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approval of the application and, thus, prohibit continued marketing of the drug product that is the subject of the application.

(1) *Disclaimer.* A report or information submitted by an applicant under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the applicant or FDA that the report or information constitutes an admission that the drug caused or contributed to an adverse effect. An applicant need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the drug caused or contributed to an adverse effect. For purposes of this provision, the term "applicant" also includes any person reporting under paragraph (c)(1)(iii) of this section.

[50 FR 7493, Feb. 22, 1985; 50 FR 14212, Apr. 11, 1985, as amended at 50 FR 21238, May 23, 1985; 51 FR 24481, July 3, 1986; 52 FR 37936, Oct. 13, 1987; 55 FR 11580, Mar. 29, 1990; 57 FR 17983, Apr. 28, 1992; 62 FR 34168, June 25, 1997; 62 FR 52251, Oct. 7, 1997; 63 FR 14611, Mar. 26, 1998; 67 FR 9586, Mar. 4, 2002; 69 FR 13473, Mar. 23, 2004; 74 FR 13113, Mar. 26, 2009; 79 FR 33088, June 10, 2014]

§314.81 Other postmarketing reports.

(a) *Applicability.* Each applicant shall make the reports for each of its approved applications and abbreviated applications required under this section and section 505(k) of the act.

(b) *Reporting requirements.* The applicant shall submit to the Food and Drug Administration at the specified times two copies of the following reports:

(1) *NDA—Field alert report.* The applicant shall submit information of the following kinds about distributed drug products and articles to the FDA district office that is responsible for the facility involved within 3 working days of receipt by the applicant. The information may be provided by telephone or other rapid communication means, with prompt written followup. The report and its mailing cover should be plainly marked: "NDA—Field Alert Report."

(i) Information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article.

(ii) Information concerning any bacteriological contamination, or any sig-

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nificant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one or more distributed batches of the drug product to meet the specification established for it in the application.

(2) *Annual report.* The applicant shall submit each year within 60 days of the anniversary date of U.S. approval of the application, two copies of the report to the FDA division responsible for reviewing the application. Each annual report is required to be accompanied by a completed transmittal Form FDA 2252 (Transmittal of Periodic Reports for Drugs for Human Use), and must include all the information required under this section that the applicant received or otherwise obtained during the annual reporting interval that ends on the U.S. anniversary date. The report is required to contain in the order listed:

(i) *Summary.* A brief summary of significant new information from the previous year that might affect the safety, effectiveness, or labeling of the drug product. The report is also required to contain a brief description of actions the applicant has taken or intends to take as a result of this new information, for example, submit a labeling supplement, add a warning to the labeling, or initiate a new study. The summary shall briefly state whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Where possible, an estimate of patient exposure to the drug product, with special reference to the pediatric population (neonates, infants, children, and adolescents) shall be provided, including dosage form.

(ii)(a) *Distribution data.* Information about the quantity of the drug product distributed under the approved application, including that distributed to distributors. The information is required to include the National Drug Code (NDC) number, the total number of dosage units of each strength or potency distributed (e.g., 100,000/5 milligram tablets, 50,000/10 milliliter vials),

and the quantities distributed for domestic use and the quantities distributed for foreign use. Disclosure of financial or pricing data is not required.

(b) *Authorized generic drugs.* If applicable, the date each authorized generic drug (as defined in §314.3) entered the market, the date each authorized generic drug ceased being distributed, and the corresponding trade or brand name. Each dosage form and/or strength is a different authorized generic drug and should be listed separately. The first annual report submitted on or after January 25, 2010 must include the information listed in this paragraph for any authorized generic drug that was marketed during the time period covered by an annual report submitted after January 1, 1999. If information is included in the annual report with respect to any authorized generic drug, a copy of that portion of the annual report must be sent to the Food and Drug Administration, Center for Drug Evaluation and Research, Office of New Drug Quality Assessment, Bldg. 21, rm. 2562, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, and marked "Authorized Generic Submission" or, by e-mail, to the Authorized Generics electronic mailbox at *AuthorizedGenerics@fda.hhs.gov* with "Authorized Generic Submission" indicated in the subject line. However, at such time that FDA has required that annual reports be submitted in an electronic format, the information required by this paragraph must be submitted as part of the annual report, in the electronic format specified for submission of annual reports at that time, and not as a separate submission under the preceding sentence in this paragraph.

(iii) *Labeling.* (a) Currently used professional labeling, patient brochures or package inserts (if any), and a representative sample of the package labels.

(b) The content of labeling required under §201.100(d)(3) of this chapter (*i.e.*, the package insert or professional labeling), including all text, tables, and figures, must be submitted in electronic format. Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how

to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of §11.10(a), (c) through (h), and (k), and the corresponding requirements of §11.30.

