

(d) In accordance with §316.28, FDA will make a cumulative list of all orphan drug designations available to the public and update such list monthly.

(e) FDA will not publicly disclose the existence of a pending marketing application for a designated orphan drug for the use for which the drug was designated unless the existence of the application has been previously publicly disclosed or acknowledged.

(f) FDA will determine the public availability of data and information contained in pending and approved marketing applications for a designated orphan drug for the use for which the drug was designated in accordance with part 20 and §314.430 of this chapter and other applicable statutes and regulations.

## PART 317—QUALIFYING PATHOGENS

Sec.

317.1 [Reserved]

317.2 List of qualifying pathogens that have the potential to pose a serious threat to public health.

AUTHORITY: 21 U.S.C. 355f, 371.

SOURCE: 79 FR 32480, June 5, 2014, unless otherwise noted.

### §317.1 [Reserved]

### §317.2 List of qualifying pathogens that have the potential to pose a serious threat to public health.

The term “qualifying pathogen” in section 505E(f) of the Federal Food, Drug, and Cosmetic Act is defined to mean any of the following:

- (a) *Acinetobacter* species.
- (b) *Aspergillus* species.
- (c) *Burkholderia cepacia* complex.
- (d) *Campylobacter* species.
- (e) *Candida* species.
- (f) *Clostridium difficile*.
- (g) *Coccidioides* species.
- (h) *Cryptococcus* species.
- (i) Enterobacteriaceae.
- (j) *Enterococcus* species.
- (k) *Helicobacter pylori*.
- (l) *Mycobacterium tuberculosis* complex.
- (m) *Neisseria gonorrhoeae*.
- (n) *Neisseria meningitidis*.
- (o) Non-tuberculous mycobacteria species.

(p) *Pseudomonas* species.

(q) *Staphylococcus aureus*.

(r) *Streptococcus agalactiae*.

(s) *Streptococcus pneumoniae*.

(t) *Streptococcus pyogenes*.

(u) *Vibrio cholerae*.

## PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

### Subpart A—General Provisions

Sec.

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320.38 Retention of bioavailability samples.

320.63 Retention of bioequivalence samples.

AUTHORITY: 21 U.S.C. 321, 351, 352, 355, 371.

**Subpart A—General Provisions****§ 320.1 Definitions.**

The definitions contained in § 314.3 of this chapter apply to those terms when used in this part.

[81 FR 69658, Oct. 6, 2016]

**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 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). A complete study report must be submitted for the bioequivalence study upon which the applicant relies for approval. For all other bioequivalence studies conducted on the same drug product formulation, the applicant must submit either a complete or summary report. If a summary report of a bioequivalence study is submitted and FDA determines that there may be bioequivalence issues or concerns with the product, FDA may require that the applicant submit a complete report of the bioequivalence study to FDA; 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; 74 FR 2862, Jan. 16, 2009]

**§ 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-evi-

dent. 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 preserv-

ative 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.

[57 FR 17998, Apr. 28, 1992, as amended at 67 FR 77673, Dec. 19, 2002]

**§320.23 Basis for measuring in vivo bioavailability or demonstrating bioequivalence.**

(a)(1) The in vivo bioavailability of a drug product is measured if the product's rate and extent of absorption, as determined by comparison of measured parameters, e.g., concentration of the active drug ingredient in the blood, urinary excretion rates, or pharmacological effects, do not indicate a significant difference from the reference material's rate and extent of absorption. For drug products that are not intended to be absorbed into the bloodstream, bioavailability may be assessed by scientifically valid measurements intended to reflect the rate and extent to which the active ingredient or active moiety becomes available at the site of action.

(2) Statistical techniques used must be of sufficient sensitivity to detect differences in rate and extent of absorption that are not attributable to subject variability.

(3) A drug product that differs from the reference material in its rate of absorption, but not in its extent of absorption, may be considered to be bioavailable if the difference in the rate of absorption is intentional, is appropriately reflected in the labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug product.

(b)(1) Two drug products will be considered bioequivalent drug products if they are pharmaceutical equivalents or pharmaceutical alternatives whose rate and extent of absorption do not show a significant difference when administered at the same molar dose of the active moiety under similar experimental conditions, either single dose or multiple dose. Some pharmaceutical equivalents or pharmaceutical alternatives may be equivalent in the extent of their absorption but not in their rate of absorption and yet may be considered bioequivalent because such differences in the rate of absorption are intentional and are reflected in the labeling, are not essential to the attainment of effective body drug concentrations on chronic use, and are considered medically insignificant for the particular drug product studied.

(2) For drug products that are not intended to be absorbed into the bloodstream, bioequivalence may be demonstrated by scientifically valid methods that are expected to detect a significant difference between the drug and the listed drug in safety and therapeutic effect.

