U.S. FOOD & DRUG ADMINISTRATION

May 12 , 2022

Aaron Siri
Siri & Glimstad LLP
200 Park Avenue
17th Floor
New York, NY 10166

Sent via email to: AARON@SIRILLP.COM

Re: Docket No. FDA-2020-P-2096

Dear Mr. Siri:

On March 23, 2021, the Food and Drug Administration (FDA, Agency, we) received a Petition for Reconsideration from Siri & Glimstad LLP (Reconsideration Petition) submitted on behalf of Informed Consent Action Network (ICAN). The Reconsideration Petition concerned FDA's decision responding to your Citizen Petition (including supporting materials) dated October 16, 2020 (Original Petition).[1] The Original Petition requested that FDA amend the study design for the Phase 3 trial of Ad26.COV2.S, a vaccine to prevent Coronavirus Disease 2019 (COVID-19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

You generally assert in the Reconsideration Petition that FDA's response to the Original Petition[2] did not adequately consider all the relevant safety concerns regarding Ad26.COV2.S.

We have completed our review, and as explained below and in accordance with Title 21 of the Code of Federal Regulations (CFR) § 10.33, your Petition for Reconsideration is denied.[3]

[1] Docket No. FDA-2020-P-2096-0001.
[2] Docket No. FDA-2020-P-2096-0009 (Response to Original Petition).
[3] Your Petition for Reconsideration states that "in the alternative" you request that FDA issue "a revised decision that fully explains its reasoning and its consideration of materials in the administrative docket." Reconsideration Petition at 2. However, there is no mechanism in our regulations for issuing revised responses to citizen petitions in this manner. A petition for reconsideration is the mechanism in our regulations for requesting that the agency revise its approach to a decision on a citizen petition. In addition, for the reasons outlined below, you have not explained how our response to the Original Petition failed to adequately explain the agency's reasoning and/or how our response failed to consider relevant materials. Accordingly, we are not granting your alternative request for FDA to issue "a revised decision that fully explains its reasoning and its consideration of materials in the administrative docket."

I. STANDARD FOR RECONSIDERATION

Under 21 CFR § 10.33, an interested person may request reconsideration of part or all of FDA's decision on a petition submitted under 21 CFR § 10.25.[4] 21 CFR § 10.33 describes the standards that a petitioner must meet when seeking reconsideration. FDA shall grant a request for reconsideration if *all of the following* apply:

> (1) The petition demonstrates that relevant information or views contained in the administrative record were not previously or not adequately considered.
>
> (2) The petitioner's position is not frivolous and is being pursued in good faith.
>
> (3) The petitioner has demonstrated sound public policy grounds supporting reconsideration.
>
> (4) Reconsideration is not outweighed by public health or other public interests.[5]

The regulation also specifies that a petition for reconsideration may not be based on information and views not contained in the administrative record on which the decision was made.[6]

II. THE ORIGINAL PETITION AND FDA'S RESPONSE

The Original Petition requested that the study design be amended for the Phase 3 trial of Ad26.COV2.S in accordance with certain requested changes.[7] The requested changes included a request to document all adverse events,[8] to document adverse events for specified periods of time,[9] to amend the sample size of the study,[10] to amend the study design to provide that participants are tested for T-cell reactivity,[11] to amend the study design to provide that germline transmission tests are conducted for male participants,[12] and to amend the study design to provide for HIV Incidence Monitoring.[13] FDA denied the Original Petition finding that with respect to each request, the Original Petition did not contain facts demonstrating any reasonable ground for the requested action.[14] FDA's response included extensive discussion of the relevant scientific issues.

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[4] An "[*i*]*nterested person* or *any person who will be adversely affected* means a person who submits a petition or comment or objection or otherwise asks to participate in an informal or formal administrative proceeding or court action." 21 CFR § 10.3(a).

[5] 21 CFR § 10.33(d).

[6] 21 CFR § 10.33(e). "An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision under § 10.25(a)." 21 CFR § 10.33(e). In addition, we note that FDA has the discretion to grant a petition for reconsideration if it is in the public interest and in the interest of justice. 21 CFR § 10.33(d).

[7] Original Petition at 2.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Response to Original Petition at 2.

III. DISCUSSION

A. The Petition Does Not Demonstrate that Reconsideration is Required

The current Petition asserts that FDA did not adequately consider all the relevant safety concerns with respect to each of FDA's responses to Petitioner's request that FDA require sponsors to make changes to the trial described in section III above.[15]

As mentioned above, FDA must grant a petition for reconsideration only if all of the four criteria for reconsideration, which are provided in § 10.33(d)(1)-(4), apply. As explained below, we find that you have failed to demonstrate that relevant information or views contained in the administrative record were not previously or adequately considered as required by § 10.33(d)(1). Because you have failed to demonstrate this criterion, we need not address the other criteria identified in §10.33(d)(2)-(4).

i. FDA adequately addressed the appropriate adverse events and reactions to be documented for the clinical trial

