

**CENTER FOR DRUG EVALUATION AND RESEARCH**

**APPLICATION NUMBER:  
22-509**

**ADMINISTRATIVE and CORRESPONDENCE  
DOCUMENTS**

## EXCLUSIVITY SUMMARY

NDA # 22-509

SUPPL #

HFD # 120

Trade Name Lamictal XR Extended Release Tablets

Generic Name lamotrigine

Applicant Name GlaxoSmithKline

Approval Date, If Known January 29, 2010

### **PART I IS AN EXCLUSIVITY DETERMINATION NEEDED?**

1. An exclusivity determination will be made for all original applications, and all efficacy supplements. Complete PARTS II and III of this Exclusivity Summary only if you answer "yes" to one or more of the following questions about the submission.

a) Is it a 505(b)(1), 505(b)(2) or efficacy supplement?

YES  NO

If yes, what type? Specify 505(b)(1), 505(b)(2), SE1, SE2, SE3, SE4, SE5, SE6, SE7, SE8

505(b)1 SE1

c) Did it require the review of clinical data other than to support a safety claim or change in labeling related to safety? (If it required review only of bioavailability or bioequivalence data, answer "no.")

YES  NO

If your answer is "no" because you believe the study is a bioavailability study and, therefore, not eligible for exclusivity, EXPLAIN why it is a bioavailability study, including your reasons for disagreeing with any arguments made by the applicant that the study was not simply a bioavailability study.

N/A

If it is a supplement requiring the review of clinical data but it is not an effectiveness supplement, describe the change or claim that is supported by the clinical data:

N/A

d) Did the applicant request exclusivity?

YES  NO

If the answer to (d) is "yes," how many years of exclusivity did the applicant request?

3

e) Has pediatric exclusivity been granted for this Active Moiety?

YES  NO

If the answer to the above question in YES, is this approval a result of the studies submitted in response to the Pediatric Written Request?

No

IF YOU HAVE ANSWERED "NO" TO ALL OF THE ABOVE QUESTIONS, GO DIRECTLY TO THE SIGNATURE BLOCKS AT THE END OF THIS DOCUMENT.

2. Is this drug product or indication a DESI upgrade?

YES  NO

IF THE ANSWER TO QUESTION 2 IS "YES," GO DIRECTLY TO THE SIGNATURE BLOCKS ON PAGE 8 (even if a study was required for the upgrade).

## **PART II FIVE-YEAR EXCLUSIVITY FOR NEW CHEMICAL ENTITIES**

(Answer either #1 or #2 as appropriate)

1. Single active ingredient product.

Has FDA previously approved under section 505 of the Act any drug product containing the same active moiety as the drug under consideration? Answer "yes" if the active moiety (including other esterified forms, salts, complexes, chelates or clathrates) has been previously approved, but this particular form of the active moiety, e.g., this particular ester or salt (including salts with hydrogen or coordination bonding) or other non-covalent derivative (such as a complex, chelate, or clathrate) has not been approved. Answer "no" if the compound requires metabolic conversion (other than deesterification of an esterified form of the drug) to produce an already approved active moiety.

YES  NO

If "yes," identify the approved drug product(s) containing the active moiety, and, if known, the NDA #(s).

NDA# 20-764	Lamictal (lamotrigine) Chewable Dispersable Tablets
NDA# 22-115	Lamictal (lamotrigine) Extended Release Tablets
NDA# 20-241	Lamictal (lamotrigine) Tablets
NDA# 22-251	Lamictal (lamotrigine) Orally Disintegrating Tablets

2. Combination product.

If the product contains more than one active moiety(as defined in Part II, #1), has FDA previously approved an application under section 505 containing any one of the active moieties in the drug product? If, for example, the combination contains one never-before-approved active moiety and one previously approved active moiety, answer "yes." (An active moiety that is marketed under an OTC monograph, but that was never approved under an NDA, is considered not previously approved.)

YES  NO

If "yes," identify the approved drug product(s) containing the active moiety, and, if known, the NDA #(s).

NDA#  
 NDA#  
 NDA#

IF THE ANSWER TO QUESTION 1 OR 2 UNDER PART II IS "NO," GO DIRECTLY TO THE SIGNATURE BLOCKS ON PAGE 8. (Caution: The questions in part II of the summary should only be answered "NO" for original approvals of new molecular entities.)  
 IF "YES," GO TO PART III.

**PART III THREE-YEAR EXCLUSIVITY FOR NDAs AND SUPPLEMENTS**

To qualify for three years of exclusivity, an application or supplement must contain "reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant." This section should be completed only if the answer to PART II, Question 1 or 2 was "yes."

1. Does the application contain reports of clinical investigations? (The Agency interprets "clinical investigations" to mean investigations conducted on humans other than bioavailability studies.) If the application contains clinical investigations only by virtue of a right of reference to clinical

investigations in another application, answer "yes," then skip to question 3(a). If the answer to 3(a) is "yes" for any investigation referred to in another application, do not complete remainder of summary for that investigation.

YES  NO

IF "NO," GO DIRECTLY TO THE SIGNATURE BLOCKS ON PAGE 8.

2. A clinical investigation is "essential to the approval" if the Agency could not have approved the application or supplement without relying on that investigation. Thus, the investigation is not essential to the approval if 1) no clinical investigation is necessary to support the supplement or application in light of previously approved applications (i.e., information other than clinical trials, such as bioavailability data, would be sufficient to provide a basis for approval as an ANDA or 505(b)(2) application because of what is already known about a previously approved product), or 2) there are published reports of studies (other than those conducted or sponsored by the applicant) or other publicly available data that independently would have been sufficient to support approval of the application, without reference to the clinical investigation submitted in the application.

