



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Drug Review Timeline Transparency; Statement of Policy

The Department and its component agencies exist to serve the American people. Consistent with and in follow up to the Department's previous transparency efforts,¹ and given the significant impact FDA's approval of drugs has on Americans, the Secretary believes the public would benefit from information regarding the timeline for FDA's review of drug product applications as provided in this document.

In 1962, Congress amended the Food, Drug, and Cosmetic Act (FD&C Act) to authorize the Food and Drug Administration (FDA) to review and approve "new drugs" for safety and efficacy.² When Congress made this historic change to our nation's drug laws, it provided a timeframe for FDA's review. In section 104 of the Drug Amendments of 1962, codified at section 505(c) of the FD&C Act, 21 U.S.C. 355(c), Congress required that, for New Drug Applications (NDAs), "[w]ithin one hundred eighty days after the filing of an application . . . , the Secretary shall either approve the application . . . or give the applicant notice of an opportunity for a hearing before the Secretary." As the Senate Judiciary Committee explained at the time, "this provision strikes a balance between the need for governmental control to assure that new drugs are not placed on the market until they have passed the relevant tests and the need to insure that governmental control does not become so rigid that the flow of new drugs to the market, and the incentive to undergo the expense involved in preparing them for the market, become stifled."³

At the time, the 180-day timeframe for review of "new drugs" was uncontroversial. At a 1963 public hearing, the Acting Director for FDA's Division of New Drugs stated that

¹ E.g., 85 FR 75893 (Nov. 27, 2020).

² Drug Amendments of 1962, Pub. L. No. 87-781, 76 Stat. 780 (Oct. 10, 1962).

³ 1962 U.S.C.C.A.N. 2884, 2891.

“[a]pplications for drugs of questionable safety or effectiveness will continue to take more of every body’s time.”⁴ However, the Director “pledge[d] action greatly short of the 180-day limit on all applications and supplements that present good scientific evidence of the safety and effectiveness of the drugs and that are properly informative to the physician or patient.”⁵

When Congress made additional amendments to the FD&C Act in 1984, it borrowed from and applied the existing 180-day review framework to the review of Abbreviated New Drug Applications (ANDAs), the approval mechanism for generic drugs.⁶ Under section 505(j)(5)(A) of the FD&C Act, 21 U.S.C. 355(j)(5)(A), the Secretary “shall approve or disapprove the [ANDA] application” “[w]ithin one hundred and eighty days of the initial receipt of an application.” FDA promulgated regulations implementing the 180-day statutory provisions for review of NDAs and ANDAs. *See* 21 CFR 314.100, 314.101. While the Prescription Drug User Fee Act (PDUFA) and Generic Drug User Fee Act (GDUFA) in their iterative forms have provided FDA with additional resources to carry out its statutory mission, Congress did not do away with the 180-day provisions in section 505 of the FD&C Act, 21 U.S.C. 355, in those laws.

Though the agency has made strides over the years to expedite review in the face of limited resources, the total time elapsed between FDA’s filing of an NDA or receipt of an ANDA to ultimate approval or disapproval of the application often exceeds 180 days. Even so, reporting on drug approvals, such as GAO’s March 2020 report,⁷ focused primarily on agency compliance with PDUFA dates. The GAO report did not mention the 180-day benchmark or discuss the agency’s approval timeframe in view of that requirement.

⁴ Proceedings, FDA Conference on the Kefauver-Harris Drug Amendments and Proposed Regulations, at 7 (Feb. 15, 1963).

⁵ *Id.* at 6.

⁶ Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585, 1588 (Sept. 24, 1984).

⁷ GAO, *FDA Drug Approval, Application Review Times Largely Reflect Agency Goals* (Mar. 2020), <https://www.gao.gov/assets/710/705193.pdf>.