[57 FR 17999, Apr. 28, 1992, as amended at 67 FR 77673, Dec. 19, 2002, 81 FR 69658, Oct. 6, 2016]

**§ 320.24 Types of evidence to measure bioavailability or establish bioequivalence.**

(a) Bioavailability may be measured or bioequivalence may be demonstrated by several in vivo and in vitro methods. FDA may require in vivo or in vitro testing, or both, to measure the bioavailability of a drug product or establish the bioequivalence of specific drug products. Information on bioequivalence requirements for specific products is included in the current edition of FDA's publication "Ap-

proved Drug Products with Therapeutic Equivalence Evaluations" and any current supplement to the publication. The selection of the method used to meet an in vivo or in vitro testing requirement depends upon the purpose of the study, the analytical methods available, and the nature of the drug product. Applicants shall conduct bioavailability and bioequivalence testing using the most accurate, sensitive, and reproducible approach available among those set forth in paragraph (b) of this section. The method used must be capable of measuring bioavailability or establishing bioequivalence, as appropriate, for the product being tested.

(b) The following in vivo and in vitro approaches, in descending order of accuracy, sensitivity, and reproducibility, are acceptable for determining the bioavailability or bioequivalence of a drug product.

(1)(i) An in vivo test in humans in which the concentration of the active ingredient or active moiety, and, when appropriate, its active metabolite(s), in whole blood, plasma, serum, or other appropriate biological fluid is measured as a function of time. This approach is particularly applicable to dosage forms intended to deliver the active moiety to the bloodstream for systemic distribution within the body; or

(ii) An in vitro test that has been correlated with and is predictive of human in vivo bioavailability data; or

(2) An in vivo test in humans in which the urinary excretion of the active moiety, and, when appropriate, its active metabolite(s), are measured as a function of time. The intervals at which measurements are taken should ordinarily be as short as possible so that the measure of the rate of elimination is as accurate as possible. Depending on the nature of the drug product, this approach may be applicable to the category of dosage forms described in paragraph (b)(1)(i) of this section. This method is not appropriate where urinary excretion is not a significant mechanism of elimination.

(3) An in vivo test in humans in which an appropriate acute pharmacological effect of the active moiety, and, when appropriate, its active metabolite(s), are measured as a function

of time if such effect can be measured with sufficient accuracy, sensitivity, and reproducibility. This approach is applicable to the category of dosage forms described in paragraph (b)(1)(i) of this section only when appropriate methods are not available for measurement of the concentration of the moiety, and, when appropriate, its active metabolite(s), in biological fluids or excretory products but a method is available for the measurement of an appropriate acute pharmacological effect. This approach may be particularly applicable to dosage forms that are not intended to deliver the active moiety to the bloodstream for systemic distribution.

(4) Well-controlled clinical trials that establish the safety and effectiveness of the drug product, for purposes of measuring bioavailability, or appropriately designed comparative clinical trials, for purposes of demonstrating bioequivalence. This approach is the least accurate, sensitive, and reproducible of the general approaches for measuring bioavailability or demonstrating bioequivalence. For dosage forms intended to deliver the active moiety to the bloodstream for systemic distribution, this approach may be considered acceptable only when analytical methods cannot be developed to permit use of one of the approaches outlined in paragraphs (b)(1)(i) and (b)(2) of this section, when the approaches described in paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(3) of this section are not available. This approach may also be considered sufficiently accurate for measuring bioavailability or demonstrating bioequivalence of dosage forms intended to deliver the active moiety locally, e.g., topical preparations for the skin, eye, and mucous membranes; oral dosage forms not intended to be absorbed, e.g., an antacid or radiopaque medium; and bronchodilators administered by inhalation if the onset and duration of pharmacological activity are defined.

(5) A currently available *in vitro* test acceptable to FDA (usually a dissolution rate test) that ensures human *in vivo* bioavailability.

(6) Any other approach deemed adequate by FDA to measure bio-

availability or establish bioequivalence.

(c) FDA may, notwithstanding prior requirements for measuring bioavailability or establishing bioequivalence, require *in vivo* testing in humans of a product at any time if the agency has evidence that the product:

(1) May not produce therapeutic effects comparable to a pharmaceutical equivalent or alternative with which it is intended to be used interchangeably;

(2) May not be bioequivalent to a pharmaceutical equivalent or alternative with which it is intended to be used interchangeably; or

(3) Has greater than anticipated potential toxicity related to pharmacokinetic or other characteristics.

[57 FR 17999, Apr. 28, 1992; 57 FR 29354, July 1, 1992, as amended at 67 FR 77673, Dec. 19, 2002]

#### **§ 320.25 Guidelines for the conduct of an *in vivo* bioavailability study.**

(a) *Guiding principles.* (1) The basic principle in an *in vivo* bioavailability study is that no unnecessary human research should be done.

(2) An *in vivo* bioavailability study is generally done in a normal adult population under standardized conditions. In some situations, an *in vivo* bioavailability study in humans may preferably and more properly be done in suitable patients. Critically ill patients shall not be included in an *in vivo* bioavailability study unless the attending physician determines that there is a potential benefit to the patient.

(b) *Basic design.* The basic design of an *in vivo* bioavailability study is determined by the following:

(1) The scientific questions to be answered.

(2) The nature of the reference material and the dosage form to be tested.

(3) The availability of analytical methods.

(4) Benefit-risk considerations in regard to testing in humans.

(c) *Comparison to a reference material.* *In vivo* bioavailability testing of a drug product shall be in comparison to an appropriate reference material unless some other approach is more appropriate for valid scientific reasons.

