

§ 314.110

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after 4 years if it contains a certification of patent invalidity or non-infringement described in § 314.50(i)(1)(i)(A)(4) or § 314.94(a)(12)(i)(A)(4).

(3) The approval of a 505(b)(2) application or ANDA described in paragraph (b)(2) of this section will occur as provided in § 314.107(b)(1) or (2), unless the owner of a patent that claims the drug, the patent owner's representative, or exclusive licensee brings suit for patent infringement against the applicant during the 1-year period beginning 48 months after the date of approval of the NDA for the new chemical entity and within 45 days after receipt of the notice described at § 314.52 or § 314.95, in which case, approval of the 505(b)(2) application or ANDA will occur as provided in § 314.107(b)(3).

(4) If an NDA:

(i) Was submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act;

(ii) Was approved after September 24, 1984;

(iii) Was for a drug product that contains an active moiety that has been previously approved in another NDA under section 505(b) of the Federal Food, Drug, and Cosmetic Act; and

(iv) Contained reports of new clinical investigations (other than bio-availability studies) conducted or sponsored by the applicant that were essential to approval of the application, for a period of 3 years after the date of approval of the application, the Agency will not approve a 505(b)(2) application or an ANDA for the conditions of approval of the NDA, or an ANDA submitted pursuant to an approved petition under section 505(j)(2)(C) of the Federal Food, Drug, and Cosmetic Act that relies on the information supporting the conditions of approval of an original NDA.

(5) If a supplemental NDA:

(i) Was approved after September 24, 1984; and

(ii) Contained reports of new clinical investigations (other than bio-availability studies) that were conducted or sponsored by the applicant that were essential to approval of the supplemental NDA, for a period of 3 years after the date of approval of the supplemental application, the Agency

will not approve a 505(b)(2) application or an ANDA for a change, or an ANDA submitted pursuant to an approved petition under section 505(j)(2)(C) of the Federal Food, Drug, and Cosmetic Act that relies on the information supporting a change approved in the supplemental NDA.

[59 FR 50368, Oct. 3, 1994, as amended at 81 FR 69657, Oct. 6, 2016]

§ 314.110 Complete response letter to the applicant.

(a) *Complete response letter.* FDA will send the applicant a complete response letter if the agency determines that we will not approve the application or abbreviated application in its present form for one or more of the reasons given in § 314.125 or § 314.127, respectively.

(1) *Description of specific deficiencies.* A complete response letter will describe all of the specific deficiencies that the agency has identified in an application or abbreviated application, except as stated in paragraph (a)(3) of this section.

(2) *Complete review of data.* A complete response letter reflects FDA's complete review of the data submitted in an original application or abbreviated application (or, where appropriate, a resubmission) and any amendments that the agency has reviewed. The complete response letter will identify any amendments that the agency has not yet reviewed.

(3) *Inadequate data.* If FDA determines, after an application is filed or an abbreviated application is received, that the data submitted are inadequate to support approval, the agency might issue a complete response letter without first conducting required inspections and/or reviewing proposed product labeling.

(4) *Recommendation of actions for approval.* When possible, a complete response letter will recommend actions that the applicant might take to place the application or abbreviated application in condition for approval.

(b) *Applicant actions.* After receiving a complete response letter, the applicant must take one of following actions:

(1) *Resubmission.* Resubmit the application or abbreviated application, addressing all deficiencies identified in the complete response letter.

(i) A resubmission of an application or efficacy supplement that FDA classifies as a Class 1 resubmission constitutes an agreement by the applicant to start a new 2-month review cycle beginning on the date FDA receives the resubmission.

(ii) A resubmission of an application or efficacy supplement that FDA classifies as a Class 2 resubmission constitutes an agreement by the applicant to start a new 6-month review cycle beginning on the date FDA receives the resubmission.

(iii) A resubmission of an NDA supplement other than an efficacy supplement constitutes an agreement by the applicant to start a new review cycle the same length as the initial review cycle for the supplement (excluding any extension due to a major amendment of the initial supplement), beginning on the date FDA receives the resubmission.

(iv) A major resubmission of an abbreviated application constitutes an agreement by the applicant to start a new 6-month review cycle beginning on the date FDA receives the resubmission.

(v) A minor resubmission of an abbreviated application constitutes an agreement by the applicant to start a new review cycle beginning on the date FDA receives the resubmission.

(2) *Withdrawal.* Withdraw the application or abbreviated application. A decision to withdraw an application or abbreviated application is without prejudice to a subsequent submission.

(3) *Request opportunity for hearing.* Ask the agency to provide the applicant an opportunity for a hearing on the question of whether there are grounds for denying approval of the application or abbreviated application under section 505(d) or (j)(4) of the act, respectively. The applicant must submit the request to the Associate Director for Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993. Within 60 days of the date of the request for an opportunity for a hearing, or within a

different time period to which FDA and the applicant agree, the agency will either approve the application or abbreviated application under §314.105, or refuse to approve the application under §314.125 or abbreviated application under §314.127 and give the applicant written notice of an opportunity for a hearing under §314.200 and section 505(c)(1)(B) or (j)(5)(c) of the act on the question of whether there are grounds for denying approval of the application or abbreviated application under section 505(d) or (j)(4) of the act, respectively.

(c) *Failure to take action.* (1) An applicant agrees to extend the review period under section 505(c)(1) or (j)(5)(A) of the act until it takes any of the actions listed in paragraph (b) of this section. For an application or abbreviated application, FDA may consider an applicant's failure to take any of such actions within 1 year after issuance of a complete response letter to be a request by the applicant to withdraw the application, unless the applicant has requested an extension of time in which to resubmit the application. FDA will grant any reasonable request for such an extension. FDA may consider an applicant's failure to resubmit the application within the extended time period or to request an additional extension to be a request by the applicant to withdraw the application.

(2) If FDA considers an applicant's failure to take action in accordance with paragraph (c)(1) of this section to be a request to withdraw the application, the agency will notify the applicant in writing. The applicant will have 30 days from the date of the notification to explain why the application should not be withdrawn and to request an extension of time in which to resubmit the application. FDA will grant any reasonable request for an extension. If the applicant does not respond to the notification within 30 days, the application will be deemed to be withdrawn.

[73 FR 39609, July 10, 2008]