Given this gap in reporting, the Department reviewed FDA’s New Drug Therapy Approvals from 2019⁸ in view of the 180-day timeframe. The Department’s review considered 48 products listed by the agency as approved in 2019.⁹ The table below presents, among other things, the date of submission, date of approval, total days from submission to approval, and total days in excess of 180 days of submission for these drugs.

| Drug Brand Name | Summary of FDA-approved use on Approval date | Submission Date | Approval Date | Days Submission to Approval | Days in Excess of 180 Days |
|------------------------|---|------------------------|----------------------|------------------------------------|-----------------------------------|
| Accrufer | Iron deficiency anemia | 9/27/2018 | 7/25/2019 | 301 | 121 |
| Adakveo | Reduce vasoocclusive crises in sickle cell disease | 5/16/2019 | 11/15/2019 | 183 | 3 |
| Aklief | Acne vulgaris | 10/4/2018 | 10/4/2019 | 365 | 185 |
| Balversa | Locally advanced or metastatic bladder cancer | 9/18/2018 | 4/12/2019 | 206 | 26 |
| Beovu | Wet age-related macular degeneration | 2/7/2019 | 10/7/2019 | 242 | 62 |
| Brukinsa | Mantle cell lymphoma | 6/27/2019 | 11/14/2019 | 140 | N/A |
| Cablivi | Acquired thrombotic thrombocytopenic purpura | 6/6/2018 | 2/6/2019 | 245 | 65 |
| Caplyta | Schizophrenia | 9/27/2018 | 12/20/2019 | 449 | 269 |
| Dayvigo | Insomnia | 12/27/2018 | 12/20/2019 | 358 | 178 |
| Egaten | Fascioliasis | 6/14/2018 | 2/13/2019 | 244 | 64 |
| Enhertu | Metastatic breast cancer | 8/29/2019 | 12/20/2019 | 113 | N/A |
| Evenity | Osteoporosis | 7/9/2018 | 4/9/2019 | 274 | 94 |
| ExEm Foam | Diagnostic agent for fallopian tube assessment | 10/9/2018 | 11/7/2019 | 394 | 214 |
| Fetroja | Complicated urinary tract infection | 12/14/2018 | 11/14/2019 | 335 | 155 |
| fluorodopa F 18 | Diagnostic agent for Parkinsonian syndromes | 4/10/2019 | 10/10/2019 | 183 | 3 |
| Ga 68 DOTATOC | Diagnostic agent for neuroendocrine tumors | 5/23/2018 | 8/21/2019 | 455 | 275 |

⁸ FDA, *New Drug Therapy Approvals 2019*, <https://www.fda.gov/drugs/new-drugs-fda-cders-new-molecular-entities-and-new-therapeutic-biological-products/new-drug-therapy-approvals-2019>.

⁹ In its review, the Department obtained the “submission date” (or, if available, “filing date”) of the 48 drugs by searching documents available to the public on FDA’s Drugs@FDA website.

| Drug Brand Name | Summary of FDA-approved use on Approval date | Submission Date | Approval Date | Days Submission to Approval | Days in Excess of 180 Days |
|------------------------|--|------------------------|----------------------|------------------------------------|-----------------------------------|
| Givlaari | Acute hepatic porphyria | 6/4/2019 | 11/20/2019 | 169 | N/A |
| Ibsrela | Irritable bowel syndrome with constipation | 9/12/2018 | 9/12/2019 | 365 | 185 |
| Inrebic | Certain types of myelofibrosis | 1/4/2019 | 8/16/2019 | 224 | 44 |
| Jeuveau | Improve appearance of glabellar lines (lines between eyebrows) | 5/15/2017 | 2/1/2019 | 627 | 447 |
| Mayzent | Relapsing forms of multiple sclerosis | 6/28/2018 | 3/26/2019 | 271 | 91 |
| Nourianz | Parkinson's disease "off" episodes | 7/27/2019 | 8/27/2019 | 31 | N/A |
| Nubeqa | Non-metastatic prostate cancer | 2/26/2019 | 7/30/2019 | 154 | N/A |
| Oxbryta | Sickle cell disease | 6/26/2019 | 11/25/2019 | 152 | N/A |
| Padcev | Refractory bladder cancer | 7/15/2019 | 12/18/2019 | 146 | N/A |
| Piqray | Advanced or metastatic breast cancer | 12/18/2018 | 5/24/2019 | 157 | N/A |
| Polivy | Relapsed or refractory diffuse large B-cell lymphoma | 12/19/2018 | 6/10/2019 | 173 | N/A |
| pretomanid | Treatment-resistant forms of tuberculosis | 12/14/2018 | 8/14/2019 | 243 | 63 |
| Reblozyl | Anemia associated with beta thalassemia | 4/4/2019 | 11/8/2019 | 218 | 38 |
| Recarbrio | Complicated urinary tract infections and complicated intra-abdominal infections | 11/16/2018 | 7/16/2019 | 242 | 62 |
| Reyvow | Migraine with or without aura | 10/11/2018 | 10/11/2019 | 365 | 185 |
| Rinvoq | Moderately to severely active rheumatoid arthritis | 12/18/2018 | 8/16/2019 | 241 | 61 |
| Rozlytrek | Metastatic non-small cell lung cancer and locally advanced or metastatic solid tumors with a specific genetic defect | 12/18/2018 | 8/15/2019 | 240 | 60 |