(d) *Previously unmarketed active drug ingredients or therapeutic moieties.* (1) An

in vivo bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing can be used to measure the following pharmacokinetic data:

(i) The bioavailability of the formulation proposed for marketing; and

(ii) The essential pharmacokinetic characteristics of the active drug ingredient or therapeutic moiety, such as the rate of absorption, the extent of absorption, the half-life of the therapeutic moiety in vivo, and the rate of excretion and/or metabolism. Dose proportionality of the active drug ingredient or the therapeutic moiety needs to be established after single-dose administration and in certain instances after multiple-dose administration. This characterization is a necessary part of the investigation of the drug to support drug labeling.

(2) The reference material in such a bioavailability study should be a solution or suspension containing the same quantity of the active drug ingredient or therapeutic moiety as the formulation proposed for marketing.

(3) The reference material should be administered by the same route as the formulation proposed for marketing unless an alternative or additional route is necessary to answer the scientific question under study. For example, in the case of an active drug ingredient or therapeutic moiety that is poorly absorbed after oral administration, it may be necessary to compare the oral dosage form proposed for marketing with the active drug ingredient or therapeutic moiety administered in solution both orally and intravenously.

(e) *New formulations of active drug ingredients or therapeutic moieties approved for marketing.* (1) An in vivo bioavailability study involving a drug product that is a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing can be used to:

(i) Measure the bioavailability of the new formulation, new dosage form, or new salt or ester relative to an appropriate reference material; and

(ii) Define the pharmacokinetic parameters of the new formulation, new

dosage form, or new salt or ester to establish dosage recommendation.

(2) The selection of the reference material(s) in such a bioavailability study depends upon the scientific questions to be answered, the data needed to establish comparability to a currently marketed drug product, and the data needed to establish dosage recommendations.

(3) The reference material should be taken from a current batch of a drug product that is the subject of an approved new drug application and that contains the same active drug ingredient or therapeutic moiety, if the new formulation, new dosage form, or new salt or ester is intended to be comparable to or to meet any comparative labeling claims made in relation to the drug product that is the subject of an approved new drug application.

(f) *Extended release formulations.* (1) The purpose of an in vivo bioavailability study involving a drug product for which an extended release claim is made is to determine if all of the following conditions are met:

(i) The drug product meets the extended release claims made for it.

(ii) The bioavailability profile established for the drug product rules out the occurrence of any dose dumping.

(iii) The drug product's steady-state performance is equivalent to a currently marketed nonextended release or extended release drug product that contains the same active drug ingredient or therapeutic moiety and that is subject to an approved full new drug application.

(iv) The drug product's formulation provides consistent pharmacokinetic performance between individual dosage units.

(2) The reference material(s) for such a bioavailability study shall be chosen to permit an appropriate scientific evaluation of the extended release claims made for the drug product. The reference material shall be one of the following or any combination thereof:

(i) A solution or suspension of the active drug ingredient or therapeutic moiety.

(ii) A currently marketed noncontrolled release drug product containing the same active drug ingredient or therapeutic moiety and administered

according to the dosage recommendations in the labeling of the noncontrolled release drug product.

(iii) A currently marketed extended release drug product subject to an approved full new drug application containing the same active drug ingredient or therapeutic moiety and administered according to the dosage recommendations in the labeling proposed for the extended release drug product.

(iv) A reference material other than one set forth in paragraph (f)(2) (i), (ii) or (iii) of this section that is appropriate for valid scientific reasons.

(g) *Combination drug products.* (1) Generally, the purpose of an in vivo bioavailability study involving a combination drug product is to determine if the rate and extent of absorption of each active drug ingredient or therapeutic moiety in the combination drug product is equivalent to the rate and extent of absorption of each active drug ingredient or therapeutic moiety administered concurrently in separate single-ingredient preparations.

(2) The reference material in such a bioavailability study should be two or more currently marketed, single-ingredient drug products each of which contains one of the active drug ingredients or therapeutic moieties in the combination drug product. The Food and Drug Administration may, for valid scientific reasons, specify that the reference material shall be a combination drug product that is the subject of an approved new drug application.

(3) The Food and Drug Administration may permit a bioavailability study involving a combination drug product to determine the rate and extent of absorption of selected, but not all, active drug ingredients or therapeutic moieties in the combination drug product. The Food and Drug Administration may permit this determination if the pharmacokinetics and the interactions of the active drug ingredients or therapeutic moieties in the combination drug product are well known and the therapeutic activity of the combination drug product is generally recognized to reside in only one of the active drug ingredients or therapeutic moieties, e.g., ampicillin in an ampicillin-probenecid combination drug product.

(h) *Use of a placebo as the reference material.* Where appropriate or where necessary to demonstrate the sensitivity of the test, the reference material in a bioavailability study may be a placebo if:

(1) The study measures the therapeutic or acute pharmacological effect of the active drug ingredient or therapeutic moiety; or

(2) The study is a clinical trial to establish the safety and effectiveness of the drug product.

(i) *Standards for test drug product and reference material.* (1) Both the drug product to be tested and the reference material, if it is another drug product, shall be shown to meet all compendial or other applicable standards of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and dissolution rates.

