UNITED STATES (U.S.)-BASED EMPLOYEE AND U.S. AGENT REPRESENTATION OF FOREIGN SPONSORS

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I. PURPOSE

This document describes the Office of New Animal Drug Evaluation (ONADE)'s procedures for working with United States (U.S.)-based employees or U.S. agents representing foreign sponsors, including:

- The definition of a U.S.-based employee and a U.S. agent
- When a U.S. agent is required
- The difference between a U.S.-based employee and a U.S. agent
- The administrative process for a foreign sponsor to appoint a U.S. agent
- The role of consultants
- Communication responsibilities

II. BACKGROUND

Sponsors who do not reside or maintain a place of business within the U.S. are commonly referred to as foreign sponsors. Foreign sponsors must be represented[1] in the U.S. in their interactions with the Center for Veterinary Medicine (CVM) by either a:

- U.S.-based employee of the foreign sponsor, or
- U.S. agent.

[1] 21 CFR § 514.1(a): "Applications to be filed under section 512(b) of the act…must be signed by the applicant or by an authorized attorney, agent, or official. If the applicant or such authorized representative does not reside or have a place of business within the United States, the application must also furnish the name and post office address of, and must be countersigned by, an authorized attorney, agent, or official residing or maintaining a place of business within the United States."

III. DEFINITIONS, ROLES AND RESPONSIBILITIES

A. Responsible Official

The responsible office is any individual who is authorized to make legal representation on behalf of the firm before the FDA (see CFR §514.1(a)). For U.S.-based companies, this can be any employee of the firm or an authorized consultant. For foreign sponsors with a U.S.-based subsidiary or branch, this can be any employee of the U.S.-based subsidiary or an authorized consultant based in the U.S. For non-U.S. companies without a U.S.-based subsidiary, this must be the U.S. Agent.

B. U.S.-based Employee

A U.S.-based employee is a person who is employed by a U.S. subsidiary or branch of a foreign sponsor and serves as the responsible official for the foreign sponsor in the U.S. in their interactions with CVM. U.S. subsidiaries of foreign sponsors must maintain a place of business within the U.S., and their employees must be reachable for contact by email and/or telephone during regular business hours. The name of the U.S. subsidiary may or may not have the same name as the foreign parent company. Frequently, the subsidiary's name is a variation of the foreign sponsor's name.

C. U.S. Agent

A U.S. agent is a person who resides or maintains a place of business within the U.S. and who serves as the responsible official for a foreign sponsor. The U.S. agent must be available for contact by email and/or telephone during regular business hours.

D. Submitter

The submitter is the person who is registered with the FDA's Electronic Submission Gateway (ESG) and CVM's Electronic Submission System (ESS) and transmits the submission to CVM. This individual should not sign the eSubmitter package unless this person is the same as the responsible official and is legally responsible for the content of the submission. All CVM responses are sent back to the account of the individual who submitted the information to the Agency unless the submission is amended to request it to be redirected to another user who holds ESG and ESS accounts.[2]

IV. SUBMISSIONS BY U.S.-BASED EMPLOYEES OR U.S. AGENTS

For foreign sponsors with U.S.-based employees, any submissions made to their generic investigational new animal drug (JINAD) or investigational new animal drug (INAD) (collectively referred to as (J)INAD) files, and abbreviated new animal drug application (ANADA) or new animal drug application (NADA) (collectively referred to

[2] See the eSubmitter Resources page at: https://www.fda.gov/industry/fda-esubmitter/cvm-esubmitter-resource-center

as (A)NADA) files must be submitted by either a U.S.-based employee or an authorized consultant[3] based in the U.S.

Foreign sponsors with no U.S.-based employees, must have a U.S. agent to make submissions to (J)INAD and (A)NADA files.

A. Submissions to Investigational and Application File Types

Electronic (eSubmitter) submissions to these files must be made by one of the following:

- For foreign sponsors with U.S.-based employees, either a U.S.-based employee or an authorized consultant based in the U.S.; or
- For foreign sponsors with no U.S.-based employees, a U.S. agent or their representative (a colleague from the U.S. agent's company [same company name]).[4]

ONADE extends this requirement to all submissions to (J)INAD files, because under the phased review process, we are making application-level decisions about the acceptability of data or information submitted. Phased review submissions are intended to support a future decision to approve an application. For the sake of simplicity, ONADE applies this requirement to all investigational submissions rather than specifying the representation required for each individual submission type.

A foreign sponsor can make submissions that are countersigned by a U.S. agent. Because of eSubmitter limitations, electronic submissions cannot be countersigned in eSubmitter right now; therefore, submissions to (J)INAD and (A)NADA files must be submitted by the U.S. agent or their representative. The Type VIII-Veterinary Master File [VMF] (import tolerance requests[5]) requires the requester to furnish the name and post office address of an authorized attorney, agent, or official residing or maintaining a place of business within the United States (21 CFR §510.205(d)).

