CENTER FOR DRUG EVALUATION AND RESEARCH

Guidance for Industry

The FDA published Good Guidance Practices in February 1997. This guidance was developed and issued prior to that date.

Additional copies are available from:
Office of Training and Communications
Division of Communications Management
Drug Information Branch, HFD-210
5600 Fishers Lane
Rockville, MD 20857

(Tel) 301-827-4573
(Internet) http://www.fda.gov/cder/guidance/index.htm

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH & HUMAN SERVICES
Public Health Service

Food and Drug Administration
Rockville MD 20857

OCT 11 1984

Dear Sir or Madam:

On September 24, 1984, the President signed the Drug Price Competition and Patent Term Restoration Act (copy enclosed). Among other things, it extends eligibility for the submission of Abbreviated New Drug Applications (ANDAs) to drug products first approved as New Drug Applications (NDAs) after the 1962 Amendments to the Federal Food, Drug, and Cosmetic Act (the Act).

This letter provides some information on how FDA intends to implement the new statute and gives preliminary guidance on how you should submit ANDAs, convert paper NDAs, and submit patent and exclusivity information. We are in the process of preparing additional interim guidance, which we hope will be available within 30 days. During this initial phase of implementation, FDA will follow existing regulations, policies and procedures, except as noted below, in future guidance, or where the statutory language dictates otherwise.

Pending Paper NDAs

As FDA initiates its implementation of the new law, we must first address the status and conversion of pending paper NDAs. The following policies will be used by FDA for paper NDAs:

1. Paper NDAs that have already been approved by the Agency will be transferred to the Division of Generic Drugs. Supplements for such applications will be handled by the Division of Generic Drugs.

2. FDA will make every effort to process those pending paper NDA submissions for which reviews appear likely to be completed by November 26 or shortly thereafter. Paper NDAs that have been fully reviewed for all aspects (including safety and effectiveness, literature, toxicology, manufacturing, and chemistry) and applications which are under review and for which completion of that process is anticipated on or about that date will continue to be reviewed by the division in the Office of Drug Research and Review or in the Office of Biologics Research and Review currently handling the application. When the application review is completed, the division will either approve the application or, if a not approvable letter is issued, it will transfer the application to the Generic Drugs Division.

3. In the case of pending paper NDAs for which reviews are not anticipated to be completed on or about November 26 or for which not approvable or deficiency letters are still outstanding, applicants should proceed to have them converted to ANDAs under the procedures outlined below.

4. Applicants wanting to convert a pending paper NDA into an ANDA should do the following:

a) If the application is now in a review division in the Office of Drug Research and Review or in the Office of Biologics Research and Review, the applicant should submit to the pending paper NDA submission a request that the application be transferred to the Division of Generic Drugs for processing and, on or after the date when the new ANDA provisions become effective (i.e., November 26, 1984), submit an ANDA to the Division of Generic Drugs.

b) If the paper NDA is now in the Division of Generic Drugs, the applicant should submit an amendment requesting that it be administratively considered as an ANDA on November 26, 1984, along with the additional information required by the statute.

The current policy of the Division of Generic Drugs does not allow more than one strength, dosage form, or container/closure system (if an injectable product) in a single ANDA. Applicants desiring to convert a paper NDA application including multiple strengths, dosage forms, etc., to an ANDA must submit separate applications for each dosage form and strength.

All firms seeking to convert paper NDAs to ANDAs should submit the required patent certification and other information required by the statute, a newly signed FD 356H, and a statement withdrawing the literature portion of the paper NDA.

To expedite the review of applications resubmitted as ANDAs, it is recommended that applicants include in the resubmission copies of all communications between the firm and the Agency concerning its paper NDA.

The Agency will utilize the initial date of submission of active paper NDAs and the dates of subsequent communications with the Agency in establishing the review priority of converted paper NDAs and resubmitted and new ANDAs.

In the absence of the actions by the applicants described above to convert paper NDAs to ANDAs the paper NDAs will be retained in the reviewing divisions for processing in accordance with existing paper NDA procedures and priorities.

Although the statute includes the concept of a paper NDA, it is not clear that such applications will provide future applicants with any advantages. Such applications, if used, would still be required to include safety and effectiveness data not required in ANDAs, and they would be subject to the same limitations as ANDAs (e.g., barred from approval or submission under the exclusivity provisions).

If you have questions concerning the resubmission of ANDAs, you may contact:

Mr. David Rosen
Division of Generic Drugs
Room 16-70, HFN-230
5600 Fishers Lane
Rockville, MD 20857
(301) 443-4080

The List of Currently Approved Drugs

The new legislation stipulates that within 60 days of enactment, FDA must make publicly available a list of all marketed drugs currently approved for safety and effectiveness and must update that list every 30 days. The list must also state whether in vitro and/or in vivo bioequivalence studies are required for approval of ANDAs for those drugs, and it must specify the approval date for all drug products approved after 1981. To comply with this requirement, FDA's existing publication, The Approved Prescription Drug Product List, and its monthly supplements, will be used to disseminate this information. Supplements to the preface to the List will explain in more detail how this requirement is being implemented and will also be used to publish required patent information and information on periods of exclusivity for submission or approval of ANDAs for specific products. The list and a subscription to its supplements is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238. The publication number is GPO 1984-381-921 201.

