Pharmaceutical & Medical Device Regulatory Update
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JONES DAY

Top News

FDA Releases Draft Guidance, Proposed Rule Affecting Biosimilar Nonproprietary Names
On August 28, 2015, FDA issued a draft guidance regarding nonproprietary naming of biological products, which addresses the agency's current thinking on the need for biological products to bear a nonproprietary name that includes an FDA-designated suffix. Additionally, FDA states that it believes that shared nonproprietary names are not appropriate for all biological products, finding a need for clearly identifiable products to support pharmacovigilance activities and to safely use products that have not been determined to be interchangeable. In releasing the draft guidance document, FDA put forth a series of questions in the notice relating to the benefits and challenges of using a suffix and related topics, requesting feedback by October 27, 2015. In a separate but related action, FDA issued a proposed rule to designate official names and proper names for certain biological products, including: (i) the reference products for an approved or publicly disclosed biosimilar application; (ii) a related biological product to one of the reference products; or (iii) biosimilar product. FDA is accepting comments on the proposed rule and its application by November 12, 2015.

FDA Updates List of Tropical Diseases Eligible for Award of Priority Review Voucher
In a final order issued August 20, 2015, FDA updated the list of tropical disease products eligible to receive a priority review voucher ("PRV"), an incentive to encourage the development of new drugs for the prevention or treatment of certain diseases by providing priority review of a subsequent human drug application. While the Federal Food, Drug, and Cosmetic Act (the "FDCA") lists 17 eligible diseases, it also authorizes FDA to expand the list to include "[a]ny other infectious disease for which there is no significant market in developed nations and that disproportionately affects poor and marginalized populations." Under criteria established in the order, FDA determined that Chagas disease, a potentially life-threatening illness caused by the protozoan parasite *T. cruzi*, and neurocysticercosis, a parasitic infection caused by larval cysts of pork tapeworms, satisfy the definition of "tropical diseases," and FDA added them to the list of designated tropical diseases. FDA also explained the criteria it applied, and will apply in the future, when expanding the list.

Read More

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UPCOMING EVENTS

September 17–18, 2015: Laura Laemmle-Wiedenfeld will give a presentation on *Damages and Penalties Under the FCA* at the CLE International Conference in San Francisco, CA.

October 1–2, 2015: Colleen Heisey will moderate a session titled *Challenging Hypotheticals*, at the Food & Drug Law Institute ("FDLI")'s program on Advertising and Promotion for the Pharmaceutical, Medical Device, Biological, and Veterinary Medicine Industries, in Washington, D.C.

October 15–16, 2015: Colleen Heisey will moderate a panel discussion at the Medical Device Law 2015 Conference, cosponsored by the American Bar Association ("ABA"), Medical Device Manufacturers Association, and FDLI, in Washington, D.C.

October 24, 2015: Maureen Bennett will speak about *International Clinical Research Issues* at the ABA's Section of International Law fall meeting in Montreal.

December 2, 2015: Maureen Bennett will give a presentation on *International Clinical Research Issues* to the Boston Bar Association's Health Law Education Committee.

RELATED PRACTICES

FDA Regulatory & Compliance Counseling
Health Care
Life Sciences

FDA Sends Warning Letters to Three Duodenoscope Manufacturers
On August 12, 2015, FDA issued warning letters to three manufacturers of duodenoscope products, in a seemingly coordinated effort to address public health concerns following the agency's inspections of their facilities earlier this year. FDA cited the companies for violations of misbranding under Section 502(t)(2) of the FDCA and adulterated products under Section 501(h) of the FDCA due to, among other things, failures related to device design and production controls, complaint processing, and other good manufacturing practice requirements. Two manufacturers were warned for not properly submitting Medical Device Reports after becoming aware of serious safety risks associated with their products. Another company was cited for failing to report to FDA when it initiated a correction or removal of the device to reduce a device-related health risk.

In recent months, some public health authorities and hospitals have alleged the devices contribute to the spread of antibiotic-resistant "super bugs" during gastrointestinal procedures, allegedly because of flaws in the products' designs. FDA's warning letters follow actions by the U.S. Department of Justice earlier this year to investigate the same manufacturers for possible violation of criminal law.

