

§514.111

21 CFR Ch. I (4–1–10 Edition)

§514.111 Refusal to approve an application.

(a) The Commissioner shall, within 180 days after the filing of the application, inform the applicant in writing of his intention to issue a notice of opportunity for a hearing on a proposal to refuse to approve the application, if the Commissioner determines upon the basis of the application, or upon the basis of other information before him with respect to a new animal drug, that:

(1) The reports of investigations required to be submitted pursuant to section 512(b) of the act do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; or

(2) The results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; or

(3) The methods used in and the facilities and controls used for the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; or

(4) Upon the basis of the information submitted to the Food and Drug Administration as part of the application, or upon the basis of any other information before it with respect to such drug, it has insufficient information to determine whether such drug is safe for use under such conditions. In making this determination the Commissioner shall consider, among other relevant factors:

(i) The probable consumption of such drug and of any substance formed in or on food because of the use of such drug;

(ii) The cumulative effect on man or animal of such drug, taking into account any chemically or pharmacologically related substances;

(iii) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such drugs, are appropriate for the use of animal experimentation data; and

(iv) Whether the conditions of use prescribed, recommended, or suggested

in the proposed labeling are reasonably certain to be followed in practice; or

(5) Evaluated on the basis of information submitted as part of the application and any other information before the Food and Drug Administration with respect to such drug, there is lack of substantial evidence as defined in §514.4.

(6) Failure to include an appropriate proposed tolerance for residues in edible products derived from animals or a withdrawal period or other restrictions for use of such drug if any tolerance or withdrawal period or other restrictions for use are required in order to assure that the edible products derived from animals treated with such drug will be safe.

(7) Based on a fair evaluation of all material facts, the labeling is false or misleading in any particular; or

(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 in-

formation 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, 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.