

(A) Is pharmaceutically equivalent to the drug product for which the original 505(b)(2) application is submitted; and

(B) Was approved before the original 505(b)(2) application was submitted.

(iv) If the applicant is seeking approval only for a new indication and not for the indications approved for the listed drug on which the applicant relies, a certification so stating.

(v) Any patent information required under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act with respect to any patent which claims the drug for which approval is sought or a method of using such drug and to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product.

(vi) Any patent certification or statement required under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act with respect to any relevant patents that claim the listed drug(s) on which investigations relied on by the applicant for approval of the application were conducted, or that claim a use for the listed drug(s). A 505(b)(2) applicant seeking approval of a drug that is pharmaceutically equivalent to a listed drug approved in an NDA implicitly relies upon one such pharmaceutically equivalent listed drug.

(vii) If the applicant believes the change for which it is seeking approval is entitled to a period of exclusivity, the information required under § 314.50(j).

(2) The applicant must submit a review copy that contains the technical sections described in § 314.50(d)(1), except that the section described in § 314.50(d)(1)(ii)(c) must contain 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, and § 314.50(d)(3), and the technical sections described in § 314.50(d)(2), (d)(4) through (6), and (f) when needed to support the modification. Each of the technical sections in the review copy is required to be separately bound with a copy of the information required under § 314.50(a), (b), and (c) and a copy of the proposed labeling.

(3) The information required by § 314.50 (d)(2), (d)(4) (if an anti-infective drug), (d)(5), (d)(6), and (f) for the listed drug on which the applicant relies must be satisfied by reference to the listed drug under paragraph (a)(1)(iii) of this section.

(4) The applicant must submit a field copy of the 505(b)(2) application that contains the technical section described in § 314.50(d)(1), a copy of the information required under § 314.50(a) and (c), and certification that the field copy is a true copy of the technical section described in § 314.50(d)(1) contained in the archival and review copies of the 505(b)(2) application.

(b) A 505(b)(2) application may not be submitted under this section for a drug product whose only difference from a listed drug is that:

(1) The extent to which its active ingredient(s) is absorbed or otherwise made available to the site of action is less than that of the listed drug; or

(2) The rate at which its active ingredient(s) is absorbed or otherwise made available to the site of action is unintentionally less than that of the listed drug.

[57 FR 17982, Apr. 28, 1992; 57 FR 61612, Dec. 28, 1992, as amended at 58 FR 47351, Sept. 8, 1993; 59 FR 50364, Oct. 3, 1994; 81 FR 69647, Oct. 6, 2016]

#### § 314.55 Pediatric use information.

(a) *Required assessment.* Except as provided in paragraphs (b), (c), and (d) of this section, each application for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration shall contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the drug is safe and effective. Where the course of the disease and the effects of the drug are sufficiently similar in adults and pediatric patients, FDA may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in adults usually supplemented with other information obtained in pediatric patients, such as pharmacokinetic studies. Studies may not be

needed in each pediatric age group, if data from one age group can be extrapolated to another. Assessments of safety and effectiveness required under this section for a drug product that represents a meaningful therapeutic benefit over existing treatments for pediatric patients must be carried out using appropriate formulations for each age group(s) for which the assessment is required.

(b) *Deferred submission.* (1) FDA may, on its own initiative or at the request of an applicant, defer submission of some or all assessments of safety and effectiveness described in paragraph (a) of this section until after approval of the drug product for use in adults. Deferral may be granted if, among other reasons, the drug is ready for approval in adults before studies in pediatric patients are complete, or pediatric studies should be delayed until additional safety or effectiveness data have been collected. If an applicant requests deferred submission, the request must provide a certification from the applicant of the grounds for delaying pediatric studies, a description of the planned or ongoing studies, and evidence that the studies are being or will be conducted with due diligence and at the earliest possible time.

(2) If FDA determines that there is an adequate justification for temporarily delaying the submission of assessments of pediatric safety and effectiveness, the drug product may be approved for use in adults subject to the requirement that the applicant submit the required assessments within a specified time.

(c) *Waivers*—(1) *General.* FDA may grant a full or partial waiver of the requirements of paragraph (a) of this section on its own initiative or at the request of an applicant. A request for a waiver must provide an adequate justification.

(2) *Full waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section if the applicant certifies that:

(i) The drug product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of such patients is so small or geographically dispersed; or

(iii) There is evidence strongly suggesting that the drug product would be ineffective or unsafe in all pediatric age groups.