EMA Releases Update to GCP Guideline
On August 21, 2015 the European Medicines Agency ("EMA") released an addendum to the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) E6 (R2) Guideline on Good Clinical Practice (GCP) for six-month public consultation. The amendments to the guideline aim: (i) to encourage implementation of improved and more efficient approaches to clinical trial design, conduct, oversight, recording and reporting while continuing to ensure the protection of clinical trial participants, and data integrity; and (ii) to update standards regarding electronic records and essential documents intended to increase the quality and efficacy of clinical trials. The consultation is open until February 6, 2016 and stakeholders are invited to submit their comments using the template provided.

FDA Issues Draft Guidance on "Rare Diseases"
FDA has released a draft guidance document entitled, *Rare Diseases: Common Issues in Drug Development Guidance for Industry*, which is intended to help sponsors conduct more efficient and successful clinical development programs for rare diseases—disorders or conditions as defined by the Orphan Drug Act that affect less than 200,000 persons in the United States. FDA provides insight on the following components of rare disease drug development: description and understanding of the disease's natural history; understanding of the pathophysiology of the disease and the drug's proposed mechanism of action; nonclinical pharmacotoxicity considerations to support the proposed clinical investigations; standards of evidence to establish safety and effectiveness; reliable endpoints and outcome assessment; and drug manufacturing considerations during drug development. FDA announced the draft guidance document in the August 17, 2015, *Federal Register*. FDA is seeking comments on the draft guidance by October 16, 2015.

CDER Director Discusses Role of Patient Advocates in Drug Development
In a recently released podcast, Janet Woodcock, director of FDA's Center for Drug Evaluation and Research ("CDER"), discussed how patient advocacy groups are playing a more significant role in the drug development process. Woodcock highlighted the draft regulatory guidance that CDER received from the group Parent Project Muscular Dystrophy ("PPMD") in 2014. She indicated that FDA took the draft from PPMD, condensed and revised it, and released its own draft guidance for industry, which is out for public comment. In a strong endorsement of patient advocacy groups, Woodcock opined that "people with chronic diseases are really expert in their disease" and have perspectives and input that should be considered. For example, as noted in the PPMD guidance, the typical outcome measure of a six-minute walk test unnecessarily excludes patients in wheelchairs or who are otherwise too young to walk, even though these patients could perform other meaningful outcome measures useful for the drug development process. Patient groups also provide firsthand insights on how study designs impact participating patients and families.

Other News

FDA Approves Drug to Treat Hypoactive Sexual Desire Disorder in Certain Women

Court Filing Indicates Amarin in Settlement Discussions with FDA Regarding Off-Label Promotion Case

Pilot Program to Focus on Medical Device Reporting on Malfunctions

FDA Warns that DPP-4 Inhibitors for Type 2 diabetes May Cause Severe Joint Pain

UK Health Report Recommends Use of E-Cigarettes as Alternative to Normal Cigarettes

US New Drug Approvals Reach 18-Year High

FDA-Industry Collaborators Publish Guidelines for Using Graphics to Present Safety Data

Indian Government Suspends Trade Talks with EU, Due to Refusal to Lift Generics Ban

Regulatory Updates

FDA Proposes Rule on Official Names and Proper Names for Certain Biologics
In the August 28, 2015, *Federal Register*, FDA published a proposed rule to designate official names and proper names for certain biological products: filgrastim-sndz (Biologics License Application ("BLA") 125553), filgrastim (BLA 103353), tbo-filgrastim (BLA 125294), pegfilgrastim (BLA 125031), epoetin alfa (BLA 103234), and infliximab (BLA 103772). The official names and proper names of these products would include distinguishing suffixes composed of four lowercase letters and would be designated as filgrastim-bflm (BLA 125553), filgrastim-jcwp (BLA 103353), filgrastim-vkzt (BLA 125294), pegfilgrastim-ljfd (BLA 125031), epoetin alfa-cgkn (BLA 103234), and infliximab-hjmt (BLA 103772). For more information on the proposal, see the above news feature. ***Comments due November 12, 2015.***

FDA Publishes Report by Medical Device Epidemiology Network Registry Task Force
In the August 25, 2015, *Federal Register*, FDA announced the availability of the report entitled *Recommendations for a National Medical Device Evaluation System: Strategically Coordinated Registry Networks to Bridge the Clinical Care and Research*. The purpose of the report is to assist FDA's Center for Devices and Radiological Health in evaluating the safety and effectiveness of medical devices in use and to help the public access accurate, scientific information to improve their health. ***Comments due October 26, 2015.***

FDA Announces Support for Study Data Tabulation Model Implementation Guide Version 3.2
In the August 18, 2015, *Federal Register*, FDA's Center for Biologics Evaluation and Research ("CBER") and CDER announced their support for the 3.2 version of Clinical Data Interchange Standards Consortium Study Data Tabulation Model Implementation Guide. FDA is encouraging sponsors to use this guide in investigational study data provided in regulatory submissions to CBER and CDER.

