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# **Formal Dispute Resolution: Appeals Above the Division Level Guidance for Industry and Review Staff**

Good Review Practice

## ***DRAFT GUIDANCE***

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For questions regarding this draft document, contact (CDER) Khushboo Sharma at 301-796-0700 or (CBER) the Office of Communication, Outreach, and Development at 800-835-4709 or 240-402-8010.

**U.S. Department of Health and Human Services  
Food and Drug Administration  
Center for Drug Evaluation and Research (CDER)  
Center for Biologics Evaluation and Research (CBER)**

**September 2015  
Procedural  
Revision 2**

# **Formal Dispute Resolution: Appeals Above the Division Level Guidance for Industry and Review Staff**

## **Good Review Practice**

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## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>1</b>
<b>II.</b>	<b>BACKGROUND</b> .....	<b>2</b>
<b>A.</b>	<b>Regulatory Framework</b> .....	<b>2</b>
<b>B.</b>	<b>Formal Dispute Resolution User Fee Performance Goals</b> .....	<b>3</b>
<b>III.</b>	<b>CONSIDERATIONS FOR SPONSORS: BEFORE SUBMITTING A REQUEST FOR FORMAL DISPUTE RESOLUTION</b> .....	<b>4</b>
<b>A.</b>	<b>What Is an Appropriate Matter for an FDRR?</b> .....	<b>4</b>
<b>B.</b>	<b>When Is a Matter Not Appropriate for an FDRR?</b> .....	<b>5</b>
<b>C.</b>	<b>Is There New Information and/or Are There New Analyses of Previously Reviewed Data That the Sponsor Believes Is/Are Relevant?</b> .....	<b>6</b>
<b>D.</b>	<b>Can a Sponsor Request a Meeting as Part of an FDRR?</b> .....	<b>6</b>
<b>E.</b>	<b>Can a Sponsor Request an Advisory Committee Meeting as Part of FDR?</b> .....	<b>7</b>
<b>IV.</b>	<b>PROCEDURES FOR SUBMITTING A REQUEST FOR FORMAL DISPUTE RESOLUTION</b> .....	<b>7</b>
<b>A.</b>	<b>How to Request Formal Dispute Resolution</b> .....	<b>7</b>
1.	<i>Requests for CDER</i> .....	<i>7</i>
2.	<i>Requests for CBER</i> .....	<i>7</i>
<b>B.</b>	<b>Content and Format of an FDRR</b> .....	<b>7</b>
<b>V.</b>	<b>FDA ACTION</b> .....	<b>9</b>
<b>A.</b>	<b>Responses to an Appeal</b> .....	<b>9</b>
1.	<i>Timelines for Reviewing Formal Dispute Resolution Requests for Human Drug Applications Covered by PDUFA or BsUFA</i> .....	<i>9</i>
2.	<i>Timelines for Reviewing Formal Dispute Resolution Requests for Human Drug Applications not Covered by PDUFA or BsUFA</i> .....	<i>11</i>
<b>B.</b>	<b>Additional Considerations Regarding Responses to Appeals That Request Advisory Committee Review</b> .....	<b>11</b>
1.	<i>Granting of a Request for Advisory Committee Review</i> .....	<i>11</i>
2.	<i>Denial of a Request for Advisory Committee Review</i> .....	<i>11</i>
<b>VI.</b>	<b>REPEAT APPEALS</b> .....	<b>12</b>

*Contains Nonbinding Recommendations*

*Draft — Not for Implementation*

**Formal Dispute Resolution:  
Appeals Above the Division Level  
Guidance for Industry and Review Staff<sup>1</sup>**

Good Review Practice

This draft guidance, when finalized, will represent the current thinking of the Food and Drug Administration (FDA or Agency) on this topic. It does not create 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. To discuss an alternative approach, contact the FDA staff responsible for this guidance as listed on the title page.

**I. INTRODUCTION**

This guidance provides recommendations for industry and review staff on the procedures in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) for resolving scientific and/or medical disputes<sup>2</sup> that cannot be resolved at the division level. This guidance describes the formal dispute resolution (FDR) procedures for formally appealing<sup>3</sup> scientific and/or medical issues to the office or center level and provides a structured procedure for resolving disputes.