(c) A summary of any changes in labeling that have been made since the last report listed by date in the order in which they were implemented, or if no changes, a statement of that fact.

(iv) *Chemistry, manufacturing, and controls changes.* (a) Reports of experiences, investigations, studies, or tests involving chemical or physical properties, or any other properties of the drug (such as the drug's behavior or properties in relation to microorganisms, including both the effects of the drug on microorganisms and the effects of microorganisms on the drug). These reports are only required for new information that may affect FDA's previous conclusions about the safety or effectiveness of the drug product.

(b) A full description of the manufacturing and controls changes not requiring a supplemental application under §314.70 (b) and (c), listed by date in the order in which they were implemented.

(v) *Nonclinical laboratory studies.* Copies of unpublished reports and summaries of published reports of new toxicological findings in animal studies and in vitro studies (e.g., mutagenicity) conducted by, or otherwise obtained by, the applicant concerning the ingredients in the drug product. The applicant shall submit a copy of a published report if requested by FDA.

(vi) *Clinical data.* (a) Published clinical trials of the drug (or abstracts of them), including clinical trials on safety and effectiveness; clinical trials on new uses; biopharmaceutic, pharmacokinetic, and clinical pharmacology studies; and reports of clinical experience pertinent to safety (for example, epidemiologic studies or analyses of experience in a monitored series of patients) conducted by or otherwise obtained by the applicant. Review articles, papers describing the use of the drug product in medical practice, papers and abstracts in which the drug is used as a research tool, promotional

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articles, press clippings, and papers that do not contain tabulations or summaries of original data should not be reported.

(b) Summaries of completed unpublished clinical trials, or prepublication manuscripts if available, conducted by, or otherwise obtained by, the applicant. Supporting information should not be reported. (A study is considered completed 1 year after it is concluded.)

(c) Analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. An assessment of data needed to ensure appropriate labeling for the pediatric population shall be included.

(vii) *Status reports of postmarketing study commitments.* A status report of each postmarketing study of the drug product concerning clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology that is required by FDA (e.g., accelerated approval clinical benefit studies, pediatric studies) or that the applicant has committed, in writing, to conduct either at the time of approval of an application for the drug product or a supplement to an application, or after approval of the application or a supplement. For pediatric studies, the status report shall include a statement indicating whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23 of this chapter. The status of these postmarketing studies shall be reported annually until FDA notifies the applicant, in writing, that the agency concurs with the applicant's determination that the study commitment has been fulfilled or that the study is either no longer feasible or would no longer provide useful information.

(a) *Content of status report.* The following information must be provided for each postmarketing study reported under this paragraph:

(1) *Applicant's name.*

(2) *Product name.* Include the approved drug product's established name and proprietary name, if any.

(3) *NDA, ANDA, and supplement number.*

(4) *Date of U.S. approval of NDA or ANDA.*

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(5) *Date of postmarketing study commitment.*

(6) *Description of postmarketing study commitment.* The description must include sufficient information to uniquely describe the study. This information may include the purpose of the study, the type of study, the patient population addressed by the study and the indication(s) and dosage(s) that are to be studied.

(7) *Schedule for completion and reporting of the postmarketing study commitment.* The schedule should include the actual or projected dates for submission of the study protocol to FDA, completion of patient accrual or initiation of an animal study, completion of the study, submission of the final study report to FDA, and any additional milestones or submissions for which projected dates were specified as part of the commitment. In addition, it should include a revised schedule, as appropriate. If the schedule has been previously revised, provide both the original schedule and the most recent, previously submitted revision.

(8) *Current status of the postmarketing study commitment.* The status of each postmarketing study should be categorized using one of the following terms that describes the study's status on the anniversary date of U.S. approval of the application or other agreed upon date:

(i) *Pending.* The study has not been initiated, but does not meet the criterion for delayed.

(ii) *Ongoing.* The study is proceeding according to or ahead of the original schedule described under paragraph (b)(2)(vii)(a)(7) of this section.

(iii) *Delayed.* The study is behind the original schedule described under paragraph (b)(2)(vii)(a)(7) of this section.

(iv) *Terminated.* The study was ended before completion but a final study report has not been submitted to FDA.

(v) *Submitted.* The study has been completed or terminated and a final study report has been submitted to FDA.

(9) *Explanation of the study's status.* Provide a brief description of the status of the study, including the patient accrual rate (expressed by providing the number of patients or subjects enrolled to date, and the total planned

enrollment), and an explanation of the study's status identified under paragraph (b)(2)(vii)(a)(8) of this section. If the study has been completed, include the date the study was completed and the date the final study report was submitted to FDA, as applicable. Provide a revised schedule, as well as the reason(s) for the revision, if the schedule under paragraph (b)(2)(vii)(a)(7) of this section has changed since the last report.