FDA Publishes Modification to the List of Recognized Standards of the FDA Modernization Act of 1997
In the August 14, 2015, *Federal Register*, FDA announced the publication of *Modifications to the List of Recognized Standards, Recognition List Number: 040*. The revised list will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

FDA Requests Participation in Pilot Program for Medical Device Reporting on Malfunctions
In the August 18, 2015, *Federal Register,* FDA solicited nominations for participation in a pilot program for the submission of medical device reports for malfunctions of class I and certain class II devices in summary format on a quarterly basis. ***FDA will begin accepting nominations September 1, 2015.***

FDA Announces Approval of Praluent (alirocumab) Through PRV Program
In the August 24, 2015, *Federal Register*, FDA announced the approval of Praluent (alirocumab), under an application for which the sponsor redeemed a rare pediatric disease PRV. Praluent is indicated as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with heterozygous familial hypercholesterolemia or clinical atherosclerotic cardiovascular disease, who require additional lowering of low density lipoprotein cholesterol. As amended by the Food and Drug Administration Safety and Innovation Act, the FDCA authorizes FDA to redeem PRVs for product applications that might otherwise not qualify for priority review.

FDA Establishes Public Docket for Use of the Inactive Ingredient Database
In the August 20, 2015, *Federal Register*, FDA announced the establishment of a public docket to receive comments from interested parties on enhancing the utility and usability of the Inactive Ingredient Database (IID), which provides information on inactive ingredients in FDA-approved drugs. These comments will help FDA identify the best practices to assist FDA staff in designing and maintaining the IID.

FDA Announces Revised Fees for Issuing Export Certificates for Devices
In the August 19, 2015, *Federal Register*, FDA announced the revised fees it will assess for issuing export certificates for devices. Due to an increase in costs to process the device certificates, FDA is raising the fees for subsequent certificates, from the current fee of $15 to $85, and revising the formula used to calculate the number of original and subsequent device export certificates issued.

FDA Offers Grant Funds for Development of Natural History Database
In the August 17, 2015, *Federal Register*, FDA announced the availability of grant funds to support the National Organization for Rare Disorders in its development of an Internet-based data collection tool with promise to further the accumulation of natural history data for many rare diseases.

FDA Classifies Clostridium Difficile Toxin Gene Amplification Assay into Class II
In the August 27, 2015, *Federal Register*, FDA announced it has classified the *Clostridium difficile (C. difficile)* toxin gene amplification assay into Class II (special controls) medical device. Labeling and performance studies are required to mitigate identified risks.

FDA Classifies the Esophageal Thermal Regulation Device into Class II
In the August 18, 2015, *Federal Register,* FDA published its classification of the esophageal thermal regulation device into class II (special controls) medical device. Biocompatibility testing, labeling, and other evaluations will be required to mitigate identified risks of injury, adverse tissue reactions, and hypo/hyperthermia.

FDA Classifies Computerized Cognitive Assessment Aid into Class II
In the August 17, 2015, *Federal Register*, FDA announced it has classified the computerized cognitive assessment aid into class II (special controls) medical device. Labeling and hardware and software verification, validation, and hazard analysis will be required to mitigate identified risks of equipment malfunction or incorrect results.