(2) Samples of the drug product to be tested shall be manufactured using the same equipment and under the same conditions as those used for full-scale production.

[42 FR 1648, Jan. 7, 1977, as amended at 67 FR 77674, Dec. 19, 2002]

**§ 320.26 Guidelines on the design of a single-dose in vivo bioavailability or bioequivalence study.**

(a) *Basic principles.* (1) An in vivo bioavailability or bioequivalence study should be a single-dose comparison of the drug product to be tested and the appropriate reference material conducted in normal adults.

(2) The test product and the reference material should be administered to subjects in the fasting state, unless some other approach is more appropriate for valid scientific reasons.

(b) *Study design.* (1) A single-dose study should be crossover in design, unless a parallel design or other design is more appropriate for valid scientific reasons, and should provide for a drug elimination period.

(2) Unless some other approach is appropriate for valid scientific reasons, the drug elimination period should be either:

(i) At least three times the half-life of the active drug ingredient or therapeutic moiety, or its metabolite(s), measured in the blood or urine; or



(ii) At least three times the half-life of decay of the acute pharmacological effect.

(c) *Collection of blood samples.* (1) When comparison of the test product and the reference material is to be based on blood concentration time curves, unless some other approach is more appropriate for valid scientific reasons, blood samples should be taken with sufficient frequency to permit an estimate of both:

(i) The peak concentration in the blood of the active drug ingredient or therapeutic moiety, or its metabolite(s), measured; and

(ii) The total area under the curve for a time period at least three times the half-life of the active drug ingredient or therapeutic moiety, or its metabolite(s), measured.

(2) In a study comparing oral dosage forms, the sampling times should be identical.

(3) In a study comparing an intravenous dosage form and an oral dosage form, the sampling times should be those needed to describe both:

(i) The distribution and elimination phase of the intravenous dosage form; and

(ii) The absorption and elimination phase of the oral dosage form.

(4) In a study comparing drug delivery systems other than oral or intravenous dosage forms with an appropriate reference standard, the sampling times should be based on valid scientific reasons.

(d) *Collection of urine samples.* When comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves, unless some other approach is more appropriate for valid scientific reasons, samples of the urine should be collected with sufficient frequency to permit an estimate of the rate and extent of urinary excretion of the active drug ingredient or therapeutic moiety, or its metabolite(s), measured.

(e) *Measurement of an acute pharmacological effect.* (1) When comparison of the test product and the reference material is to be based on acute pharmacological effect-time curves, measurements of this effect should be made with sufficient frequency to permit a reasonable estimate of the total area

under the curve for a time period at least three times the half-life of decay of the pharmacological effect, unless some other approach is more appropriate for valid scientific reasons.

(2) The use of an acute pharmacological effect to determine bioavailability may further require demonstration of dose-related response. In such a case, bioavailability may be determined by comparison of the dose-response curves as well as the total area under the acute pharmacological effect-time curves for any given dose.

[42 FR 1648, Jan. 7, 1977, as amended at 67 FR 77674, Dec. 19, 2002]

**§ 320.27 Guidelines on the design of a multiple-dose in vivo bioavailability study.**

(a) *Basic principles.* (1) In selected circumstances it may be necessary for the test product and the reference material to be compared after repeated administration to determine steady-state levels of the active drug ingredient or therapeutic moiety in the body.

(2) The test product and the reference material should be administered to subjects in the fasting or nonfasting state, depending upon the conditions reflected in the proposed labeling of the test product.

(3) A multiple-dose study may be required to determine the bioavailability of a drug product in the following circumstances:

(i) There is a difference in the rate of absorption but not in the extent of absorption.

(ii) There is excessive variability in bioavailability from subject to subject.

(iii) The concentration of the active drug ingredient or therapeutic moiety, or its metabolite(s), in the blood resulting from a single dose is too low for accurate determination by the analytical method.

(iv) The drug product is an extended release dosage form.

(b) *Study design.* (1) A multiple-dose study should be crossover in design, unless a parallel design or other design is more appropriate for valid scientific reasons, and should provide for a drug elimination period if steady-state conditions are not achieved.

(2) A multiple-dose study is not required to be of crossover design if the

study is to establish dose proportionality under a multiple-dose regimen or to establish the pharmacokinetic profile of a new drug product, a new drug delivery system, or an extended release dosage form.

(3) If a drug elimination period is required, unless some other approach is more appropriate for valid scientific reasons, the drug elimination period should be either:

(i) At least five times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s), measured in the blood or urine; or

(ii) At least five times the half-life of decay of the acute pharmacological effect.

(c) *Achievement of steady-state conditions.* Whenever a multiple-dose study is conducted, unless some other approach is more appropriate for valid scientific reasons, sufficient doses of the test product and reference material should be administered in accordance with the labeling to achieve steady-state conditions.

(d) *Collection of blood or urine samples.*

(1) Whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady state, appropriate dosage administration and sampling should be carried out to document attainment of steady state.

(2) Whenever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady state, appropriate dosage administration and sampling should be carried out to document attainment of steady state.

