

ability to make available the underlying raw data from the investigation for FDA audit, if necessary.

Same drug product formulation is the formulation of the drug product submitted for approval and any formulations that have minor differences in composition or method of manufacture from the formulation submitted for approval, but are similar enough to be relevant to the Agency's determination of bioequivalence.

Specification is the quality standard (i.e., tests, analytical procedures, and acceptance criteria) provided in an approved NDA or ANDA to confirm the quality of drug substances, drug products, intermediates, raw materials, reagents, components, in-process materials, container closure systems, and other materials used in the production of a drug substance or drug product. For the purpose of this definition, acceptance criteria means numerical limits, ranges, or other criteria for the tests described.

Strength is the amount of drug substance contained in, delivered, or deliverable from a drug product, which includes:

(1)(i) The total quantity of drug substance in mass or units of activity in a dosage unit or container closure (e.g., weight/unit dose, weight/volume or weight/weight in a container closure, or units/volume or units/weight in a container closure); and/or, as applicable.

(ii) The concentration of the drug substance in mass or units of activity per unit volume or mass (e.g., weight/weight, weight/volume, or units/volume); or

(2) Such other criteria the Agency establishes for determining the amount of drug substance contained in, delivered, or deliverable from a drug product if the weights and measures described in paragraph (i) of this definition do not apply (e.g., certain drug-device combination products for which the amount of drug substance is emitted per use or unit time).

Substantially complete application is an ANDA that on its face is sufficiently complete to permit a substantive review. Sufficiently complete means that the ANDA contains all the information required under section 505(j)(2)(A) of

the Federal Food, Drug, and Cosmetic Act and does not contain a deficiency described in § 314.101(d) and (e).

Tentative approval is notification that an NDA or ANDA otherwise meets the requirements for approval under the Federal Food, Drug, and Cosmetic Act, but cannot be approved because there is a 7-year period of orphan exclusivity for a listed drug under section 527 of the Federal Food, Drug, and Cosmetic Act and § 316.31 of this chapter, or that a 505(b)(2) application or ANDA otherwise meets the requirements for approval under the Federal Food, Drug, and Cosmetic Act, but cannot be approved until the conditions in § 314.107(b)(1)(iii), (b)(3), or (c) are met; because there is a period of exclusivity for the listed drug under § 314.108; because there is a period of pediatric exclusivity for the listed drug under section 505A of the Federal Food, Drug, and Cosmetic Act; because there is a period of exclusivity for the listed drug under section 505E of the Federal Food, Drug, and Cosmetic Act; or because a court order pursuant to 35 U.S.C. 271(e)(4)(A) orders that the NDA or ANDA may be approved no earlier than the date specified. A drug product that is granted tentative approval is not an approved drug and will not be approved until FDA issues an approval letter after any necessary additional review of the NDA or ANDA.

The list is the list of approved drug products published in FDA's current "Approved Drug Products With Therapeutic Equivalence Evaluations," available electronically on FDA's Web site at <http://www.fda.gov/cder>.

Therapeutic equivalents are approved drug products that are pharmaceutical equivalents for which bioequivalence has been demonstrated, and that can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling.

[81 FR 69636, Oct. 6, 2016]

Subpart B—Applications

§ 314.50 Content and format of an NDA.

NDAs and supplements to approved NDAs are required to be submitted in the form and contain the information,

as appropriate for the particular submission, required under this section. Three copies of the NDA are required: An archival copy, a review copy, and a field copy. An NDA for a new chemical entity will generally contain an application form, an index, a summary, five or six technical sections, case report tabulations of patient data, case report forms, drug samples, and labeling, including, if applicable, any Medication Guide required under part 208 of this chapter. Other NDAs will generally contain only some of those items, and information will be limited to that needed to support the particular submission. These include an NDA of the type described in section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act, an amendment, and a supplement. The NDA is required to contain reports of all investigations of the drug product sponsored by the applicant, and all other information about the drug pertinent to an evaluation of the NDA that is received or otherwise obtained by the applicant from any source. FDA will maintain guidance documents on the format and content of NDAs to assist applicants in their preparation.

(a) *Application form.* The applicant must submit a completed and signed application form that contains the following:

(1) The name and address of the applicant; the date of the NDA; the NDA number if previously issued (for example, if the NDA is a resubmission or an amendment or supplement); the name of the drug product, including its established, proprietary, code, and chemical names; the dosage form and strength; the route of administration; the identification numbers of all INDs (as defined in §312.3(b) of this chapter) that are referenced in the NDA; the identification numbers of all drug master files and other applications under this part that are referenced in the NDA; and the drug product's proposed indications for use.