In the portion of your Petition for Reconsideration dedicated to the issue of adverse events and reactions, you provide no evidence that FDA's response to the Original Petition failed to previously or adequately consider relevant information or views contained in the administrative record. Rather, this portion of the Petition for Reconsideration appears to set forth a basis for why FDA should have taken a different approach. Specifically, you state that "as a new biological product, it is unclear which events may or may not be caused by the vaccine."[16] However, arguments for why FDA should have taken a different approach are not sufficient to demonstrate that FDA failed to previously or adequately consider relevant information. In considering your Original Petition, FDA *did* adequately consider relevant information and views contained in the administrative record. For example, pages 9 – 13 of the response contain extensive discussion of the relevant information and views.

ii. FDA adequately addressed the duration of monitoring of adverse events and reactions in the petition response

You assert that FDA's response regarding this aspect of the Original Petition "is lacking" for two reasons: (1) "the FDA Decision only addresses FDA's issuance of an emergency use authorization ('EUA'). . . and does not address requirements for full licensure;" and (2) "the

[15] In the "Action Requested" section of your Reconsideration Petition, you refer to one of the requests in the Original Petition: that "participants are tested for T-cell reactivity to SARS-CoV-2 pre-vaccination and post-vaccination." Id. at 2. You include this in the list of requests from the Original Petition for which you seek reconsideration. However, the "Statement of Grounds" section of the Reconsideration Petition does not address this request at all. *See*, id. at 2-5. You provide no bases or arguments for why FDA's response to the Original Petition failed to adequately consider relevant information or views in the administrative record related to this request in the Original Petition. In considering your Original Petition, FDA *did* adequately consider relevant information and views contained in the administrative record. For example, see pages 19-20 of the response to the Original Petition.

[16] Reconsideration Petition, at 3.

FDA Decision fails to address the specific concerns related to toddlers and children."[17] However, you have failed to demonstrate that the relevant information or views contained in the administrative record were not previously or adequately considered regarding the duration of monitoring of adverse events and reactions. In responding to the Original Petition, FDA did consider information and views in the administrative record regarding licensure standards and concerns regarding pediatric populations. For example, pages 13-16 of the response include a discussion of this topic. This includes specific concerns with respect to pediatric populations, including on page 15 of the response where FDA explained that it was not scientifically appropriate to extrapolate the results or conclusions of a 2019 publication that the Original Petition cited which was authored by researchers at FDA and Duke University regarding drug trials to vaccines. As another example, page 3 of the response includes a discussion of FDA's standards for licensure.

iii. FDA adequately addressed germline transmission tests in the petition response

In the portion of your Petition for Reconsideration dedicated to the issue of germline transmission tests for male participants, you provide no evidence that FDA's response to the Original Petition failed to consider relevant information or views contained in the administrative record. Rather, this portion of the Petition for Reconsideration appears to merely reiterate a request in the Original Petition that FDA require the specified testing. Specifically, you state that "Petitioner therefore reiterates its request that the agency require the manufacturer, which would have the capability of doing so, to determine whether or not there is distribution to the gonads."[18] However, reiterating a request that FDA previously denied is not sufficient to demonstrate that FDA failed to previously or adequately consider relevant information. In considering your Original Petition, FDA *did* adequately consider relevant information and views contained in the administrative record. For example, FDA's discussion of issues related to germline transmission tests can be found on pages 20 – 22 of the response.

iv. FDA adequately addressed the appropriate sample size in the petition response

In this portion of your Petition for Reconsideration, you also include a statement that "the agency's response did not directly address the critical issue [related to sample size] with children."[19] However, you fail to identify any information or views in the administrative record that FDA failed to consider. The relevant information or views contained in the administrative record were previously and adequately considered regarding appropriate sample size. For example, pages 16 – 19 of the response includes a relevant discussion.

[17] Id. at 3. The Reconsideration Petition does not explain the difference in age range between "toddlers" and "children." Instead of using these terms we will use the term "pediatric populations."
[18] Id. at 4-5.
[19] Reconsideration Petition at 4.

v. FDA adequately addressed HIV Incidence Monitoring

In the portion of your Petition for Reconsideration dedicated to the issue of HIV incidence monitoring, you provide no evidence that FDA's response to the Original Petition failed to consider relevant information or views contained in the administrative record. Rather, this portion of the Petition for Reconsideration appears to merely reiterate a request in the Original Petition that FDA require the specified monitoring. Specifically, you state that changes to the study protocol "should be a condition of the issuance of licensure and approval."[20] However, making such a request is not sufficient to demonstrate that FDA failed to previously or adequately consider relevant information. In considering your Original Petition, FDA *did* adequately consider relevant information and views contained in the administrative record related to HIV incidence monitoring. For example, FDA's discussion of issues related to this topic can be found on pages 22 – 26 of the response.

IV. CONCLUSION

For the foregoing reasons, your Petition for Reconsideration is denied.

Sincerely,

Lauren Roth -S

Digitally signed by Lauren Roth -S
Date: 2022.05.12 20:44:14 -04'00'

Lauren K. Roth
Associate Commissioner for Policy
Office of the Commissioner
U.S. Food and Drug Administration

cc: Dockets Management Staff

[20] Reconsideration Petition, at 5.