(3) A more complete characterization of the blood concentration or urinary excretion rate during the absorption and elimination phases of a single dose administered at steady-state is encouraged to permit estimation of the total area under concentration-time curves or cumulative urinary excretion-time curves and to obtain pharmacokinetic information, e.g., half-life or blood clearance, that is essential in preparing adequate labeling for the drug product.

(e) *Steady-state parameters.* (1) In certain instances, e.g., in a study involving a new drug entity, blood clearances

at steady-state obtained in a multiple-dose study should be compared to blood clearances obtained in a single-dose study to support adequate dosage recommendations.

(2) In a linear system, the area under the blood concentration-time curve during a dosing interval in a multiple-dose steady-state study is directly proportional to the fraction of the dose absorbed and is equal to the corresponding “zero to infinity” area under the curve for a single-dose study. Therefore, when steady-state conditions are achieved, a comparison of blood concentrations during a dosing interval may be used to define the fraction of the active drug ingredient or therapeutic moiety absorbed.

(3) Other methods based on valid scientific reasons should be used to determine the bioavailability of a drug product having dose-dependent kinetics (non-linear system).

(f) *Measurement of an acute pharmacological effect.* When comparison of the test product and the reference material is to be based on acute pharmacological effect-time curves, measurements of this effect should be made with sufficient frequency to demonstrate a maximum effect and a lack of significant difference between the test product and the reference material.

[42 FR 1648, Jan. 7, 1977, as amended at 67 FR 77674, Dec. 19, 2002]

#### **§ 320.28 Correlation of bioavailability with an acute pharmacological effect or clinical evidence.**

Correlation of in vivo bioavailability data with an acute pharmacological effect or clinical evidence of safety and effectiveness may be required if needed to establish the clinical significance of a special claim, e.g., in the case of an extended release preparation.

[42 FR 1648, Jan. 7, 1977, as amended at 67 FR 77674, Dec. 19, 2002]

#### **§ 320.29 Analytical methods for an in vivo bioavailability or bioequivalence study.**

(a) The analytical method used in an in vivo bioavailability or bioequivalence study to measure the concentration of the active drug ingredient or

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therapeutic moiety, or its active metabolite(s), in body fluids or excretory products, or the method used to measure an acute pharmacological effect shall be demonstrated to be accurate and of sufficient sensitivity to measure, with appropriate precision, the actual concentration of the active drug ingredient or therapeutic moiety, or its active metabolite(s), achieved in the body.

(b) When the analytical method is not sensitive enough to measure accurately the concentration of the active drug ingredient or therapeutic moiety, or its active metabolite(s), in body fluids or excretory products produced by a single dose of the test product, two or more single doses may be given together to produce higher concentration if the requirements of § 320.31 are met.

[42 FR 1648, Jan. 7, 1977, as amended at 67 FR 77674, Dec. 19, 2002]

## **§ 320.30 Inquiries regarding bioavailability and bioequivalence requirements and review of protocols by the Food and Drug Administration.**

(a) The Commissioner of Food and Drugs strongly recommends that, to avoid the conduct of an improper study and unnecessary human research, any person planning to conduct a bioavailability or bioequivalence study submit the proposed protocol for the study to FDA for review prior to the initiation of the study.

(b) FDA may review a proposed protocol for a bioavailability or bioequivalence study and will offer advice with respect to whether the following conditions are met:

(1) The design of the proposed bioavailability or bioequivalence study is appropriate.

(2) The reference material to be used in the bioavailability or bioequivalence study is appropriate.

(3) The proposed chemical and statistical analytical methods are adequate.

(c)(1) General inquiries relating to in vivo bioavailability requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Office of Clinical Pharmacology, 10903

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New Hampshire Ave., Silver Spring, MD 20993–0002.

(2) General inquiries relating to bioequivalence requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Division of Bioequivalence (HFD–650), 7500 Standish Pl., Rockville, MD 20855–2773.

[57 FR 18000, Apr. 28, 1992, as amended at 67 FR 77674, Dec. 19, 2002; 74 FR 13114, Mar. 26, 2009]

## **§ 320.31 Applicability of requirements regarding an “Investigational New Drug Application.”**

(a) Any person planning to conduct an in vivo bioavailability or bioequivalence study in humans shall submit an “Investigational New Drug Application” (IND) if:

(1) The test product contains a new chemical entity as defined in § 314.108(a) of this chapter; or

(2) The study involves a radioactively labeled drug product; or

(3) The study involves a cytotoxic drug product.

(b) Any person planning to conduct a bioavailability or bioequivalence study in humans using a drug product that contains an already approved, non-new chemical entity shall submit an IND if the study is one of the following:

(1) A single-dose study in normal subjects or patients where either the maximum single or total daily dose exceeds that specified in the labeling of the drug product that is the subject of an approved new drug application or abbreviated new drug application.

(2) A multiple-dose study in normal subjects or patients where either the single or total daily dose exceeds that specified in the labeling of the drug product that is the subject of an approved new drug application or abbreviated new drug application.

(3) A multiple-dose study on an extended release product on which no single-dose study has been completed.

(c) The provisions of parts 50, 56, and 312 of this chapter are applicable to any bioavailability or bioequivalence study in humans conducted under an IND.