(2) A statement whether the submission is an original submission, a 505(b)(2) application, a resubmission, or a supplement to an application under §314.70.

(3) A statement whether the applicant proposes to market the drug prod-

uct as a prescription or an over-the-counter product.

(4) A check-list identifying what enclosures required under this section the applicant is submitting.

(5) The applicant, or the applicant's attorney, agent, or other authorized official must sign the NDA. If the person signing the NDA does not reside or have a place of business within the United States, the NDA is required to contain the name and address of, and be countersigned by, an attorney, agent, or other authorized official who resides or maintains a place of business within the United States.

(b) *Index.* The archival copy of the NDA is required to contain a comprehensive index by volume number and page number to the summary under paragraph (c) of this section, the technical sections under paragraph (d) of this section, and the supporting information under paragraph (f) of this section.

(c) *Summary.* (1) An NDA is required to contain a summary of the NDA in enough detail that the reader may gain a good general understanding of the data and information in the NDA, including an understanding of the quantitative aspects of the data. The summary is not required for supplements under §314.70. Resubmissions of an NDA should contain an updated summary, as appropriate. The summary should discuss all aspects of the NDA, and synthesize the information into a well-structured and unified document. The summary should be written at approximately the level of detail required for publication in, and meet the editorial standards generally applied by, refereed scientific and medical journals. In addition to the agency personnel reviewing the summary in the context of their review of the NDA, FDA may furnish the summary to FDA advisory committee members and agency officials whose duties require an understanding of the NDA. To the extent possible, data in the summary should be presented in tabular and graphic forms. FDA has prepared a guideline under §10.90(b) that provides information about how to prepare a summary. The summary required under this paragraph may be used by FDA or the applicant to prepare the Summary Basis

of Approval document for public disclosure (under § 314.430(e)(2)(ii)) when the NDA is approved.

(2) The summary is required to contain the following information:

(i) The proposed text of the labeling, including, if applicable, any Medication Guide required under part 208 of this chapter, for the drug, with annotations to the information in the summary and technical sections of the NDA that support the inclusion of each statement in the labeling, and, if the NDA is for a prescription drug, statements describing the reasons for omitting a section or subsection of the labeling format in § 201.57 of this chapter.

(ii) A statement identifying the pharmacologic class of the drug and a discussion of the scientific rationale for the drug, its intended use, and the potential clinical benefits of the drug product.

(iii) A brief description of the marketing history, if any, of the drug outside the United States, including a list of the countries in which the drug has been marketed, a list of any countries in which the drug has been withdrawn from marketing for any reason related to safety or effectiveness, and a list of countries in which applications for marketing are pending. The description is required to describe both marketing by the applicant and, if known, the marketing history of other persons.

(iv) A summary of the chemistry, manufacturing, and controls section of the NDA.

(v) A summary of the nonclinical pharmacology and toxicology section of the NDA.

(vi) A summary of the human pharmacokinetics and bioavailability section of the NDA.

(vii) A summary of the microbiology section of the NDA (for anti-infective drugs only).

(viii) A summary of the clinical data section of the NDA, including the results of statistical analyses of the clinical trials.

(ix) A concluding discussion that presents the benefit and risk considerations related to the drug, including a discussion of any proposed additional studies or surveillance the applicant intends to conduct postmarketing.

(d) *Technical sections.* The NDA is required to contain the technical sections described below. Each technical section is required to contain data and information in sufficient detail to permit the agency to make a knowledgeable judgment about whether to approve the NDA or whether grounds exist under section 505(d) of the Federal Food, Drug, and Cosmetic Act to refuse to approve the NDA. The required technical sections are as follows:

(1) *Chemistry, manufacturing, and controls section.* A section describing the composition, manufacture, and specification of the drug substance and the drug product, including the following:

(i) *Drug substance.* A full description of the drug substance including its physical and chemical characteristics and stability; the name and address of its manufacturer; the method of synthesis (or isolation) and purification of the drug substance; the process controls used during manufacture and packaging; and the specifications necessary to ensure the identity, strength, quality, and purity of the drug substance and the bioavailability of the drug products made from the substance, including, for example, tests, analytical procedures, and acceptance criteria relating to stability, sterility, particle size, and crystalline form. The NDA may provide additionally for the use of alternatives to meet any of these requirements, including alternative sources, process controls, and analytical procedures. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary may satisfy relevant requirements in this paragraph.

