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Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane
Room 1061
Rockville, Maryland 20852

MERCK
Research Laboratories

RE: Docket No. 02D-0018
Draft Guidance: Collection of Race and Ethnicity Data in Clinical Trials for FDA Regulated Products

Merck & Co., Inc., is a leading worldwide, human health product company. Merck's corporate strategy -- to discover new medicines through breakthrough research -- encourages us to spend more than $2 billion annually on worldwide Research and Development (R & D). Through a combination of the best science and state-of-the-art medicine, Merck's R & D pipeline has produced many of the important pharmaceutical products on the market today.

Merck Research Laboratories (MRL), Merck's research division, is one of the leading U.S. biomedical research organizations. MRL tests many compounds as potential drug candidates through comprehensive, state-of-the-art R & D programs. Merck supports regulatory oversight of product development that is based on sound scientific principles and good medical judgment.

In the course of bringing Merck product candidates through developmental testing and clinical trials, Merck scientists regularly address issues affected by this draft guidance (hereafter referred to as the Guidance). We have extensive experience in collecting race information in clinical trials conducted in the United States and abroad for both drugs and biologics.

We present two comments, requests for clarification, and conclusions. Where possible, we reference our comments by relevant line number in the Guidance.

1. OMB Definitions Applied to International Pharmaceutical Development

In the January 30, 2003, *Federal Register* notice, the Agency specifically asked for comments on the general applicability of this Guidance to clinical trials of medical devices. However, the FDA did not inquire about the applicability of this Guidance to drugs and biologics, nor did the FDA place this Guidance in the context of international harmonization efforts (e.g., ICH). We view these omissions as oversights that if addressed, would lead one to conclude that this Guidance should NOT be applied to any FDA regulated products for the reasons outlined below.

Clinical trials conducted under FDA regulations should be exempt from complying with OMB Directive 15 due to the extensive international component of pharmaceutical development. The review of data generated in international clinical trials is a unique aspect of FDA's mission, very different from the data collection and review by other government agencies that focus exclusively on data regarding U.S. citizens. The OMB Directive 15 should not be applied to the

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information submitted to and reviewed by FDA, nor should it impact information submitted to and reviewed by foreign regulatory authorities.

OMB's *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity* (FR Notice 58782, Vol. 62, No. 210, Thursday, October 30, 1997), state that the standards apply to medical and other research, and, "*The categories represent a social-political construct designed for collecting data on the race and ethnicity of broad population groups* ***in this country,. . . .***" We agree that OMB's racial and ethnic definitions generally apply to clinical trials conducted in the United States; however, they are not applicable or feasible when considered on a global basis for international clinical trials. Insisting on the use of racial and ethnic labels that are based on American standards will complicate the use of racial and ethnic categories in clinical development programs throughout the world where these definitions may not meaningfully represent the race or ethnicity of the populations being studied. Furthermore, the use of racial and ethnic categories that are not applicable to the patients in our international studies will not contribute to a better understanding of the safety and efficacy profiles of new products. Therefore, we recommend against the application of American racial and ethnic labels to pharmaceutical development conducted in a global environment. This position is consistent with the ICH objectives to identify and correct redundancies and inefficiencies in the development of pharmaceuticals caused by incompatible regulatory schemes.

Lastly, we encourage the FDA to be particularly sensitive to racial and ethnic labels that may offend foreign citizens and regulatory authorities, although the terms are considered politically correct in the U.S. For example, the ethnicity categories, *Hispanic or Latino* and *NOT Hispanic or Latino* **(Line 157)** do not apply outside of the U.S., where the terms are inappropriate. South American countries, such as Brazil, do not consider themselves to be *Hispanic or Latino,* even though they include "*.. person(s) of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.*" As a rule, Merck uses *Hispanic or Latino* to collect demographic information only for clinical trials conducted in the U.S. We do not use these labels outside the U.S., where they are irrelevant or may offend clinical trial participants and regulators.

For these reasons, Merck strongly recommends against implementation of the standardized approach being recommended by the OMB to clinical trials conducted in the United States and abroad for FDA regulated products.

2. Implementation Details

If the FDA is compelled to implement this Guidance, it would be helpful if FDA would describe its implementation expectations and requirements in the *Federal Register* notice accompanying the final Guidance. We note that the proposed Guidance relies heavily on information already available in OMB Directive 15, but lacks information specifically with regard to how FDA expects sponsors to comply with and apply the Guidance in the setting of international clinical trials. For example, how do the OMB categories affect the integration of U.S. and foreign data in marketing applications? What will the Agency require regarding U.S. and foreign racial and ethnic categories in summaries of safety datasets?

Merck recommends that the FDA give sponsors adequate time (e.g., at least one year) to convert case report forms, databases, table structures, and dictionaries to the OMB categories. Furthermore, Merck recommends that the Agency make the Guidance apply only to studies that are initiated after the effective date, grandfathering studies that are already completed or that are underway.

3. Requests for Clarification

Finally, it would be helpful if the Final Guidance could clarify or address the following points:

Line 157: Why do OMB's minimum recommendations for ethnic categories include that only *Hispanic or Latino* be captured? In a global environment, other ethnic categories are as important, such as *Middle Eastern, Arab, Japanese, Chinese, etc.*

Lines 165 and 200: Why are there two categories to capture *Black* trial participants? Is there a reason to distinguish *Black or African American* for U.S. trials from *Black, of African heritage* for trials outside the U.S.? FDA should clarify how this distinction is relevant to data analyses based on racial factors. Furthermore, we recommend that Appendix 2 (page 12, Item 1) include a definition for *Black, of African heritage*.

Line 411: Why does the definition of *American Indian or Alaska Native* require that persons answer affirmatively to both parts of the statement (origin AND affiliation/attachment)? This appears to complicate the questions and result in more negative responses. We suggest that OMB consider revising this definition in future updates to Directive 15 so that it reads, "*A person having origins in any of the original people of North and South America (including Central America)~~, and who maintains tribal affiliation or community attachment~~.*"

Line 423: Does *Native Hawaiian or Other Pacific Islander* include aborigine, Ainu, and Veddah peoples?

In conclusion, Merck recommends against the application of American racial and ethnic labels to pharmaceutical development conducted in a global environment. However, if this Guidance must be implemented, Merck recommends that the Agency grant sponsors appropriate lead time to convert data collections to the recommended categories and impose the Guidance only on clinical trials that are started after the effective date.

We welcome the opportunity to meet with you to discuss these issues.

Sincerely,

Lauren M. Hetrick

for David Blois, Ph.D.
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