(d) A bioavailability or bioequivalence study in humans other than one described in paragraphs (a) through (c)

of this section is exempt from the requirements of part 312 of this chapter if the following conditions are satisfied:

(1) If the study is one described under § 320.38(b) or § 320.63, the person conducting the study, including any contract research organization, must retain reserve samples of any test article and reference standard used in the study and release the reserve samples to FDA upon request, in accordance with, and for the period specified in, § 320.38;

(2) An in vivo bioavailability or bioequivalence study in humans must be conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter, and informed consent set forth in part 50 of this chapter; and

(3) The person conducting the study, including any contract research organization, must notify FDA and all participating investigators of any serious adverse event, as defined in § 312.32(a), observed during the conduct of the study as soon as possible but in no case later than 15 calendar days after becoming aware of its occurrence. Each report must be submitted on FDA Form 3500A or in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). Each report must bear prominent identification of its contents, i.e., “bioavailability/bioequivalence safety report.” The person conducting the study, including any contract research organization, must also notify FDA of any fatal or life-threatening adverse event from the study as soon as possible but in no case later than 7 calendar days after becoming aware of its occurrence. Each notification under this paragraph must be submitted to the Director, Office of Generic Drugs in the Center for Drug Evaluation and Research at FDA. Relevant followup information to a bioavailability/bioequivalence safety report must be submitted as soon as the information is available and must be identified as such, i.e., “Followup bioavailability/bioequivalence safety report.” Upon request from FDA, the person conducting

the study, including any contract research organization, must submit to FDA any additional data or information that the agency deems necessary, as soon as possible, but in no case later than 15 calendar days after receiving the request.

[57 FR 18000, Apr. 28, 1992, as amended at 58 FR 25927, Apr. 28, 1993; 67 FR 77674, Dec. 19, 2002; 75 FR 59963, Sept. 29, 2010]

**§ 320.32 Procedures for establishing or amending a bioequivalence requirement.**

(a) The Food and Drug Administration, on its own initiative or in response to a petition by an interested person, may propose and promulgate a regulation to establish a bioequivalence requirement for a product not subject to section 505(j) of the act if it finds there is well-documented evidence that specific pharmaceutical equivalents or pharmaceutical alternatives intended to be used interchangeably for the same therapeutic effect:

(1) Are not bioequivalent drug products; or

(2) May not be bioequivalent drug products based on the criteria set forth in § 320.33; or

(3) May not be bioequivalent drug products because they are members of a class of drug products that have close structural similarity and similar physicochemical or pharmacokinetic properties to other drug products in the same class that FDA finds are not bioequivalent drug products.

(b) FDA shall include in a proposed rule to establish a bioequivalence requirement the evidence and criteria set forth in § 320.33 that are to be considered in determining whether to issue the proposal. If the rulemaking is proposed in response to a petition, FDA shall include in the proposal a summary and analysis of the relevant information that was submitted in the petition as well as other available information to support the establishment of a bioequivalence requirement.

(c) FDA, on its own initiative or in response to a petition by an interested person, may propose and promulgate

an amendment to a bioequivalence requirement established under this subpart.

[57 FR 18000, Apr. 28, 1992]

**§ 320.33 Criteria and evidence to assess actual or potential bioequivalence problems.**

The Commissioner of Food and Drugs shall consider the following factors, when supported by well-documented evidence, to identify specific pharmaceutical equivalents and pharmaceutical alternatives that are not or may not be bioequivalent drug products.

(a) Evidence from well-controlled clinical trials or controlled observations in patients that such drug products do not give comparable therapeutic effects.

(b) Evidence from well-controlled bioequivalence studies that such products are not bioequivalent drug products.

(c) Evidence that the drug products exhibit a narrow therapeutic ratio, e.g., there is less than a 2-fold difference in median lethal dose ( $LD_{50}$ ) and median effective dose ( $ED_{50}$ ) values, or have less than a 2-fold difference in the minimum toxic concentrations and minimum effective concentrations in the blood, and safe and effective use of the drug products requires careful dosage titration and patient monitoring.

(d) Competent medical determination that a lack of bioequivalence would have a serious adverse effect in the treatment or prevention of a serious disease or condition.

(e) Physicochemical evidence that:

(1) The active drug ingredient has a low solubility in water, e.g., less than 5 milligrams per 1 milliliter, or, if dissolution in the stomach is critical to absorption, the volume of gastric fluids required to dissolve the recommended dose far exceeds the volume of fluids present in the stomach (taken to be 100 milliliters for adults and prorated for infants and children).

(2) The dissolution rate of one or more such products is slow, e.g., less than 50 percent in 30 minutes when tested using either a general method specified in an official compendium or a paddle method at 50 revolutions per

minute in 900 milliliters of distilled or deionized water at 37 °C, or differs significantly from that of an appropriate reference material such as an identical drug product that is the subject of an approved full new drug application.

(3) The particle size and/or surface area of the active drug ingredient is critical in determining its bioavailability.

(4) Certain physical structural characteristics of the active drug ingredient, e.g., polymorphic forms, conformations, solvates, complexes, and crystal modifications, dissolve poorly and this poor dissolution may affect absorption.

(5) Such drug products have a high ratio of excipients to active ingredients, e.g., greater than 5 to 1.