During the course of review of an investigational new drug application (IND), new drug application (NDA), biologics license application (BLA), or abbreviated new drug application (ANDA), a wide variety of important scientific and/or medical issues are discussed that are central to product development. Sometimes, a sponsor<sup>4</sup> may disagree with the Agency on a matter, and a dispute arises. Because these disputes often involve complex scientific and/or medical matters, it is critical to have procedures in place to help ensure open, prompt discussion

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<sup>1</sup> This guidance has been prepared by the Center for Drug Evaluation and Research in cooperation with the Center for Biologics Evaluation and Research at the Food and Drug Administration.

<sup>2</sup> The FDA considers scientific and/or medical disputes to encompass procedural matters that may arise in the context of a larger scientific and/or medical dispute.

<sup>3</sup> For purposes of this guidance, an *appeal* is a request for FDR.

<sup>4</sup> For purposes of this guidance, the term *sponsor* includes any sponsor of or applicant for an NDA, ANDA, or BLA under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act.

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34 of such disputes. The procedures and policies described in this guidance are intended to promote  
35 rapid resolution of scientific and/or medical disputes between sponsors and CDER or CBER.<sup>5</sup>  
36

37 This guidance revises the draft guidance for industry and review staff *Formal Dispute*  
38 *Resolution: Appeals Above the Division Level* issued in March 2013. This revision expands the  
39 scope of the guidance to include formal dispute resolution requests (FDRRs) for human drug  
40 applications covered under the Biosimilar User Fee Act of 2012 (BsUFA). Additionally, certain  
41 areas were revised to provide more clarity, such as when a matter is and is not appropriate for an  
42 FDRR, and information to include in the supporting background information. Also, this  
43 guidance clarifies that CDER and CBER intend to manage formal requests for appeals of  
44 scientific and/or medical disputes related to an application for a user fee product under any of the  
45 available regulatory mechanisms (i.e., 21 CFR 10.75, 312.48(c), 314.103(c)), through the FDR  
46 process.  
47

48 In general, FDA's guidance documents do not establish legally enforceable responsibilities.  
49 Instead, guidances describe the Agency's current thinking on a topic and should be viewed only  
50 as recommendations, unless specific regulatory or statutory requirements are cited. The use of  
51 the word *should* in Agency guidances means that something is suggested or recommended, but  
52 not required. Although guidance documents do not legally bind the FDA, review staff may  
53 depart from guidance documents only with appropriate justification and supervisory  
54 concurrence.  
55

56

## **II. BACKGROUND**

58

### **A. Regulatory Framework**

59  
60

61 In 1997, Congress enacted section 562 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
62 360bbb-1), which directed the FDA to ensure that it had adequate dispute resolution procedures  
63 to provide for appropriate review of scientific controversies between the FDA and members of  
64 regulated industry, including possible review by a scientific advisory committee.<sup>6</sup> The Agency's  
65 implementation of section 562 was two-fold. First, the FDA amended 21 CFR 10.75, the general  
66 appeal regulation applicable across all FDA components, to provide for advisory committee  
67 review (21 CFR 10.75(b)(2); 63 FR 63978, November 18, 1998). Second, the Agency adopted

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<sup>5</sup> This guidance does not apply to purely internal disputes involving FDA staff. Additionally, this guidance is not intended to address the alternate dispute resolution pathway of appealing a dispute to the Drug Safety Oversight Board that exists for risk evaluation and mitigation strategies modified or required after initial drug approval (21 U.S.C. 355-1(h)(5)). For guidance on how to resolve disputes of scientific and technical issues relating to current good manufacturing practice requirements, see the guidance for industry *Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP*. We update guidances periodically. To make sure you have the most recent version of a guidance, check the FDA Drugs guidance Web page at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

<sup>6</sup> Although section 562 refers to obligations concerning both drugs and devices, this guidance addresses FDR only as it pertains to CDER- and CBER-regulated products. This guidance does not address FDR for medical devices regulated by the Center for Devices and Radiological Health.

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68 an individual, center-based approach to the specific implementation of section 562’s mandates,  
69 which would be detailed in center-issued guidances (63 FR at 63979).

