

## Food and Drug Administration, HHS

## § 312.2

AUTHORITY: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 371, 381, 382, 383, 393; 42 U.S.C. 262.

SOURCE: 52 FR 8831, Mar. 19, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 312 can be found at 69 FR 13717, Mar. 24, 2004.

### Subpart A—General Provisions

#### § 312.1 Scope.

(a) This part contains procedures and requirements governing the use of investigational new drugs, including procedures and requirements for the submission to, and review by, the Food and Drug Administration of investigational new drug applications (IND's). An investigational new drug for which an IND is in effect in accordance with this part is exempt from the premarketing approval requirements that are otherwise applicable and may be shipped lawfully for the purpose of conducting clinical investigations of that drug.

(b) References in this part to regulations in the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

#### § 312.2 Applicability.

(a) *Applicability.* Except as provided in this section, this part applies to all clinical investigations of products that are subject to section 505 of the Federal Food, Drug, and Cosmetic Act or to the licensing provisions of the Public Health Service Act (58 Stat. 632, as amended (42 U.S.C. 201 *et seq.*)).

(b) *Exemptions.* (1) The clinical investigation of a drug product that is lawfully marketed in the United States is exempt from the requirements of this part if all the following apply:

(i) The investigation is not intended to be reported to FDA as a well-controlled study in support of a new indication for use nor intended to be used to support any other significant change in the labeling for the drug;

(ii) If the drug that is undergoing investigation is lawfully marketed as a prescription drug product, the investigation is not intended to support a significant change in the advertising for the product;

(iii) The investigation does not involve a route of administration or dos-

age level or use in a patient population or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with the use of the drug product;

(iv) The investigation is conducted in compliance with the requirements for institutional review set forth in part 56 and with the requirements for informed consent set forth in part 50; and

(v) The investigation is conducted in compliance with the requirements of § 312.7.

(2)(i) A clinical investigation involving an in vitro diagnostic biological product listed in paragraph (b)(2)(ii) of this section is exempt from the requirements of this part if (a) it is intended to be used in a diagnostic procedure that confirms the diagnosis made by another, medically established, diagnostic product or procedure and (b) it is shipped in compliance with § 312.160.

(ii) In accordance with paragraph (b)(2)(i) of this section, the following products are exempt from the requirements of this part: (a) blood grouping serum; (b) reagent red blood cells; and (c) anti-human globulin.

(3) A drug intended solely for tests in vitro or in laboratory research animals is exempt from the requirements of this part if shipped in accordance with § 312.160.

(4) FDA will not accept an application for an investigation that is exempt under the provisions of paragraph (b)(1) of this section.

(5) A clinical investigation involving use of a placebo is exempt from the requirements of this part if the investigation does not otherwise require submission of an IND.

(6) A clinical investigation involving an exception from informed consent under § 50.24 of this chapter is not exempt from the requirements of this part.

(c) *Bioavailability studies.* The applicability of this part to in vivo bioavailability studies in humans is subject to the provisions of § 320.31.

(d) *Unlabeled indication.* This part does not apply to the use in the practice of medicine for an unlabeled indication of a new drug product approved under part 314 or of a licensed biological product.

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(e) *Guidance.* FDA may, on its own initiative, issue guidance on the applicability of this part to particular investigational uses of drugs. On request, FDA will advise on the applicability of this part to a planned clinical investigation.

[52 FR 8831, Mar. 19, 1987, as amended at 61 FR 51529, Oct. 2, 1996; 64 FR 401, Jan. 5, 1999]

#### § 312.3 Definitions and interpretations.

(a) The definitions and interpretations of terms contained in section 201 of the Act apply to those terms when used in this part:

(b) The following definitions of terms also apply to this part:

*Act* means the Federal Food, Drug, and Cosmetic Act (secs. 201–902, 52 Stat. 1040 *et seq.*, as amended (21 U.S.C. 301–392)).

*Clinical investigation* means any experiment in which a drug is administered or dispensed to, or used involving, one or more human subjects. For the purposes of this part, an experiment is any use of a drug except for the use of a marketed drug in the course of medical practice.

*Contract research organization* means a person that assumes, as an independent contractor with the sponsor, one or more of the obligations of a sponsor, e.g., design of a protocol, selection or monitoring of investigations, evaluation of reports, and preparation of materials to be submitted to the Food and Drug Administration.

*FDA* means the Food and Drug Administration.

*IND* means an investigational new drug application. For purposes of this part, “IND” is synonymous with “Notice of Claimed Investigational Exemption for a New Drug.”

*Investigational new drug* means a new drug or biological drug that is used in a clinical investigation. The term also includes a biological product that is used in vitro for diagnostic purposes. The terms “investigational drug” and “investigational new drug” are deemed to be synonymous for purposes of this part.

*Investigator* means an individual who actually conducts a clinical investigation (i.e., under whose immediate direction the drug is administered or dispensed to a subject). In the event an in-

vestigation is conducted by a team of individuals, the investigator is the responsible leader of the team. “Sub-investigator” includes any other individual member of that team.

*Marketing application* means an application for a new drug submitted under section 505(b) of the act or a biologics license application for a biological product submitted under the Public Health Service Act.

*Sponsor* means a person who takes responsibility for and initiates a clinical investigation. The sponsor may be an individual or pharmaceutical company, governmental agency, academic institution, private organization, or other organization. The sponsor does not actually conduct the investigation unless the sponsor is a sponsor-investigator. A person other than an individual that uses one or more of its own employees to conduct an investigation that it has initiated is a sponsor, not a sponsor-investigator, and the employees are investigators.

*Sponsor-Investigator* means an individual who both initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed. The term does not include any person other than an individual. The requirements applicable to a sponsor-investigator under this part include both those applicable to an investigator and a sponsor.

*Subject* means a human who participates in an investigation, either as a recipient of the investigational new drug or as a control. A subject may be a healthy human or a patient with a disease.

[52 FR 8831, Mar. 19, 1987, as amended at 64 FR 401, Jan. 5, 1999; 64 FR 56449, Oct. 20, 1999]

#### § 312.6 Labeling of an investigational new drug.

(a) The immediate package of an investigational new drug intended for human use shall bear a label with the statement “Caution: New Drug—Limited by Federal (or United States) law to investigational use.”

(b) The label or labeling of an investigational new drug shall not bear any statement that is false or misleading in any particular and shall not represent that the investigational new drug is