Submissions to (J)INAD and (A)NADA files made by U.S.-based employees do not need to be countersigned when they are submitted by a U.S.-based employee or an authorized U.S.-based consultant. Therefore, CVM requires that U.S.-based employees select in eSubmitter the "U.S.-based employee or representative" option indicating that they are employed by a U.S. subsidiary of the foreign sponsor.

[3] A consultant is required to submit a signed letter from the sponsor stating that the consultant is authorized to interact with CVM on the sponsor's behalf.

[4] Note that the functionality allowing someone other than the submitter to sign the administrative cover sheet does not change the requirement for the U.S. agent or representative to make the submission. This is because that process does not provide the "countersignature" required when the submitter is not the U.S. agent (i.e., we would need two signatures in that case and eSubmitter only collects one).

[5] See SOP 1243.150.009 Procedures for Processing and Reviewing Import Tolerances

Electronic submissions to these files that are not made by an authorized representative (as specified above) will be closed out with the final action Refuse to Review (RTR) or Refuse to File (RTF).[6]

Paper submissions made by a foreign sponsor and countersigned by a U.S. agent can be processed for review.

B. Submissions to Other File Types

A U.S.-based employee or a U.S. agent is not required for submissions to files other than (J)INADs and (A)NADAs. Submissions to other files (e.g., General Correspondence [GC] or Veterinary Master File [VMF]) do not need to be countersigned by a U.S. agent and may be submitted directly by a foreign sponsor for review. However, import tolerance requests under a VMF file require the requester to furnish the name and post office address of an authorized attorney, agent, or official residing or maintaining a place of business within the United States (21 CFR §510.205(d)).

Note: While a U.S. agent is not required for submissions to a VMF, foreign manufacturing facilities[7] are required to designate a U.S. agent.[8] ONADE encourages foreign manufacturing facilities to identify the U.S. agent in their VMF using the process below.

V. ADMINISTRATIVE PROCESS FOR A FOREIGN SPONSOR TO APPOINT A U.S. AGENT[9]

When the initial submission (A-0000) to establish a file is made by the U.S. agent, the U.S. agent should include a signed letter from the foreign sponsor stating that they are appointing [person or company] as their U.S. agent.[10] The U.S. agent may be a specific person or a company (for example, "John Smith" or "John Smith Consulting"). The letter appointing the U.S. agent should also contain contact information for the U.S. agent including their email address, telephone number, and mailing address.

The U.S. agent for a foreign sponsor may be changed through a general correspondence (G) submission to all applicable files; the G submission should include a signed letter from the foreign sponsor as outlined above. Foreign sponsors may appoint different U.S. agents to different files; therefore, a record is needed in each file to document the identity of the U.S. agent is. Ideally with any change in U.S. agent, the current U.S. agent will submit a G submission notifying ONADE the identity of the new U.S. agent taking responsibility from that point on. If a U.S. agent relationship terminates without a new U.S. agent being identified, the current U.S. agent should submit a G submission stating that they are no longer serving as the U.S. agent from that point on. If the current U.S. agent is unable to make this submission, we would accept this notification directly from the foreign sponsor. It is

[6] See P&P 1243.2050 Refuse to File and Refuse to Review
[7] See P&P 1243.2400 Veterinary Master Files with Manufacturing Information
[8] 21 CFR § 207.69(b)
[9] No administrative process is needed for U.S.-based employees.
[10] See P&P 1243.4000 Processing a Request to Open an Investigational (INAD) or Generic Investigational New Animal Drug (JINAD) File

is important to note that before ONADE can accept submissions to a (J)INAD or (A)NADA file, the foreign sponsor must appoint a new U.S. agent and that agent should make a G submission (as described previously) informing ONADE they are the U.S. agent.

A sponsor may appoint only one U.S. agent to a file at a time.

The G submission will be assigned to the project manager (PM) for a pioneer (INAD or NADA) sponsor. G submissions to other file types will be assigned to the appropriate review division. If we receive a linked G submission across diverse file types, the submission will be assigned according to the majority of impacted files.

The primary reviewer assigned to the G submission will close it out with final action code 007, SUBMISSION FILED WITH NO REVIEW DOCUMENTATION; NO LETTER SENT (FNR).

VI. COMMUNICATION RESPONSIBILITIES

When communicating via email with a foreign sponsor or consultant, ONADE will copy the U.S.-based employee or the U.S. agent or their representative. If the foreign sponsor initiates communication with ONADE that does not include their U.S.-based employee or U.S. agent (such as sending an email or requesting a telephone conversation), we will remind the foreign sponsor that we recommend the U.S.-based employee or U.S. agent or their representative be included in any communication between ONADE and the foreign sponsor.

