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SFDA ISSUES PROPOSED REGULATIONS FOR THE ADMINISTRATION OF INSPECTIONS OF FOREIGN DRUG MANUFACTURERS

On August 20, 2012, China's State Food and Drug Administration ("SFDA") released for public comment the proposed *Measures for the Administration of Inspections of Foreign Drug Manufacturers* ("Proposed Measures").[1] The comment period for the Proposed Measures will end on October 8, 2012.

The Proposed Measures, if adopted, will have serious impact on foreign drug manufacturers that import or are applying to import drugs to China. If a manufacturer fails to pass the inspection, the SFDA will

1. issue a warning letter to the manufacturer and order it to suspend importation of the drug, or suspend the SFDA evaluation of the manufacturer's application for the marketing authorization for the drug, until the manufacturer passes the next inspection; and
2. at the same time, notify Chinese customs to suspend the customs clearance of the drug, and for those already imported into China, order the manufacturer to conduct a recall, or take other corrective actions, depending on the seriousness of the circumstances.

WHO WILL BE INSPECTED?

Foreign drug manufacturers that have received drug marketing authorizations from, or are applying for such authorizations with the SFDA are subject to inspection. The SFDA determines which manufacturer to inspect by referring to information from drug registration evaluations, routine supervision, entry port inspections, complaints from the public, and information from other sources.

HOW WILL THE INSPECTION BE CONDUCTED?

Before Inspection

- The SFDA will inform the Chinese representative offices or agents of the foreign drug manufacturers ("Agent/Agents") about the inspection in advance, such as the time of the inspection, and the facilities and drugs to be inspected. The Agents will be responsible for communicating with the foreign drug manufacturers and submitting the required documents to the SFDA's Center for Certification of Drug ("CCD")[2] promptly and prior to inspection, though the regulation does not define what is considered to be "prompt." If the foreign drug manufacturer needs to postpone the inspection due to real and special reasons, its Agent should file a written application to the CCD explaining the justification for the request. Refusal to receive the inspection without justification, or refusal to cooperate with the inspection will be deemed as failing the inspection.

[1] SFDA Proposed Measures available at http://www.sfda.gov.cn/WS01/CL0778/74394.html.
[2] http://www.ccd.org.cn/

- The required documents must be in Chinese language, and include
  1. a "site master file" with a general introduction of the company, and the company's quality management systems, including these nine systems: personnel, facilities, and equipment; documents; production; quality control; product distribution; product nonconformance and recalls; and self-audit;[3]
  2. information on drugs imported over the past three years, including annual imported amount, customs inspection data, adverse events, product complaints and recalls (including reasons for recall), and final product dispositions. No requirement for these information if the product is currently applying for marketing authorization; and
  3. basic information on the manufacturing and sales of such drugs in other countries during the past three years, including whether the products have been suspended from importation into these countries due to GMP noncompliance, or recalled due to product quality reasons, and if yes, the detailed reasons and final product dispositions. No requirement for these information if the product is currently applying for marketing authorization.[4]

During Inspection

- The inspection team will consist of two to five inspectors, with a leader. During the inspection, the foreign drug manufacturer must arrange batch productions of the drugs to be inspected.
- The scope of inspection includes verifying whether the drug registration application materials match with the on-site data gathered and the actual manufacturing process, and whether the drug manufacturing conforms with China's Good Manufacturing Practices (GMP), as revised in 2010.
- The foreign drug manufacturer must promptly provide the relevant documents. When necessary, the inspectors can take photos or videos to collect evidence. If the foreign drug manufacturer refuses photos or videos to be taken, the inspectors should describe the situation in detail in the inspection report. When necessary, inspectors can also take samples back to China for testing.
- In the last inspection meeting, the inspection team will orally discuss any deficiency findings with the foreign drug manufacturer. If having different views, the foreign drug manufacturer can explain, and the inspection team can further verify the information if necessary, and modify the deficiency findings based on the result of verifications.

After Inspection

- Within two months after the inspection, the CCD will send a written inspection report to the Agent, except where the inspection finding is either "no obvious deficiencies" or "deficiencies, but can be immediately corrected."
- Within one month after receiving the inspection report (or conclusion of the inspection if the CCD does not send a written report due to the exception described above), the Agent is responsible for submitting a corrective action report to the CCD. If there are special reasons preventing submission on time, the Agent must apply for extension and specify the new deadline, but the extension cannot be more than one month.

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[3] The site master file must be prepared as described in the most updated version of PIC/S guidance document on preparation of site master file. See http://www.picscheme.org/publication.php?id=15. PIC/S is the abbreviation and logo used to describe both the Pharmaceutical Inspection Convention (PIC) and the Pharmaceutical Inspection Co-operation Scheme (PIC Scheme) operating together in parallel.
[4] See Appendix of the Proposed Measures.

HOW ARE INSPECTION RESULTS CLASSIFIED?

Within one month after receiving the corrective action report, the CCD will conduct a comprehensive review based on risk management principles and classify the manufacturer as "Compliance," "Compliance after Corrections," or "Noncompliance."

- **Compliance** — where the inspection found that manufacturing and quality control are consistent with the information provided in the application documents, and the manufacturing conforms with the requirements of China's drug GMP.
- **Compliance after Corrections** — where the inspection found that there are multiple major deficiencies, but the corrections report submitted indicate that the manufacturing can conform with the requirements of China's drug GMP after completion of the corrections. If necessary, the CCD will reinspect to verify the corrections.
- **Noncompliance** — where the inspection found that fraudulent activities have occurred, or that key elements that have product quality impacts were inconsistent with the application materials; or where there is any critical deficiency, or multiple major deficiencies, and the deficiency/deficiencies indicate that the manufacturing cannot conform with the requirements of China's drug GMP.

WHAT ARE THE CONSEQUENCES AND IMPLICATIONS?

- Where the classification is "Compliance" or "Compliance After Corrections," the SFDA will send a written opinion to the Agent within one month after the inspection classification.
- Where the classification is "Noncompliance," the SFDA will
  1. issue a warning letter to the manufacturer and order it to suspend importation of the drug, or suspend the SFDA evaluation of the manufacturer's application for the marketing authorization for the drug, until the manufacturer passes the next inspection; and
  2. at the same time, notify Chinese customs to suspend the customs clearance of the drug, and for those already imported into China, order the manufacturer to conduct a recall, or take other corrective actions, depending on the seriousness of the circumstances.

If you have any questions on the SFDA proposed measures discussed, please contact the following attorneys:

Shaoyu Chen	86.10.5910.0509	chens@cov.com
Scott Cunningham	202.662.5275	scunningham@cov.com
Jason Ma	202.662.5015	jma@cov.com