



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-D-0811]

Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat Clostridium difficile Infection Not Responsive to Standard Therapies; Draft Guidance for Industry; Availability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 document entitled “Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat Clostridium difficile Infection Not Responsive to Standard Therapies; Draft Guidance for Industry.” The draft guidance document provides members of the medical and scientific community and other interested persons with notice that, when finalized, we intend to exercise enforcement discretion under limited conditions, regarding the investigational new drug (IND) requirements for the use of fecal microbiota for transplantation (FMT) to treat C. difficile infection not responding to standard therapies. The draft guidance replaces the draft guidance of the same title dated March 2014 and, when finalized, is intended to supersede the document of the same title, dated July 2013.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft

guidance by [**INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Since 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 <http://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): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, 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-2013-D-0811 for “Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat Clostridium difficile Infection Not Responsive to Standard Therapies.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management 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 <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. 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:

<http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://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 Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Gretchen Opper, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

#### I. Background

FDA is announcing the availability of a draft document entitled "Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for

Transplantation to Treat Clostridium difficile Infection Not Responsive to Standard Therapies.”

The draft guidance document provides members of the medical and scientific community and other interested persons with notice that, when finalized, we intend to exercise enforcement discretion under limited conditions, regarding the IND requirements for the use of FMT to treat C. difficile infection not responding to standard therapies. FDA intends to exercise this discretion, provided that: (1) The licensed health care provider treating the patient obtains adequate consent from the patient or his or her legally authorized representative for the use of FMT products. The consent should include, at a minimum, a statement that the use of FMT products to treat C. difficile is investigational and a discussion of its reasonably foreseeable risks; (2) the FMT product is not obtained from a stool bank; and (3) the stool donor and stool are qualified by screening and testing performed under the direction of the licensed health care provider for the purpose of providing the FMT product for treatment of the patient.

FDA has developed this policy to assure that patients with C. difficile infection not responding to standard therapies may have access to this treatment, while addressing and controlling the risks that centralized manufacturing in stool banks presents to subjects. FDA intends for this to be an interim policy, while the Agency develops a comprehensive approach for the study and use of FMT products under IND.

A stool bank is defined, for the purpose of this guidance, as an establishment that collects, prepares, and stores FMT product for distribution to other establishments, health care providers, or other entities for use in patient therapy or clinical research. An establishment that collects or prepares FMT products solely under the direction of licensed health care providers for the purpose of treating their patients (e.g., a hospital laboratory) is not considered to be a stool bank under this guidance.

In the draft guidance, FDA provides that the stool bank sponsor may request a waiver of certain IND regulations relating to the obligations of investigators and subinvestigators (e.g., certain sections of the Statement of Investigator Form FDA 1572 that may not be applicable to FMT provided to the health care provider to treat their patients) (21 CFR 312.10). FDA is requesting comments on which IND regulations are appropriate to waive. In particular, FDA is requesting comments on the requirement for institutional review board review of the use of FMT to treat patients with C. difficile infection not responding to standard therapies when the FMT is provided by a stool bank (21 CFR 312.23(a)(1)(iv) and 21 CFR 312.66).

In the draft guidance, FDA proposes a revised policy with regard to patient access to FMT. The provision that the donor be known either to the patient or to the treating licensed health care provider, a concept that was used in the March 2014 draft guidance, was subject to difficulties in interpretation, and the revised approach more accurately reflects our intent to mitigate risk, based on the number of patients exposed to a particular donor or manufacturing practice rather than the risk inherent from any one donor. Although FDA acknowledges that directed donations present different risks than stool bank donations, the number of persons exposed through a directed donation will be limited. FDA also requests comments on this revised policy. The draft guidance replaces the draft guidance of the same title, dated March 2014 and, when finalized, is intended to supersede the document of the same title, dated July 2013.

The 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 "Enforcement Policy Regarding Investigational New Drug Requirements for Use of Fecal Microbiota for Transplantation to Treat Clostridium difficile Infection Not

Responsive to Standard Therapies.” 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.

## II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910-0014. The collections of information in 21 CFR part 50 have been approved under OMB control number 0910-0755.

## III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: February 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-04372 Filed: 2/29/2016 8:45 am; Publication Date: 3/1/2016]