Orange Book
Questions and Answers
Guidance for Industry

DRAFT GUIDANCE

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For questions regarding this draft document, contact (CDER) Elizabeth Giaquinto Friedman 240-402-7930.

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research (CDER)

May 2020
Generics

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Orange Book
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This draft guidance, when finalized, will represent the current thinking of the Food and Drug Administration (FDA or Agency) on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the FDA staff responsible for this guidance as listed on the title page.

I. INTRODUCTION

This guidance is intended to assist interested parties (including prospective drug product applicants, drug product applicants, and approved application holders) in utilizing the *Approved Drug Products With Therapeutic Equivalence Evaluations* publication (the Orange Book).[2] This guidance provides answers to commonly asked questions that we have received from these interested parties regarding the Orange Book.[3]

In general, FDA's guidance documents do not establish legally enforceable responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in Agency guidances means that something is suggested or recommended, but not required.

II. BACKGROUND

The Orange Book identifies (1) drug products approved by FDA under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and (2) patent and exclusivity information related to approved drug products. In particular, the main criteria for the inclusion of a drug product in the Orange Book are that the drug product is the subject of an approved application and that FDA has not

[1] This guidance has been prepared by the Office of Generic Drugs in the Center for Drug Evaluation and Research at the Food and Drug Administration.

[2] The Orange Book is available at https://www.accessdata.fda.gov/scripts/cder/ob/index.cfm.

[3] This guidance generally does not include topics addressed in the Orange Book Preface, the Frequently Asked Questions on The Orange Book, and the Frequently Asked Questions on Patents and Exclusivity web pages, which are available at https://www.fda.gov/Drugs/DevelopmentApprovalProcess/ucm079068.htm, https://www.fda.gov/Drugs/InformationOnDrugs/ucm114166.htm, and https://www.fda.gov/Drugs/DevelopmentApprovalProcess/ucm079031.htm, respectively.

determined the drug product to have been withdrawn from sale for safety or effectiveness reasons.[4]

The Orange Book is composed of four main parts:

(1) The Prescription Drug Product List, which is a list of approved marketed prescription drug products with therapeutic equivalence evaluations (which along with the OTC Drug Product List is referred to as the "Active Section");

(2) The OTC Drug Product List, which is a list of marketed over-the-counter (OTC) drug products that have been approved in new drug application (NDAs) or abbreviated new drug applications (ANDAs) (which along with the Prescription Drug Product List is referred to as the "Active Section");

(3) The Drug Products with Approval under Section 505 of the FD&C Act Administered by the Center for Biologics Evaluation and Research List; and

(4) The Discontinued Drug Product List, which is a cumulative list of approved drug products that have never been marketed, are for exportation (e.g., only marketed outside the United States), are for military use, are not commercially distributed by a United States federal or state government entity, have been discontinued from marketing and FDA has not determined that they were withdrawn from sale for reasons of safety or effectiveness, or have had their approvals withdrawn for reasons other than safety or effectiveness subsequent to being discontinued from marketing (commonly referred to as the "Discontinued Section").

The Orange Book contains additional information, including three appendices and two addenda related to patents and exclusivity. The Orange Book website also has a number of additional resources that can assist stakeholders with using the Orange Book and related questions.[5]

In addition, the Orange Book contains therapeutic equivalence[6] evaluations for approved multisource prescription drug products, which are reflected for drug products in the Active Section.[7] These evaluations have been prepared to serve as public information and advice to

[4] See 21 CFR 314.161.

[5] Available at the Orange Book homepage at https://www.fda.gov/Drugs/InformationOnDrugs/ucm129662.htm.

[6] Approved drug products are therapeutic equivalents if they are pharmaceutical equivalents for which bioequivalence has been demonstrated, and they can be expected to have the same clinical effect and safety profile when administered to patients under the conditions specified in the labeling (21 CFR 314.3(b)).

