

(1) Thirty days after FDA receives the application at the address in §812.19 for the investigation of a device other than a banned device, unless FDA notifies the sponsor that the investigation may not begin; or

(2) FDA approves, by order, an IDE for the investigation.

(b) *Grounds for disapproval or withdrawal.* FDA may disapprove or withdraw approval of an application if FDA finds that:

(1) There has been a failure to comply with any requirement of this part or the act, any other applicable regulation or statute, or any condition of approval imposed by an IRB or FDA.

(2) The application or a report contains an untrue statement of a material fact, or omits material information required by this part.

(3) The sponsor fails to respond to a request for additional information within the time prescribed by FDA.

(4) There is reason to believe that the risks to the subjects are not outweighed by the anticipated benefits to the subjects and the importance of the knowledge to be gained, or informed consent is inadequate, or the investigation is scientifically unsound, or there is reason to believe that the device as used is ineffective.

(5) It is otherwise unreasonable to begin or to continue the investigation owing to the way in which the device is used or the inadequacy of:

(i) The report of prior investigations or the investigational plan;

(ii) The methods, facilities, and controls used for the manufacturing, processing, packaging, storage, and, where appropriate, installation of the device; or

(iii) Monitoring and review of the investigation.

(c) *Notice of disapproval or withdrawal.* If FDA disapproves an application or proposes to withdraw approval of an application, FDA will notify the sponsor in writing.

(1) A disapproval order will contain a complete statement of the reasons for disapproval and a statement that the sponsor has an opportunity to request a hearing under part 16.

(2) A notice of a proposed withdrawal of approval will contain a complete statement of the reasons for with-

drawal and a statement that the sponsor has an opportunity to request a hearing under part 16. FDA will provide the opportunity for hearing before withdrawal of approval, unless FDA determines in the notice that continuation of testing under the exemption will result in an unreasonable risk to the public health and orders withdrawal of approval before any hearing.

[45 FR 3751, Jan. 18, 1980, as amended at 45 FR 58842, Sept. 5, 1980]

§812.35 Supplemental applications.

(a) *Changes in investigational plan.* A sponsor shall: (1) Submit to FDA a supplemental application if the sponsor or an investigator proposes a change in the investigational plan that may affect its scientific soundness or the rights, safety, or welfare of subjects, and (2) obtain FDA approval under §812.30(a) of any such change, and IRB approval when the change involves the rights, safety, or welfare of subjects (see §§56.110 and 56.111), before implementation. These requirements do not apply in the case of a deviation from the investigational plan to protect the life or physical well-being of a subject in an emergency, which deviation shall be reported to FDA within 5 working days after the sponsor learns of it (see §812.150(a)(4)). Whenever a sponsor intends to conduct a clinical investigation with an exception from informed consent for emergency research as set forth in §50.24 of this chapter, the sponsor shall submit a separate IDE for such investigation.

(b) *IRB approval for new facilities.* A sponsor shall submit to FDA a certification of any IRB approval of an investigation or a part of an investigation not included in the IDE application. If the investigation is otherwise unchanged, the supplemental application shall consist of an updating of the information required by §812.20(b) and (c) and a description of any modifications in the investigational plan required by the IRB as a condition of approval. A certification of IRB approval need not be included in the initial submission of the supplemental application, and such certification is not a precondition for agency consideration of the application. Nevertheless, a sponsor may not

begin a part of an investigation at a facility until the IRB has approved the investigation, FDA has received the certification of IRB approval, and FDA, under § 812.30(a), has approved the supplemental application relating to that part of the investigation (see § 56.103(a)).

[50 FR 25909, June 24, 1985; 50 FR 28932, July 17, 1985; 61 FR 51531, Oct. 2, 1996]

§ 812.36 Treatment use of an investigational device.

(a) *General.* A device that is not approved for marketing may be under clinical investigation for a serious or immediately life-threatening disease or condition in patients for whom no comparable or satisfactory alternative device or other therapy is available. During the clinical trial or prior to final action on the marketing application, it may be appropriate to use the device in the treatment of patients not in the trial under the provisions of a treatment investigational device exemption (IDE). The purpose of this section is to facilitate the availability of promising new devices to desperately ill patients as early in the device development process as possible, before general marketing begins, and to obtain additional data on the device's safety and effectiveness. In the case of a serious disease, a device ordinarily may be made available for treatment use under this section after all clinical trials have been completed. In the case of an immediately life-threatening disease, a device may be made available for treatment use under this section prior to the completion of all clinical trials. 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. For purposes of this section, "treatment use" of a device includes the use of a device for diagnostic purposes.

(b) *Criteria.* FDA shall consider the use of an investigational device under a treatment IDE if:

(1) The device is intended to treat or diagnose a serious or immediately life-threatening disease or condition;

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

(3) The device is under investigation in a controlled clinical trial for the same use under an approved IDE, or such clinical trials have been completed; and

(4) The sponsor of the investigation is actively pursuing marketing approval/clearance of the investigational device with due diligence.

(c) *Applications for treatment use.* (1) A treatment IDE application shall include, in the following order:

(i) The name, address, and telephone number of the sponsor of the treatment IDE;

(ii) The intended use of the device, the criteria for patient selection, and a written protocol describing the treatment use;

(iii) An explanation of the rationale for use of the device, including, as appropriate, either a list of the available regimens that ordinarily should be tried before using the investigational device or an explanation of why the use of the investigational device is preferable to the use of available marketed treatments;

(iv) A description of clinical procedures, laboratory tests, or other measures that will be used to evaluate the effects of the device and to minimize risk;

(v) Written procedures for monitoring the treatment use and the name and address of the monitor;

(vi) Instructions for use for the device and all other labeling as required under § 812.5(a) and (b);

(vii) Information that is relevant to the safety and effectiveness of the device for the intended treatment use. Information from other IDE's may be incorporated by reference to support the treatment use;

(viii) A statement of the sponsor's commitment to meet all applicable responsibilities under this part and part 56 of this chapter and to ensure compliance of all participating investigators with the informed consent requirements of part 50 of this chapter;