| Drug Brand Name | Summary of FDA-approved use on Approval date | Submission Date | Approval Date | Days Submission to Approval | Days in Excess of 180 Days |
|------------------------|---|------------------------|----------------------|------------------------------------|-----------------------------------|
| Scenesse | Increase pain-free light exposure in patients with erythropoietic protoporphyria | 11/8/2018 | 10/8/2019 | 334 | 154 |
| Skyrizi | Moderate-to-severe plaque psoriasis | 4/3/2018 | 4/23/2019 | 385 | 205 |
| Sunosi | Excessive daytime sleepiness in patients with narcolepsy or obstructive sleep apnea | 12/20/2017 | 3/20/2019 | 455 | 275 |
| TissueBlue | Dye used in eye surgery | 4/29/2019 | 12/20/2019 | 235 | 55 |
| Trikafta | Cystic Fibrosis | 7/19/2019 | 10/21/2019 | 94 | N/A |
| Turalio | Symptomatic tenosynovial giant cell tumor | 12/3/2018 | 8/2/2019 | 242 | 62 |
| Ubrelvy | Migraine | 12/26/2018 | 12/23/2019 | 362 | 182 |
| Vyleesi | Hypoactive sexual desire disorder in premenopausal women | 3/23/2018 | 6/21/2019 | 455 | 275 |
| Vyndaqel | Cardiomyopathy caused by transthyretin-mediated amyloidosis | 11/2/2018 | 5/3/2019 | 182 | 2 |
| Vyondys 53 | Duchenne muscular dystrophy | 12/19/2018 | 12/12/2019 | 358 | 178 |
| Wakix | Excessive daytime sleepiness in patients with narcolepsy | 12/14/2018 | 8/14/2019 | 243 | 63 |
| Xcopri | Partial-onset seizures | 11/21/2018 | 11/21/2019 | 365 | 185 |
| Xenleta | Community-acquired bacterial pneumonia | 12/19/2018 | 8/19/2019 | 243 | 63 |
| Xpovio | Relapsed or refractory multiple myeloma | 8/6/2018 | 7/3/2019 | 331 | 151 |
| Zulresso | Postpartum depression | 4/9/2018 | 3/19/2019 | 344 | 164 |

The Department found that 38 of the 48 drugs (79.1%) were approved more than 180 days after submission of an application. The average time from submission to approval for the 48 drugs in the table above was 273.8 days. It should be noted that in many instances the failure

to meet the 180-day statutory benchmark may have been justified and in such cases, was frequently the result of questions by the agency and responses by the applicant.

Because FDA's approval of drugs affects the health and financial well-being of all Americans, the Department believes the public is entitled to information like the data provided in the table above regarding the amount of the time required for FDA review and approval of new and generic drugs. To that end, effective upon publication of this Notice, for all NDA and ANDA approvals, FDA must take the following action.

FDA shall publish annually on its website, for each approved NDA and ANDA approved after the date of this publication, (a) the date on which FDA "filed," in the case of an NDA, or "received," in the case of an ANDA, such application; (b) the date on which FDA approved the NDA or ANDA; (c) the total days elapsed between the dates in (a) and (b); and (d) the total days in excess of 180-days the date of (c). For example, if an NDA was "filed" on January 25, 2021 and approved on December 27, 2021, then the total days elapsed for review would be 336 days, and the days in excess of 180 days would be 156 days.

Members of the public can use this information to further study the health and economic impacts of FDA review timelines. This reporting is also consistent with FDA's mission to "promote the public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner." 21 U.S.C. 393(b)(1). In addition to educating the public, the Department believes this information will inform Congress as to whether to provide FDA with additional resources to carry out the agency's review obligations within the timeframe prescribed by Congress.

Dated: January 8, 2021.

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