(a) In light of previously approved applications, is a clinical investigation (either conducted by the applicant or available from some other source, including the published literature) necessary to support approval of the application or supplement?

YES  NO

If "no," state the basis for your conclusion that a clinical trial is not necessary for approval AND GO DIRECTLY TO SIGNATURE BLOCK ON PAGE 8:

(b) Did the applicant submit a list of published studies relevant to the safety and effectiveness of this drug product and a statement that the publicly available data would not independently support approval of the application?

YES  NO

(1) If the answer to 2(b) is "yes," do you personally know of any reason to disagree with the applicant's conclusion? If not applicable, answer NO.

YES  NO

If yes, explain:

(2) If the answer to 2(b) is "no," are you aware of published studies not conducted or sponsored by the applicant or other publicly available data that could independently demonstrate the safety and effectiveness of this drug product?

YES  NO

If yes, explain:

- (c) If the answers to (b)(1) and (b)(2) were both "no," identify the clinical investigations submitted in the application that are essential to the approval:

LAM100036 A Multicenter, Double-Blind, Randomized, Parallel-Group Evaluation of Lamictal Extended-Release Adjunctive Therapy in Subjects with Primary Generalized Tonic-Clonic Seizures.

Studies comparing two products with the same ingredient(s) are considered to be bioavailability studies for the purpose of this section.

3. In addition to being essential, investigations must be "new" to support exclusivity. The agency interprets "new clinical investigation" to mean an investigation that 1) has not been relied on by the agency to demonstrate the effectiveness of a previously approved drug for any indication and 2) does not duplicate the results of another investigation that was relied on by the agency to demonstrate the effectiveness of a previously approved drug product, i.e., does not redemonstrate something the agency considers to have been demonstrated in an already approved application.

- a) For each investigation identified as "essential to the approval," has the investigation been relied on by the agency to demonstrate the effectiveness of a previously approved drug product? (If the investigation was relied on only to support the safety of a previously approved drug, answer "no.")

Investigation #1 YES  NO

Investigation #2 YES  NO

If you have answered "yes" for one or more investigations, identify each such investigation and the NDA in which each was relied upon:

- b) For each investigation identified as "essential to the approval", does the investigation duplicate the results of another investigation that was relied on by the agency to support the effectiveness of a previously approved drug product?

Investigation #1 YES  NO



identified as the sponsor, did the applicant certify that it or the applicant's predecessor in interest provided substantial support for the study?

Investigation #1  
!  
!  
YES  ! NO   
Explain: ! Explain:

Investigation #2  
!  
!  
YES  ! NO   
Explain: ! Explain:

(c) Notwithstanding an answer of "yes" to (a) or (b), are there other reasons to believe that the applicant should not be credited with having "conducted or sponsored" the study? (Purchased studies may not be used as the basis for exclusivity. However, if all rights to the drug are purchased (not just studies on the drug), the applicant may be considered to have sponsored or conducted the studies sponsored or conducted by its predecessor in interest.)

YES  NO

If yes, explain:

=====

Name of person completing form: Dorothy Demczar, PharmD  
Title: Regulatory Project Manager  
Date: March 3, 2010

Name of Office/Division Director signing form: Russell Katz, M.D.  
Title: Division Director

Form OGD-011347; Revised 05/10/2004; formatted 2/15/05

Application  
Type/Number

Submission  
Type/Number

Submitter Name

Product Name

-----  
NDA-22509

-----  
ORIG-1

-----  
SMITHKLINE  
BEECHAM CORP  
DBA  
GLAXOSMITHKLIN  
E

-----  
LAMICTAL  
XR(LAMOTRIGINE)ORAL  
TABLETS

-----  
**This is a representation of an electronic record that was signed electronically and this page is the manifestation of the electronic signature.**  
-----

/s/  
-----

DOROTHY J DEMCZAR  
03/03/2010

RUSSELL G KATZ  
03/03/2010



**FILING COMMUNICATION**

NDA 022509

GlaxoSmithKline  
Attention: Elizabeth McConnell, PharmD  
Associate Director, Neurology, US Regulatory Affairs  
PO Box 13398  
Five Moore Drive  
Research Triangle Park, NC 27709

Dear Dr. McConnell:

Please refer to your new drug application (NDA) dated March 31, 2009, received March 31, 2009, submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act, for Lamictal XR (lamotrigine) extended-release (b) (4) and 300 mg tablets.

We have completed our filing review and have determined that your application is sufficiently complete to permit a substantive review. Therefore, this application is considered filed 60 days after the date we received your application in accordance with 21 CFR 314.101(a). The review classification for this application is **Standard**. Therefore, the user fee goal date is January 31, 2010.

We are reviewing your application according to the processes described in the Guidance for Review Staff and Industry: Good Review Management Principles and Practices for PDUFA Products. Therefore, we have established internal review timelines as described in the guidance, which includes the timeframes for FDA internal milestone meetings (e.g., filing, planning, mid-cycle, team and wrap-up meetings). Please be aware that the timelines described in the guidance are flexible and subject to change based on workload and other potential review issues (e.g., submission of amendments). We will inform you of any necessary information requests or status updates following the milestone meetings or at other times, as needed, during the process. If major deficiencies are not identified during the review, we plan to communicate proposed labeling and, if necessary, any postmarketing commitment requests by December 31, 2009.