[7] We note that those products with approved applications that are *single-source* (i.e., there is only one approved product available for that active ingredient, dosage form, route of administration, and strength) are also included in the Orange Book, but no therapeutic equivalence code is included with such products.

state health agencies, prescribers, and pharmacists to promote public education on drug product selection and to foster containment of health care costs.[8]

The coding system for therapeutic equivalence evaluations is designed (1) to allow users to determine quickly whether the Agency has determined that a particular approved drug product (e.g., a particular strength, dosage form, and route of administration of an approved drug) is therapeutically equivalent to other pharmaceutically equivalent[9] drug products and (2) to provide additional information to users on the basis of FDA's evaluations; the first item (i.e., therapeutic equivalence) is reflected in the first letter of the therapeutic equivalence code, and the second item (i.e., additional information) is reflected in the second letter of the code.

As noted in the Introduction, this guidance provides answers to questions that have been received by the FDA staff that publishes and manages the Orange Book. The questions and answers in this guidance cover the following topics:

- General inquiries about the content and format of the Orange Book
- Petitioned ANDAs
- The movement of drug products between the Active and Discontinued Sections of the Orange Book
- Patent listings

III. QUESTIONS AND ANSWERS

A. General Inquiries About the Content and Format of the Orange Book

Q1. Which applications are not listed in the Orange Book?

A1. The Orange Book does not include: (1) approved drug products that were discontinued either before the first edition in October 1980 or discontinued between 1980 and 1987, prior to the identification of discontinued products; (2) drug products that have a tentative

[8] Therapeutic equivalence evaluations in the Orange Book are not official FDA actions affecting the legal status of products under the FD&C Act. See, e.g., 45 FR 72582 at 72597 (October 31, 1980).

[9] Pharmaceutical equivalents are drug products in identical dosage forms and route(s) of administration that contain identical amounts of the identical active drug ingredient, *i.e.*, the same salt or ester of the same therapeutic moiety, or, in the case of modified-release dosage forms that require a reservoir or overage or such forms as prefilled syringes where the residual volume may vary, that deliver identical amounts of the active drug ingredient over the identical dosing period; do not necessarily contain the same inactive ingredients; and meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates (21 CFR 314.3(b)). They may differ in characteristics such as shape, scoring configuration, release mechanisms, packaging, excipients (including colors, flavors, preservatives), expiration date/time, and, within certain limits, labeling (Orange Book Preface at vii).

approval;[10] (3) drug products marketed before 1962 for which a Drug Efficacy Study Implementation review has not been completed; (4) biological products licensed by FDA under the Public Health Service Act (42 U.S.C. 262);[11] (5) marketed drug products that are not the subject of an approved NDA or ANDA (e.g., under OTC monograph); and (6) drug products compounded by a pharmacy pursuant to section 503A of the FD&C Act and drug products compounded by an outsourcing facility pursuant to section 503B of the FD&C Act. Approved drug products are removed from the Orange Book when, for example, an approval is withdrawn under section 505(e) or 505(j)(6) of the FD&C Act,[12] when FDA has determined that the drug product was withdrawn from sale for reasons of safety or effectiveness,[13] or when the status of an approval is converted from final approval to tentative approval.

Q2. Can I access the current data files for the Orange Book? How are data provided?

A2. Yes. The Orange Book Data Files[14] contain current Orange Book data for approved drug products and unexpired patent and exclusivity data, which are updated monthly. They are available in a compressed ZIP file under "Additional Resources."

Q3. Is it possible to obtain previous editions of the Orange Book or an Orange Book Data File?

A3. Requests for previous editions of the Orange Book or an Orange Book Data File should be made under the Freedom of Information Act. Requests should be submitted either online via https://www.accessdata.fda.gov/scripts/foi/FOIRequest/index.cfm or in writing to FDA's Freedom of Information Staff at the following address:

Food and Drug Administration

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[10] 21 CFR 314.3(b). *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 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.

[11] See the *Purple Book: Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations* available at https://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm411418.htm.

[12] See section 505(e) and 505(j)(6) of the FD&C Act.

[13] 21 CFR 314.161.

[14] Available at the Orange Book homepage at https://www.fda.gov/Drugs/InformationOnDrugs/ucm129662.htm.

Division of Freedom of Information
Office of the Executive Secretariat, OC
5630 Fishers Ln., Rm. 1035
Rockville, MD 20857.[15]

Q4. For daily updates to the Orange Book (e.g., posting of newly submitted or revised patent information or newly approved generic drug products), is there a specific time of the day when the electronic Orange Book is updated?