(ii)(a) *Drug product.* A list of all components used in the manufacture of the drug product (regardless of whether they appear in the drug product) and a statement of the composition of the drug product; the specifications for each component; the name and address of each manufacturer of the drug product; a description of the manufacturing and packaging procedures and in-process controls for the drug product; the specifications necessary to ensure the identity, strength, quality, purity, potency, and bioavailability of the drug product, including, for example, tests,

analytical procedures, and acceptance criteria relating to sterility, dissolution rate, container closure systems; and stability data with proposed expiration dating. The NDA may provide additionally for the use of alternatives to meet any of these requirements, including alternative components, manufacturing and packaging procedures, in-process controls, and analytical procedures. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary may satisfy relevant requirements in this paragraph.

(b) Unless provided by paragraph (d)(1)(ii)(a) of this section, for each batch of the drug product used to conduct a bioavailability or bioequivalence study described in §320.38 or §320.63 of this chapter or used to conduct a primary stability study: The batch production record; the specification for each component and for the drug product; the names and addresses of the sources of the active and noncompendial inactive components and of the container and closure system for the drug product; the name and address of each contract facility involved in the manufacture, processing, packaging, or testing of the drug product and identification of the operation performed by each contract facility; and the results of any test performed on the components used in the manufacture of the drug product as required by §211.84(d) of this chapter and on the drug product as required by §211.165 of this chapter.

(c) The proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product or a comparably detailed description of the production process for a representative batch of the drug product.

(iii) *Environmental impact.* The NDA is required to contain either a claim for categorical exclusion under §25.30 or 25.31 of this chapter or an environmental assessment under §25.40 of this chapter.

(iv) The applicant may, at its option, submit a complete chemistry, manufacturing, and controls section 90 to 120 days before the anticipated submission of the remainder of the NDA. FDA will

review such early submissions as resources permit.

(v) The applicant must include a statement certifying that the field copy of the NDA has been provided to the applicant's home FDA district office.

(2) *Nonclinical pharmacology and toxicology section.* A section describing, with the aid of graphs and tables, animal and in vitro studies with drug, including the following:

(i) Studies of the pharmacological actions of the drug in relation to its proposed therapeutic indication and studies that otherwise define the pharmacologic properties of the drug or are pertinent to possible adverse effects.

(ii) Studies of the toxicological effects of the drug as they relate to the drug's intended clinical uses, including, as appropriate, studies assessing the drug's acute, subacute, and chronic toxicity; carcinogenicity; and studies of toxicities related to the drug's particular mode of administration or conditions of use.

(iii) Studies, as appropriate, of the effects of the drug on reproduction and on the developing fetus.

(iv) Any studies of the absorption, distribution, metabolism, and excretion of the drug in animals.

(v) For each nonclinical laboratory study subject to the good laboratory practice regulations under part 58 a statement that it was conducted in compliance with the good laboratory practice regulations in part 58, or, if the study was not conducted in compliance with those regulations, a brief statement of the reason for the non-compliance.

(3) *Human pharmacokinetics and bioavailability section.* A section describing the human pharmacokinetic data and human bioavailability data, or information supporting a waiver of the submission of in vivo bioavailability data under subpart B of part 320, including the following:

(i) A description of each of the bioavailability and pharmacokinetic studies of the drug in humans performed by or on behalf of the applicant that includes a description of the analytical procedures and statistical methods used in each study and a statement

with respect to each study that it either was conducted in compliance with the institutional review board regulations in part 56, or was not subject to the regulations under § 56.104 or § 56.105, and that it was conducted in compliance with the informed consent regulations in part 50.

(ii) If the NDA describes in the chemistry, manufacturing, and controls section tests, analytical procedures, and acceptance criteria needed to assure the bioavailability of the drug product or drug substance, or both, a statement in this section of the rationale for establishing the tests, analytical procedures, and acceptance criteria, including data and information supporting the rationale.

(iii) A summarizing discussion and analysis of the pharmacokinetics and metabolism of the active ingredients and the bioavailability or bioequivalence, or both, of the drug product.

(4) *Microbiology section.* If the drug is an anti-infective drug, a section describing the microbiology data, including the following:

(i) A description of the biochemical basis of the drug's action on microbial physiology.

(ii) A description of the antimicrobial spectra of the drug, including results of in vitro preclinical studies to demonstrate concentrations of the drug required for effective use.

(iii) A description of any known mechanisms of resistance to the drug, including results of any known epidemiologic studies to demonstrate prevalence of resistance factors.

(iv) A description of clinical microbiology laboratory procedures (for example, in vitro sensitivity discs) needed for effective use of the drug.

