

chapter or informed consent regulations in part 50 of this chapter, was not conducted in compliance with those regulations such that the rights or safety of human subjects were not adequately protected.

(9) That the applicant or contract research organization that conducted a bioavailability or bioequivalence study described in § 320.38 or § 320.63 of this chapter that is contained in the application or abbreviated application refuses to permit an inspection of facilities or records relevant to the study by a properly authorized officer or employee of the Department of Health and Human Services or refuses to submit reserve samples of the drug products used in the study when requested by FDA.

(10) That the labeling for the drug product that is the subject of the abbreviated new drug application is no longer consistent with that for the listed drug referred to in the abbreviated new drug application, except for differences approved in the abbreviated new drug application or those differences resulting from:

(i) A patent on the listed drug issued after approval of the abbreviated new drug application; or

(ii) Exclusivity accorded to the listed drug after approval of the abbreviated new drug application that do not render the drug product less safe or effective than the listed drug for any remaining, nonprotected condition(s) of use.

(c) FDA will withdraw approval of an application or abbreviated application if the applicant requests its withdrawal because the drug subject to the application or abbreviated application is no longer being marketed, provided none of the conditions listed in paragraphs (a) and (b) of this section applies to the drug. FDA will consider a written request for a withdrawal under this paragraph to be a waiver of an opportunity for hearing otherwise provided for in this section. Withdrawal of approval of an application or abbreviated application under this paragraph is without prejudice to refiling.

(d) FDA may notify an applicant that it believes a potential problem associated with a drug is sufficiently serious that the drug should be removed from

the market and may ask the applicant to waive the opportunity for hearing otherwise provided for under this section, to permit FDA to withdraw approval of the application or abbreviated application for the product, and to remove voluntarily the product from the market. If the applicant agrees, the agency will not make a finding under paragraph (b) of this section, but will withdraw approval of the application or abbreviated application in a notice published in the FEDERAL REGISTER that contains a brief summary of the agency's and the applicant's views of the reasons for withdrawal.

[57 FR 17993, Apr. 28, 1992, as amended at 58 FR 25927, Apr. 28, 1993; 64 FR 402, Jan. 5, 1999]

§ 314.151 Withdrawal of approval of an abbreviated new drug application under section 505(j)(5) of the act.

(a) Approval of an abbreviated new drug application approved under § 314.105(d) may be withdrawn when the agency withdraws approval, under § 314.150(a) or under this section, of the approved drug referred to in the abbreviated new drug application. If the agency proposed to withdraw approval of a listed drug under § 314.150(a), the holder of an approved application for the listed drug has a right to notice and opportunity for hearing. The published notice of opportunity for hearing will identify all drug products approved under § 314.105(d) whose applications are subject to withdrawal under this section if the listed drug is withdrawn, and will propose to withdraw such drugs. Holders of approved applications for the identified drug products will be provided notice and an opportunity to respond to the proposed withdrawal of their applications as described in paragraphs (b) and (c) of this section.

(b)(1) The published notice of opportunity for hearing on the withdrawal of the listed drug will serve as notice to holders of identified abbreviated new drug applications of the grounds for the proposed withdrawal.

(2) Holders of applications for drug products identified in the notice of opportunity for hearing may submit written comments on the notice of opportunity for hearing issued on the proposed withdrawal of the listed drug. If an abbreviated new drug application

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holder submits comments on the notice of opportunity for hearing and a hearing is granted, the abbreviated new drug application holder may participate in the hearing as a nonparty participant as provided for in § 12.89 of this chapter.

(3) Except as provided in paragraphs (c) and (d) of this section, the approval of an abbreviated new drug application for a drug product identified in the notice of opportunity for hearing on the withdrawal of a listed drug will be withdrawn when the agency has completed the withdrawal of approval of the listed drug.

(c)(1) If the holder of an application for a drug identified in the notice of opportunity for hearing has submitted timely comments but does not have an opportunity to participate in a hearing because a hearing is not requested or is settled, the submitted comments will be considered by the agency, which will issue an initial decision. The initial decision will respond to the comments, and contain the agency's decision whether there are grounds to withdraw approval of the listed drug and of the abbreviated new drug applications on which timely comments were submitted. The initial decision will be sent to each abbreviated new drug application holder that has submitted comments.

(2) Abbreviated new drug application holders to whom the initial decision was sent may, within 30 days of the issuance of the initial decision, submit written objections.

(3) The agency may, at its discretion, hold a limited oral hearing to resolve dispositive factual issues that cannot be resolved on the basis of written submissions.

(4) If there are no timely objections to the initial decision, it will become final at the expiration of 30 days.

(5) If timely objections are submitted, they will be reviewed and responded to in a final decision.

(6) The written comments received, the initial decision, the evidence relied on in the comments and in the initial decision, the objections to the initial decision, and, if a limited oral hearing has been held, the transcript of that hearing and any documents submitted therein, shall form the record upon

which the agency shall make a final decision.

(7) Except as provided in paragraph (d) of this section, any abbreviated new drug application whose holder submitted comments on the notice of opportunity for hearing shall be withdrawn upon the issuance of a final decision concluding that the listed drug should be withdrawn for grounds as described in § 314.150(a). The final decision shall be in writing and shall constitute final agency action, reviewable in a judicial proceeding.

(8) Documents in the record will be publicly available in accordance with § 10.20(j) of this chapter. Documents available for examination or copying will be placed on public display in the Division of Dockets Management (HFA-305), Food and Drug Administration, room. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, promptly upon receipt in that office.

(d) If the agency determines, based upon information submitted by the holder of an abbreviated new drug application, that the grounds for withdrawal of the listed drug are not applicable to a drug identified in the notice of opportunity for hearing, the final decision will state that the approval of the abbreviated new drug application for such drug is not withdrawn.

[57 FR 17994, Apr. 28, 1992]

§ 314.152 Notice of withdrawal of approval of an application or abbreviated application for a new drug.

If the Food and Drug Administration withdraws approval of an application or abbreviated application for a new drug, FDA will publish a notice in the FEDERAL REGISTER announcing the withdrawal of approval. If the application or abbreviated application was withdrawn for grounds described in § 314.150(a) or § 314.151, the notice will announce the removal of the drug from the list of approved drugs published under section 505(j)(6) of the act and shall satisfy the requirement of § 314.162(b).

[57 FR 17994, Apr. 28, 1992]