§ 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 demonstrating the in vivo bioequivalence of a solid oral dosage form (other than a delayed release or extended release dosage form) of a drug product determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or which is identical, related, or similar to such a drug product under §310.6 of this chapter unless FDA has evaluated the drug product under the criteria set forth in §320.33, included the drug product in the Approved Drug Products with Therapeutic Equivalence Evaluations List, and rated the drug product as having a known or potential bioequivalence problem. A drug product so rated reflects a determination by FDA that an in vivo bioequivalence study is required.

(d) For certain drug products, bioavailability may be measured or bioequivalence may be demonstrated by evidence obtained in vitro in lieu of in vivo data. FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of the drug product if the drug product meets one of the following criteria:

(1) [Reserved]

(2) The drug product is in the same dosage form, but in a different strength, and is proportionally similar in its active and inactive ingredients to
another drug product for which the same manufacturer has obtained approval and the conditions in paragraphs (d)(2)(i) through (d)(2)(iii) of this section are met:

(i) The bioavailability of this other drug product has been measured;
(ii) Both drug products meet an appropriate in vitro test approved by FDA; and
(iii) The applicant submits evidence showing that both drug products are proportionally similar in their active and inactive ingredients.

(iv) Paragraph (d) of this section does not apply to delayed release or extended release products.

(3) The drug product is, on the basis of scientific evidence submitted in the application, shown to meet an in vitro test that has been correlated with in vivo data.

(4) The drug product is a reformulated product that is identical, except for a different color, flavor, or preservative that could not affect the bioavailability of the reformulated product, to another drug product for which the same manufacturer has obtained approval and the following conditions are met:

(i) The bioavailability of the other product has been measured; and
(ii) Both drug products meet an appropriate in vitro test approved by FDA.

(e) FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability or bioequivalence if waiver is compatible with the protection of the public health. For full new drug applications, FDA may defer a requirement for the submission of evidence of in vivo bioavailability if deferral is compatible with the protection of the public health.

(f) FDA, for good cause, may require evidence of in vivo bioavailability or bioequivalence for any drug product if the agency determines that any difference between the drug product and a listed drug may affect the bioavailability or bioequivalence of the drug product.