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

Reg: Docket No. 2005N-0403 Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs that are Regulated Under a Biologics License Application, and Animal Drugs

RIN 0910-AA49

Dear Sir/Madam:

Genpharm Inc, a subsidiary of Merck KgA, based in Toronto, Canada, is a manufacturer and exporter of drug products to Canada, United States and Internationally.

We are submitting our comments in the following pages seeking further clarification on several areas of FDA's proposed amendment to its regulations governing drug establishment registration and drug listing.

Sincerely,

Salendar Kumar
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1. Assignment of the NDC

Per page 51299 of the Federal Register-Docket No. 2005N-0403/ Vol. 71, No. 167/ Tuesday, August 29, 2006/Proposed Rules, "the NDC numbers currently assigned to drugs prior to effective date of the rule would remain unchanged, provided those NDC numbers would comply with the new regulations as finalized. FDA intends to validate that current NDC numbers comply with the new regulations as finalized." Since the current rule for the assignment of NDC number is consistent with the proposed rule in terms of using the same configuration and number of digits, further clarification on the type of validation that FDA intends to perform is required. How will applicants with "invalid" NDC be notified and what will be the process to change the NDC?

It should be clarified if FDA intends to develop a consistent package code for each packaging format i.e. every bottles of 60's will be given package code of 05, etc.? If the intention is to develop a consistent package code, there could be instances where the package code may be assigned to a different existing format that could lead to different packaging formats with same NDC numbers.

2. Timing of requests for NDC assignment

It is not clear from the proposed rule when a sponsor can or should request the assignment of NDC during the review of a drug application. For example, during the review process, final print labeling will be requested for submission to the NDA/ANDA. We would need to know the NDC prior to this point in the submission. Also, foreign companies often market their products through distributors in the US. When in the submission process can the NDC for distributor labeling be requested? Ideally, this would be the same time as the manufacturer's request. Generic products are usually launched to the market within days of FDA approval, so labeling needs to be printed and applied to packages (at risk) prior to approval of the application. The process, communication mechanism and turnaround time for issuing the NDC by FDA needs further clarification.

3. Submission of listing applications.

Currently, FDA will not accept submissions for drug listing unless the product has received a final approval from FDA and a copy of the final approval letter is included in the listing submission. Per proposed section 207.49, the proposed listing information for manufacturers include "approved US application number or approved US BLA number,

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if any". Hence, it suggests that the drug product listing can be done prior to obtaining approval of the application. It should be clarified in the final rule if the application approval is needed to submit drug listing.

If the approval of the application is not required for drug product listing, it should be clarified what, if any, further notification to FDA is required after approval and the content as well as the format of further notification.

If the listing application can be submitted prior to application approval, when will the listing be added to the FDA database used by the customs agents? The current system causes significant delays in launch for foreign products since Customs will not release them at the border unless the NDC is listed. This represents a significant market disadvantage to foreign sourced products since domestic product can be shipped simultaneously with the listing application.

4. Batch size and number of batches

Page 51312 of the Federal Register-Docket No. 2005N-0403/Vol. 71, No. 167/ Tuesday, August 29/Proposed Rule indicates that the FDA is considering establishments to provide number of batches and batch size for each drug subject to the listing requirements that they manufacture. Justification for such proposal should be provided, as this information is already provided in the annual report to the application. Providing this information again creates redundancy and increases the reporting burden on the manufacturers.

5. Electronic access; agent or firm?

Per section 207.69, one of the defined requirements for an official contact and a United States agent is to ensure the accuracy of registration and listing information. The proposed rule highlights the registration, application for NDC number and listing requirements of the foreign manufacturers, foreign repackers, foreign relabeler and foreign drug product salvagers but does not clarify the role of the official contact person or the United States agent with respect to the registration, application for NDC number, listing of the initial application and updating, using the electronic system. Will the firm be enabled to log in to update their own information or will this be restricted to the agent?

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6. Confidentiality of information

Per section 207.81, all registration information and all listing information after the drug is listed except for information obtained under 207.33 (d)(1)(ii) and 207.54(b)(1) will be available for public disclosure at FDA's own discretion. If drug listing can be performed (see above) prior to approval of the application, and/or the NDC is assigned prior to the approval of the application, the company's sensitive information may be available for public disclosure that is inappropriate for an unapproved product. This needs to be elaborated in the final rule.

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