

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. 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. 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.

(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

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under what circumstances the drug could be developed.

(3) If the drug is being studied in a clinical trial, the sponsor must explain why the patients to be treated cannot be enrolled in the clinical trial and under what circumstances the sponsor would conduct a clinical trial in these patients.

(d) *Safeguards.* (1) Upon review of the IND annual report, FDA will determine whether it is appropriate for the expanded access to continue under this section.

(i) If the drug is not being actively developed or if the expanded access use is not being developed (but another use is being developed), FDA will consider whether it is possible to conduct a clinical study of the expanded access use.

(ii) If the drug is being actively developed, FDA will consider whether providing the investigational drug for expanded access use is interfering with the clinical development of the drug.

(iii) As the number of patients enrolled increases, FDA may ask the sponsor to submit an IND or protocol for the use under § 312.320.

(2) The sponsor is responsible for monitoring the expanded access protocol to ensure that licensed physicians comply with the protocol and the regulations applicable to investigators.

§ 312.320 Treatment IND or treatment protocol.

Under this section, FDA may permit an investigational drug to be used for widespread treatment use.

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

(1) *Trial status.* (i) The drug is being investigated in a controlled clinical trial under an IND designed to support a marketing application for the expanded access use, or

(ii) All clinical trials of the drug have been completed; and

(2) *Marketing status.* The sponsor is actively pursuing marketing approval of the drug for the expanded access use with due diligence; and

(3) *Evidence.* (i) When the expanded access use is for a serious disease or condition, there is sufficient clinical evidence of safety and effectiveness to support the expanded access use. Such

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evidence would ordinarily consist of data from phase 3 trials, but could consist of compelling data from completed phase 2 trials; or

(ii) When the expanded access use is for an immediately life-threatening disease or condition, the available scientific evidence, taken as a whole, provides a reasonable basis to conclude that the investigational drug may be effective for the expanded access use and would not expose patients to an unreasonable and significant risk of illness or injury. This evidence would ordinarily consist of clinical data from phase 3 or phase 2 trials, but could be based on more preliminary clinical evidence.

(b) *Submission.* The expanded access submission must include information adequate to satisfy FDA 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).

(c) *Safeguard.* The sponsor is responsible for monitoring the treatment protocol to ensure that licensed physicians comply with the protocol and the regulations applicable to investigators.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

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