(b) *Public disclosure of information.* Except for the information described in this paragraph, FDA may publicly disclose any information described in paragraph (b)(2)(vii) of this section, concerning a postmarketing study, if the agency determines that the information is necessary to identify the applicant or to establish the status of the study, including the reasons, if any, for failure to conduct, complete, and report the study. Under this section, FDA will not publicly disclose trade secrets, as defined in § 20.61 of this chapter, or information, described in § 20.63 of this chapter, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(viii) *Status of other postmarketing studies.* A status report of any postmarketing study not included under paragraph (b)(2)(vii) of this section that is being performed by, or on behalf of, the applicant. A status report is to be included for any chemistry, manufacturing, and controls studies that the applicant has agreed to perform and for all product stability studies.

(ix) *Log of outstanding regulatory business.* To facilitate communications between FDA and the applicant, the report may, at the applicant's discretion, also contain a list of any open regulatory business with FDA concerning the drug product subject to the application (e.g., a list of the applicant's unanswered correspondence with the agency, a list of the agency's unanswered correspondence with the applicant).

(3) *Other reporting*—(i) *Advertisements and promotional labeling.* The applicant shall submit specimens of mailing pieces and any other labeling or advertising devised for promotion of the drug product at the time of initial dissemination of the labeling and at the

time of initial publication of the advertisement for a prescription drug product. Mailing pieces and labeling that are designed to contain samples of a drug product are required to be complete, except the sample of the drug product may be omitted. Each submission is required to be accompanied by a completed transmittal Form FDA-2253 (Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use) and is required to include a copy of the product's current professional labeling. Form FDA-2253 is available on the Internet at <http://www.fda.gov/opacom/morechoices/fdaforms/cder.html>.

(ii) *Special reports.* Upon written request the agency may require that the applicant submit the reports under this section at different times than those stated.

(iii) *Notification of a permanent discontinuance or an interruption in manufacturing.* (a) An applicant of a prescription drug product must notify FDA in writing of a permanent discontinuance of manufacture of the drug product or an interruption in manufacturing of the drug product that is likely to lead to a meaningful disruption in supply of that drug in the United States if:

(1) The drug product is life supporting, life sustaining, or intended for use in the prevention or treatment of a debilitating disease or condition, including any such drug used in emergency medical care or during surgery; and

(2) The drug product is not a radio-pharmaceutical drug product.

(b) Notifications required by paragraph (b)(3)(iii)(a) of this section must be submitted to FDA electronically in a format that FDA can process, review, and archive:

(1) At least 6 months prior to the date of the permanent discontinuance or interruption in manufacturing; or

(2) If 6 months' advance notice is not possible because the permanent discontinuance or interruption in manufacturing was not reasonably anticipated 6 months in advance, as soon as practicable thereafter, but in no case later than 5 business days after the permanent discontinuance or interruption in manufacturing occurs.

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(c) Notifications required by paragraph (b)(3)(iii)(a) of this section must include the following information:

(1) The name of the drug subject to the notification, including the NDC for such drug;

(2) The name of the applicant;

(3) Whether the notification relates to a permanent discontinuance of the drug or an interruption in manufacturing of the drug;

(4) A description of the reason for the permanent discontinuance or interruption in manufacturing; and

(5) The estimated duration of the interruption in manufacturing.

(d)(1) FDA will maintain a publicly available list of drugs that are determined by FDA to be in shortage. This drug shortages list will include the following information:

(i) The names and NDC(s) for such drugs;

(ii) The name of each applicant for such drugs;

(iii) The reason for the shortage, as determined by FDA from the following categories: Requirements related to complying with good manufacturing practices; regulatory delay; shortage of an active ingredient; shortage of an inactive ingredient component; discontinuation of the manufacture of the drug; delay in shipping of the drug; demand increase for the drug; or other reason; and

(iv) The estimated duration of the shortage.

(2) FDA may choose not to make information collected to implement this paragraph available on the drug shortages list or available under section 506C(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356c(c)) if FDA determines that disclosure of such information would adversely affect the public health (such as by increasing the possibility of hoarding or other disruption of the availability of the drug to patients). FDA will also not provide information on the public drug shortages list or under section 506C(c) of the Federal Food, Drug, and Cosmetic Act that is protected by 18 U.S.C. 1905 or 5 U.S.C. 552(b)(4), including trade secrets and commercial or financial information that is considered confidential or privileged under §20.61 of this chapter.

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(e) If an applicant fails to submit a notification as required under paragraph (b)(3)(iii)(a) of this section and in accordance with paragraph (b)(3)(iii)(b) of this section, FDA will issue a letter to the applicant informing it of such failure.

