§ 312.310 Individual patients, including for emergency use.

Under this section, FDA may permit an investigational drug to be used for the treatment of an individual patient by a licensed physician.

(a) Criteria. The criteria in §312.305(a) must be met; and the following determinations must be made:

(1) The physician must determine that the probable risk to the person from the investigational drug is not greater than the probable risk from the disease or condition; and

(2) FDA must determine that the patient cannot obtain the drug under another IND or protocol.

(b) Submission. The expanded access submission must include information adequate to demonstrate that the criteria in §312.305(a) and paragraph (a) of this section have been met. The expanded access submission must meet the requirements of §312.305(b).

(1) If the drug is the subject of an existing IND, the expanded access submission may be made by the sponsor or by a licensed physician.

(2) A sponsor may satisfy the submission requirements by amending its existing IND to include a protocol for individual patient expanded access.
§ 312.315 Intermediate-size patient populations.

Under this section, FDA may permit an investigational drug to be used for the treatment of a patient population smaller than that typical of a treatment IND or treatment protocol. FDA may ask a sponsor to consolidate expanded access under this section when the agency has received a significant number of requests for individual patient expanded access to an investigational drug for the same use.

(a) Need for expanded access. Expanded access under this section may be needed in the following situations:

(1) Drug not being developed. The drug is not being developed, for example, because the disease or condition is so rare that the sponsor is unable to recruit patients for a clinical trial.

(2) Drug being developed. The drug is being studied in a clinical trial, but patients requesting the drug for expanded access use are unable to participate in the trial. For example, patients may not be able to participate in the trial because they have a different disease or stage of disease than the one being studied or otherwise do not meet the enrollment criteria, because enrollment in the trial is closed, or because the trial site is not geographically accessible.

(3) Approved or related drug. (i) The drug is an approved drug product that is no longer marketed for safety reasons or is unavailable through marketing due to failure to meet the conditions of the approved application, or

(ii) The drug contains the same active moiety as an approved drug product that is unavailable through marketing due to failure to meet the conditions of the approved application or a drug shortage.