70  
71 At the time of section 562’s enactment, in addition to the general, Agency-wide regulation set  
72 forth at 21 CFR 10.75, CDER and CBER had dispute resolution regulations that pertained to the  
73 IND and NDA processes (21 CFR 312.48, 314.103). Nonetheless, in response to the enactment  
74 of section 562, CDER and CBER created FDR. The guidance for industry *Formal Dispute*  
75 *Resolution: Appeals Above the Division Level* issued in February 2000 (2000 guidance) outlined  
76 the basic elements of FDR. The 2000 guidance brought together under the FDR umbrella  
77 various regulatory appeal mechanisms as they relate to CDER- and CBER-regulated user fee  
78 products.

79  
80 As set forth in more detail below, FDR is intended to address scientific and/or medical disputes  
81 as they relate to applications for user fee products regulated by CDER and CBER. As such,  
82 CDER and CBER intend to manage any formal request for appeal of a scientific and/or medical  
83 matter related to an application for a user fee product under any of the available regulatory  
84 mechanisms (21 CFR 10.75, 312.48(c), 314.103(c)), through the FDR process.<sup>7</sup> Any appeal of a  
85 scientific and/or medical matter proceeds to the next management level in the center chain of  
86 command above the level at which the decision being appealed was made. However, regardless  
87 of the regulatory mechanism cited by a sponsor, if a sponsor challenges specific administrative  
88 and/or procedural decisions that arise during the course of an FDR, CDER and CBER intend to  
89 review these interim decisions as part of the review of the pending substantive scientific and/or  
90 medical dispute, and not as a separate review.

### **B. Formal Dispute Resolution User Fee Performance Goals**

91  
92  
93  
94 In the Prescription Drug User Fee Act of 1992 (PDUFA) and subsequent reauthorizations,<sup>8</sup>  
95 CDER and CBER agreed to specific performance goals for activities associated with the  
96 development and review of human drug applications, as defined in 21 U.S.C. 379g. These  
97 performance goals contain specific time frames for resolving disputes affecting an IND, NDA, or  
98 BLA. For disputes involving human drug applications covered by PDUFA, the PDUFA goal is

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<sup>7</sup> A sponsor seeking informal resolution of a specific issue, including but not limited to, a procedural or administrative matter regarding a product, may raise the issue with the appropriate center ombudsman (21 CFR 312.48(b), 314.103(b)). CDER and CBER ombudsmen informally investigate and facilitate resolution of such issues. Such informal contacts with the ombudsman concerning human drug applications are not subject to user fee goals. It is important to note that although sponsors may seek informal advice from the ombudsman at any time, they should not engage the ombudsman in this manner and at the same time pursue FDR. Moreover, such requests for ombudsman assistance are outside the scope of FDR and this guidance.

<sup>8</sup> See the letter “PDUFA Reauthorization Performance Goals and Procedures; Fiscal Years 2013 Through 2017” from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record (<http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf>). In the letter, PDUFA performance goals for FDR are listed under section V., Major Dispute Resolution. CDER and CBER consider FDR and major dispute resolution to be synonymous. Although CBER employs the FDR process for all of its products, outcome reporting under PDUFA performance goals includes only those issues that involve PDUFA products.

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99 to respond to an appeal of a dispute above the original signatory authority within 30 calendar  
100 days of the center’s receipt of the written appeal (see section V.A.1., Timelines for Reviewing  
101 Formal Dispute Resolution Requests for Human Drug Applications Covered by PDUFA or  
102 BsUFA).

103  
104 In BsUFA, CDER and CBER agreed to specific performance goals for the review of biosimilar  
105 biological applications.<sup>9</sup> For disputes involving human drug applications covered by BsUFA, the  
106 BsUFA goal is to respond to an appeal of a dispute above the original signatory authority within  
107 30 calendar days of the center’s receipt of the written appeal (see section V.A.1., Timelines for  
108 Reviewing Formal Dispute Resolution Requests for Human Drug Applications Covered by  
109 PDUFA or BsUFA).