(1) Not later than 30 calendar days after the issuance of such a letter, the applicant must submit to FDA a written response setting forth the basis for noncompliance and providing the required notification under paragraph (b)(3)(iii)(a) of this section and including the information required under paragraph (b)(3)(iii)(c) of this section; and

(2) Not later than 45 calendar days after the issuance of a letter under paragraph (b)(3)(iii)(e) of this section, FDA will make the letter and the applicant's response to the letter public, unless, after review of the applicant's response, FDA determines that the applicant had a reasonable basis for not notifying FDA as required under paragraph (b)(3)(iii)(a) of this section.

(f) The following definitions of terms apply to paragraph (b)(3)(iii) of this section:

Drug shortage or shortage means a period of time when the demand or projected demand for the drug within the United States exceeds the supply of the drug.

Intended for use in the prevention or treatment of a debilitating disease or condition means a drug product intended for use in the prevention or treatment of a disease or condition associated with mortality or morbidity that has a substantial impact on day-to-day functioning.

Life supporting or life sustaining means a drug product that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life.

Meaningful disruption means a change in production that is reasonably likely to lead to a reduction in the supply of a drug by a manufacturer that is more than negligible and affects the ability of the manufacturer to fill orders or meet expected demand for its product, and does not include interruptions in manufacturing due to matters such as routine maintenance or insignificant

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changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time.

(iv) *Withdrawal of approved drug product from sale.* (a) Within 30 calendar days of the withdrawal of an approved drug from sale, applicants who are manufacturers, repackers, or relabelers subject to part 207 of this chapter must submit the following information about the drug, in accordance with the applicable requirements described in §§ 207.61 and 207.65:

(1) The National Drug Code (NDC);
(2) The identity of the drug by established name and by proprietary name, if any;

(3) The new drug application number or abbreviated application number;

(4) The date on which the drug is expected to be no longer in commercial distribution. FDA requests that the reason for withdrawal of the drug from sale be included with the information.

(b) Within 30 calendar days of the withdrawal of an approved drug from sale, applicants who are not subject to part 207 of this chapter must submit the information listed in paragraphs (b)(3)(iv)(a)(I) through (4) of this section. The information must be submitted either electronically or in writing to the Drug Registration and Listing Office, Food and Drug Administration, Center for Drug Evaluation and Research.

(c) Reporting under paragraph (b)(3)(iv)(a) of this section constitutes compliance with the requirements of § 207.57 of this chapter to update drug listing information with respect to the withdrawal from sale.

(c) *General requirements—(1) Multiple applications.* For all reports required by this section, the applicant shall submit the information common to more than one application only to the application first approved, and shall not report separately on each application. The submission is required to identify all the applications to which the report applies.

(2) *Patient identification.* Applicants should not include in reports under this section the names and addresses of individual patients; instead, the applicant should code the patient names whenever possible and retain the code in the applicant's files. The applicant

shall maintain sufficient patient identification information to permit FDA, by using that information alone or along with records maintained by the investigator of a study, to identify the name and address of individual patients; this will ordinarily occur only when the agency needs to investigate the reports further or when there is reason to believe that the reports do not represent actual results obtained.

(d) *Withdrawal of approval.* If an applicant fails to make reports required under this section, FDA may withdraw approval of the application and, thus, prohibit continued marketing of the drug product that is the subject of the application.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910-0001)

[50 FR 7493, Feb. 22, 1985; 50 FR 14212, Apr. 11, 1985, as amended at 50 FR 21238, May 23, 1985; 55 FR 11580, Mar. 29, 1990; 57 FR 17983, Apr. 28, 1992; 63 FR 66670, Dec. 2, 1998; 64 FR 401, Jan. 5, 1999; 65 FR 64617, Oct. 30, 2000; 66 FR 10815, Feb. 20, 2001; 68 FR 69019, Dec. 11, 2003; 69 FR 18766, Apr. 8, 2004; 69 FR 48775, Aug. 11, 2004; 72 FR 58999, Oct. 18, 2007; 74 FR 13113, Mar. 26, 2009; 74 FR 37167, July 28, 2009; 76 FR 78539, Dec. 19, 2011; 80 FR 38938, July 8, 2015; 81 FR 60221, Aug. 31, 2016]

§ 314.90 Waivers.

(a) An applicant may ask the Food and Drug Administration to waive under this section any requirement that applies to the applicant under §§ 314.50 through 314.81. An applicant may ask FDA to waive under § 314.126(c) any criteria of an adequate and well-controlled study described in § 314.126(b). A waiver request under this section is required to be submitted with supporting documentation in an NDA, or in an amendment or supplement to an NDA. The waiver request is required to contain one of the following:

(1) An explanation why the applicant's compliance with the requirement is unnecessary or cannot be achieved;

(2) A description of an alternative submission that satisfies the purpose of the requirement; or

(3) Other information justifying a waiver.

(b) FDA may grant a waiver if it finds one of the following: