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By Maya Earls 2020-10-30T10:47:52000-04:00

- Drug linked to cardiac, digestive issues, lawsuit says
- Alleged harms caused by third parties, government argues

Animal advocacy groups failed to show how they were harmed by the government's approval of a drug designed to reduce ammonia gas from cow manure, and even if they did, the alleged harms are attributable to third parties, not the drug Experior, the government told a California federal court.

The lawsuit filed in the U.S. District Court for the Northern District of California seeks to block the Food and Drug Administration's 2018 approval of the drug manufactured by Elanco Animal Health Inc.

Animal Legal Defense Fund, Food & Water Watch, and **Food Animal Concerns Trust** argue Experior belongs to a class of drugs linked to higher mortality rates among cows, and makes them more susceptible to bacteria that may threaten the food supply.

But the groups don't allege Experior is on the market, and they don't say which feedlots will use the drug once it is, the government says in its motion to dismiss filed Thursday.

The groups also say Experior will likely increase cow herd density at feedlots and will encourage the construction of new feedlots. But they failed to show how the alleged harm is imminent because they don't provide any examples of a feedlot that has been expanded as a result of the drug's approval, according to the filing.

In addition, the food safety concerns and air and water contamination alleged in the complaint are based on harms caused by beta-agonist drugs in general and not Experior specifically, the government says. And any of the alleged injuries would only happen if third parties, such as feedlot operators, take or fail to take independent action, according to the filing.

Elanco, which also filed a motion to dismiss Thursday, said the animal groups failed to complete the FDA's citizen petition process. The courts can only review the issue after the FDA has taken "final agency action," it argued.

The Department of Justice represents the federal government. Covington & Burling LLP represents Elanco.

Animal Legal Defense Fund and Paige Tomaselli of Richmond, Calif., represent the plaintiffs.

The case is [Animal Legal Def. Fund v. Azar](#) , N.D. Cal., No. 3:20-cv-03703, 10/29/20 .

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