

§ 312.34

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to the IND for which the sponsor requests or expects a reply, comment, or meeting.

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[52 FR 8831, Mar. 19, 1987, as amended at 52 FR 23031, June 17, 1987; 63 FR 6862, Feb. 11, 1998]

§ 312.34 Treatment use of an investigational new drug.

(a) *General.* A drug that is not approved for marketing may be under clinical investigation for a serious or immediately life-threatening disease condition in patients for whom no comparable or satisfactory alternative drug or other therapy is available. During the clinical investigation of the drug, it may be appropriate to use the drug in the treatment of patients not in the clinical trials, in accordance with a treatment protocol or treatment IND. The purpose of this section is to facilitate the availability of promising new drugs to desperately ill patients as early in the drug development process as possible, before general marketing begins, and to obtain additional data on the drug's safety and effectiveness. In the case of a serious disease, a drug ordinarily may be made available for treatment use under this section during Phase 3 investigations or after all clinical trials have been completed; however, in appropriate circumstances, a drug may be made available for treatment use during Phase 2. In the case of an immediately life-threatening disease, a drug may be made available for treatment use under this section earlier than Phase 3, but ordinarily not earlier than Phase 2. For purposes of this section, the "treatment use" of a drug includes the use of a drug for diagnostic purposes. If a protocol for an investigational drug meets the criteria of this section, the protocol is to be submitted as a treatment protocol under the provisions of this section.

(b) *Criteria.* (1) FDA shall permit an investigational drug to be used for a treatment use under a treatment protocol or treatment IND if:

(i) The drug is intended to treat a serious or immediately life-threatening disease;

(ii) There is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population;

(iii) The drug is under investigation in a controlled clinical trial under an IND in effect for the trial, or all clinical trials have been completed; and

(iv) The sponsor of the controlled clinical trial is actively pursuing marketing approval of the investigational drug with due diligence.

(2) *Serious disease.* For a drug intended to treat a serious disease, the Commissioner may deny a request for treatment use under a treatment protocol or treatment IND if there is insufficient evidence of safety and effectiveness to support such use.

(3) *Immediately life-threatening disease.* (i) For a drug intended to treat an immediately life-threatening disease, the Commissioner may deny a request for treatment use of an investigational drug under a treatment protocol or treatment IND if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug:

(A) May be effective for its intended use in its intended patient population; or

(B) Would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

(ii) For the purpose of this section, an "immediately life-threatening" disease means a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

(c) *Safeguards.* Treatment use of an investigational drug is conditioned on the sponsor and investigators complying with the safeguards of the IND process, including the regulations governing informed consent (21 CFR part 50) and institutional review boards (21 CFR part 56) and the applicable provisions of part 312, including distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports.

(d) *Clinical hold.* FDA may place on clinical hold a proposed or ongoing

treatment protocol or treatment IND in accordance with § 312.42.

[52 FR 19476, May 22, 1987, as amended at 57 FR 13248, Apr. 15, 1992]

§ 312.35 Submissions for treatment use.

(a) *Treatment protocol submitted by IND sponsor.* Any sponsor of a clinical investigation of a drug who intends to sponsor a treatment use for the drug shall submit to FDA a treatment protocol under § 312.34 if the sponsor believes the criteria of § 312.34 are satisfied. If a protocol is not submitted under § 312.34, but FDA believes that the protocol should have been submitted under this section, FDA may deem the protocol to be submitted under § 312.34. A treatment use under a treatment protocol may begin 30 days after FDA receives the protocol or on earlier notification by FDA that the treatment use described in the protocol may begin.

(1) A treatment protocol is required to contain the following:

- (i) The intended use of the drug.
- (ii) An explanation of the rationale for use of the drug, including, as appropriate, either a list of what available regimens ordinarily should be tried before using the investigational drug or an explanation of why the use of the investigational drug is preferable to the use of available marketed treatments.
- (iii) A brief description of the criteria for patient selection.
- (iv) The method of administration of the drug and the dosages.
- (v) A description of clinical procedures, laboratory tests, or other measures to monitor the effects of the drug and to minimize risk.

(2) A treatment protocol is to be supported by the following:

- (i) Informational brochure for supplying to each treating physician.
- (ii) The technical information that is relevant to safety and effectiveness of the drug for the intended treatment purpose. Information contained in the sponsor's IND may be incorporated by reference.
- (iii) A commitment by the sponsor to assure compliance of all participating investigators with the informed consent requirements of 21 CFR part 50.

(3) A licensed practitioner who receives an investigational drug for treatment use under a treatment protocol is an "investigator" under the protocol and is responsible for meeting all applicable investigator responsibilities under this part and 21 CFR parts 50 and 56.

(b) *Treatment IND submitted by licensed practitioner.* (1) If a licensed medical practitioner wants to obtain an investigational drug subject to a controlled clinical trial for a treatment use, the practitioner should first attempt to obtain the drug from the sponsor of the controlled trial under a treatment protocol. If the sponsor of the controlled clinical investigation of the drug will not establish a treatment protocol for the drug under paragraph (a) of this section, the licensed medical practitioner may seek to obtain the drug from the sponsor and submit a treatment IND to FDA requesting authorization to use the investigational drug for treatment use. A treatment use under a treatment IND may begin 30 days after FDA receives the IND or on earlier notification by FDA that the treatment use under the IND may begin. A treatment IND is required to contain the following:

- (i) A cover sheet (Form FDA 1571) meeting § 312.23(g)(1).
- (ii) Information (when not provided by the sponsor) on the drug's chemistry, manufacturing, and controls, and prior clinical and nonclinical experience with the drug submitted in accordance with § 312.23. A sponsor of a clinical investigation subject to an IND who supplies an investigational drug to a licensed medical practitioner for purposes of a separate treatment clinical investigation shall be deemed to authorize the incorporation-by-reference of the technical information contained in the sponsor's IND into the medical practitioner's treatment IND.
- (iii) A statement of the steps taken by the practitioner to obtain the drug under a treatment protocol from the drug sponsor.
- (iv) A treatment protocol containing the same information listed in paragraph (a)(1) of this section.
- (v) A statement of the practitioner's qualifications to use the investigational drug for the intended treatment use.