At this time, we are notifying you that, we have not identified any potential review issues. Please note that our filing review is only a preliminary evaluation of the application and is not indicative of deficiencies that may be identified during our review. However, we request that you submit the following information:

1. All primary and secondary SAS programs.

2. Please provide a clean and marked up version of the recently approved Lamictal XR label in Word format.

### **REQUIRED PEDIATRIC ASSESSMENTS**

Under the Pediatric Research Equity Act (PREA) (21 U.S.C. 355c), all applications for new active ingredients, new indications, new dosage forms, new dosing regimens, or new routes of administration are required to contain an assessment of the safety and effectiveness of the product for the claimed indication in pediatric patients unless this requirement is waived, deferred, or inapplicable.

We acknowledge receipt of your request for a partial waiver of pediatric studies in patients below 13 years of age for this application. Once we have reviewed your request, we will notify you if the partial deferral request is denied.

We note that you have submitted pediatric studies with this application for pediatric patients 13 to 16. Once the review of this application is complete we will notify you whether you have fulfilled the pediatric study requirement for this age group.

If you have any questions, call Dorothy Demczar, Pharm.D., Regulatory Project Manager, at (301) 796-2263.

Sincerely,

*{See appended electronic signature page}*

Russell Katz, M.D.  
Division Director  
Division of Neurology Products  
Office of Drug Evaluation I  
Center of Drug Evaluation and Research

-----  
**This is a representation of an electronic record that was signed electronically and  
this page is the manifestation of the electronic signature.**  
-----

/s/

-----  
Russell Katz  
6/12/2009 09:55:19 AM



NDA 22-509

**NDA ACKNOWLEDGMENT**

GlaxoSmithKline  
Attention: Elizabeth McConnell, PharmD  
Associate Director, Neurology, US Regulatory Affairs  
PO Box 13398  
Five Moore Drive  
Research Triangle Park, NC 27709

Dear Dr. McConnell:

We have received your new drug application (NDA) submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act (FDCA) for the following:

Name of Drug Product: Lamictal XR (lamotrigine) Extended-Release Tablets <sup>(b) (4)</sup> and 300 mg tablets

Date of Application: March 31, 2009

Date of Receipt: March 31, 2009

Our Reference Number: NDA 22-509

Unless we notify you within 60 days of the receipt date that the application is not sufficiently complete to permit a substantive review, we will file the application on May 30, 2009 in accordance with 21 CFR 314.101(a).

If you have not already done so, promptly submit the content of labeling [21 CFR 314.50(l)(1)(i)] in structured product labeling (SPL) format as described at <http://www.fda.gov/oc/datacouncil/spl.html>. Failure to submit the content of labeling in SPL format may result in a refusal-to-file action under 21 CFR 314.101(d)(3). The content of labeling must conform to the content and format requirements of revised 21 CFR 201.56-57.

The NDA number provided above should be cited at the top of the first page of all submissions to this application. Send all submissions, electronic or paper, including those sent by overnight mail or courier, to the following address:

Food and Drug Administration  
Center for Drug Evaluation and Research  
Division of Neurology  
5901-B Ammendale Road  
Beltsville, MD 20705-1266

All regulatory documents submitted in paper should be three-hole punched on the left side of the page and bound. The left margin should be at least three-fourths of an inch to assure text is not obscured in the fastened area. Standard paper size (8-1/2 by 11 inches) should be used; however, it may occasionally be necessary to use individual pages larger than standard paper size. Non-standard, large pages should be folded and mounted to allow the page to be opened for review without disassembling the jacket and refolded without damage when the volume is shelved. Shipping unbound documents may result in the loss of portions of the submission or an unnecessary delay in processing which could have an adverse impact on the review of the submission. For additional information, please see <http://www.fda.gov/cder/ddms/binders.htm>.

If you have any questions, call Dorothy Demczar, PharmD, Regulatory Project Manager, at (301) 796-2263.

Sincerely,

*{See appended electronic signature page}*

Dorothy Demczar, PharmD  
Regulatory Project Manager  
Division of Neurology  
Office of Drug Evaluation 1  
Center for Drug Evaluation and Research

-----  
**This is a representation of an electronic record that was signed electronically and  
this page is the manifestation of the electronic signature.**  
-----

