4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. FDA-2017-D-6380]**

# Clarification of Orphan Designation of Drugs and Biologics for Pediatric Subpopulations of Common Diseases; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Clarification of Orphan Designation of Drugs and Biologics for Pediatric Subpopulations of Common Diseases." FDA intends to no longer grant orphan drug designation to drugs for pediatric subpopulations of common diseases (i.e., diseases or conditions with an overall prevalence of over 200,000 in the United States), unless the use of the drug in the pediatric subpopulation meets the regulatory criteria for an orphan subset, or unless the disease in the pediatric subpopulation is considered a different disease from the disease in the adult population. This will help resolve an unintended loophole in the Pediatric Research Equity Act (PREA) orphan exemption process where a sponsor holding a pediatric-subpopulation designation can submit a marketing application for use of its drug in the non-orphan adult population of that disease, get a pediatric-subpopulation designation for the pediatric subset of the disease, and, due to this designation, be exempt from conducting the pediatric studies normally required under PREA when seeking approval of the adult indication.

**DATES:** Submit either electronic or written comments on the draft guidance by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** to

ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to https://www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on https://www.regulations.gov.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions*: All submissions received must include the Docket No. FDA-2017-D-6380 for " Clarification of Orphan Designation of Drugs and Biologics for Pediatric Subpopulations of Common Diseases." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at https://www.regulations.gov or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on https://www.regulations.gov. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015,

or access the information at: https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

*Docket*: For access to the docket to read background documents or the electronic and written/paper comments received, go to https://www.regulations.gov and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Aaron Friedman, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5295, Silver Spring, MD 20993, 301-796-8660.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Clarification of Orphan Designation of Drugs and Biologics for Pediatric Subpopulations of Common Diseases." FDA intends to no longer grant orphan drug designation to drugs for pediatric subpopulations of common diseases (i.e., diseases or conditions with an overall prevalence of

over 200,000 in the United States), unless the use of the drug in the pediatric subpopulation meets the regulatory criteria for an orphan subset, or unless the disease in the pediatric subpopulation is considered a different disease from the disease in the adult population. This will help resolve an unintended loophole in the PREA orphan exemption process where a sponsor holding a pediatric-subpopulation designation can submit a marketing application for use of its drug in the non-orphan adult population of that disease, get a pediatric-subpopulation designation for the pediatric subset of the disease, and, due to this designation, be exempt from conducting the pediatric studies normally required under PREA when seeking approval of the adult indication.

FDA expects to implement this policy upon publication of the final version of this guidance dependent upon comments received. In the interim, FDA will refrain from issuing final decisions on requests for pediatric-subpopulation designation until the guidance is finalized.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on orphan designation of drugs and biologics for pediatric subpopulations of common diseases. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

## II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either https://www.fda.gov/Orphan or https://www.regulations.gov.

Dated: December 14, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

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