

the analytical method used to produce the evidence) that demonstrates that such food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health.” Alternately, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient “does not contain allergenic protein” or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act that the ingredient “does not cause an allergic response that poses a risk to human health” (section 403(w)(7) of the FD&C Act).

We issued a guidance document entitled “Guidance for Industry: Food Allergen Labeling Exemption Petitions and Notifications,” which is available

on our website at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-food-allergen-labeling-exemption-petitions-and-notifications>.

The guidance sets forth our recommendations with regard to the information that respondents should submit in such a petition or notification. The guidance states that to evaluate these petitions and notifications, we will consider scientific evidence that describes: (1) The identity or composition of the ingredient; (2) the methods used to produce the ingredient; (3) the methods used to characterize the ingredient; (4) the intended use of the ingredient in food; and (5) either (a) for a petition, data and information, including the expected level of consumer exposure to the ingredient, that demonstrate that the ingredient,

when manufactured and used as described, does not cause an allergic response that poses a risk to human health; or (b) for a notification, data and information that demonstrate that the ingredient, when manufactured as described, does not contain allergenic protein, or documentation of a previous determination under a process under section 409 of the FD&C Act that the ingredient does not cause an allergic response that poses a risk to human health. We use the information submitted in the petition or notification to determine whether the ingredient satisfies the criteria of section 403(w)(6) and (7) of the FD&C Act for granting the exemption.

We estimate the reporting burden associated with the collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

FD&C section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
403(w)(6); petition for exemption .....	5	1	5	100	500
403(w)(7); notification .....	5	1	5	68	340
Total .....					840

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 22, 2020.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-D-0114]

**Referencing Approved Drug Products in Abbreviated New Drug Application Submissions; Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Referencing Approved Drug Products in Abbreviated New Drug Application Submissions.” Any person is permitted to submit an abbreviated new drug application (ANDA) in order to seek approval to market a generic version of a previously approved drug product.

The purpose of this guidance is to provide information to potential applicants on how to identify a reference listed drug (RLD), a reference standard, and the basis of submission in an ANDA submission.

**DATES:** The announcement of the guidance is published in the **Federal Register** on October 28, 2020.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2017-D-0114 for “Referencing Approved Drug Products in Abbreviated New Drug Application Submissions.” Received comments will be placed in

the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, 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.

**FOR FURTHER INFORMATION CONTACT:** Susan Levine, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD, 20993, 240–402–7936.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a guidance for industry entitled “Referencing Approved Drug Products in Abbreviated New Drug Submissions” To obtain approval of an ANDA submitted under section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C 355(j)), an ANDA applicant generally must show, among other things, that the proposed generic drug has the same active ingredient(s), conditions of use, route of administration, dosage form, strength, and, with certain permissible differences, labeling as the specific listed drug referred to in the ANDA, *i.e.*, the RLD. Under section 505(j)(2)(A)(iv) of the FD&C Act, the ANDA applicant also must demonstrate that the proposed generic drug is bioequivalent to the RLD and, if any in vivo bioequivalence study is required for approval of the ANDA, the applicant must use the reference standard selected by FDA in such testing (21 CFR 314.3(b)). Further, under section 505(j)(2)(A)(vi) of the FD&C Act, a generic drug must meet the same high standards of quality and manufacturing as drug products approved under section 505(c) of the FD&C Act.

This guidance provides information to potential applicants on how to identify a “reference listed drug,” “reference standard,” and the “basis of submission” in ANDA submissions. A variety of factors has led to confusion among stakeholders on what these terms mean and how an ANDA applicant should use them. These factors include the discontinued marketing of many approved drug products and FDA’s past practice of identifying reference standards with the RLD symbol (“+”) in the printed version, and with a “Yes” under the “RLD” column in the electronic version, of FDA’s “Approved Drug Products with Therapeutic Equivalence Evaluations” (the “Orange Book”). This guidance is intended to address this confusion by explaining what these terms mean and by clarifying the differences among them. This guidance provides recommendations on how applicants can accurately use these terms in an ANDA, how persons can request FDA designation of an RLD, and how persons can request FDA selection of a reference standard.

This guidance finalizes the draft guidance announced in the **Federal**

**Register** on January 17, 2017 (82 FR 4894). The final guidance incorporates clarifying revisions in light of comments received on the draft guidance. The final guidance also explains that a controlled correspondence may be submitted to FDA instead of a citizen petition to request that FDA designate a different listed drug as an RLD.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Referencing Approved Drug Products in Abbreviated New Drug Application Submissions.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

**II. Paperwork Reduction Act of 1995**

This guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required.

However, this guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 for the submission of new drug applications and ANDAs have been approved under OMB control number 0910–0001, the submission of citizen petitions is approved under OMB control number 0910–0191, and the submission of controlled correspondence pertaining to ANDAs is approved under OMB control number 0910–0797.

**III. Electronic Access**

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs> or <https://www.regulations.gov>.

Dated: October 22, 2020.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

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