DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

JUL 29 1998

Donald A. Gable, D.V.M.
Manager, Pharmaceutical Regulatory Affairs
Boehringer Ingelheim Vetmedica, Inc.
15th & Oak
P.O. Box 338
Elwood, Kansas 66024

Dear Dr. Gable:

As you are aware, Bacitracin Methylene Disalicylate and [redacted] appear as listings for Boehringer Ingelheim in 21 CFR § 558.15 (the Food and Drug Administration's (FDA) regulation providing for interim marketing of antibiotics and combinations of antibiotics). The preamble to 21 CFR § 558.15 states that only new animal drugs which had been determined to be approved for use by a new animal drug application, a new drug application, a master file, an antibiotic regulation or a food additive regulation were listed as having interim marketing rights. (41 FR 8282, 8285, February 25, 1976). This statement was made in response to a comment regarding the impact on section 558.15 of the court decision in Hoffman-LaRoche v. Weinberger, 425 F.Supp. 890 (D.D.C. 1975). That decision held that an Agency policy that allowed the marketing of unapproved drugs was inconsistent with the Federal Food, Drug, and Cosmetic Act. Therefore, the Agency intended to include in the 21 CFR § 558.15 listings only new animal drugs or combinations of new animal drugs and conditions of use approved by one of the mechanisms described above.

When the Agency attempted to reconstruct its records of the approvals for new animal drugs or combinations of new animal drugs and conditions of use subject to the listings in 21 CFR § 558.15, it found the records for some of them to be incomplete. The Agency previously advised sponsors of some new animal drugs listed in section 558.15 of the incomplete state of the Agency's records in the Notices of Opportunity for Hearings (NOOHs) on proposed withdrawal of approvals for certain antibiotic uses (42 FR 43772,43773, August 30, 1977; 42 FR 56264, 56265, October 21, 1977). The notices state that:

> [u]nder section 108(b)(2) of the Animal Drug Amendments of 1968 (Pub. L. 90-399), any approval of a new animal drug granted prior to the effective date of the amendments whether through approval of a new drug application, master file, antibiotic regulation, or food additive regulation, continues in effect until withdrawn in accordance with the provisions of section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b). Many such approvals were issued long ago, and some may never have been used by the holder of the approval.

> Consequently, the current files of the ... FDA may be incomplete and may fail to reflect the existence of some approvals.

The NOOH requested sponsors with approved new animal drugs that were within the scope of the notices but not listed in the notices to submit proof of the existence of approvals to the Agency. In addition, the Agency has found that the records for other new animal drugs listed in section 558.15 that were outside the scope of the 1977 NOOHs are incomplete.

The Agency has been unable to reconstruct from its records the existence of an approval for a product or products represented by the following listings for Boehringer Ingelheim in section 558.15: Bacitracin Methylene Disalicylate and the combination of [redacted] While the agency does have its statement in the preamble to 21 CFR § 558.15 that all new animal drugs listed in the regulation were subject to approvals, the Agency has inadequate documentation to support an approval for new animal drugs subject to the listings noted above.

The Agency would like to resolve the factual issues resulting from the incomplete nature of the Agency's current records and confirm the approval status of new animal drugs for the conditions of use listed in section 558.15. In this regard, we are requesting assistance from all sponsors of new animal drugs listed in section 558.15 for which our records are incomplete. We are asking that such sponsors, if they have information (including statements from persons with personal knowledge) establishing that an approval corresponding to a specific listing in section 558.15 was granted prior to the February 25, 1976, publication date of 21 CFR § 558.15, identify the involved product(s) and certify the approval status to the Agency.

If you have information regarding the approval status of new animal drugs or combinations of new animal drugs corresponding to the listings cited in this letter, we ask that you identify each such new animal drug or combination of new animal drugs, attach associated product labeling, and certify its approval status. The Agency will use the certification you provide along with the statement in the preamble to 21 CFR § 558.15 and other information in the Agency's files regarding the approval status of the new animal drug as the administrative record of the approval.

This record would help ensure that Agency actions are consistent with the actual approval status of your new animal drug(s). Furthermore, this record will be used to respond to any judicial challenge to a new animal drug's approval status. While the Agency cannot guarantee that a court would find this record sufficient if the approval status is challenged, the Agency believes it can make arguments in light of the history surrounding new animal drugs in this class (e.g., the transition under the 1968 amendments, the long passage of time since the approvals were granted, etc.) to support a finding by a court that the record is adequate.

Your certification should be in the form of a letter signed by an individual with the authority to bind the firm in matters relating to new animal drug applications, and should contain the following language: "I (name and title of the responsible individual at the firm, including the

firm's name) CERTIFY that (name of new animal drug or combination of new animal drugs) was approved for (firm name) by the Food and Drug Administration by (specify the type of approval: 1) new animal drug application; 2) new drug application; 3) antibiotic regulation; 4) food additive regulation; or 5) master file) prior to February 25, 1976, for the following species, use levels, and indications for use listed in 21 CFR 558.15: (specify same)." If you are certifying the approval status of several products, repeat this statement for each product. If the approval was granted to any entity other than the present firm, your certification should include a description tracing the ownership of the approval from the original recipient to the firm named in the current certification. You should attach to the certification labeling consistent with the approval but no greater in scope than the listing in section 558.15 for each new animal drug for which certification is being made. Your certification letter should also include the following statements "I CERTIFY that all the statements made in this letter are true and complete to the best of my knowledge and ability and that the attached new animal drug labels are true and complete copies. I understand that, as with any other statements provided to the Food and Drug Administration, wilfully making a false certification is a criminal offense under U.S. Code, Title 18, Sec. 1001."

We ask that you provide the above certification within 60 days. Once the approval status of products subject to a small group of listings in section 558.15 is clarified, the Agency at present anticipates codifying elsewhere in Part 558 as approval regulations products for which certification is received, and subsequently taking steps to withdraw section 558.15. If you have any questions, please contact Andrew J. Beaulieu, Deputy Director, Office of New Animal Drug Evaluation at the Center for Veterinary Medicine. We thank you for your assistance in this matter.

Sincerely yours,

Stephen F. Sundlof, D.V.M., Ph.D.
Director, Center for Veterinary Medicine