(5) *Clinical data section.* A section describing the clinical investigations of the drug, including the following:

(i) A description and analysis of each clinical pharmacology study of the drug, including a brief comparison of the results of the human studies with the animal pharmacology and toxicology data.

(ii) A description and analysis of each controlled clinical study pertinent to a proposed use of the drug, including the protocol and a description of the statistical analyses used to evaluate the

study. If the study report is an interim analysis, this is to be noted and a projected completion date provided. Controlled clinical studies that have not been analyzed in detail for any reason (e.g., because they have been discontinued or are incomplete) are to be included in this section, including a copy of the protocol and a brief description of the results and status of the study.

(iii) A description of each uncontrolled clinical study, a summary of the results, and a brief statement explaining why the study is classified as uncontrolled.

(iv) A description and analysis of any other data or information relevant to an evaluation of the safety and effectiveness of the drug product obtained or otherwise received by the applicant from any source, foreign or domestic, including information derived from clinical investigations, including controlled and uncontrolled studies of uses of the drug other than those proposed in the NDA, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers.

(v) An integrated summary of the data demonstrating substantial evidence of effectiveness for the claimed indications. Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended. The effectiveness data must be presented by gender, age, and racial subgroups and must identify any modifications of dose or dose interval needed for specific subgroups. Effectiveness data from other subgroups of the population of patients treated, when appropriate, such as patients with renal failure or patients with different levels of severity of the disease, also must be presented.

(vi) A summary and updates of safety information, as follows:

(a) The applicant must submit an integrated summary of all available information about the safety of the drug product, including pertinent animal data, demonstrated or potential adverse effects of the drug, clinically significant drug/drug interactions, and other safety considerations, such as data from epidemiological studies of related drugs. The safety data must be

presented by gender, age, and racial subgroups. When appropriate, safety data from other subgroups of the population of patients treated also must be presented, such as for patients with renal failure or patients with different levels of severity of the disease. A description of any statistical analyses performed in analyzing safety data should also be included, unless already included under paragraph (d)(5)(ii) of this section.

(b) The applicant must, under section 505(i) of the Federal Food, Drug, and Cosmetic Act, update periodically its pending NDA with new safety information learned about the drug that may reasonably affect the statement of contraindications, warnings, precautions, and adverse reactions in the draft labeling and, if applicable, any Medication Guide required under part 208 of this chapter. These “safety update reports” must include the same kinds of information (from clinical studies, animal studies, and other sources) and must be submitted in the same format as the integrated summary in paragraph (d)(5)(vi)(a) of this section. In addition, the reports must include the case report forms for each patient who died during a clinical study or who did not complete the study because of an adverse event (unless this requirement is waived). The applicant must submit these reports (1) 4 months after the initial submission; (2) in a resubmission following receipt of a complete response letter; and (3) at other times as requested by FDA. Before submitting the first such report, applicants are encouraged to consult with FDA regarding further details on its form and content.

(vii) If the drug has a potential for abuse, a description and analysis of studies or information related to abuse of the drug, including a proposal for scheduling under the Controlled Substances Act. A description of any studies related to overdose is also required, including information on dialysis, antidotes, or other treatments, if known.

(viii) An integrated summary of the benefits and risks of the drug, including a discussion of why the benefits exceed the risks under the conditions stated in the labeling.

(ix) A statement with respect to each clinical study involving human subjects that it either was conducted in compliance with the institutional review board regulations in part 56, or was not subject to the regulations under § 56.104 or § 56.105, and that it was conducted in compliance with the informed consent regulations in part 50.

(x) If a sponsor has transferred any obligations for the conduct of any clinical study to a contract research organization, a statement containing the name and address of the contract research organization, identification of the clinical study, and a listing of the obligations transferred. If all obligations governing the conduct of the study have been transferred, a general statement of this transfer—in lieu of a listing of the specific obligations transferred—may be submitted.

(xi) If original subject records were audited or reviewed by the sponsor in the course of monitoring any clinical study to verify the accuracy of the case reports submitted to the sponsor, a list identifying each clinical study so audited or reviewed.

(6) *Statistical section.* A section describing the statistical evaluation of clinical data, including the following:

(i) A copy of the information submitted under paragraph (d)(5)(ii) of this section concerning the description and analysis of each controlled clinical study, and the documentation and supporting statistical analyses used in evaluating the controlled clinical studies.

(ii) A copy of the information submitted under paragraph (d)(5)(vi)(a) of this section concerning a summary of information about the safety of the drug product, and the documentation and supporting statistical analyses used in evaluating the safety information.