A4. Updates to the electronic Orange Book are generally posted in the afternoon, Eastern Time.

Q5. When are newly approved NDA drug products listed in the Orange Book?

A5. Newly approved NDA drug products will generally appear in the Active Section of the Orange Book in the month following their approval, and will remain there, unless the NDA holder notifies FDA that the drug product will not be available for sale within 180 days of approval.[16] If the NDA holder notifies FDA that it does not intend to market upon approval, the NDA drug product will, in the month following such approval, appear in the Discontinued Section. The monthly cumulative supplement of the Orange Book is generally updated at the end of the second full week of each month.

Q6. Are the marketing reports required under section 506I of the FD&C Act available to the public?[17]

A6. No. Consistent with section 506I(f) of the FD&C Act, FDA will not publish copies of marketing reports submitted to the Agency, but will update the Orange Book, as appropriate, as the reports are reviewed and processed.

[15] Recommendations on submitting a Freedom of Information Act request are provided on FDA's How to Make a FOIA Request web page, available at https://www.fda.gov/RegulatoryInformation/FOI/HowtoMakeaFOIARequest/default.htm.

[16] See section 506I(b) of the FD&C Act. If an NDA holder intends to market the drug product within 180 days of approval, no such notification should be submitted to the Agency.

[17] The FDA Reauthorization Act of 2017, Public Law 115-52 (Aug. 18, 2017) (FDARA) added section 506I to the FD&C Act, which imposes certain reporting requirements on NDA and ANDA holders regarding the marketing status of approved drug products. Specifically, the three required marketing status notifications set forth in section 506I of the FD&C Act include the following: notifications of the withdrawal of approved drugs from sale, notifications of approved drugs not being available for sale, and one-time reports on the marketing status of approved drugs.

B. Petitioned ANDAs

Q7. A petitioned ANDA[18] drug product is listed in the Orange Book without a therapeutic equivalence code. What is its reference listed drug (RLD)[19]? Should a therapeutic equivalence code be assigned to that ANDA?

A7. For a petitioned ANDA, the RLD should be the listed drug referenced in the approved suitability petition.[20] The first petitioned ANDA approved will not be pharmaceutically equivalent to the RLD and thus no therapeutic equivalence code would be assigned to it. However, after the first petitioned ANDA is approved, FDA generally will assign therapeutic equivalence codes to all ANDAs that contain the same petitioned differences (i.e., in dosage form, route of administration, strength, or active ingredient (in a drug product with more than one active ingredient)) as the first petitioned ANDA.

C. The Movement of Drug Products Between the Active and Discontinued Sections of the Orange Book

Q8. Are only those drug products for which approval of the application has been withdrawn (i.e., the approval of the drug product application has been withdrawn by FDA) considered *withdrawn from sale* by FDA?

A8. No. A drug product considered withdrawn from sale is not limited to the withdrawal of approval of a drug product application. The Agency has previously indicated that withdrawal from sale is not limited to a permanent withdrawal of a product but can include drug products for which "any decision to discontinue marketing"[21] has been made. In particular, FDA previously explained its interpretation that a drug is considered to have been "withdrawn from sale" for purposes of section 505(j)(5) and 505(j)(6)(C) of the FD&C Act if:

> the applicant has ceased its own distribution of the drug, whether or not it has ordered recall of previously distributed lots of the drug. A routine, temporary interruption in the supply of a drug product would not be considered a withdrawal from sale, however, unless triggered by safety or effectiveness concerns.[22]

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[18] A *petitioned ANDA* is a type of ANDA for a proposed drug product that differs from the RLD in its dosage form, route of administration, strength, or active ingredient (in a product with more than one active ingredient) and for which FDA has determined, in response to a suitability petition submitted under section 505(j)(2)(C) of the FD&C Act, that clinical studies are not necessary to establish the safety and effectiveness of that proposed drug product. See also, proposed rule Abbreviated New Drug Applications and 505(b)(2) Applications 80 FR 6802 at 6806 (February 6, 2015).

[19] Reference listed drug is the listed drug identified by FDA as the drug product upon which an applicant relies in seeking approval of its ANDA (21 CFR 314.3(b)).