(6) Specific inactive ingredients, e.g., hydrophilic or hydrophobic excipients and lubricants, either may be required for absorption of the active drug ingredient or therapeutic moiety or, alternatively, if present, may interfere with such absorption.

(f) Pharmacokinetic evidence that:

(1) The active drug ingredient, therapeutic moiety, or its precursor is absorbed in large part in a particular segment of the gastrointestinal tract or is absorbed from a localized site.

(2) The degree of absorption of the active drug ingredient, therapeutic moiety, or its precursor is poor, e.g., less than 50 percent, ordinarily in comparison to an intravenous dose, even when it is administered in pure form, e.g., in solution.

(3) There is rapid metabolism of the therapeutic moiety in the intestinal wall or liver during the process of absorption (first-pass metabolism) so the therapeutic effect and/or toxicity of such drug product is determined by the rate as well as the degree of absorption.

(4) The therapeutic moiety is rapidly metabolized or excreted so that rapid dissolution and absorption are required for effectiveness.

(5) The active drug ingredient or therapeutic moiety is unstable in specific portions of the gastrointestinal tract and requires special coatings or formulations, e.g., buffers, enteric coatings, and film coatings, to assure adequate absorption.

(6) The drug product is subject to dose dependent kinetics in or near the therapeutic range, and the rate and extent of absorption are important to bioequivalence.

[42 FR 1635, Jan. 7, 1977. Redesignated and amended at 57 FR 18001, Apr. 28, 1992; 81 FR 17066, Mar. 28, 2016]

**§ 320.34 Requirements for batch testing and certification by the Food and Drug Administration.**

(a) If the Commissioner determines that individual batch testing by the Food and Drug Administration is necessary to assure that all batches of the same drug product meet an appropriate in vitro test, he shall include in the bioequivalence requirement a requirement for manufacturers to submit samples of each batch to the Food and Drug Administration and to withhold distribution of the batch until notified by the Food and Drug Administration that the batch may be introduced into interstate commerce.

(b) The Commissioner will ordinarily terminate a requirement for a manufacturer to submit samples for batch testing on a finding that the manufacturer has produced four consecutive batches that were tested by the Food and Drug Administration and found to meet the bioequivalence requirement, unless the public health requires that batch testing be extended to additional batches.

[42 FR 1635, Jan. 7, 1977. Redesignated at 57 FR 18001, Apr. 28, 1992]

**§ 320.35 Requirements for in vitro testing of each batch.**

If a bioequivalence requirement specifies a currently available in vitro test or an in vitro bioequivalence standard comparing the drug product to a reference standard, the manufacturer shall conduct the test on a sample of each batch of the drug product to assure batch-to-batch uniformity.

[42 FR 1635, Jan. 7, 1977. Redesignated at 57 FR 18001, Apr. 28, 1992]

**§ 320.36 Requirements for maintenance of records of bioequivalence testing.**

(a) All records of in vivo or in vitro tests conducted on any marketed batch of a drug product to assure that the

product meets a bioequivalence requirement shall be maintained by the manufacturer for at least 2 years after the expiration date of the batch and submitted to the Food and Drug Administration on request.

(b) Any person who contracts with another party to conduct a bioequivalence study from which the data are intended to be submitted to FDA as part of an application submitted under part 314 of this chapter shall obtain from the person conducting the study sufficient accurate financial information to allow the submission of complete and accurate financial certifications or disclosure statements required under part 54 of this chapter and shall maintain that information and all records relating to the compensation given for that study and all other financial interest information required under part 54 of this chapter for 2 years after the date of approval of the application. The person maintaining these records shall, upon request for any properly authorized officer or employee of the Food and Drug Administration, at reasonable time, permit such officer or employee to have access to and copy and verify these records.

[42 FR 1635, Jan. 7, 1977. Redesignated at 57 FR 18001, Apr. 28, 1992, as amended at 63 FR 5252, Feb. 2, 1998]

**§ 320.38 Retention of bioavailability samples.**

(a) The applicant of an application or supplemental application submitted under section 505 of the Federal Food, Drug, and Cosmetic Act, or, if bioavailability testing was performed under contract, the contract research organization shall retain an appropriately identified reserve sample of the drug product for which the applicant is seeking approval (test article) and of the reference standard used to perform an in vivo bioavailability study in accordance with and for the studies described in paragraph (b) of this section that is representative of each sample of the test article and reference standard provided by the applicant for the testing.

(b) Reserve samples shall be retained for the following test articles and reference standards and for the studies described:

(1) If the formulation of the test article is the same as the formulation(s) used in the clinical studies demonstrating substantial evidence of safety and effectiveness for the test article's claimed indications, a reserve sample of the test article used to conduct an in vivo bioavailability study comparing the test article to a reference oral solution, suspension, or injection.

(2) If the formulation of the test article differs from the formulation(s) used in the clinical studies demonstrating substantial evidence of safety and effectiveness for the test article's claimed indications, a reserve sample of the test article and of the reference standard used to conduct an in vivo bioequivalence study comparing the test article to the formulation(s) (reference standard) used in the clinical studies.