FDA Extends Comment Period on Draft Guidance for Quality Metrics Program
In the August 26, 2015, *Federal Register*, FDA announced the extension of the comment period on specific questions relating to the FDA's development and planned implementation of a quality metrics programs, as identified in the draft guidance published on July 28, 2015. ***Comments now due November 27, 2015.***

FDA Extends Closing Date of Intent to Participate in Consultation of Reauthorization of the Generic Drug User Fee Amendments of 2012
In the August 12, 2015, *Federal Register,* FDA announced that it is extending the closing date for public stakeholders, health care professionals, and scientific and academic experts to notify the FDA of their intent to participate in periodic consultation meetings on the reauthorization of the Generic Drug User Fee Amendments of 2012 ("GDUFA"). The FDCA requires FDA to consult with a range of stakeholders in developing recommendations for the next GDUFA program. ***Closing Date is now April 30, 2016.***

FDA Publishes Notice of Patent Infringement Complaint Filed Against a Biosimilar Applicant
In the August 24, 2015, *Federal Register*, FDA announced that an applicant for a proposed biosimilar product had notified FDA that a patent infringement action has been filed in connection with the applicant's biologics license application. FDA received notice of the following complaint: *Janssen Biotech, Inc., et. al. v. Celltrion Healthcare Co., Ltd., et al.*, 15–cv–10698 (D. Mass., filed March 6, 2015).

FDA Announces Participation in International Medical Device Regulators Forum
In the August 19, 2015, *Federal Register*, FDA announced that CDRH and related offices are participating in the International Medical Device Regulators Forum's ("IMDRF") Regulated Product Submission Table of Contents Pilot Program. IMDRF developed a comprehensive Table of Contents for Non-In Vitro Diagnostics and for In Vitro Diagnostics marketing authorizations. The project is intended to provide industry, IMDRF, and CDRH staff the opportunity to evaluate the Table of Contents structure and to receive input from participants. Parties interested in the voluntary Pilot Program should submit a request to participate.

FDA Determines Biaxin XL Oral Tablets Not Withdrawn for Safety or Effectiveness
In the August 27, 2015, *Federal Register*, FDA published its determination that Biaxin XL were not withdrawn from sale for reasons of safety or effectiveness. FDA will not begin procedures to withdraw approval of abbreviated new drug applications ("ANDAs") that refer to these products and will continue to evaluate and approve ANDAs that refer to the products if they meet all other regulatory requirements.

FDA Announces Renewal of National Mammography Quality Assurance Advisory Committee
In the August 14, 2015, *Federal Register*, FDA announced that the National Mammography Quality Assurance Advisory Committee has been renewed. The commissioner has determined it is in the public interest to renew the National Mammography Quality Assurance Advisory Committee for an additional two years beyond the charter expiration date.

FDA Issued the Following Draft and Final Guidance Documents:
Guidance for Industry: Design and Analysis of Shedding Studies for Virus or Bacteria-Based Gene Therapy and Oncolytic Products, August 27, 2015, *Federal Register.*

Guidance for Industry and FDA Staff: Select Updates for Non-Clinical Engineering Tests and Recommended Labeling for Intravascular Stents and Associated Delivery Systems, August 18, 2015, *Federal Register.*

Guidance for Industry: Providing Submissions in Electronic Format – Postmarketing Safety Reports for Vaccines, August 18, 2015, *Federal Register.*

Guidance for Industry: Uncomplicated Gonorrhea: Developing Drugs for Treatment, August 18, 2015, *Federal Register.*

Guidance for Industry and FDA Staff: Endotoxin Testing Recommendations for Single-Use Intraocular Ophthalmic Devices, August 17, 2015, *Federal Register.*

Guidance for Industry and FDA Staff: Intent to Exempt Certain Unclassified, Class II, and Class I Reserved Medical Devices from Premarket Notification Requirements, August 14, 2015, *Federal Register.*

Guidance for Industry: Guidance for Entities Considering Whether to Register as Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act, August 12, 2015, *Federal Register.*

Draft Guidance for Industry: Nonproprietary Naming of Biological Products, August 28, 2015, *Federal Register*. ***Comments due October 27, 2015.***

Draft Guidance for Industry: Compounding Animal Drugs From Bulk Drug Substances, August 17, 2015, *Federal Register*. ***Comments due November 16, 2015.***

Draft Guidance for Industry: Qualification of Biomarket – Total Kidney Volume in Studies of Treatment of Autosomal Dominant Polycystic Kidney Disease, August 17, 2015, *Federal Register.* ***Comments due October 16, 2015.***

Draft Guidance for Industry: Rare Diseases: Common Issues in Drug Development, August 17, 2015, *Federal Register*. ***Comments due October 16, 2015.***