[20] 21 CFR 314.94(a)(3)(i).

[21] See the final rule Abbreviated New Drug Applications Regulations 57 FR 17950 at 17956 (April 28, 1992).

[22] See the proposed rule Abbreviated New Drug Application Regulations 54 FR 28872 at 28907 (July 10, 1989).

Likewise, FDA has considered a drug product to have been withdrawn from sale if the NDA or ANDA holder has notified FDA that the drug product is not being marketed.

Q9. How should an NDA or ANDA holder notify FDA, under section 506I of the FD&C Act, that a drug product is or will be withdrawn from sale?

A9. The NDA or ANDA holder should submit a notification of withdrawal from sale in a letter to the applicable NDA or ANDA file through the electronic submissions gateway.[23] The notification should prominently identify the submission as an "ADMINISTRATIVE CHANGE / NOT AVAILABLE FOR SALE."[24]

NDA and ANDA holders are required to provide a written notification to FDA 180 days prior to withdrawing an approved drug product from sale.[25] If it is not practicable to submit the notification 180 days before withdrawing the drug product from sale, that submission should be made "as soon as practicable, but not later than the date of withdrawal" from sale.[26,27]

Q10. How and when should an NDA or ANDA holder request that an application be moved from the Discontinued Section of the Orange Book to the Active Section?

A10. Prior to requesting that an application be moved from the Discontinued Section to the Active Section, the application holder should determine whether the submission of a supplement under 21 CFR 314.70 or 314.97 is required prior to or at the time of introduction of the drug product into the marketplace.

If a prior approval supplement under 21 CFR 314.70(b) is required:

- The application holder should notify the Orange Book 1-2 months prior to the approval of the supplement that the application holder is seeking market entry or re-entry via submission to the application file identified as an "ADMINISTRATIVE CHANGE / NOTIFICATION OF COMMERCIAL MARKETING."
- The Orange Book will move the product from the Discontinued Section to the Active Section upon approval of the supplement in the subsequent monthly cumulative supplement.

[23] The electronic submissions gateway is available at https://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/. Questions related to electronic submissions should be emailed to the CDER Electronic Submission (ESUB) Team at esub@fda.hhs.gov.

[24] See draft guidance for industry *Marketing Status Notifications Under Section 506I of the Federal Food, Drug, and Cosmetic Act; Content and Format*. When final, this guidance will represent FDA's current thinking on this topic.

[25] Section 506I(a) of the FD&C Act.

[26] Id.

[27] This notification addresses only the requirement in section 506I(a) of the FD&C Act; additional notifications may be required when a drug product is withdrawn from sale, for example, under section 506C(a) of the FD&C Act.

If a Changes Being Effected supplement under 21 CFR 314.70(c) is required:

- The application holder should determine the anticipated launch date, which is generally the date the drug product is put into the marketplace for distribution.
- The application holder should notify the Orange Book that the application holder is seeking market entry or re-entry approximately 1 – 2 months before the anticipated launch date via submission to the application file identified as an "ADMINISTRATIVE CHANGE / NOTIFICATION OF COMMERCIAL MARKETING."
- The Orange Book will move the product from the Discontinued Section to the Active Section upon the anticipated launch date in the subsequent monthly cumulative supplement.

Q11. When will a move of a drug product to or from the Discontinued Section be reflected in the Orange Book?

A11. A move to or from the Discontinued Section will generally be reflected in a future Orange Book monthly cumulative supplement update. The monthly electronic Orange Book is generally updated by the end of the following month's second work week (e.g., November's edition of the electronic Orange Book will be updated by the end of the second full work week in December).[28]

D. Patent Listings

1. Listing Patents

Q13. How does an NDA holder ensure that Form FDA 3542 (Patent Information Submitted Upon and After Approval of an NDA or Supplement)[29] is timely filed?