(3) For a new formulation, new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing, a reserve sample of the test article and of the reference standard used to conduct an in vivo bioequivalence study comparing the test article to a marketed product (reference standard) that contains the same active drug ingredient or therapeutic moiety.

(c) Each reserve sample shall consist of a sufficient quantity to permit FDA to perform five times all of the release tests required in the application or supplemental application.

(d) Each reserve sample shall be adequately identified so that the reserve sample can be positively identified as having come from the same sample as used in the specific bioavailability study.

(e) Each reserve sample shall be stored under conditions consistent with product labeling and in an area segregated from the area where testing is conducted and with access limited to authorized personnel. Each reserve sample shall be retained for a period of at least 5 years following the date on which the application or supplemental application is approved, or, if such application or supplemental application is not approved, at least 5 years following the date of completion of the bioavailability study in which the sam-

ple from which the reserve sample was obtained was used.

(f) Authorized FDA personnel will ordinarily collect reserve samples directly from the applicant or contract research organization at the storage site during a preapproval inspection. If authorized FDA personnel are unable to collect samples, FDA may require the applicant or contract research organization to submit the reserve samples to the place identified in the agency's request. If FDA has not collected or requested delivery of a reserve sample, or if FDA has not collected or requested delivery of any portion of a reserve sample, the applicant or contract research organization shall retain the sample or remaining sample for the 5-year period specified in paragraph (e) of this section.

(g) Upon release of the reserve samples to FDA, the applicant or contract research organization shall provide a written assurance that, to the best knowledge and belief of the individual executing the assurance, the reserve samples came from the same samples as used in the specific bioavailability or bioequivalence study identified by the agency. The assurance shall be executed by an individual authorized to act for the applicant or contract research organization in releasing the reserve samples to FDA.

(h) A contract research organization may contract with an appropriate, independent third party to provide storage of reserve samples provided that the sponsor of the study has been notified in writing of the name and address of the facility at which the reserve samples will be stored.

(i) If a contract research organization conducting a bioavailability or bioequivalence study that requires reserve sample retention under this section or § 320.63 goes out of business, it shall transfer its reserve samples to an appropriate, independent third party, and shall notify in writing the sponsor of the study of the transfer and provide the study sponsor with the name and address of the facility to which the reserve samples have been transferred.

[58 FR 25927, Apr. 28, 1993, as amended at 64 FR 402, Jan. 5, 1999]

**§ 320.63 Retention of bioequivalence samples.**

The applicant of an abbreviated application or a supplemental application submitted under section 505 of the Federal Food, Drug, and Cosmetic Act, or, if bioequivalence testing was performed under contract, the contract research organization shall retain reserve samples of any test article and reference standard used in conducting an in vivo or in vitro bioequivalence study required for approval of the abbreviated application or supplemental application. The applicant or contract research organization shall retain the reserve samples in accordance with, and for the period specified in, § 320.38 and shall release the reserve samples to FDA upon request in accordance with § 320.38.

[58 FR 25928, Apr. 28, 1993, as amended at 64 FR 402, Jan. 5, 1999]

**PART 328—OVER-THE-COUNTER  
DRUG PRODUCTS INTENDED FOR  
ORAL INGESTION THAT CONTAIN  
ALCOHOL**

**Subpart A—General Provisions**

Sec.

328.1 Scope.

328.3 Definitions.

**Subpart B—Ingredients**

328.10 Alcohol.

**Subpart C—Labeling**

328.50 Principal display panel of all OTC drug products intended for oral ingestion that contain alcohol.

AUTHORITY: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

SOURCE: 60 FR 13595, Mar. 13, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 328 appear at 69 FR 13717, Mar. 24, 2004.

**Subpart A—General Provisions****§ 328.1 Scope.**

Reference in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

**§ 328.3 Definitions.**

As used in this part:

(a) *Alcohol* means the substance known as ethanol, ethyl alcohol, or Alcohol, USP.

(b) *Inactive ingredient* means any component of a product other than an active ingredient as defined in § 210.3(b)(7) of this chapter.

**Subpart B—Ingredients****§ 328.10 Alcohol.**

(a) Any over-the-counter (OTC) drug product intended for oral ingestion shall not contain alcohol as an inactive ingredient in concentrations that exceed those established in this part, unless a specific exemption, as provided in paragraph (e) or (f) of this section, has been approved.

(b) For any OTC drug product intended for oral ingestion and labeled for use by adults and children 12 years of age and over, the amount of alcohol in the product shall not exceed 10 percent.

(c) For any OTC drug product intended for oral ingestion and labeled for use by children 6 to under 12 years of age, the amount of alcohol in the product shall not exceed 5 percent.

(d) For any OTC drug product intended for oral ingestion and labeled for use by children under 6 years of age, the amount of alcohol in the product shall not exceed 0.5 percent.

(e) The Food and Drug Administration will grant an exemption from paragraphs (b), (c), and (d) of this section where appropriate, upon petition under the provisions of § 10.30 of this chapter. Appropriate cause, such as a specific solubility or manufacturing problem, must be adequately documented in the petition. Decisions with respect to requests for exemption shall be maintained in a permanent file for public review by the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(f) Ipecac syrup is exempt from the provisions of paragraph (d) of this section.

(g) The following drugs are temporarily exempt from the provisions of