(7) *Pediatric use section.* A section describing the investigation of the drug for use in pediatric populations, including an integrated summary of the information (the clinical pharmacology studies, controlled clinical studies, or uncontrolled clinical studies, or other data or information) that is relevant to the safety and effectiveness and benefits and risks of the drug in pediatric

populations for the claimed indications, a reference to the full descriptions of such studies provided under paragraphs (d)(3) and (d)(5) of this section, and information required to be submitted under § 314.55.

(e) *Samples and labeling.* (1) Upon request from FDA, the applicant must submit the samples described below to the places identified in the Agency's request. FDA generally will ask applicants to submit samples directly to two or more Agency laboratories that will perform all necessary tests on the samples and validate the applicant's analytical procedures.

(i) Four representative samples of the following, each sample in sufficient quantity to permit FDA to perform three times each test described in the NDA to determine whether the drug substance and the drug product meet the specifications given in the NDA:

(a) The drug product proposed for marketing;

(b) The drug substance used in the drug product from which the samples of the drug product were taken; and

(c) Reference standards and blanks (except that reference standards recognized in an official compendium need not be submitted).

(ii) Samples of the finished market package, if requested by FDA.

(2) The applicant must submit the following in the archival copy of the NDA:

(i) Three copies of the analytical procedures and related descriptive information contained in the chemistry, manufacturing, and controls section under paragraph (d)(1) of this section for the drug substance and the drug product that are necessary for FDA's laboratories to perform all necessary tests on the samples and to validate the applicant's analytical procedures. The related descriptive information includes a description of each sample; the proposed regulatory specifications for the drug; a detailed description of the methods of analysis; supporting data for accuracy, specificity, precision and ruggedness; and complete results of the applicant's tests on each sample.

(ii) Copies of the label and all labeling for the drug product (including, if applicable, any Medication Guide required under part 208 of this chapter)

for the drug product (4 copies of draft labeling or 12 copies of final printed labeling).

(f) *Case report forms and tabulations.* The archival copy of the NDA is required to contain the following case report tabulations and case report forms:

(1) *Case report tabulations.* The NDA is required to contain tabulations of the data from each adequate and well-controlled study under § 314.126 (Phase 2 and Phase 3 studies as described in §§ 312.21 (b) and (c) of this chapter), tabulations of the data from the earliest clinical pharmacology studies (Phase 1 studies as described in § 312.21(a) of this chapter), and tabulations of the safety data from other clinical studies. Routine submission of other patient data from uncontrolled studies is not required. The tabulations are required to include the data on each patient in each study, except that the applicant may delete those tabulations which the agency agrees, in advance, are not pertinent to a review of the drug's safety or effectiveness. Upon request, FDA will discuss with the applicant in a "pre-NDA" conference those tabulations that may be appropriate for such deletion. Barring unforeseen circumstances, tabulations agreed to be deleted at such a conference will not be requested during the conduct of FDA's review of the NDA. If such unforeseen circumstances do occur, any request for deleted tabulations will be made by the director of the FDA division responsible for reviewing the NDA, in accordance with paragraph (f)(3) of this section.

(2) *Case report forms.* The NDA is required to contain copies of individual case report forms for each patient who died during a clinical study or who did not complete the study because of an adverse event, whether believed to be drug related or not, including patients receiving reference drugs or placebo. This requirement may be waived by FDA for specific studies if the case report forms are unnecessary for a proper review of the study.

(3) *Additional data.* The applicant must submit to FDA additional case report forms and tabulations needed to conduct a proper review of the NDA, as requested by the director of the FDA division responsible for reviewing the

NDA. The applicant's failure to submit information requested by FDA within 30 days after receipt of the request may result in the agency viewing any eventual submission as a major amendment under § 314.60 and extending the review period as necessary. If desired by the applicant, the FDA division director will verify in writing any request for additional data that was made orally.

(4) *Presentation and format.* Applicants are invited to meet with FDA before submitting an NDA to discuss the presentation and format of supporting information. If the applicant and FDA agree, the applicant may submit tabulations of patient data and case report forms in an alternate form.

(g) *Other.* The following general requirements apply to the submission of information within the summary under paragraph (c) of this section and within the technical sections under paragraph (d) of this section.

(1) The applicant ordinarily is not required to resubmit information previously submitted, but may incorporate the information by reference. A reference to information submitted previously is required to identify the file by name, reference number, volume, and page number in the agency's records where the information can be found. A reference to information submitted to the agency by a person other than the applicant is required to contain a written statement that authorizes the reference and that is signed by the person who submitted the information.