A13. An NDA holder must submit information for each patent that claims the drug or method of using the drug and for which a claim of patent infringement could reasonably be asserted against a person engaged in the unlicensed manufacture, use, or sale of the drug product.[30] The NDA holder must submit this patent information to the NDA on a Form FDA 3542.[31] FDA publishes this patent information in the Orange Book. For a patent to be considered timely filed, a Form FDA 3542 must be submitted to the NDA within 30 days after the date of approval of the NDA or supplement or within 30 days of issuance of a patent for each patent that claims the drug substance (active ingredient), drug product

[28] We note that there may be user fee implications associated with moves to and from the Discontinued Section. See the guidance for industry *Assessing User Fees Under the Prescription Drug User Fee Amendments of 2017*.

[29] The Form FDA 3542 is available at https://www.fda.gov/downloads/aboutfda/reportsmanualsforms/forms/ucm048345.pdf.

[30] See section 505(b)(1) and 505(c)(2) of the FD&C Act; see also 21 CFR 314.53(b)(1).

[31] 21 CFR 314.53(c)(2)(ii).

(formulation or composition), and/or approved method of using the approved drug product.[32]

With respect to any errors or omissions that FDA identifies in a Form FDA 3542, 21 CFR 314.53(c)(2)(ii) provides:

> If the applicant submits the required patent information within the 30 days, but we notify an applicant that a declaration form is incomplete or shows that the patent is not eligible for listing, the applicant must submit an acceptable declaration form within 15 days of FDA notification to be considered timely filed.

Under the terms of the regulation, to be considered timely filed as of the date of the original submission of patent information, the NDA holder must submit an acceptable Form FDA 3542 within 15 days of FDA's original notification.[33] NDA holders should carefully read the instructions to Form FDA 3542 in correcting such deficiencies.

Q14. How does an NDA holder ensure that an amendment to the description of an approved method of use claimed by the patent is timely filed?

A14. An NDA holder's amendment to the description of an approved method(s) of use (MOU) claimed by the patent will be considered timely filed if it is submitted within 30 days of (1) patent issuance, (2) approval of a corresponding change to the drug product labeling, or (3) a decision by the U.S. Patent and Trademark Office or a Federal court that is specific to the patent and alters the construction of a method-of-use claim(s) of the patent.[34] Outside of these circumstances, and except as provided in the patent listing dispute regulations,[35] an amendment to the description of the approved MOU claimed by the patent will not be considered timely filed.[36]

Q15. How can an NDA holder submit a reissued patent to the Orange Book for listing?

A15. An NDA holder is required to request that the original patent be removed from the Orange Book[37] once a patent is reissued because, upon patent reissuance, the original

[32] 21 CFR 314.53(c)(1) and 21 CFR 314.53(c)(2)(ii) and 21 CFR 314.53(d)(3).

[33] 21 CFR 314.53(c)(2)(ii).

[34] 21 CFR 314.94(a)(12)(vi) and 21 CFR 314.50(i)(4). For a decision by the U.S. Patent and Trademark Office or a Federal court that is specific to the patent and alters the construction of a method-of-use claim(s) of the patent, the amendment must contain a copy of that decision. 21 CFR 314.94(a)(12)(vi) and 21 CFR 314.50(i)(4).

[35] See 21 CFR 314.53(f)(1).

[36] 21 CFR 314.94(a)(12)(vi) and 21 CFR 314.50(i)(4).

[37] 21 CFR 314.53(f)(2)(i).

patent is surrendered and ceases to have legal effect.[38] Consistent with our regulations for any request to withdraw a patent from the Orange Book, the original patent will remain listed in the Orange Book until FDA determines that no first applicant is eligible for 180-day exclusivity based on a paragraph IV certification to that patent or after the 180-day exclusivity period of a first applicant based on that patent has expired or has been extinguished or relinquished.[39]

Q16. How does FDA receive and process a request from an NDA holder for removal of a patent from the Orange Book?

