This document is scheduled to be published in the
Federal Register on 12/05/2014 and available online at
http://federalregister.gov/a/2014-28540, and on **FDsys.gov**

4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-D-1891]

How to Obtain a Letter from the Food and Drug Administration Stating that Bioequivalence Study Protocols Contain Safety Protections Comparable to Applicable Risk Evaluation and Mitigation Strategies for Reference Listed Drugs; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "How to Obtain a Letter from FDA Stating that Bioequivalence Study Protocols Contain Safety Protections Comparable to Applicable REMS for RLD." This draft guidance describes how a prospective abbreviated new drug application (ANDA) applicant may request a letter stating that FDA has determined the following: The potential applicant's bioequivalence (BE) study protocol contains safety protections comparable to those in the risk evaluation and mitigation strategy (REMS) with elements to assure safe use (ETASU) applicable to the reference listed drug (RLD) and FDA will not consider it a violation of the REMS for the RLD sponsor to provide a sufficient quantity of the RLD to the interested generic firm or its agent to allow the firm to perform the testing necessary to support its ANDA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft

guidance by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

Submit electronic comments on the guidance to http://www.regulations.gov. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, rm. 1670, Silver Spring, MD 20993, 240-402-7930, Elizabeth.Giaquinto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "How to Obtain a Letter from FDA Stating that Bioequivalence Study Protocols Contain Safety Protections Comparable to Applicable REMS for RLD." Section 505-1(a)(1) of the FD&C Act authorizes FDA to require applicants to submit a proposed REMS as a part of the relevant application[1] if FDA determines that a REMS is necessary to ensure that the benefits of a drug outweigh its risks (21 U.S.C. 355-1(a)(1)). A REMS is a required risk management plan that

[1] Section 505-1 of the FD&C Act applies to any application for approval of a prescription drug submitted under section 505(b) or (j) of the FD&C Act (including both NDAs submitted under section 505(b)(2) and ANDAs submitted under section 505(j)), as well as applications submitted under section 351 of the Public Health Service Act (42 U.S.C. 262).

uses tools beyond routine professional labeling (such as a medication guide, a patient package insert, and/or a communication plan) to ensure that the benefits of a drug outweigh its risks (section 505-1(f) of the FD&C Act). In addition, FDA may require ETASU in some circumstances when such elements are necessary to mitigate the risks associated with the drug. ETASU may include, for example, requirements that health care providers who prescribe or administer the drug have particular training or certification; that patients using the drug be monitored and/or enrolled in a registry; or that pharmacies, practitioners, or health care settings that dispense the drug be specially certified.

FDA is aware of instances in which an RLD sponsor has refused to sell drug products to a prospective ANDA applicant seeking to conduct the testing needed to obtain approval, and the RLD sponsor has cited the REMS ETASU as justification. In the interest of facilitating prospective generic applicants' access to RLD products to conduct the testing necessary to support ANDA approval, FDA has, on request, reviewed the BE study protocols proposed by a prospective ANDA applicant to assess whether they provide safety protections comparable to those in the applicable REMS ETASU. When the Agency has determined that comparable protections existed, FDA has issued letters to the RLD sponsor stating so, and indicating that FDA would not consider it to be a violation of the REMS for the RLD sponsor to provide drug product to the prospective ANDA applicant or its agent.

Requesting or obtaining such a letter from FDA is not a legal requirement. If a prospective ANDA applicant chooses to request such a letter, this guidance is intended to clarify the process for doing so.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on how a

prospective generic applicant can obtain a letter stating that its BE study protocols contain safety protections comparable to those in the applicable REMS for the RLD. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

II. Comments

Interested persons may submit either electronic comments regarding this document to http://www.regulations.gov or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at http://www.regulations.gov.

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910-0014 and 0910-0001.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm or http://www.regulations.gov.

Dated: December 1, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014-28540 Filed 12/04/2014 at 8:45 am; Publication Date: 12/05/2014]