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under §314.65 or an abbreviated application under §314.99 and later submit it again for consideration.

(c) The initial review cycle may be adjusted by mutual agreement between FDA and an applicant or as provided in §§314.60 and 314.96, as the result of a major amendment.

[73 FR 39609, July 10, 2008]

§314.101 Filing an application and receiving an abbreviated new drug application.

(a)(1) Within 60 days after FDA receives an application, the agency will determine whether the application may be filed. The filing of an application means that FDA has made a threshold determination that the application is sufficiently complete to permit a substantive review.

(2) If FDA finds that none of the reasons in paragraphs (d) and (e) of this section for refusing to file the application apply, the agency will file the application and notify the applicant in writing. The date of filing will be the date 60 days after the date FDA received the application. The date of filing begins the 180-day period described in section 505(c) of the act. This 180-day period is called the ''filing clock.''

(3) If FDA refuses to file the application, the agency will notify the applicant in writing and state the reason under paragraph (d) or (e) of this section for the refusal. If FDA refuses to file the application under paragraph (d) of this section, the applicant may request in writing within 30 days of the date of the agency's notification an informal conference with the agency about whether the agency should file the application. If, following the informal conference, the applicant requests that FDA file the application (with or without amendments to correct the deficiencies), the agency will file the application over protest under paragraph (a)(2) of this section, notify the applicant in writing, and review it as filed. If the application is filed over protest, the date of filing will be the date 60 days after the date the applicant requested the informal conference. The applicant need not resubmit a copy of an application that is filed over protest. If FDA refuses to file the application under paragraph (e) of this section, the applicant may amend the application and resubmit it, and the agency will make a determination under this section whether it may be filed.

(b)(1) An abbreviated new drug application will be reviewed after it is submitted to determine whether the abbreviated application may be received. Receipt of an abbreviated new drug application means that FDA has made a threshold determination that the abbreviated application is sufficiently complete to permit a substantive review.

(2) If FDA finds that none of the reasons in paragraphs (d) and (e) of this section for considering the abbreviated new drug application not to have been received applies, the agency will receive the abbreviated new drug application and notify the applicant in writing.

(3) If FDA considers the abbreviated new drug application not to have been received under paragraph (d) or (e) of this section, FDA will notify the applicant, ordinarily by telephone. The applicant may then:

(i) Withdraw the abbreviated new drug application under §314.99; or

(ii) Amend the abbreviated new drug application to correct the deficiencies; or

(iii) Take no action, in which case FDA will refuse to receive the abbreviated new drug application.

(c) [Reserved]

(d) FDA may refuse to file an application or may not consider an abbreviated new drug application to be received if any of the following applies:

(1) The application does not contain a completed application form.

(2) The application is not submitted in the form required under §314.50 or §314.94.

(3) The application or abbreviated application is incomplete because it does not on its face contain information required under section 505(b), section 505(j), or section 507 of the act and §314.50 or §314.94.

(4) The applicant fails to submit a complete environmental assessment, which addresses each of the items specified in the applicable format under §25.40 of this chapter or fails to provide sufficient information to establish that

the requested action is subject to categorical exclusion under § 25.30 or § 25.31 of this chapter.

(5) The application or abbreviated application does not contain an accurate and complete English translation of each part of the application that is not in English.

(6) The application does not contain a statement for each nonclinical laboratory study that it was conducted in compliance with the requirements set forth in part 58 of this chapter, or, for each study not conducted in compliance with part 58 of this chapter, a brief statement of the reason for the noncompliance.

(7) The application does not contain a statement for each clinical study that it was conducted in compliance with the institutional review board regulations in part 56 of this chapter, or was not subject to those regulations, and that it was conducted in compliance with the informed consent regulations in part 50 of this chapter, or, if the study was subject to but was not conducted in compliance with those regulations, the application does not contain a brief statement of the reason for the noncompliance.

(8) The drug product that is the subject of the submission is already covered by an approved application or abbreviated application and the applicant of the submission:

(i) Has an approved application or abbreviated application for the same drug product; or

(ii) Is merely a distributor and/or repackager of the already approved drug product.

(9) The application is submitted as a 505(b)(2) application for a drug that is a duplicate of a listed drug and is eligible for approval under section 505(j) of the act.

(e) The agency will refuse to file an application or will consider an abbreviated new drug application not to have been received if any of the following applies:

(1) The drug product is subject to licensing by FDA under the Public Health Service Act (42 U.S.C. 201 *et seq.*) and subchapter F of this chapter.

(2) In the case of a 505(b)(2) application or an abbreviated new drug application, the drug product contains the same active moiety as a drug that:

(i) Was approved after September 24, 1984, in an application under section 505(b) of the act, and

(ii) Is entitled to a 5-year period of exclusivity under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act and § 314.108(b)(2), unless the 5-year exclusivity period has elapsed or unless 4 years of the 5-year period have elapsed and the application or abbreviated application contains a certification of patent invalidity or noninfringement described in § 314.50(i)(1)(i)(A)(*4*) or § 314.94(a)(12)(i)(A)(*4*).

(f)(1) Within 180 days after the date of filing, plus the period of time the review period was extended (if any), FDA will either:

(i) Approve the application; or

(ii) Issue a notice of opportunity for a hearing if the applicant asked FDA to provide it an opportunity for a hearing on an application in response to a complete response letter.

(2) Within 180 days after the date of receipt, plus the period of time the review clock was extended (if any), FDA will either approve or disapprove the abbreviated new drug application. If FDA disapproves the abbreviated new drug application, FDA will issue a notice of opportunity for hearing if the applicant asked FDA to provide it an opportunity for a hearing on an abbreviated new drug application in response to a complete response letter.

(3) This paragraph does not apply to applications or abbreviated applications that have been withdrawn from FDA review by the applicant.

[57 FR 17987, Apr. 28, 1992; 57 FR 29353, July 1, 1992, as amended at 59 FR 50366, Oct. 3, 1994; 62 FR 40599, July 29, 1997; 64 FR 402, Jan. 5, 1999; 73 FR 39609, July 10, 2008]

§ 314.102 Communications between FDA and applicants.

(a) *General principles.* During the course of reviewing an application or an abbreviated application, FDA shall communicate with applicants about scientific, medical, and procedural issues that arise during the review process. Such communication may take the form of telephone conversations, letters, or meetings, whichever