

(d) The 60-day period shall begin when FDA receives a manufacturer's submission, including, where applicable, a certification statement or an application for an exemption.

**§ 99.203 Request to extend the time for completing planned studies.**

(a) A manufacturer may request, prior to or at the time of making a submission to FDA under § 99.201, that FDA extend the 36-month time period for completing the studies and submitting a supplemental application for the new use that is the subject of the information to be disseminated. Such request must set forth the reasons that such studies cannot be completed and submitted in a supplemental application within 36 months.

(b) A manufacturer who has certified that it will complete the studies necessary to submit a supplemental application for a new use within a specified period of time from the date that dissemination of information under this part can begin under § 99.201(a)(4)(ii), but later finds that it will be unable to complete such studies and submit a supplemental application within that time period may request an extension of time from FDA. The manufacturer, in its request for extension, shall identify the product, the new use, and shall:

(1) Describe the study or studies that cannot be completed on time and explain why the study or studies cannot be completed on time;

(2) Describe the current status of the incomplete study or studies and summarize the work conducted, including the dates on which principal events concerning the study or studies occurred; and

(3) Estimate the additional time needed to complete the studies and submit a supplemental application. The requested extension shall not exceed an additional 24 months.

(c) The manufacturer shall send three copies of the request for extension to the same FDA office that received the manufacturer's initial submission and certification statement. The outside of the envelope shall be marked as "Request for Time Extension—Dissemination of Information on an Unapproved Use."

**§ 99.205 Application for exemption from the requirement to file a supplemental application.**

(a) In certain circumstances, described in paragraph (b) of this section, a manufacturer may submit an application for an exemption from the requirement to submit a supplemental application for a new use for purposes of disseminating information on that use.

(b) The manufacturer's application for an exemption shall identify the basis for the proposed exemption and shall include materials demonstrating that it would be economically prohibitive or that it would be unethical to conduct the studies necessary to submit a supplemental application for the new use.

(1) If the basis for the manufacturer's application for exemption is that it would be economically prohibitive to incur the costs necessary to submit a supplemental application for a new use, the manufacturer shall, at a minimum, provide:

(i) Evidence explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Evidence demonstrating that the cost of the study or studies for the new use reasonably exceeds the expected revenue from the new use minus the costs of goods sold and marketing and administrative expenses attributable to the new use of the product. Such evidence shall include:

(A) A description of the additional studies that the manufacturer believes are necessary to support the submission of a supplemental application for the new use, including documentation from prior discussions, if any, with the agency concerning the studies that would be needed, and an estimate of the projected costs for such studies;

(B) The expected patient population for the new use;

(C) The expected revenue for the new use, including an explanation of the price at which the drug or device will be sold;

(D) Any exclusivity for the drug or device for the new use; and

(E) Any other information that the manufacturer has showing that conducting the studies on the new use would be economically prohibitive; and

(iii) An attestation by a responsible individual of the manufacturer or an individual acting on the manufacturer's behalf verifying that the estimates included with the submission are accurate and were prepared in accordance with generally accepted accounting procedures. The data underlying and supporting the estimates shall be made available to FDA upon request. Alternatively, a manufacturer may submit a report of an independent certified public accountant in accordance with the Statement of Standards for Attestation established by the American Institute of Certified Public Accountants and agreed upon procedures performed with respect to the estimates submitted under this section.

(2) If the basis for the manufacturer's application for exemption is that it would be unethical to conduct the studies necessary for the supplemental application for a new use, the manufacturer shall provide evidence:

(i) Explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the new use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Explaining why it would be unethical to conduct the further studies that would be necessary for the approval of the new use. Such evidence shall establish that, notwithstanding the insufficiency of available data to support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a

controlled study (e.g., by providing no therapy, a placebo, an alternative therapy, or an alternative dose) would pose an unreasonable risk of harm to human subjects. In assessing the appropriateness of conducting studies to support the new use, the manufacturer may provide evidence showing that the new use is broadly accepted as current standard medical treatment or therapy. The manufacturer shall also address the possibility of conducting studies in different populations or of modified design (e.g., adding the new therapy to existing treatments or using an alternative dose if monotherapy studies could not be conducted).

#### Subpart D—FDA Action on Submissions, Requests, and Applications

##### § 99.301 Agency action on a submission.

(a) *Submissions.* Within 60 days after receiving a submission under this part, FDA may:

(1) Determine that the manufacturer does not comply with the requirements under this part and that, as a result, the manufacturer shall not disseminate any information under this part;

(2) After providing the manufacturer notice and an opportunity for a meeting, determine that the information submitted regarding a new use fails to provide data, analyses, or other written matter that is objective and balanced and:

(i) Require the manufacturer to disseminate additional information, including information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information or any other information that can be made publicly available, which, in the agency's opinion:

(A) Is objective and scientifically sound;

(B) Pertains to the safety or effectiveness of the new use; and

(C) Is necessary to provide objectivity and balance; and

(ii) Require the manufacturer to disseminate an objective statement prepared by FDA that is based on data or other scientifically sound information available to the agency and bears on