(2) The applicant must submit an accurate and complete English translation of each part of the NDA that is not in English. The applicant must submit a copy of each original literature publication for which an English translation is submitted.

(3) If an applicant who submits an NDA under section 505(b) of the Federal Food, Drug, and Cosmetic Act obtains a "right of reference or use," as defined under § 314.3(b), to an investigation described in clause (A) of section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act, the applicant must include in its NDA a written statement signed by the owner of the data from each such investigation that the applicant may rely on in support of the approval

of its NDA, and provide FDA access to, the underlying raw data that provide the basis for the report of the investigation submitted in its NDA.

(h) *Patent information.* The NDA is required to contain the patent information described under § 314.53.

(i) *Patent certification—(1) Contents.* A 505(b)(2) application is required to contain the following:

(i) *Patents claiming drug substance, drug product, or method of use.* (A) An appropriate patent certification or statement with respect to each patent issued by the U.S. Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims the drug substance or drug product on which investigations that are relied upon by the applicant for approval of its 505(b)(2) application were conducted or that claims an approved use for such drug and for which information is required to be filed under section 505(b) and (c) of the Federal Food, Drug, and Cosmetic Act and § 314.53. For each such patent, the applicant must provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(1) That the patent information has not been submitted to FDA. The applicant must entitle such a certification "Paragraph I Certification";

(2) That the patent has expired. The applicant must entitle such a certification "Paragraph II Certification";

(3) The date on which the patent will expire. The applicant must entitle such a certification "Paragraph III Certification"; or

(4)(i) That the patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the 505(b)(2) application is submitted. The applicant must entitle such a certification "Paragraph IV Certification". This certification must be submitted in the following form:

I, (name of applicant), certify that Patent No. ____ (is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of) (name of proposed drug product) for which this 505(b)(2) application is submitted.

(ii) The certification must be accompanied by a statement that the applicant will comply with the requirements under § 314.52(a) with respect to providing a notice to each owner of the patent or its representative and to the NDA holder (or, if the NDA holder does not reside or maintain a place of business within the United States, its attorney, agent, or other authorized official) for the drug product that is claimed by the patent or a use of which is claimed by the patent and with the requirements under § 314.52(b) with respect to sending the notice and under § 314.52(c) with respect to the content of the notice.

(B) If the drug on which investigations that are relied upon by the applicant were conducted is itself a licensed generic drug of a patented drug first approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act, an appropriate patent certification or statement under this section with respect to each patent that claims the first-approved patented drug or that claims an approved use for such a drug.

(C) If, before the date of submission of an original 505(b)(2) application, there is a drug product approved in an NDA that is pharmaceutically equivalent to the drug product for which the original 505(b)(2) application is submitted, an appropriate patent certification or statement under this section with respect to each patent that claims the drug substance or drug product or that claims an approved use for one such drug product.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (i)(1)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the drug or drugs on which investigations that are relied upon in this 505(b)(2) application were conducted or that claim a use of such drug or drugs.

(iii) *Method-of-use patent.* (A) If information that is submitted under section 505(b) or (c) of the Federal Food, Drug, and Cosmetic Act and § 314.53 is for a method-of-use patent, and the labeling for the drug product for which the applicant is seeking approval does not in-

clude an indication or other condition of use that is covered by the method-of-use patent, a statement explaining that the method-of-use patent does not claim a proposed indication or other condition of use.

(B) If the labeling of the drug product for which the applicant is seeking approval includes an indication or other condition of use that, according to the patent information submitted under section 505(b) or (c) of the Federal Food, Drug, and Cosmetic Act and § 314.53 or in the opinion of the applicant, is claimed by a method-of-use patent, the applicant must submit an applicable certification under paragraph (i)(1)(i) of this section.

(2) [Reserved]

(3) *Licensing agreements.* If a 505(b)(2) application is submitted for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, the applicant must submit a paragraph IV certification as to that patent and a statement that the applicant has been granted a patent license. If the patent owner consents to approval of the 505(b)(2) application (if otherwise eligible for approval) as of a specific date, the 505(b)(2) application must contain a written statement from the patent owner that it has a licensing agreement with the applicant and that it consents to approval of the 505(b)(2) application as of a specific date.