110  
111 In the Generic Drug User Fee Amendments of 2012 (GDUFA), the FDA agreed to specific  
112 performance goals for the review of generic drug applications.<sup>10</sup> For disputes involving human  
113 drug applications covered by GDUFA, the GDUFA goal is to aspire to respond to an appeal of a  
114 dispute above the original signatory authority within 30 calendar days of the center’s receipt of  
115 the written appeal when possible. The procedures described in this guidance generally will be  
116 applied and the time frames will be met when possible (see section V.A.2., Timelines for  
117 Reviewing Formal Dispute Resolution Requests for Human Drug Applications not Covered by  
118 PDUFA or BsUFA).

119  
120 For those applications not covered by PDUFA, BsUFA, or GDUFA, and applications for CBER-  
121 regulated medical devices (covered by the Medical Device User Fee Act), the procedures  
122 described in this guidance generally will be applied and the time frames will be met as resources  
123 permit (see section V.A.2., Timelines for Reviewing Formal Dispute Resolution Requests for  
124 Human Drug Applications not Covered by PDUFA or BsUFA).

125

126

### **III. CONSIDERATIONS FOR SPONSORS: BEFORE SUBMITTING A REQUEST FOR FORMAL DISPUTE RESOLUTION**

128

129

#### **A. What Is an Appropriate Matter for an FDRR?**

130

131

132 CDER and CBER consider a regulatory action taken by the FDA that relates to an application for  
133 a user fee product and has scientific and/or medical significance to be a matter that could be

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<sup>9</sup> See the letter “Biosimilar Biological Product Authorization Performance Goals and Procedures; Fiscal Years 2013 Through 2017” from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the Congressional Record (<http://www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/UCM281991.pdf>). In the letter, BsUFA performance goals for FDR are listed under section IV., Major Dispute Resolution. CDER and CBER consider FDR and major dispute resolution to be synonymous.

<sup>10</sup> Generic Drug User Fee Act Program Performance Goals and Procedures (<http://www.fda.gov/downloads/ForIndustry/UserFees/GenericDrugUserFees/UCM282505.pdf>)

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134 appropriately handled through FDR. The following are a few examples of regulatory actions that  
135 would be appropriate for an FDRR:  
136

- 137 • Complete response (CR) letter
- 138 • IND clinical hold (partial or full)
- 139 • Request for breakthrough therapy designation denied
- 140 • Request for proprietary name review denied
- 141 • Refuse to receive for an ANDA

142

#### 143 **B. When Is a Matter Not Appropriate for an FDRR?**

144

145 Agency communications such as meeting minutes or general advice letters typically include  
146 recommendations and/or advice made to a sponsor that generally conveys CDER's or CBER's  
147 current thinking on a particular topic raised by the sponsor. Sponsors are not bound by such  
148 recommendations and/or advice. Sponsors can follow the advice in meeting minutes or a general  
149 advice letter, or they can use an alternative approach, if the approach satisfies the requirements  
150 of the applicable statutes and regulations. Advice communicated in meeting minutes and general  
151 advice letters is not a regulatory action taken by CDER or CBER, so it would not be an  
152 appropriate subject for an FDRR.  
153

154

154 Additionally, CDER and CBER do not intend to accept an FDRR if the sponsor has not yet  
155 sought reconsideration of the issue(s) in the FDRR or if the sponsor is actively engaged with  
156 other entities within the FDA and/or pursuing other regulatory or legal pathways on the same  
157 matter at the same time. The following are examples of such circumstances.  
158

159

- 159 • A sponsor's IND is placed on clinical hold, or a sponsor receives a CR letter, but has not  
160 yet asked the review division to reconsider the clinical hold action, or has requested and  
161 been granted a post-action meeting with the division but has not yet participated in that  
162 post-action meeting. CDER and CBER do not intend to accept the FDRR until the  
163 sponsor has taken these steps. Under FDR, consistent with 21 CFR 10.75, 312.48, and  
164 314.103, when a scientific and/or medical dispute arises, the sponsor should initially seek  
165 reconsideration of the matter with the original deciding official before making an appeal  
166 to the next higher management level. The FDA notes that no new information and/or  
167 new analysis of previously reviewed data should be submitted as part of a request for  
168 reconsideration.  
169

