

## § 312.310

## 21 CFR Ch. I (4–1–23 Edition)

(5) *Sponsors*. In all cases of expanded access, sponsors are responsible for submitting IND safety reports and annual reports (when the IND or protocol continues for 1 year or longer) to FDA as required by §§ 312.32 and 312.33, ensuring that licensed physicians are qualified to administer the investigational drug for the expanded access use, providing licensed physicians with the information needed to minimize the risk and maximize the potential benefits of the investigational drug (the investigator's brochure must be provided if one exists for the drug), maintaining an effective IND for the expanded access use, and maintaining adequate drug disposition records and retaining records in a manner consistent with the requirements of § 312.57. Depending on the type of expanded access, other sponsor responsibilities under subpart D may also apply.

(d) *Beginning treatment*—(1) *INDs*. An expanded access IND goes into effect 30 days after FDA receives the IND or on earlier notification by FDA that the expanded access use may begin.

(2) *Protocols*. With the following exceptions, expanded access use under a protocol submitted under an existing IND may begin as described in § 312.30(a).

(i) Expanded access use under the emergency procedures described in § 312.310(d) may begin when the use is authorized by the FDA reviewing official.

(ii) Expanded access use under § 312.320 may begin 30 days after FDA receives the protocol or upon earlier notification by FDA that use may begin.

(3) *Clinical holds*. FDA may place any expanded access IND or protocol on clinical hold as described in § 312.42.

### § 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.

(3) A licensed physician may satisfy the submission requirements by obtaining from the sponsor permission for FDA to refer to any information in the IND that would be needed to support the expanded access request (right of reference) and by providing any other required information not contained in the IND (usually only the information specific to the individual patient).

(c) *Safeguards*. (1) Treatment is generally limited to a single course of therapy for a specified duration unless FDA expressly authorizes multiple courses or chronic therapy.

(2) At the conclusion of treatment, the licensed physician or sponsor must provide FDA with a written summary of the results of the expanded access use, including adverse effects.

(3) FDA may require sponsors to monitor an individual patient expanded access use if the use is for an extended duration.

(4) When a significant number of similar individual patient expanded access requests have been submitted, FDA may ask the sponsor to submit an IND or protocol for the use under § 312.315 or § 312.320.

(d) *Emergency procedures*. If there is an emergency that requires the patient to be treated before a written submission can be made, FDA may authorize

the expanded access use to begin without a written submission. The FDA reviewing official may authorize the emergency use by telephone.

(1) Emergency expanded access use may be requested by telephone, facsimile, or other means of electronic communications. For investigational biological drug products regulated by the Center for Biologics Evaluation and Research, the request should be directed to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, 240-402-8010 or 1-800-835-4709, e-mail: [ocod@fda.hhs.gov](mailto:ocod@fda.hhs.gov). For all other investigational drugs, the request for authorization should be directed to the Division of Drug Information, Center for Drug Evaluation and Research, 301-796-3400, e-mail: [druginfo@fda.hhs.gov](mailto:druginfo@fda.hhs.gov). After normal working hours (8 a.m. to 4:30 p.m.), the request should be directed to the FDA Emergency Call Center, 866-300-4374, e-mail: [emergency.operations@fda.hhs.gov](mailto:emergency.operations@fda.hhs.gov).

(2) The licensed physician or sponsor must explain how the expanded access use will meet the requirements of §§312.305 and 312.310 and must agree to submit an expanded access submission within 15 working days of FDA's authorization of the use.

[74 FR 40942, Aug. 13, 2009, as amended at 75 FR 32659, June 9, 2010; 80 FR 18091, Apr. 3, 2015]

### §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.

(b) *Criteria.* The criteria in §312.305(a) must be met; and FDA must determine that:

(1) There is enough evidence that the drug is safe at the dose and duration proposed for expanded access use to justify a clinical trial of the drug in the approximate number of patients expected to receive the drug under expanded access; and

(2) There is at least preliminary clinical evidence of effectiveness of the drug, or of a plausible pharmacologic effect of the drug to make expanded access use a reasonable therapeutic option in the anticipated patient population.

(c) *Submission.* The expanded access submission must include information adequate to satisfy FDA that the criteria in §312.305(a) and paragraph (b) of this section have been met. The expanded access submission must meet the requirements of §312.305(b). In addition:

(1) The expanded access submission must state whether the drug is being developed or is not being developed and describe the patient population to be treated.

(2) If the drug is not being actively developed, the sponsor must explain why the drug cannot currently be developed for the expanded access use and