/s/

-----  
Dorothy Demczar  
5/8/2009 03:36:31 PM

## ACTION PACKAGE CHECKLIST

APPLICATION INFORMATION <sup>1</sup>		
NDA # 022509 BLA #	NDA Supplement # BLA STN #	If NDA, Efficacy Supplement Type:
Proprietary Name: Lamictal XR Established/Proper Name: Lamotrigine extended release Dosage Form: tablet		Applicant: GlaxoSmithKline Agent for Applicant (if applicable):
RPM: Dorothy Demczar		Division: DNP
<p><u>NDA's:</u> NDA Application Type: <input checked="" type="checkbox"/> 505(b)(1)   <input type="checkbox"/> 505(b)(2) Efficacy Supplement:   <input type="checkbox"/> 505(b)(1)   <input type="checkbox"/> 505(b)(2)</p> <p>(A supplement can be either a (b)(1) or a (b)(2) regardless of whether the original NDA was a (b)(1) or a (b)(2). Consult page 1 of the NDA Regulatory Filing Review for this application or Appendix A to this Action Package Checklist.)</p>		<p><u>505(b)(2) Original NDAs and 505(b)(2) NDA supplements:</u> Listed drug(s) referred to in 505(b)(2) application (include NDA/ANDA #(s) and drug name(s)):</p> <p>Provide a brief explanation of how this product is different from the listed drug.</p> <p><input type="checkbox"/> If no listed drug, check here and explain:</p> <p><b>Prior to approval, review and confirm the information previously provided in Appendix B to the Regulatory Filing Review by re-checking the Orange Book for any new patents and pediatric exclusivity. If there are any changes in patents or exclusivity, notify the OND ADRA immediately and complete a new Appendix B of the Regulatory Filing Review.</b></p> <p style="text-align: center;"><input type="checkbox"/> No changes                      <input type="checkbox"/> Updated Date of check:</p> <p><b>If pediatric exclusivity has been granted or the pediatric information in the labeling of the listed drug changed, determine whether pediatric information needs to be added to or deleted from the labeling of this drug.</b></p> <p><b>On the day of approval, check the Orange Book again for any new patents or pediatric exclusivity.</b></p>
❖ User Fee Goal Date Action Goal Date (if different)		01/ 31/10
❖ Actions		
• Proposed action		<input checked="" type="checkbox"/> AP <input type="checkbox"/> TA <input type="checkbox"/> AE <input type="checkbox"/> NA <input type="checkbox"/> CR
• Previous actions ( <i>specify type and date for each action taken</i> )		<input checked="" type="checkbox"/> None
❖ Promotional Materials ( <i>accelerated approvals only</i> ) Note: If accelerated approval (21 CFR 314.510/601.41), promotional materials to be used within 120 days after approval must have been submitted (for exceptions, see guidance <a href="http://www.fda.gov/cder/guidance/2197dft.pdf">www.fda.gov/cder/guidance/2197dft.pdf</a> ). If not submitted, explain _____		<input type="checkbox"/> Received

<sup>1</sup> The **Application Information** section is (only) a checklist. The **Contents of Action Package** section (beginning on page 5) lists the documents to be included in the Action Package.

❖ Application <sup>2</sup> Characteristics	
Review priority: <input checked="" type="checkbox"/> Standard <input type="checkbox"/> Priority Chemical classification (new NDAs only):  <input type="checkbox"/> Fast Track <input type="checkbox"/> Rx-to-OTC full switch <input type="checkbox"/> Rolling Review <input type="checkbox"/> Rx-to-OTC partial switch <input type="checkbox"/> Orphan drug designation <input type="checkbox"/> Direct-to-OTC  NDAs: Subpart H <input type="checkbox"/> Accelerated approval (21 CFR 314.510) <input type="checkbox"/> Restricted distribution (21 CFR 314.520) Subpart I <input type="checkbox"/> Approval based on animal studies  <input type="checkbox"/> Submitted in response to a PMR <input type="checkbox"/> Submitted in response to a PMC  Comments: _____	
❖ Date reviewed by PeRC ( <i>required for approvals only</i> ) If PeRC review not necessary, explain: _____	01/13/10
❖ BLAs only: <i>RMS-BLA Product Information Sheet for TBP</i> has been completed and forwarded to OBPS/DRM ( <i>approvals only</i> )	<input type="checkbox"/> Yes, date
❖ BLAs only: is the product subject to official FDA lot release per 21 CFR 610.2 ( <i>approvals only</i> )	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ Public communications ( <i>approvals only</i> )	
• Office of Executive Programs (OEP) liaison has been notified of action	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
• Press Office notified of action (by OEP)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
• Indicate what types (if any) of information dissemination are anticipated	<input checked="" type="checkbox"/> None <input type="checkbox"/> HHS Press Release <input type="checkbox"/> FDA Talk Paper <input type="checkbox"/> CDER Q&As <input type="checkbox"/> Other

<sup>2</sup> All questions in all sections pertain to the pending application, i.e., if the pending application is an NDA or BLA supplement, then the questions should be answered in relation to that supplement, not in relation to the original NDA or BLA. For example, if the application is a pending BLA supplement, then a new *RMS-BLA Product Information Sheet for TBP* must be completed.

❖ Exclusivity	
<ul style="list-style-type: none"> <li>Is approval of this application blocked by any type of exclusivity?</li> </ul>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
<ul style="list-style-type: none"> <li>NDA and BLAs: Is there existing orphan drug exclusivity for the “same” drug or biologic for the proposed indication(s)? <i>Refer to 21 CFR 316.3(b)(13) for the definition of “same drug” for an orphan drug (i.e., active moiety). This definition is NOT the same as that used for NDA chemical classification.</i></li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes If, yes, NDA/BLA #      and date exclusivity expires:
<ul style="list-style-type: none"> <li>(b)(2) NDAs only: Is there remaining 5-year exclusivity that would bar effective approval of a 505(b)(2) application? <i>(Note that, even if exclusivity remains, the application may be tentatively approved if it is otherwise ready for approval.)</i></li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, NDA #      and date exclusivity expires:
<ul style="list-style-type: none"> <li>(b)(2) NDAs only: Is there remaining 3-year exclusivity that would bar effective approval of a 505(b)(2) application? <i>(Note that, even if exclusivity remains, the application may be tentatively approved if it is otherwise ready for approval.)</i></li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, NDA #      and date exclusivity expires:
<ul style="list-style-type: none"> <li>(b)(2) NDAs only: Is there remaining 6-month pediatric exclusivity that would bar effective approval of a 505(b)(2) application? <i>(Note that, even if exclusivity remains, the application may be tentatively approved if it is otherwise ready for approval.)</i></li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, NDA #      and date exclusivity expires:
<ul style="list-style-type: none"> <li>NDAs only: Is this a single enantiomer that falls under the 10-year approval limitation of 505(u)? <i>(Note that, even if the 10-year approval limitation period has not expired, the application may be tentatively approved if it is otherwise ready for approval.)</i></li> </ul>	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, NDA #      and date 10-year limitation expires:
❖ Patent Information (NDAs only)	
<ul style="list-style-type: none"> <li>Patent Information: Verify that form FDA-3542a was submitted for patents that claim the drug for which approval is sought. If the drug is an old antibiotic, skip the Patent Certification questions.</li> </ul>	<input checked="" type="checkbox"/> Verified <input type="checkbox"/> Not applicable because drug is an old antibiotic.
<ul style="list-style-type: none"> <li>Patent Certification [505(b)(2) applications]: Verify that a certification was submitted for each patent for the listed drug(s) in the Orange Book and identify the type of certification submitted for each patent.</li> </ul>	21 CFR 314.50(i)(1)(i)(A) <input type="checkbox"/> Verified  21 CFR 314.50(i)(1) <input type="checkbox"/> (ii) <input type="checkbox"/> (iii)
<ul style="list-style-type: none"> <li>[505(b)(2) applications] If the application includes a <b>paragraph III</b> certification, it cannot be approved until the date that the patent to which the certification pertains expires (but may be tentatively approved if it is otherwise ready for approval).</li> </ul>	<input type="checkbox"/> No paragraph III certification Date patent will expire
<ul style="list-style-type: none"> <li>[505(b)(2) applications] For <b>each paragraph IV</b> certification, verify that the applicant notified the NDA holder and patent owner(s) of its certification that the patent(s) is invalid, unenforceable, or will not be infringed (review documentation of notification by applicant and documentation of receipt of notice by patent owner and NDA holder). <i>(If the application does not include any paragraph IV certifications, mark “N/A” and skip to the next section below (Summary Reviews)).</i></li> </ul>	<input type="checkbox"/> N/A (no paragraph IV certification) <input type="checkbox"/> Verified