(3) *Partial waiver.* An applicant may request a waiver of the requirements of paragraph (a) of this section with respect to a specified pediatric age group, if the applicant certifies that:

(i) The drug product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group, and is not likely to be used in a substantial number of patients in that age group;

(ii) Necessary studies are impossible or highly impractical because, e.g., the number of patients in that age group is so small or geographically dispersed;

(iii) There is evidence strongly suggesting that the drug product would be ineffective or unsafe in that age group; or

(iv) The applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

(4) *FDA action on waiver.* FDA shall grant a full or partial waiver, as appropriate, if the agency finds that there is a reasonable basis on which to conclude that one or more of the grounds for waiver specified in paragraphs (c)(2) or (c)(3) of this section have been met. If a waiver is granted on the ground that it is not possible to develop a pediatric formulation, the waiver will cover only those pediatric age groups requiring that formulation. If a waiver is granted because there is evidence that the product would be ineffective or unsafe in pediatric populations, this information will be included in the product's labeling.

(5) *Definition of “meaningful therapeutic benefit”.* For purposes of this section and §201.23 of this chapter, a drug will be considered to offer a meaningful therapeutic benefit over existing therapies if FDA estimates that:

(i) If approved, the drug would represent a significant improvement in the treatment, diagnosis, or prevention of a disease, compared to marketed products adequately labeled for that

use in the relevant pediatric population. Examples of how improvement might be demonstrated include, for example, evidence of increased effectiveness in treatment, prevention, or diagnosis of disease, elimination or substantial reduction of a treatment-limiting drug reaction, documented enhancement of compliance, or evidence of safety and effectiveness in a new subpopulation; or

(ii) The drug is in a class of drugs or for an indication for which there is a need for additional therapeutic options.

(d) *Exemption for orphan drugs.* This section does not apply to any drug for an indication or indications for which orphan designation has been granted under part 316, subpart C, of this chapter.

[63 FR 66670, Dec. 2, 1998]

**§ 314.56 Nonprescription drug product with an additional condition for nonprescription use (ACNU).**

(a) *Definition.* The following definition applies to this section:

(1) *Additional condition for nonprescription use (ACNU)* means one or more FDA-approved conditions that an applicant of a nonprescription drug product must implement to ensure consumers' appropriate self-selection or appropriate actual use, or both, of the nonprescription drug product without the supervision of a practitioner licensed by law to administer such drug if an applicant demonstrates and FDA determines that labeling alone is insufficient to ensure appropriate self-selection or appropriate actual use, or both.

(2) [Reserved]

(b) *Separate application required for a nonprescription drug product with an ACNU.* Notwithstanding § 310.200(b) of this chapter, an applicant must submit a separate application for a nonprescription drug product with an ACNU. Initial approval for a nonprescription drug product with an ACNU cannot be obtained through a supplement to an approved application.

(c) *Specific requirements for an application for a nonprescription drug product with an ACNU.* The applicant must submit an application that complies with the following requirements:

(1) *New drug application (NDA).* When fulfilling the content and format requirements under § 314.50, an NDA for a nonprescription drug product with an ACNU must include—

(i) A statement regarding whether the purpose of the ACNU is to ensure appropriate self-selection or appropriate actual use, or both, by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug;

(ii) A statement regarding the necessity of the ACNU;

(iii) A description of how the ACNU ensures appropriate self-selection or appropriate actual use, or both;

(iv) A description of the key elements of the ACNU, including:

(A) The additional condition implemented by the applicant to be fulfilled by the consumer to obtain the nonprescription drug product with an ACNU;

(B) The labeling specifically associated with the ACNU; and

(C) The criteria by which the consumer would successfully fulfill the ACNU, including a description of the specific actions to be taken by a consumer or required responses to be provided by a consumer;

(v) Adequate data or other information that demonstrates the necessity of the ACNU to ensure appropriate self-selection or appropriate actual use, or both;

(vi) Adequate data or other information that demonstrates the effect of the ACNU on the appropriate self-selection or appropriate actual use, or both; and

(vii) A description of the specific way(s) the ACNU is operationalized.

(2) *Abbreviated new drug application (ANDA).* When fulfilling the content and format requirements under § 314.94, an ANDA for a nonprescription drug product with an ACNU must include:

(i) A statement regarding whether the purpose of the ACNU is to ensure appropriate self-selection or appropriate actual use, or both, by consumers of the nonprescription drug product with an ACNU without the supervision of a practitioner licensed by law to administer such drug, which must be the same as the purpose of the