

**§ 812.38**

**21 CFR Ch. I (4–1–08 Edition)**

(ii) FDA determines that any of the grounds for disapproval or withdrawal of approval listed in § 812.30(b)(1) through (b)(5) apply;

(iii) The device is intended for a serious disease or condition and there is insufficient evidence of safety and effectiveness to support such use;

(iv) The device is intended for an immediately life-threatening disease or condition and the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the device:

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

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

(v) There is reasonable evidence that the treatment use is impeding enrollment in, or otherwise interfering with the conduct or completion of, a controlled investigation of the same or another investigational device;

(vi) The device has received marketing approval/clearance or a comparable device or therapy becomes available to treat or diagnose the same indication in the same patient population for which the investigational device is being used;

(vii) The sponsor of the controlled clinical trial is not pursuing marketing approval/clearance with due diligence;

(viii) Approval of the IDE for the controlled clinical investigation of the device has been withdrawn; or

(ix) The clinical investigator(s) named in the treatment IDE are not qualified by reason of their scientific training and/or experience to use the investigational device for the intended treatment use.

(3) *Notice of disapproval or withdrawal.* If FDA disapproves or proposes to withdraw approval of a treatment IDE, FDA will follow the procedures set forth in § 812.30(c).

(e) *Safeguards.* Treatment use of an investigational device is conditioned upon the sponsor and investigators complying with the safeguards of the IDE process and the regulations governing informed consent (part 50 of this chapter) and institutional review boards (part 56 of this chapter).

(f) *Reporting requirements.* The sponsor of a treatment IDE shall submit progress reports on a semi-annual basis to all reviewing IRB's and FDA until the filing of a marketing application. These reports shall be based on the period of time since initial approval of the treatment IDE and shall include the number of patients treated with the device under the treatment IDE, the names of the investigators participating in the treatment IDE, and a brief description of the sponsor's efforts to pursue marketing approval/clearance of the device. Upon filing of a marketing application, progress reports shall be submitted annually in accordance with § 812.150(b)(5). The sponsor of a treatment IDE is responsible for submitting all other reports required under § 812.150.

[62 FR 48947, Sept. 18, 1997]

**§ 812.38 Confidentiality of data and information.**

(a) *Existence of IDE.* FDA will not disclose the existence of an IDE unless its existence has previously been publicly disclosed or acknowledged, until FDA approves an application for premarket approval of the device subject to the IDE; or a notice of completion of a product development protocol for the device has become effective.

(b) *Availability of summaries or data.*  
(1) FDA will make publicly available, upon request, a detailed summary of information concerning the safety and effectiveness of the device that was the basis for an order approving, disapproving, or withdrawing approval of an application for an IDE for a banned device. The summary shall include information on any adverse effect on health caused by the device.

(2) If a device is a banned device or if the existence of an IDE has been publicly disclosed or acknowledged, data or information contained in the file is not available for public disclosure before approval of an application for premarket approval or the effective date of a notice of completion of a product development protocol except as provided in this section. FDA may, in its discretion, disclose a summary of selected portions of the safety and effectiveness data, that is, clinical, animal, or laboratory studies and tests of the

device, for public consideration of a specific pending issue.

(3) If the existence of an IDE file has not been publicly disclosed or acknowledged, no data or information in the file are available for public disclosure except as provided in paragraphs (b)(1) and (c) of this section.

(4) Notwithstanding paragraph (b)(2) of this section, FDA will make available to the public, upon request, the information in the IDE that was required to be filed in Docket Number 95S-0158 in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, for investigations involving an exception from informed consent under §50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

(c) *Reports of adverse effects.* Upon request or on its own initiative, FDA shall disclose to an individual on whom an investigational device has been used a copy of a report of adverse device effects relating to that use.

(d) *Other rules.* Except as otherwise provided in this section, the availability for public disclosure of data and information in an IDE file shall be handled in accordance with §814.9.

[45 FR 3751, Jan. 18, 1980, as amended at 53 FR 11253, Apr. 6, 1988; 61 FR 51531, Oct. 2, 1996]

### Subpart C—Responsibilities of Sponsors

#### § 812.40 General responsibilities of sponsors.

Sponsors are responsible for selecting qualified investigators and providing them with the information they need to conduct the investigation properly, ensuring proper monitoring of the investigation, ensuring that IRB review and approval are obtained, submitting an IDE application to FDA, and ensuring that any reviewing IRB and FDA are promptly informed of significant new information about an investigation. Additional responsibilities of sponsors are described in subparts B and G.

#### § 812.42 FDA and IRB approval.

A sponsor shall not begin an investigation or part of an investigation until an IRB and FDA have both approved the application or supplemental application relating to the investigation or part of an investigation.

[46 FR 8957, Jan. 27, 1981]

#### § 812.43 Selecting investigators and monitors.

(a) *Selecting investigators.* A sponsor shall select investigators qualified by training and experience to investigate the device.

(b) *Control of device.* A sponsor shall ship investigational devices only to qualified investigators participating in the investigation.

(c) *Obtaining agreements.* A sponsor shall obtain from each participating investigator a signed agreement that includes:

(1) The investigator's curriculum vitae.

(2) Where applicable, a statement of the investigator's relevant experience, including the dates, location, extent, and type of experience.

(3) If the investigator was involved in an investigation or other research that was terminated, an explanation of the circumstances that led to termination.

(4) A statement of the investigator's commitment to:

(i) Conduct the investigation in accordance with the agreement, the investigational plan, this part and other applicable FDA regulations, and conditions of approval imposed by the reviewing IRB or FDA;

(ii) Supervise all testing of the device involving human subjects; and

(iii) Ensure that the requirements for obtaining informed consent are met.

(5) Sufficient accurate financial disclosure information to allow the sponsor to submit a complete and accurate certification or disclosure statement as required under part 54 of this chapter. The sponsor shall obtain a commitment from the clinical investigator to promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following completion of the study.