

present, in writing, comments and information bearing on the initial decision. If no comments or information is received, the initial decision will become final at the expiration of 30 days.

(3) Comments and information received within 30 days of the issuance of the initial decision will be considered by the agency and responded to in a final decision.

(4) The agency may, in its discretion, hold a limited oral hearing to resolve dispositive factual issues that cannot be resolved on the basis of written submissions.

(5) If the final decision affirms the agency's initial decision that the listed drug was withdrawn for reasons of safety or effectiveness, the decision will be published in the FEDERAL REGISTER in compliance with § 314.152, and will, except as provided in paragraph (b)(6) of this section, suspend approval of all abbreviated new drug applications identified under paragraph (b)(1) of this section and remove from the list the listed drug and any drug whose approval was suspended under this paragraph. The notice will satisfy the requirement of § 314.162(b). The agency's final decision and copies of materials on which it relies will also be filed with the Dockets Management Branch (address in paragraph (b)(1) of this section).

(6) If the agency determines in its final decision that the listed drug was withdrawn for reasons of safety or effectiveness but, based upon information submitted by the holder of an abbreviated new drug application, also determines that the reasons for the withdrawal of the listed drug are not relevant to the safety and effectiveness of the drug subject to such abbreviated new drug application, the final decision will state that the approval of such abbreviated new drug application is not suspended.

(7) Documents in the record will be publicly available in accordance with § 10.20(j) of this chapter. Documents available for examination or copying will be placed on public display in the Dockets Management Branch (address in paragraph (b)(1) of this section) promptly upon receipt in that office.

[57 FR 17995, Apr. 28, 1992]

**§ 314.160 Approval of an application or abbreviated application for which approval was previously refused, suspended, or withdrawn.**

Upon the Food and Drug Administration's own initiative or upon request of an applicant, FDA may, on the basis of new data, approve an application or abbreviated application which it had previously refused, suspended, or withdrawn approval. FDA will publish a notice in the FEDERAL REGISTER announcing the approval.

[57 FR 17995, Apr. 28, 1992]

**§ 314.161 Determination of reasons for voluntary withdrawal of a listed drug.**

(a) A determination whether a listed drug that has been voluntarily withdrawn from sale was withdrawn for safety or effectiveness reasons may be made by the agency at any time after the drug has been voluntarily withdrawn from sale, but must be made:

(1) Prior to approving an abbreviated new drug application that refers to the listed drug;

(2) Whenever a listed drug is voluntarily withdrawn from sale and abbreviated new drug applications that referred to the listed drug have been approved; and

(3) When a person petitions for such a determination under §§ 10.25(a) and 10.30 of this chapter.

(b) Any person may petition under §§ 10.25(a) and 10.30 of this chapter for a determination whether a listed drug has been voluntarily withdrawn for safety or effectiveness reasons. Any such petition must contain all evidence available to the petitioner concerning the reason that the drug is withdrawn from sale.

(c) If the agency determines that a listed drug is withdrawn from sale for safety or effectiveness reasons, the agency will, except as provided in paragraph (d) of this section, publish a notice of the determination in the FEDERAL REGISTER.

(d) If the agency determines under paragraph (a) of this section that a listed drug is withdrawn from sale for safety and effectiveness reasons and there are approved abbreviated new drug applications that are subject to suspension under section 505(j)(5) of the

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act, FDA will initiate a proceeding in accordance with § 314.153(b).

(e) A drug that the agency determines is withdrawn for safety or effectiveness reasons will be removed from the list, under § 314.162. The drug may be relisted if the agency has evidence that marketing of the drug has resumed or that the withdrawal is not for safety or effectiveness reasons. A determination that the drug is not withdrawn for safety or effectiveness reasons may be made at any time after its removal from the list, upon the agency's initiative, or upon the submission of a petition under §§ 10.25(a) and 10.30 of this chapter. If the agency determines that the drug is not withdrawn for safety or effectiveness reasons, the agency shall publish a notice of this determination in the FEDERAL REGISTER. The notice will also announce that the drug is relisted, under § 314.162(c). The notice will also serve to reinstate approval of all suspended abbreviated new drug applications that referred to the listed drug.

[57 FR 17995, Apr. 28, 1992]

### § 314.162 Removal of a drug product from the list.

(a) FDA will remove a previously approved new drug product from the list for the period stated when:

(1) The agency withdraws or suspends approval of a new drug application or an abbreviated new drug application under § 314.150(a) or § 314.151 or under the imminent hazard authority of section 505(e) of the act, for the same period as the withdrawal or suspension of the application; or

(2) The agency, in accordance with the procedures in § 314.153(b) or § 314.161, issues a final decision stating that the listed drug was withdrawn from sale for safety or effectiveness reasons, or suspended under § 314.153(b), until the agency determines that the withdrawal from the market has ceased or is not for safety or effectiveness reasons.

(b) FDA will publish in the FEDERAL REGISTER a notice announcing the removal of a drug from the list.

(c) At the end of the period specified in paragraph (a)(1) or (a)(2) of this section, FDA will relist a drug that has been removed from the list. The agency will publish in the FEDERAL REGISTER a

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notice announcing the relisting of the drug.

[57 FR 17996, Apr. 28, 1992]

### § 314.170 Adulteration and misbranding of an approved drug.

All drugs, including those the Food and Drug Administration approves under section 505 of the act and this part, are subject to the adulteration and misbranding provisions in sections 501, 502, and 503 of the act. FDA is authorized to regulate approved new drugs by regulations issued through informal rulemaking under sections 501, 502, and 503 of the act.

[50 FR 7493, Feb. 22, 1985. Redesignated at 57 FR 17983, Apr. 28, 1992, and amended at 64 FR 402, Jan. 5, 1999]

### Subpart E—Hearing Procedures for New Drugs

SOURCE: 50 FR 7493, Feb. 22, 1985, unless otherwise noted. Redesignated at 57 FR 17983, Apr. 28, 1992.

### § 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

(a) *Notice of opportunity for hearing.* The Director of the Center for Drug Evaluation and Research, Food and Drug Administration, will give the applicant, and all other persons who manufacture or distribute identical, related, or similar drug products as defined in § 310.6 of this chapter, notice and an opportunity for a hearing on the Center's proposal to refuse to approve an application or to withdraw the approval of an application or abbreviated application under section 505(e) of the act. The notice will state the reasons for the action and the proposed grounds for the order.

(1) The notice may be general (that is, simply summarizing in a general way the information resulting in the notice) or specific (that is, either referring to specific requirements in the statute and regulations with which there is a lack of compliance, or providing a detailed description and analysis of the specific facts resulting in the notice).