170

- 170 • A sponsor anticipates receiving a CR action and submits an FDRR before receiving the  
171 CR letter. CDER and CBER do not intend to accept the FDRR until the sponsor has  
172 received the CR letter and unsuccessfully attempted to resolve the concern(s) with the  
173 review division (e.g., has submitted a request for an end-of-review meeting to discuss the  
174 matter with the review division, participated in such a meeting, and received a response  
175 from the review division indicating that its decision remains the same).  
176

177

- 177 • A sponsor receives a CR action and has submitted a request for an end-of-review meeting  
178 to discuss the matter with the review division. At the same time, the sponsor submits an  
179 FDRR to the next management level. CDER and CBER do not intend to accept the

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180 appeal at that time because the sponsor has not yet attempted to resolve the concern(s)  
181 with the review division, nor received a response from the review division indicating that  
182 its decision remains the same.

183  
184 • A sponsor submits an FDRR that is accepted and the deciding official<sup>11</sup> on the appeal  
185 issues an interim response to the sponsor (see section V., FDA Action). The sponsor then  
186 submits an FDRR to appeal the interim response to the next management level. CDER  
187 and CBER do not intend to accept the appeal to the next management level until a final  
188 decision on the appeal has been made at the lower management level.

189  
190 • A sponsor submits a Petition for Stay of Action under 21 CFR 10.35(b) and, for the same  
191 matter, several days later submits an FDRR. CDER and CBER do not intend to accept  
192 the FDRR because the sponsor is already engaged in another regulatory/legal proceeding  
193 within the Agency regarding the scientific and/or medical matter in dispute.

#### 194 195 **C. Is There New Information and/or Are There New Analyses of Previously** 196 **Reviewed Data That the Sponsor Believes Is/Are Relevant?**

197  
198 Because internal Agency review of a decision that has been appealed must be based on the same  
199 information as was relied on to make the original decision (i.e., information already in the  
200 relevant administrative file; 21 CFR 10.75(d)), no new information should be submitted as part  
201 of an FDRR. If the sponsor would like to have CDER or CBER consider new information that  
202 may affect the original decision on a matter, it should submit the new information to the  
203 sponsor's application (i.e., IND, NDA, BLA, ANDA) for review by the division and the original  
204 deciding official. CDER and CBER consider new analyses of previously reviewed data to be  
205 new information because the original deciding official might have made a different decision had  
206 he or she had the opportunity to review the new analyses.

#### 207 208 **D. Can a Sponsor Request a Meeting as Part of an FDRR?**

209  
210 After a sponsor has decided to submit an FDRR, as part of the appeal, it can request a meeting  
211 with the deciding official for the appeal (i.e., a Type A meeting for human drug applications  
212 covered by PDUFA, a biosimilar biological product development (BPD) Type 1 meeting for  
213 human drug applications covered by BsUFA, or a meeting for a human drug application covered  
214 by GDUFA).<sup>12</sup> This meeting is an opportunity for the sponsor to discuss the appeal issue(s) with  
215 the deciding official for the appeal.

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<sup>11</sup> For purposes of this guidance, the term *deciding official* refers to the person assigned to make the decision on the appeal.

<sup>12</sup> See the guidance for industry *Formal Meetings Between the FDA and Sponsors or Applicants* for human drug applications covered by PDUFA. See the draft guidance for industry *Formal Meetings Between the FDA and Biosimilar Biological Product Sponsors or Applicants* for biosimilar biological product applications covered by BsUFA (when final, this guidance will represent the FDA's current thinking on this topic).

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**E. Can a Sponsor Request an Advisory Committee Meeting as Part of FDR?**

As part of an original appeal or at any point in the FDR process, a sponsor can request that a scientific dispute be reviewed by an appropriate advisory committee. Because it can take a significant amount of time to schedule an advisory committee meeting, if a sponsor believes that review by an advisory committee is the most appropriate venue for resolution of a scientific controversy, such a request should be made as early in the dispute resolution process as feasible.