- [505(b)(2) applications] For **each paragraph IV** certification, based on the questions below, determine whether a 30-month stay of approval is in effect due to patent infringement litigation.

Answer the following questions for **each** paragraph IV certification:

- (1) Have 45 days passed since the patent owner's receipt of the applicant's notice of certification?

Yes     No

(Note: The date that the patent owner received the applicant's notice of certification can be determined by checking the application. The applicant is required to amend its 505(b)(2) application to include documentation of this date (e.g., copy of return receipt or letter from recipient acknowledging its receipt of the notice) (see 21 CFR 314.52(e)).

*If "Yes," skip to question (4) below. If "No," continue with question (2).*

- (2) Has the patent owner (or NDA holder, if it is an exclusive patent licensee) submitted a written waiver of its right to file a legal action for patent infringement after receiving the applicant's notice of certification, as provided for by 21 CFR 314.107(f)(3)?

Yes     No

*If "Yes," there is no stay of approval based on this certification. Analyze the next paragraph IV certification in the application, if any. If there are no other paragraph IV certifications, skip the rest of the patent questions.*

*If "No," continue with question (3).*

- (3) Has the patent owner, its representative, or the exclusive patent licensee filed a lawsuit for patent infringement against the applicant?

Yes     No

(Note: This can be determined by confirming whether the Division has received a written notice from the (b)(2) applicant (or the patent owner or its representative) stating that a legal action was filed within 45 days of receipt of its notice of certification. The applicant is required to notify the Division in writing whenever an action has been filed within this 45-day period (see 21 CFR 314.107(f)(2)).

*If "No," the patent owner (or NDA holder, if it is an exclusive patent licensee) has until the expiration of the 45-day period described in question (1) to waive its right to bring a patent infringement action or to bring such an action. After the 45-day period expires, continue with question (4) below.*

- (4) Did the patent owner (or NDA holder, if it is an exclusive patent licensee) submit a written waiver of its right to file a legal action for patent infringement within the 45-day period described in question (1), as provided for by 21 CFR 314.107(f)(3)?

Yes     No

*If "Yes," there is no stay of approval based on this certification. Analyze the next paragraph IV certification in the application, if any. If there are no other paragraph IV certifications, skip to the next section below (Summary Reviews).*

*If "No," continue with question (5).*

<p>(5) Did the patent owner, its representative, or the exclusive patent licensee bring suit against the (b)(2) applicant for patent infringement within 45 days of the patent owner's receipt of the applicant's notice of certification?</p> <p>(Note: This can be determined by confirming whether the Division has received a written notice from the (b)(2) applicant (or the patent owner or its representative) stating that a legal action was filed within 45 days of receipt of its notice of certification. The applicant is required to notify the Division in writing whenever an action has been filed within this 45-day period (see 21 CFR 314.107(f)(2)). If no written notice appears in the NDA file, confirm with the applicant whether a lawsuit was commenced within the 45-day period).</p> <p><i>If "No," there is no stay of approval based on this certification. Analyze the next paragraph IV certification in the application, if any. If there are no other paragraph IV certifications, skip to the next section below (Summary Reviews).</i></p> <p><i>If "Yes," a stay of approval may be in effect. To determine if a 30-month stay is in effect, consult with the OND ADRA and attach a summary of the response.</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>CONTENTS OF ACTION PACKAGE</b>	
❖ Copy of this Action Package Checklist <sup>3</sup>	Yes
<b>Officer/Employee List - section <u>A</u></b>	
❖ List of officers/employees who participated in the decision to approve this application and consented to be identified on this list ( <i>approvals only</i> )	<input checked="" type="checkbox"/> Included
Documentation of consent/non-consent by officers/employees	<input checked="" type="checkbox"/> Included
<b>Action Letters - section <u>B</u></b>	
❖ Copies of all action letters ( <i>including approval letter with final labeling</i> )	Action(s) and date(s) : Approval 01/29/10
<b>Labeling – section <u>C</u></b>	
❖ Package Insert ( <i>write submission/communication date at upper right of first page of PI</i> )	Attached to Approval Letter 01/29/10
<ul style="list-style-type: none"> <li>• Most recent division-proposed labeling (only if generated after latest applicant submission of labeling)</li> </ul>	
<ul style="list-style-type: none"> <li>• Most recent submitted by applicant labeling (only if subsequent division labeling does not show applicant version)</li> </ul>	
<ul style="list-style-type: none"> <li>• Original applicant-proposed labeling</li> </ul>	
<ul style="list-style-type: none"> <li>• Other relevant labeling (e.g., most recent 3 in class, class labeling), if applicable</li> </ul>	
❖ Medication Guide/Patient Package Insert/Instructions for Use ( <i>write submission/communication date at upper right of first page of each piece</i> )	<input checked="" type="checkbox"/> Medication Guide Attached to approval letter 01/29/10 <input type="checkbox"/> Patient Package Insert <input type="checkbox"/> Instructions for Use <input type="checkbox"/> None