Draft Guidance for Industry: Botanical Drug Development, August 17, 2015, *Federal Register.* ***Comments due October 16, 2015.***

Draft Guidance for Industry and FDA Staff: Establishing the Performance Characteristics of In Vitro Diagnostic Devices for the Detection or Detection and Differentiation of Human Papillomaviruses, August 14, 2015, *Federal Register.* ***Comments due November 12, 2015.***

Information Collection Activities:

FDA Announced the Opportunity to Comment on the Following Proposed Information Collections:
- Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

FDA Announced that the Following Collections Have Been Submitted to OMB:
- Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting

EU Regulatory Notices

EMA Consults on GVP Guidelines
On August 11, 2015 the EMA released two guidelines on good pharmacovigilance practice ("GVP") for public consultation. The first set is related to post-authorization safety studies, while the second specifies requirements for the transmission of study protocols, updated protocols following substantial amendments, final study reports and progress reports if requested on post-authorization safety studies initiated, managed or financed by marketing authorization holders voluntarily or pursuant to an obligation. ***Comments due October 9, 2016.***

Upcoming Meetings, Workshops, and Conferences

Drugs and Biologics
Public Workshop entitled "Scientific Inquiry Into How Mobile Health and Social Data Sources May Inform Medical Product Safety and Efficacy," **September 11, 2015,** in College Park, MD.

Public Meeting of the Science Board to the Food and Drug Administration, **September 15, 2015,** via webcast.

Public Workshop entitled "Surrogate Endpoints for Clinical Trials in Kidney Transplantation," **September 28, 2015,** in Arlington, VA.

FDA/CDC/NLM Workshop on Promoting Semantic Interoperability of Laboratory Data, **September 28, 2015,** in Silver Spring, MD.

Sixth Annual Coalition Against Major Diseases/Food and Drug Administration Scientific Workshop, **October 15, 2015,** in Silver Spring, MD.

Public Meeting on Patient-Focused Drug Development for Nontuberculous Mycobacterial Lung Infections, **October 15, 2015,** in Silver Spring, MD. ***Comments due December 15, 2015.***

Public Workshop entitled "In Vitro Diagnostic Testing for Direct Oral Anticoagulants," **October 26, 2015,** in Silver Spring, MD.

Medical Devices
Stakeholder Meeting—MDUFA Reauthorization, **September 15, 2015**, in Silver Spring, MD.

Public Workshop on Medical Device Patient Labeling, **September 29-30, 2015**, in Silver Spring, MD.

Public Workshop on Acute Ischemic Stroke Medical Devices Trials, **October 6, 2015**, in Silver Spring, MD.

Public Workshop on Physiological Closed-Loop Controlled Devices, **October 13, 2015,** in Silver Spring, MD.

Public Workshop entitled "Non-Microbial Biomarkers of Infection for In Vitro Diagnostic Device Use," **October 16, 2015**, in Silver Spring, MD.

Public Workshop entitled "Neurodiagnostics and Non-Invasive Brain Stimulation Medical Devices Workshop," **November 19, 2015,** in Silver Spring, MD.

Advisory Committees
Joint Meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee, **September 10–11, 2015**, in Silver Spring, MD.

Pediatric Advisory Committee, **September, 16, 2015**, in Silver Spring, MD.

Arthritis Advisory Committee, **October 23, 2015,** in Silver Spring, MD.

Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR), **November 3, 2015,** in Jefferson, AR.

Bone, Reproductive, and Urologic Drugs Advisory Committee, **November 3, 2015,** in Silver Spring, MD.

For more comprehensive listings of FDA meetings, please visit these FDA web pages:
Meetings, Conferences, and Workshops (Drugs)
Workshops, Meetings, and Conferences (Biologics)
Workshops and Conferences (Medical Devices)
FDA Advisory Committee Calendar

Recent Notable Drug and Device Approvals/Clearances

FDA approves Repatha to treat certain patients with high cholesterol (August 27, 2015)

FDA extends use of Promacta in young children with rare blood disorder (August 24, 2015)

FDA approves first treatment for sexual desire disorder (August 18, 2015)

For additional information on drug and device approvals and clearances, please visit FDA's web pages on Drug Approvals and Databases (includes biologics) and Device Approvals, Denials, and Clearances.

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