ONADE expects the U.S.-based employee or U.S. agent or their representative to attend any formal meetings held under the file.[11]

VII. ROLE OF CONSULTANTS

A foreign sponsor may engage consultants in addition to a U.S.-based employee or a U.S. agent.

Authorized U.S.-based consultants can submit electronic submissions to (J)INAD and (A)NADA files on behalf of foreign sponsor with U.S.-based employees. However, for foreign sponsors with no U.S.-based employees, all electronic submissions to (J)INAD files, (A)NADA files, and import tolerance requests must be made by the U.S. agent or their representative, and any paper submissions must be countersigned by the U.S. agent, as discussed above.

Submissions to other file types (as described previously) may be made directly by a consultant.

VIII. REFERENCES

Title 21 Code of Federal Regulations

Part 510 – New Animal Drugs

[11] See P&P 1243.3024 Scheduling and Holding Meetings with Outside Parties

Subpart C - Import Tolerances for Residues of Unapproved New Animal Drugs in Food §§510.201 -510.213

Part 514 – New Animal Drug Applications

§514.1 Applications

Part 207 - 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, and the National Drug Code

§207.69 What are the requirements for an official contact and a United States agent?

CVM Program Policy and Procedures Manual – ONADE Reviewer's Chapter

1243.2050 Refuse to File and Refuse to Review

1243.2400 Veterinary Master Files with Manufacturing Information

1243.3024 Scheduling and Holding Meetings with Outside Parties

1243.4000 Processing a Request to Open an Investigational (INAD) or Generic Investigational New Animal Drug (JINAD) File

ONADE Standard Operating Procedure

1243.150.009 Procedures for Processing and Reviewing Import Tolerances

IX. VERSION HISTORY

May 28, 2020 – Original version. This document takes ONADE policy and formalizes it in this policy and procedure document.

October 28, 2021 – Updated language in Section III to include the requirement for a U.S. Agent for import tolerance requests

December 22, 2021 – Updated to include information about roles and responsibilities of the Responsible Official, U.S. agent, U.S.-based employees, and submitters. A table summarizing the roles of U.S. agents and U.S.-based employees was placed in an appendix.

APPENDIX 1: SUMMARY TABLE OF U.S. AGENT AND U.S.-BASED EMPLOYEE INFORMATION

Information	U.S. agent	U.S.-based employee
Definition	The person who serves as the responsible official for a foreign sponsor in their interactions with CVM.	A person who is employed by a U.S. subsidiary or branch of a foreign sponsor and serves as the responsible official for the foreign sponsor in the U.S. in their interactions with CVM.
Requirements	Must reside or maintain a place of business within the U.S.	U.S. subsidiaries of a foreign sponsors must maintain a place of business within the U.S., and their employees must be reachable for contact by email and/or telephone during regular business hours.
	Must be available for contact by email and/or telephone during regular business hours.	The name of the U.S. subsidiary may or may not have the same name as the foreign parent company. Frequently, the subsidiary's name is a variation of the foreign sponsor's name.
	A sponsor may appoint only one U.S. agent to a file at a time (1:1 ratio of US agent to a file).	A foreign sponsor may have more than one U.S-based employee, just like U.S.-based sponsors.
Electronic Submissions to (J)INAD and (A)NADA	Must be submitted by a U.S. agent or their representative (a colleague from the U.S. agent's company [same company name]).	Must be submitted by either a U.S.-based employee or an authorized consultant based in the U.S.
Electronic Submissions to Type VIII-VMF (import tolerance requests)	The requester must furnish the name and post office address of an authorized attorney, agent, or official residing or maintaining a place of business within the United States (21 CFR §510.205(d)).	The requester must furnish the name and post office address of an authorized attorney, agent, or official residing or maintaining a place of business within the United States (21 CFR §510.205(d)).

Information	U.S. agent	U.S.-based employee
Communication by email	When communicating via email with a foreign sponsor or consultant, ONADE will copy the U.S. agent or their representative (a colleague from the U.S. agent's company [same company name]).	When communicating via email with a foreign sponsor or consultant, ONADE will copy the U.S.-based employee or their representative (a colleague from the U.S.-based subsidiary [same company name]).
Attendance at meetings with CVM	ONADE expects the U.S. agent or their representative to attend any formal meetings held under the file.	ONADE expects the U.S.-based employee or their representative to attend any formal meetings held under the file.
Consultants	All electronic submissions to (J)INAD files, (A)NADA files, and import tolerance requests must be made by the U.S. agent or their representative.	Authorized U.S.-based consultants can submit electronic submissions to (J)INAD and (A)NADA files on behalf of foreign sponsor with U.S.-based employees.