<sup>3</sup> Fill in blanks with dates of reviews, letters, etc.  
Version: 9/5/08

<ul style="list-style-type: none"> <li>Most-recent division-proposed labeling (only if generated after latest applicant submission of labeling)</li> </ul>	
<ul style="list-style-type: none"> <li>Most recent submitted by applicant labeling (only if subsequent division labeling does not show applicant version)</li> </ul>	
<ul style="list-style-type: none"> <li>Original applicant-proposed labeling</li> </ul>	
<ul style="list-style-type: none"> <li>Other relevant labeling (e.g., most recent 3 in class, class labeling), if applicable</li> </ul>	
<ul style="list-style-type: none"> <li>❖ Labels (<b>full color</b> carton and immediate-container labels) (<i>write submission/communication date at upper right of first page of each submission</i>)</li> </ul>	
<ul style="list-style-type: none"> <li>Most-recent division proposal for (only if generated after latest applicant submission)</li> </ul>	
<ul style="list-style-type: none"> <li>Most recent applicant-proposed labeling</li> </ul>	
<ul style="list-style-type: none"> <li>❖ Labeling reviews (<i>indicate dates of reviews and meetings</i>)</li> </ul>	<input type="checkbox"/> RPM <input type="checkbox"/> DMEDP <input type="checkbox"/> DRISK <input type="checkbox"/> DDMAC <input type="checkbox"/> CSS <input type="checkbox"/> Other reviews
<ul style="list-style-type: none"> <li>❖ Proprietary Name             <ul style="list-style-type: none"> <li>Review(s) (<i>indicate date(s)</i>)</li> <li>Acceptability/non-acceptability letter(s) (<i>indicate date(s)</i>)</li> </ul> </li> </ul>	none

**Administrative / Regulatory Documents – sections D thru J**

<ul style="list-style-type: none"> <li>❖ <b><u>D</u></b> Administrative Reviews (<i>e.g., RPM Filing Review<sup>4</sup>/Memo of Filing Meeting</i>) (<i>indicate date of each review</i>)</li> </ul>	01/25/10 – RPM filing review/ Memo of filing meeting
<ul style="list-style-type: none"> <li>❖ <b><u>E</u></b> NDAs only: Exclusivity Summary (<i>signed by Division Director</i>)</li> </ul>	<input checked="" type="checkbox"/> Included
<ul style="list-style-type: none"> <li>❖ Application Integrity Policy (AIP) Status and Related Documents <a href="http://www.fda.gov/ora/compliance_ref/aip_page.html">www.fda.gov/ora/compliance_ref/aip_page.html</a></li> </ul>	
<ul style="list-style-type: none"> <li>Applicant in on the AIP</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<ul style="list-style-type: none"> <li>This application is on the AIP             <ul style="list-style-type: none"> <li>If yes, Center Director’s Exception for Review memo (<i>indicate date</i>)</li> <li>If yes, OC clearance for approval (<i>indicate date of clearance communication</i>)</li> </ul> </li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <input type="checkbox"/> Not an AP action
<ul style="list-style-type: none"> <li>❖ <b><u>F</u></b> Pediatric Page (<i>approvals only, must be reviewed by PERC before finalized</i>)</li> </ul>	<input checked="" type="checkbox"/> Included
<ul style="list-style-type: none"> <li>❖ Debarment certification (original applications only): verified that qualifying language was not used in certification and that certifications from foreign applicants are cosigned by U.S. agent (<i>include certification</i>)</li> </ul>	<input checked="" type="checkbox"/> Verified, statement is acceptable
<ul style="list-style-type: none"> <li>❖ Postmarketing Requirement (PMR) Studies</li> </ul>	<input checked="" type="checkbox"/> None
<ul style="list-style-type: none"> <li>Outgoing communications (<i>if located elsewhere in package, state where located</i>)</li> </ul>	
<ul style="list-style-type: none"> <li>Incoming submissions/communications</li> </ul>	
<ul style="list-style-type: none"> <li>❖ Postmarketing Commitment (PMC) Studies</li> </ul>	<input checked="" type="checkbox"/> None
<ul style="list-style-type: none"> <li>Outgoing Agency request for postmarketing commitments (<i>if located elsewhere in package, state where located</i>)</li> </ul>	

<sup>4</sup> Filing reviews for other disciplines should be filed behind the discipline tab.  
Version: 9/5/08

