

exist at levels sufficient to meet patient need;

(iii) Adequate U.S. postmarketing use data is available for the non-ODS product(s); and

(iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or

(4) For individual active moieties marketed as ODS products and represented by two or more NDAs:

(i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and

(ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

[67 FR 48384, July 24, 2002, as amended at 71 FR 70873, Dec. 7, 2006; 70 FR 17192, Apr. 4, 2005; 75 FR 19241, Apr. 14, 2010; 73 FR 69552, Nov. 19, 2008; 75 FR 19241, Apr. 14, 2010]

PART 3—PRODUCT JURISDICTION

Subpart A—Assignment of Agency Component for Review of Premarket Applications

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Subpart B [Reserved]

AUTHORITY: 21 U.S.C. 321, 351, 353, 355, 360, 360c–360f, 360h–360j, 360gg–360ss, 360bbb–2, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262, 264.

SOURCE: 56 FR 58756, Nov. 21, 1991, unless otherwise noted.

Subpart A—Assignment of Agency Component for Review of Premarket Applications

§ 3.1 Purpose.

This regulation relates to agency management and organization and has two purposes. The first is to implement section 503(g) of the act, as added by section 16 of the Safe Medical Devices Act of 1990 (Public Law 101-629) and amended by section 204 of the Medical Device User Fee and Modernization Act of 2002 (Public Law 107-250), by specifying how FDA will determine the organizational component within FDA designated to have primary jurisdiction for the premarket review and regulation of products that are comprised of any combination of a drug and a device; a device and a biological; a biological and a drug; or a drug, a device and a biological. This determination will eliminate, in most cases, the need to receive approvals from more than one FDA component for such combination products. The second purpose of this regulation is to enhance the efficiency of agency management and operations by providing procedures for determining which agency component will have primary jurisdiction for any drug, device, or biological product where such jurisdiction is unclear or in dispute. Nothing in this section prevents FDA from using any agency resources it deems necessary to ensure adequate review of the safety and effectiveness of any product, or the substantial equivalence of any device to a predicate device.

[56 FR 58756, Nov. 21, 1991, as amended at 68 FR 37077, June 23, 2003]

§ 3.2 Definitions.

For the purpose of this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency component* means the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, or alternative organizational component of the agency.