(4) *Untimely filing of patent information.* (i) If a patent described in paragraph (i)(1)(i)(A) of this section is issued and the holder of the approved NDA for the patented drug does not file with FDA the required information on the patent within 30 days of issuance of the patent, an applicant who submitted a 505(b)(2) application that, before the submission of the patent information, contained an appropriate patent certification or statement is not required to submit a patent certification or statement to address the patent or patent information that is late-listed with respect to the pending 505(b)(2) application. Except as provided in § 314.53(f)(1), an NDA holder's amendment to the description of the approved method(s) of use claimed by the patent will be considered untimely filing of patent information unless:

(A) The amendment to the description of the approved method(s) of use claimed by the patent is submitted within 30 days of patent issuance;

(B) The amendment to the description of the approved method(s) of use claimed by the patent is submitted within 30 days of approval of a corresponding change to product labeling; or

(C) The amendment to the description of the approved method(s) of use claimed by the patent is submitted within 30 days of a decision by the U.S. Patent and Trademark Office or by a Federal district court, the Court of Appeals for the Federal Circuit, or the U.S. Supreme Court that is specific to the patent and alters the construction of a method-of-use claim(s) of the patent, and the amendment contains a copy of the decision.

(ii) An applicant whose 505(b)(2) application is submitted after the NDA holder's untimely filing of patent information or whose 505(b)(2) application was previously filed but did not contain an appropriate patent certification or statement at the time of the patent submission must submit a certification under paragraph (i)(1)(i) of this section and/or a statement under paragraph (i)(1)(iii) of this section as to that patent.

(5) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn, the applicant must submit an appropriate certification or statement for each listed patent.

(6) *Amended certifications.* A patent certification or statement submitted under paragraphs (i)(1)(i) through (iii) of this section may be amended at any time before the approval of the 505(b)(2) application. An applicant must submit an amended certification as an amendment to a pending 505(b)(2) application. If an applicant with a pending 505(b)(2) application voluntarily makes a patent certification for an untimely filed patent, the applicant may withdraw the patent certification for the untimely filed patent. Once an amendment is

submitted to change the certification, the 505(b)(2) application will no longer be considered to contain the prior certification.

(i) *After finding of infringement.* An applicant who has submitted a paragraph IV certification and is sued for patent infringement must submit an amendment to change its certification if a court enters a final decision from which no appeal has been or can be taken, or signs and enters a settlement order or consent decree in the action that includes a finding that the patent is infringed, unless the final decision, settlement order, or consent decree also finds the patent to be invalid. In its amendment, the applicant must certify under paragraph (i)(1)(i)(A)(3) of this section that the patent will expire on a specific date or, with respect to a patent claiming a method of use, the applicant may instead provide a statement under paragraph (i)(1)(iii) of this section if the applicant amends its 505(b)(2) application such that the applicant is no longer seeking approval for a method of use claimed by the patent. Once an amendment for the change has been submitted, the 505(b)(2) application will no longer be considered to contain a paragraph IV certification to the patent. If a final decision finds the patent to be invalid and infringed, an amended certification is not required.

(ii) *After request to remove a patent or patent information from the list.* If the list reflects that an NDA holder has requested that a patent or patent information be removed from the list and no ANDA applicant is eligible for 180-day exclusivity based on a paragraph IV certification to that patent, the patent or patent information will be removed and any applicant with a pending 505(b)(2) application (including a tentatively approved 505(b)(2) application) who has made a certification with respect to such patent must submit an amendment to withdraw its certification. In the amendment, the applicant must state the reason for withdrawing the certification or statement (that the patent has been removed from the list). If the list reflects that an NDA holder has requested that a patent or patent information be removed from the list and one or more

first applicants are eligible for 180-day exclusivity based on a paragraph IV certification to that patent, the patent will remain listed until any 180-day exclusivity based on that patent has expired or has been extinguished. A 505(b)(2) applicant is not required to provide or maintain a certification to a patent or patent information that remains listed only for purposes of a first applicant's 180-day exclusivity for its ANDA. Once an amendment to withdraw the certification has been submitted, the 505(b)(2) application will no longer be considered to contain a paragraph IV certification to the patent. If removal of a patent from the list results in there being no patents listed for the listed drug(s) identified in the 505(b)(2) application, the applicant must submit an amended certification reflecting that there are no listed patents.

(iii) *Other amendments.* (A) Except as provided in paragraphs (i)(4) and (i)(6)(iii)(B) of this section:

(1) An applicant must amend a submitted certification or statement if, at any time before the approval of the 505(b)(2) application, the applicant learns that the submitted certification or statement is no longer accurate; and

(2) An applicant must submit an appropriate patent certification or statement under paragraph (i)(1) of this section if, after submission of the 505(b)(2) application, a new patent is issued by the U.S. Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims a listed drug relied upon or that claims an approved use for such listed drug for which information is required to be filed under section 505(b) and (c) of the Federal Food, Drug, and Cosmetic Act and § 314.53.