<ul style="list-style-type: none"> <li>Incoming submission documenting commitment</li> </ul>	
❖ <b>G</b> ) Outgoing communications ( <i>letters (except previous action letters), emails, faxes, telecons</i> )	NDA ack letter 05/08/09; Filing communication 06/12/09;
❖ <b>H</b> ) Internal memoranda, telecons, etc.	
❖ <b>I</b> ) Minutes of Meetings	
<ul style="list-style-type: none"> <li>PeRC (<i>indicate date; approvals only</i>)</li> </ul>	<input type="checkbox"/> Not applicable 01/13/10
<ul style="list-style-type: none"> <li>Pre-Approval Safety Conference (<i>indicate date; approvals only</i>)</li> </ul>	<input checked="" type="checkbox"/> Not applicable
<ul style="list-style-type: none"> <li>Regulatory Briefing (<i>indicate date</i>)</li> </ul>	<input checked="" type="checkbox"/> No mtg
<ul style="list-style-type: none"> <li>Pre-NDA/BLA meeting (<i>indicate date</i>)</li> </ul>	<input type="checkbox"/> No mtg 08/23/07
<ul style="list-style-type: none"> <li>EOP2 meeting (<i>indicate date</i>)</li> </ul>	<input checked="" type="checkbox"/> No mtg
<ul style="list-style-type: none"> <li>Other (e.g., EOP2a, CMC pilot programs)</li> </ul>	
❖ Advisory Committee Meeting(s)	<input checked="" type="checkbox"/> No AC meeting
<ul style="list-style-type: none"> <li>Date(s) of Meeting(s)</li> </ul>	
<ul style="list-style-type: none"> <li>48-hour alert or minutes, if available</li> </ul>	
<b>Decisional and Summary Memos – section J</b>	
❖ Office Director Decisional Memo ( <i>indicate date for each review</i> )	<input checked="" type="checkbox"/> None
Division Director Summary Review ( <i>indicate date for each review</i> )	<input checked="" type="checkbox"/> None
Cross-Discipline Team Leader Review ( <i>indicate date for each review</i> )	<input type="checkbox"/> None 01/28/10
<b>Clinical Information<sup>5</sup></b>	
❖ <b>K</b> ) Clinical Reviews	
<ul style="list-style-type: none"> <li>Clinical Team Leader Review(s) (<i>indicate date for each review</i>)</li> </ul>	
<ul style="list-style-type: none"> <li>Clinical review(s) (<i>indicate date for each review</i>)</li> </ul>	01/28/10
<ul style="list-style-type: none"> <li>Social scientist review(s) (if OTC drug) (<i>indicate date for each review</i>)</li> </ul>	<input checked="" type="checkbox"/> None
❖ Safety update review(s) ( <i>indicate location/date if incorporated into another review</i> )	
❖ <b>L</b> ) Financial Disclosure reviews(s) or location/date if addressed in another review OR If no financial disclosure information was required, review/memo explaining why not	01/28/10 (located in clinical review)
❖ Clinical reviews from other clinical areas/divisions/Centers ( <i>indicate date of each review</i> )	<input checked="" type="checkbox"/> None
❖ Controlled Substance Staff review(s) and Scheduling Recommendation ( <i>indicate date of each review</i> )	<input checked="" type="checkbox"/> Not needed
❖ <b>M</b> ) Risk Management	<input checked="" type="checkbox"/> None 1/29/10
<ul style="list-style-type: none"> <li>Review(s) and recommendations (including those by OSE and CSS) (<i>indicate date of each review and indicate location/date if incorporated into another review</i>)</li> </ul>	
<ul style="list-style-type: none"> <li>REMS Memo (<i>indicate date</i>)</li> </ul>	05/29/09 (NDA 22115 approval)
<ul style="list-style-type: none"> <li>REMS Document and Supporting Statement (<i>indicate date(s) of submission(s)</i>)</li> </ul>	01/18/10
❖ <b>N</b> ) DSI Clinical Inspection Review Summary(ies) ( <i>include copies of DSI letters to investigators</i> )	<input type="checkbox"/> None requested Inspection Summary 1/20/10 Investigator letter 9/16/09

<sup>5</sup> Filing reviews should be filed with the discipline reviews.  
Version: 9/5/08

<b>Clinical Microbiology</b>		<input checked="" type="checkbox"/> None
❖ Clinical Microbiology Team Leader Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
Clinical Microbiology Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
<b>Biostatistics - section <u>O</u></b>		<input type="checkbox"/> None
❖ Statistical Division Director Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None 12/08/09
Statistical Team Leader Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None 12/08/09
Statistical Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None 12/8/09
<b>Clinical Pharmacology - section</b>		<input checked="" type="checkbox"/> None
❖ Clinical Pharmacology Division Director Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
Clinical Pharmacology Team Leader Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
Clinical Pharmacology review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
❖ DSI Clinical Pharmacology Inspection Review Summary ( <i>include copies of DSI letters</i> )		<input checked="" type="checkbox"/> None
<b>Nonclinical</b>		<input checked="" type="checkbox"/> None
❖ Pharmacology/Toxicology Discipline Reviews		
• ADP/T Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
• Supervisory Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
• Pharm/tox review(s), including referenced IND reviews ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
❖ Review(s) by other disciplines/divisions/Centers requested by P/T reviewer ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
❖ Statistical review(s) of carcinogenicity studies ( <i>indicate date for each review</i> )		<input type="checkbox"/> No carc
❖ ECAC/CAC report/memo of meeting		<input type="checkbox"/> None Included in P/T review, page
❖ DSI Nonclinical Inspection Review Summary ( <i>include copies of DSI letters</i> )		<input type="checkbox"/> None requested
<b>CMC/Quality</b>		<input type="checkbox"/> None
❖ <b>P</b> CMC/Quality Discipline Reviews		
• ONDQA/OBP Division Director Review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None
• Branch Chief/Team Leader Review(s) ( <i>indicate date for each review</i> )		<input checked="" type="checkbox"/> None
• CMC/product quality review(s) ( <i>indicate date for each review</i> )		<input type="checkbox"/> None Review 12/03/09
• BLAs only: Facility information review(s) ( <i>indicate dates</i> )		<input type="checkbox"/> None
❖ Microbiology Reviews		
• NDAs: Microbiology reviews (sterility & pyrogenicity) ( <i>indicate date of each review</i> )		<input checked="" type="checkbox"/> Not needed
• BLAs: Sterility assurance, product quality microbiology ( <i>indicate date of each review</i> )		
❖ Reviews by other disciplines/divisions/Centers requested by CMC/quality reviewer ( <i>indicate date of each review</i> )		<input checked="" type="checkbox"/> None
❖ Environmental Assessment (check one) (original and supplemental applications)		
<input type="checkbox"/> Categorical Exclusion ( <i>indicate review date</i> )( <i>all original applications and all efficacy supplements that could increase the patient population</i> )		

