Bloomberg Law

Pharmaceutical Law & Industry Report®

New Products

To Use a Generic Drug Application, Or Not, That's the Question

BY BRONWYN MIXTER

Generic drug makers are getting help with deciding the type of abbreviated application to submit for a product's approval.

Food and Drug Administration draft guidance released Oct. 12 can help manufacturers determine whether to submit an abbreviated new drug application (ANDA) or a 505(b)(2) application. ANDAs are used for generic drug approvals, while the 505(b)(2) application is a special subset of new drug application (NDA). NDAs are used to obtain approval of new branded drug products.

A 505(b)(2) application is an NDA for a drug product that differs slightly from the reference-listed (brand) drug. For example, the new product might have a different route of administration. While 505(b)(2) applications require less scientific information than standard NDAs, they require more information than ANDAs, which have to demonstrate only that the generic drug is bioequivalent to the brand drug.

The advantage of an ANDA is that the generic product can be automatically substituted for the brand product, which isn't usually the case with 505(b)(2) products. But 505(b)(2) products come with certain patent protections and are eligible for certain exclusivity periods.

Differences Between Applications The guidance says 505(b)(2) applications allow greater flexibility as to the characteristics of the proposed product than an ANDA. ANDAs generally are required to demonstrate that the proposed generic drug product and the reference listed drug are the same with respect to the active ingredient, dosage form, route of administration, strength, previously approved conditions of use, and labeling. The FDA said it will generally refuse to file a 505(b)(2) application for a drug that is a duplicate of a reference listed drug and that is eligible for approval under an ANDA.

Jonathan J. Darrow, an instructor of medicine at Harvard Medical School, told Bloomberg BNA in an Oct. 12 email the 505(b)(2) pathway ''can be used for drugs that are less similar to existing drugs but that still share certain characteristics'' and aren't necessarily bioequivalent to the reference-listed drug.

A 505(b)(2) product ''can be almost anything. It can be a new chemical entity. It can be a small tweak to an approved product,'' Kurt R. Karst, a life sciences attorney with Hyman, Phelps & McNamara in Washington, told Bloomberg BNA.

Darrow said 505(b)(2) applications require more data, time, and cost than ANDAs.

Manufacturers can obtain approval of products under the 505(b)(2) application pathway and can list their own patent in the FDA's Orange Book, thereby blocking competitors from copying their product, according to Gaby L. Longsworth, a patent attorney with Sterne, Kessler, Goldstein & Fox in Washington, told Bloomberg BNA in an Oct. 13 email. The Orange Book is a listing of patents brand-name manufacturers claim cover their drug products.

Also, products approved under a 505(b)(2) application are eligible for either five years of new chemical entity exclusivity or three years of new product exclusivity, depending upon the product, Longsworth said. This differs from ANDAs, which only provide 180 days of exclusivity for the first generic version of an approved brand drug. Some 505(b)(2)-approved products might not receive any exclusivity if they lack sufficient innovation, she said.

Requesting Help From FDA The guidance states that an ANDA applicant wanting dialog can get a a pre-ANDA meeting at the FDA's Office of Generic Drugs. For example, ANDA applicants should request a pre-ANDA meeting if they are considering submitting applications requiring data outside the scope of the ANDA pathway or for any differences in bioequivalence.

ANDA applicants with specific and targeted inquiries can ask questions about the generic drug product development process by sending ''controlled correspondence'' to the Office of Generic Drugs, according to the draft guidance. 505(b)(2) applicants with questions can direct controlled correspondence to the FDA's Office of New Drugs, the guidance said.

The Association for Accessible Medicines (AAM), a trade association for generic drug manufacturers, is reviewing the draft guidance with its members, Rachel Schwartz, a spokeswoman for the AAM told Bloomberg BNA Oct. 12. Members of the AAM include Baxter Healthcare Corp., Mylan N.V., and Teva Pharmaceuticals USA Inc.

A Federal Register notice announcing the draft guidance was published in the Oct. 13 Federal Register. Comments on the draft guidance are due Dec. 12 (Docket No. FDA-2017-D-5974).

To contact the reporter on this story: Bronwyn Mixter in Washington at bmixter@bna.com

To contact the editor responsible for this story: Brian Broderick at bbroderick@bna.com

 ISSN 1542-9547

The draft guidance is at http://src.bna.com/tiT.

   ISSN 1542-9547