

§ 320.21

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pharmaceutical equivalents or alternatives may be considered bioequivalent if there is no significant difference in the extent to which the active ingredient or moiety from each product becomes available at the site of drug action. This applies only if the difference in the rate at which the active ingredient or moiety becomes available at the site of drug action is intentional and is reflected in the proposed labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug.

(f) *Bioequivalence requirement* means a requirement imposed by the Food and Drug Administration for in vitro and/or in vivo testing of specified drug products which must be satisfied as a condition of marketing.

[42 FR 1634, Jan. 7, 1977, as amended at 42 FR 1648, Jan. 7, 1977; 57 FR 17997, Apr. 28, 1992; 67 FR 77672, Dec. 19, 2002]

Subpart B—Procedures for Determining the Bioavailability or Bioequivalence of Drug Products

SOURCE: 42 FR 1648, Jan. 7, 1977, unless otherwise noted.

§ 320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.

(a) Any person submitting a full new drug application to the Food and Drug Administration (FDA) shall include in the application either:

(1) Evidence measuring the in vivo bioavailability of the drug product that is the subject of the application; or

(2) Information to permit FDA to waive the submission of evidence measuring in vivo bioavailability.

(b) Any person submitting an abbreviated new drug application to FDA shall include in the application either:

(1) Evidence demonstrating that the drug product that is the subject of the abbreviated new drug application is bioequivalent to the reference listed drug (defined in § 314.3(b) of this chapter); or

(2) Information to show that the drug product is bioequivalent to the reference listed drug which would permit

FDA to waive the submission of evidence demonstrating in vivo bioequivalence as provided in paragraph (f) of this section.

(c) Any person submitting a supplemental application to FDA shall include in the supplemental application the evidence or information set forth in paragraphs (a) and (b) of this section if the supplemental application proposes any of the following changes:

(1) A change in the manufacturing site or a change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.

(2) A change in the labeling to provide for a new indication for use of the drug product, if clinical studies are required to support the new indication for use.

(3) A change in the labeling to provide for a new dosage regimen or for an additional dosage regimen for a special patient population, e.g., infants, if clinical studies are required to support the new or additional dosage regimen.

(d) FDA may approve a full new drug application, or a supplemental application proposing any of the changes set forth in paragraph (c) of this section, that does not contain evidence of in vivo bioavailability or information to permit waiver of the requirement for in vivo bioavailability data, if all of the following conditions are met.

(1) The application is otherwise approvable.

(2) The application agrees to submit, within the time specified by FDA, either:

(i) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of the drug product that is the subject of the application; or

(ii) Information to permit FDA to waive measurement of in vivo bioavailability.

(e) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of a drug product shall be obtained using one of the approaches for determining bioavailability set forth in § 320.24.

(f) Information to permit FDA to waive the submission of evidence measuring the in vivo bioavailability or

demonstrating the in vivo bioequivalence shall meet the criteria set forth in § 320.22.

(g) Any person holding an approved full or abbreviated new drug application shall submit to FDA a supplemental application containing new evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application if notified by FDA that:

(1) There are data demonstrating that the dosage regimen in the labeling is based on incorrect assumptions or facts regarding the pharmacokinetics of the drug product and that following this dosage regimen could potentially result in subtherapeutic or toxic levels; or

(2) There are data measuring significant intra-batch and batch-to-batch variability, e.g., plus or minus 25 percent, in the bioavailability of the drug product.

(h) The requirements of this section regarding the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence apply only to a full or abbreviated new drug application or a supplemental application for a finished dosage formulation.

[57 FR 17998, Apr. 28, 1992, as amended at 67 FR 77672, Dec. 19, 2002]

§ 320.22 Criteria for waiver of evidence of in vivo bioavailability or bioequivalence.

(a) Any person submitting a full or abbreviated new drug application, or a supplemental application proposing any of the changes set forth in § 320.21(c), may request FDA to waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application. An applicant shall submit a request for waiver with the application. Except as provided in paragraph (f) of this section, FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence if the drug product meets any of the provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) For certain drug products, the in vivo bioavailability or bioequivalence of the drug product may be self-evident. FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of these drug products. A drug product's in vivo bioavailability or bioequivalence may be considered self-evident based on other data in the application if the product meets one of the following criteria:

(1) The drug product:

(i) Is a parenteral solution intended solely for administration by injection, or an ophthalmic or otic solution; and

(ii) Contains the same active and inactive ingredients in the same concentration as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(2) The drug product:

(i) Is administered by inhalation as a gas, e.g., a medicinal or an inhalation anesthetic; and

(ii) Contains an active ingredient in the same dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(3) The drug product:

(i) Is a solution for application to the skin, an oral solution, elixir, syrup, tincture, a solution for aerosolization or nebulization, a nasal solution, or similar other solubilized form; and

(ii) Contains an active drug ingredient in the same concentration and dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application; and

(iii) Contains no inactive ingredient or other change in formulation from the drug product that is the subject of the approved full new drug application or abbreviated new drug application that may significantly affect absorption of the active drug ingredient or active moiety for products that are systemically absorbed, or that may significantly affect systemic or local availability for products intended to act locally.

(c) FDA shall waive the requirement for the submission of evidence measuring the in vivo bioavailability or