A16. If an NDA holder determines that a patent or patent claim no longer meets the statutory requirements for listing (e.g., if a court finds a listed patent invalid or unenforceable, from which no appeal has been or can be taken), the NDA holder must promptly notify FDA to amend or withdraw the patent information and request that the patent information be removed from the Orange Book.[40] If the NDA holder is required by court order to amend patent information or withdraw a patent from the Orange Book, the NDA holder must submit an amendment to its NDA that includes a copy of the order within 14 days of the date of order entry.[41] As described above, FDA will remove a patent from the Orange Book if there is no first applicant eligible for 180-day exclusivity based on a paragraph IV certification to that patent or after the expiration, extinguishment, or relinquishment of any 180-day exclusivity period for a first applicant.[42]

An NDA holder may submit a withdrawal of a patent and request for removal of the patent from the Orange Book by letter to the NDA file.[43] The letter must contain the NDA number, each product to which the request applies, and the patent number.[44] A Form FDA 3542 is not required to be submitted for this request, but the NDA holder should clearly and prominently identify that it is seeking patent withdrawal and removal from the Orange Book under 21 CFR 314.53(f)(2)(iv).

Q17. An NDA holder has requested that a patent be removed from the Orange Book. The patent remains in the Orange Book with a *delist request* flag. When will the patent be removed?

[38] See final rule Abbreviated New Drug Applications and 505(b)(2) Applications, 81 FR 69580 at 69601 (October 6, 2016) referencing 37 CFR 1.178(a).

[39] 21 CFR 314.53(f)(2)(i).

[40] Id.

[41] Id.

[42] Id.

[43] 21 CFR 314.53(f)(2)(iv).

[44] Id.

A17. A patent may remain listed for a certain period even if the NDA holder requests that it be removed because a first applicant may retain eligibility for 180-day exclusivity based on a paragraph IV certification to this patent.[45]

Until the patent is removed from the Orange Book — after any associated 180-day exclusivity has expired or has been extinguished or relinquished — ANDA applicants must submit or maintain appropriate certifications to the patent notwithstanding the NDA holder's request to remove the patent.[46] Applicants submitting a section 505(b)(2) application are not required to certify to a patent when the delist request flag is set to *Y* in the Orange Book.[47]

2. Patent Listing Disputes

Q18. Can a patent listing be disputed?

A18. Yes. 21 CFR 314.53(f)(1) outlines a process through which a person other than the NDA holder can dispute the accuracy or relevance of patent information published in the Orange Book, as well as the process for the relevant NDA holder to respond to such disputes. If any person either "disputes the accuracy or relevance of patent information submitted to the Agency" and published by the Agency in the Orange Book or "believes that an NDA holder has failed to submit required patent information, that person must first notify the Agency in a written or electronic communication titled '314.53(f) Patent Listing Dispute.'"[48] The patent listing dispute may be sent to the Orange Book Staff at orangebook@fda.hhs.gov.[49]

The patent listing dispute "must include a statement of dispute that describes the specific grounds for disagreement regarding the accuracy or relevance of patent information," which FDA will send to the applicable NDA holder.[50] 21 CFR 314.53(f)(1) states:

> For a dispute regarding the accuracy or relevance of patent information regarding an approved method of using the drug product, this statement of dispute must be only a narrative description (no more than 250 words) of the person's interpretation of the scope of the patent. This statement of dispute must only contain information for which the person consents to disclosure because FDA will send the text of the statement to the applicable NDA holder without review or redaction.

[45] 21 CFR 314.53(f)(2)(i).

[46] 21 CFR 314.94(a)(12)(viii)(B).

[47] 21 CFR 314.50(i)(6)(ii)("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").

[48] 21 CFR 314.53(f)(1).

[49] Alternatively, the patent listing dispute may be submitted to the following address: Office of Generic Drugs, Central Document Room, 5901B Ammendale Road, Beltsville, MD 20705.

[50] 21 CFR 314.53(f)(1).

FDA will forward the dispute to the NDA holder as described in the regulation.

Q19. How does FDA provide notification of whether a patent listing dispute has been submitted?

A19. For all patent listing disputes, FDA promptly posts information to a Patent Listing Dispute List website[51] indicating whether (1) a patent listing dispute has been submitted to FDA and (2) the NDA holder has timely responded to the patent listing dispute.[52] The Patent Listing Dispute List contains relevant drug product information and information on the disputed patent. This list is cumulative in nature and is organized by the drug product established name and patent number(s).

[51] The Orange Book Patent Listing Dispute List website is available at https://www.fda.gov/Drugs/InformationOnDrugs/ucm559235.htm.

[52] See 21 CFR 314.53(f)(1)(iii).