Patent Certification for ANDAs

All new paper NDAs and ANDAs, including those for DESI drug products, must now contain information included under the newly added subsection 505(j)(2) or the firm will receive a not approvable letter. As is currently the policy, a new application will be considered incomplete if it is not accompanied by an acceptable bioavailability/bioequivalence study or protocol (where in vivo studies are required). In addition to the other new requirements, all ANDA (or paper NDA) applicants now must certify regarding the patent status of the subject drug as outlined in 505(j)(2)(A)(vii) or 505(b)(2)(A) of the statute. For all relevant patents on the listed drug, an applicant must certify one of the following:

(1) no patent information has been filed;
(2) the patent has expired;
(3) the date on which the patent will expire; or
(4) the patent filed is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted

With respect to a method of use patent for the listed drug, the applicant must certify that the method of use patent does not claim an indication for which the applicant seeks approval. If this patent information is not included in the application, the ANDA or paper NDA will be considered incomplete and will be the subject of a not approvable letter.

Submission of Patent Information by NDA Holders

As required in the new language added to section 505(b) of the Act, all holders of approved NDAs must file with FDA by October 24, 1984, the patent number and expiration date of any effective patents which claim the drug or a method of using such drug. Patents which claim a method of manufacturing such drugs should not be included. The information is required to be filed in a supplement to the application, but we are also requesting that the information be sent to the Information Systems Division to facilitate processing initially (see below). Such information may be filed after October 24, 1984, only if good cause is shown for the failure to file by that date and only if no ANDA has been submitted that refers to that drug in the approved NDA. Relevant patent information must be filed with all new submissions of NDAs. All patent information filed with FDA on approved applications under this subsection will be published and updated monthly in supplements to the Approved Prescription Drug Product List. Holders of pending NDAs need file such patent information only upon approval. In any event, FDA will not publish patent information until the NDA is approved.

Exclusive Approval for Certain Drugs

The new statute [amended sections 505(j)(4)(D) and 505(c)(3)(D)] establishes various periods of time during which ANDAs or paper NDAs for certain products may not be submitted or approved if a pioneer application qualifies for exclusivity. If you believe one or more of your approved products qualify for such exclusive approval status, please notify us promptly. Such prompt notification is essential to enable FDA to publish the exclusivity information and the patent status data by the dates mandated in the new statute. We plan to publish these and all other data required by the statute in a supplement to the Approved Prescription Drug Products List.

Where to Submit Patent and Exclusivity Information

To expedite the compilation and the publication of the patent and exclusivity information by the Agency, currently approved NDA holders are requested to submit patent and exclusivity information to:

Thomas J. McGinnis
Division of Drug Information Resources
Room 8B33, HFN-84
5600 Fishers Lane
Rockville, Maryland 20857

In response to industry requests, we are enclosing a suggested format for the submission of this patent and exclusivity information.

Additional Information

For general questions regarding the ANDA aspects of the new legislation, including questions on the status of pending paper NDAs in the new drug review divisions contact:

Donald Hare
Office of Drug Standards
Room 13B44, HFN-203
5600 Fishers Lane
Rockville, Maryland 20857
(301) 443-2784

For information on the patent extension aspects of the new legislation contact:

Charles E. Van Horn
Director, Patent Examining Group 120
Commissioner of Patents and Trademarks
Washington, D.C. 20231
(703) 557-3637

or

Frances Sasinowski
Division of Regulatory Affairs
FDA/Center for Drugs and Biologics
Room 11B06, HFN-366
5600 Fishers Lane
Rockville, MD 20857
(301) 443-3640

FDA plans to issue proposed procedural regulations to implement the new law and will, at that time, comply with applicable provisions of the Paperwork Reduction Act.

We will keep you informed of additional guidance though written communication and through meetings of appropriate legal and professional associations on a continuing basis. We welcome your input and interest.

Sincerely,

Paul Parkman

for Harry M. Meyer, Jr., M.D.
Director
Center for Drugs and Biologics

Attachments

copy of the statute
patent/exclusivity information format

Suggested Format for Patent and Exclusivity Information

1) Active Ingredient(s)

2) Strength(s)

3) Trade Name

4) (Dosage Form, Route of Administration)

5) Applicant Firm Name

6) NDA Number

7) Approval Date

8) Exclusivity - Date first ANDA could be approved and length of exclusivity period

9) Applicable patent numbers and expiration date of each

The above information should be supplied for each product.

Information for all products from a firm may be put in tabular form and submitted together to Thomas McGinnis, FDA Division of Information Resources (HFN-84), 5600 Fishers Lane, Rockville, MD 20857. Even though is it not required to be submitted, if you have included any patent information that applies to pending NDAs or supplements, please so indicate in the material you submit. The agency does not intend to publish patent information on pending applications.