757, July 28, 1999; 64 FR 63204, Nov. 19, 1999]

§514.115 Withdrawal of approval of applications.

(a) The Secretary may suspend approval of an application approved pursuant to section 512(c) of the act and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing on a finding that there is an imminent hazard to the health of man or of the animals for which such new animal drug or animal feed is intended.

(b) The Commissioner shall notify in writing the person holding an application approved pursuant to section 512(c) of the act and afford an opportunity for a hearing on a proposal to withdraw approval of such application if he finds:

(1) That the application contains any untrue statement of a material fact; or

(2) That the applicant has made any changes from the standpoint of safety or effectiveness beyond the variations provided for in the application unless he has supplemented the application by filing with the Secretary adequate information respecting all such changes and unless there is in effect an approval of the supplemental application, or such changes are those for which written authorization or approval is not required as provided for in §514.8. The supplemental application shall be treated in the same manner as the original application.

(3) That in the case of an application for use of a new animal drug approved or deemed approved pursuant to section 512(c) of the act:

(i) Experience or scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; or

(ii) New evidence not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods,

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or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved or that section 512(d)(1)(H) of the act applies to such drug; or

(iii) On the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that such drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

(4) That any nonclinical laboratory study that is described in the application and that is essential to show that the drug is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling, was not conducted in compliance with the good laboratory practice regulations as set forth in part 58 of this chapter and no reason for the noncompliance is provided or, if it is, the differences between the practices used in conducting the study and the good laboratory practice regulations do not support the validity of the study.

(c) The Commissioner may notify in writing the person holding an application approved pursuant to section 512(c) of the act and afford an opportunity for a hearing on a proposal to withdraw approval of such application if he finds:

(1) That the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports in accordance with a regulation or order under section 512(1)(1) of the act, or the applicant has refused to permit access to, or copying, or verification of, such records as required by section 512(1)(2) of the act; or

(2) That on the basis of new information before him evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls

used for, the manufacture, processing, and packing of such drug or animal feed are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or

(3) That on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of.

(d) Approval of an application pursuant to section 512(c) of the act will be withdrawn on the basis of a request for its withdrawal submitted in writing by a person holding an approved new animal drug application on the grounds that the drug subject to such application is no longer being marketed and information is included in support of this finding, provided none of the conditions cited in paragraphs (a), (b), and (c) of this section pertain to the subject drug. A written request for such withdrawal shall be construed as a waiver of the opportunity for a hearing as otherwise provided for in this section. Withdrawal of approval of an application under the provisions of this paragraph shall be without prejudice.

(e) On the basis of the withdrawal of approval of an application for a new animal drug approved pursuant to section 512(c) of the act, the regulation published pursuant to section 512(i) of the act covering the conditions of use of such drug as provided for in the application shall be revoked.

[40 FR 13825, Mar. 27, 1975, as amended at 50 FR 7517, Feb. 22, 1985; 64 FR 63204, Nov. 19, 1999]

§514.116 Notice of withdrawal of approval of application.

When an approval of an application submitted pursuant to section 512 of the act is withdrawn by the Commissioner, he will give appropriate public notice of such action by publication in the FEDERAL REGISTER.