(B) An applicant is not required to submit a supplement to change a submitted certification when information on an otherwise applicable patent is submitted after the approval of the 505(b)(2) application.

(j) *Claimed exclusivity.* A new drug product, upon approval, may be entitled to a period of marketing exclusivity under the provisions of § 314.108. If an applicant believes its drug product is entitled to a period of exclusivity, it must submit with the NDA

prior to approval the following information:

(1) A statement that the applicant is claiming exclusivity.

(2) A reference to the appropriate paragraph under § 314.108 that supports its claim.

(3) If the applicant claims exclusivity under § 314.108(b)(2), information to show that, to the best of its knowledge or belief, a drug has not previously been approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act containing any active moiety in the drug for which the applicant is seeking approval.

(4) If the applicant claims exclusivity under § 314.108(b)(4) or (b)(5), the following information to show that the NDA contains “new clinical investigations” that are “essential to approval of the NDA or supplement” and were “conducted or sponsored by the applicant:”

(i) “*New clinical investigations.*” A certification that to the best of the applicant's knowledge each of the clinical investigations included in the NDA meets the definition of “new clinical investigation” set forth in § 314.108(a).

(ii) “*Essential to approval.*” A list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval, a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, such published studies or publicly available reports do not provide a sufficient basis for the approval of the conditions for which the applicant is seeking approval without reference to the new clinical investigation(s) in the NDA, and an explanation as to why the studies or reports are insufficient.

(iii) “*Conducted or sponsored by.*” If the applicant was the sponsor named in the Form FDA 1571 for an IND under which the new clinical investigation(s) that is essential to the approval of its NDA was conducted, identification of the IND by number. If the applicant was not the sponsor of the IND under which the clinical investigation(s) was

conducted, a certification that the applicant or its predecessor in interest provided substantial support for the clinical investigation(s) that is essential to the approval of its NDA, and information supporting the certification. To demonstrate “substantial support,” an applicant must either provide a certified statement from a certified public accountant that the applicant provided 50 percent or more of the cost of conducting the study or provide an explanation of why FDA should consider the applicant to have conducted or sponsored the study if the applicant’s financial contribution to the study is less than 50 percent or the applicant did not sponsor the investigational new drug. A predecessor in interest is an entity, e.g., a corporation, that the applicant has taken over, merged with, or purchased, or from which the applicant has purchased all rights to the drug. Purchase of nonexclusive rights to a clinical investigation after it is completed is not sufficient to satisfy this definition.

(k) *Financial certification or disclosure statement.* The NDA must contain a financial certification or disclosure statement or both as required by part 54 of this chapter.

(l) *Format of an original NDA*—(1) *Archival copy.* The applicant must submit a complete archival copy of the NDA that contains the information required under paragraphs (a) through (f) of this section. FDA will maintain the archival copy during the review of the NDA to permit individual reviewers to refer to information that is not contained in their particular technical sections of the NDA, to give other agency personnel access to the NDA for official business, and to maintain in one place a complete copy of the NDA. Except as required by paragraph (1)(1)(i) of this section, applicants may submit the archival copy on paper or in electronic format provided that electronic submissions are made in accordance with part 11 of this chapter.

(i) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in

paragraph (1)(5) of this section. This requirement is in addition to the requirements of paragraph (e)(2)(ii) of this section that copies of the formatted label and all labeling be submitted. 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.

(ii) [Reserved]

(2) *Review copy.* The applicant must submit a review copy of the NDA. Each of the technical sections, described in paragraphs (d)(1) through (6) of this section, in the review copy is required to be separately bound with a copy of the application form required under paragraph (a) of this section and a copy of the summary required under paragraph (c) of this section.

(3) *Field copy.* The applicant must submit a field copy of the NDA that contains the technical section described in paragraph (d)(1) of this section, a copy of the application form required under paragraph (a) of this section, a copy of the summary required under paragraph (c) of this section, and a certification that the field copy is a true copy of the technical section described in paragraph (d)(1) of this section contained in the archival and review copies of the NDA.

(4) *Binding folders.* The applicant may obtain from FDA sufficient folders to bind the archival, the review, and the field copies of the NDA.

(5) *Electronic format submissions.* 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).

[50 FR 7493, Feb. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 314.50, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 314.52 Notice of certification of invalidity, unenforceability, or non-infringement of a patent.

(a) *Notice of certification.* For each patent that claims the listed drug or