<input type="checkbox"/> Review & FONSI ( <i>indicate date of review</i> )	
<input type="checkbox"/> Review & Environmental Impact Statement ( <i>indicate date of each review</i> )	
❖ NDAs: Methods Validation	<input type="checkbox"/> Completed <input type="checkbox"/> Requested <input type="checkbox"/> Not yet requested <input checked="" type="checkbox"/> Not needed
❖ Facilities Review/Inspection	
<ul style="list-style-type: none"> <li>• NDAs: Facilities inspections (include EER printout) (<i>date completed must be within 2 years of action date</i>)</li> </ul>	Date completed: <input type="checkbox"/> Acceptable <input type="checkbox"/> Withhold recommendation
<ul style="list-style-type: none"> <li>• BLAs:           <ul style="list-style-type: none"> <li>○ TBP-EER</li> <li>○ Compliance Status Check (approvals only, both original and all supplemental applications except CBEs) (<i>date completed must be within 60 days prior to AP</i>)</li> </ul> </li> </ul>	Date completed: <input type="checkbox"/> Acceptable <input type="checkbox"/> Withhold recommendation Date completed: <input type="checkbox"/> Requested <input type="checkbox"/> Accepted <input type="checkbox"/> Hold

## Appendix A to Action Package Checklist

An NDA or NDA supplemental application is likely to be a 505(b)(2) application if:

- (1) It relies on published literature to meet any of the approval requirements, and the applicant does not have a written right of reference to the underlying data. If published literature is cited in the NDA but is not necessary for approval, the inclusion of such literature will not, in itself, make the application a 505(b)(2) application.
- (2) **Or** it relies for approval on the Agency's previous findings of safety and efficacy for a listed drug product and the applicant does not own or have right to reference the data supporting that approval.
- (3) **Or** it relies on what is "generally known" or "scientifically accepted" about a class of products to support the safety or effectiveness of the particular drug for which the applicant is seeking approval. (Note, however, that this does not mean *any* reference to general information or knowledge (e.g., about disease etiology, support for particular endpoints, methods of analysis) causes the application to be a 505(b)(2) application.)

Types of products for which 505(b)(2) applications are likely to be submitted include: fixed-dose combination drug products (e.g., heart drug and diuretic (hydrochlorothiazide) combinations); OTC monograph deviations (see 21 CFR 330.11); new dosage forms; new indications; and, new salts.

An efficacy supplement can be either a (b)(1) or a (b)(2) regardless of whether the original NDA was a (b)(1) or a (b)(2).

An efficacy supplement is a 505(b)(1) supplement if the supplement contains all of the information needed to support the approval of the change proposed in the supplement. For example, if the supplemental application is for a new indication, the supplement is a 505(b)(1) if:

- (1) The applicant has conducted its own studies to support the new indication (or otherwise owns or has right of reference to the data/studies).
- (2) **And** no additional information beyond what is included in the supplement or was embodied in the finding of safety and effectiveness for the original application or previously approved supplements is needed to support the change. For example, this would likely be the case with respect to safety considerations if the dose(s) was/were the same as (or lower than) the original application.
- (3) **And** all other "criteria" are met (e.g., the applicant owns or has right of reference to the data relied upon for approval of the supplement, the application does not rely for approval on published literature based on data to which the applicant does not have a right of reference).

An efficacy supplement is a 505(b)(2) supplement if:

- (1) Approval of the change proposed in the supplemental application would require data beyond that needed to support our previous finding of safety and efficacy in the approval of the original application (or earlier supplement), and the applicant has not conducted all of its own studies for approval of the change, or obtained a right to reference studies it does not own. For example, if the change were for a new indication AND a higher dose, we would likely require clinical efficacy data and preclinical safety data to approve the higher dose. If the applicant provided the effectiveness data, but had to rely on a different listed drug, or a new aspect of a previously cited listed drug, to support the safety of the new dose, the supplement would be a 505(b)(2).
- (2) **Or** the applicant relies for approval of the supplement on published literature that is based on data that the applicant does not own or have a right to reference. If published literature is cited in the supplement but is not necessary for approval, the inclusion of such literature will not, in itself, make the supplement a 505(b)(2) supplement.
- (3) **Or** the applicant is relying upon any data they do not own or to which they do not have right of reference.

If you have questions about whether an application is a 505(b)(1) or 505(b)(2) application, consult with your ODE's ADRA.