**IV. PROCEDURES FOR SUBMITTING A REQUEST FOR FORMAL DISPUTE RESOLUTION**

**A. How to Request Formal Dispute Resolution**

The sponsor should submit an FDRR to the sponsor's application as described below. *Before submitting a request, it is strongly encouraged that sponsors contact CDER or CBER and provide advance notice of the pending submission to ensure prompt handling of the appeal. Contact information is provided below.*

*1. Requests for CDER*

Requests for FDR with CDER should be submitted to the sponsor's application. The request should be submitted as an amendment to the application to the appropriate review division, and a copy should be submitted to the CDER Formal Dispute Resolution Project Manager (FDRPM). The contact information can be found on the CDER Formal Dispute Resolution Web page.<sup>13</sup> We encourage sponsors to contact the FDRPM before submitting a request for FDR.

*2. Requests for CBER*

Requests for FDR with CBER should be submitted to the sponsor's application when the request relates to an active submission. The request should be submitted as an amendment to the application to the appropriate review division, and a copy to the CBER Ombudsman. The contact information can be found on the CBER Ombudsman Web page.<sup>14</sup> We encourage sponsors to contact the CBER Ombudsman before submitting a request for FDR. Note that the CBER Ombudsman handles both informal requests and FDRRs, so if the sponsor intends to submit an FDRR, it should be clear in its submission that the request is an FDRR.

**B. Content and Format of an FDRR**

To make the most efficient use of CDER or CBER and industry resources, any FDRR to either CBER or CDER should include information adequate to explain the nature of the scientific

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<sup>13</sup> See

<http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ContactCDER/ucm444092.htm>.

<sup>14</sup> See <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CBER/ucm122881.htm>.

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258 and/or medical dispute, and to allow the deciding official to determine the necessary steps  
259 needed to resolve the matter quickly and efficiently. Each request should include the following:  
260

- 261 • Identification of the submission as **FORMAL DISPUTE RESOLUTION REQUEST** in  
262 bold, uppercase letters.
- 263
- 264 • The application number (e.g., IND, NDA, BLA, ANDA),<sup>15</sup> if applicable.
- 265
- 266 • The proprietary and/or generic name and established name for drug products; the proper  
267 name and trade name for biological products.
- 268
- 269 • The division or office where the application is filed.
- 270
- 271 • The proposed indication(s), if applicable.
- 272
- 273 • A brief, but *comprehensive* statement of each issue to be resolved, including:  
274
  - 275 – A description of the scientific and/or medical matter to be resolved
  - 276
  - 277 – A statement of the steps that have been taken to resolve the dispute, including a  
278 summary of relevant regulatory history, and any previous FDRRs
  - 279
  - 280 – A statement of proposed possible solutions and/or outcomes
  - 281
- 282 • A statement identifying the division and/or office that issued the decision on the matter  
283 being disputed and, if applicable, the deciding official on any prior FDRRs related to the  
284 same scientific and/or medical dispute. A statement of whether a meeting with the  
285 deciding official is requested and what type of meeting is requested.
- 286
- 287 • A statement of whether an advisory committee review is requested.
- 288
- 289 • A list of documents previously submitted to the sponsor's application that are deemed  
290 necessary for resolution of the matter, with reference to submission dates so the  
291 documents can be readily located.
- 292
- 293 • A statement that no new information has been submitted in support of the FDRR and, if  
294 applicable, that the last deciding official received and had the opportunity to review all of  
295 the material now being relied upon for the FDRR.
- 296
- 297 • The name, title, and contact information (i.e., mailing address, email address, telephone  
298 number, fax number) for the sponsor contact for the appeal.
- 299
- 300

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<sup>15</sup> If the request is related to a CBER-regulated device, the request should include the application number (i.e., investigational device application, 510(k), premarket approval application, BLA).

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### 301 **V. FDA ACTION**

302  
303 The FDRPM or CBER Ombudsman functions as the administrative contact for all issues related  
304 to FDRRs. The FDRPM or CBER Ombudsman is responsible for communicating and  
305 explaining all regulatory processes related to FDR to the sponsor. The FDRPM or CBER  
306 Ombudsman will conduct a preliminary review of the FDRR to evaluate whether the appeal  
307 satisfies the procedural criteria (as described in section IV., Procedures for Submitting a Request  
308 for Formal Dispute Resolution) so that the FDRR can be accepted. If the FDRR is accepted, the  
309 FDRPM or CBER Ombudsman will forward the appeal to the appropriate CDER or CBER  
310 management level, as established under the center chain of command. The FDRPM or CBER  
311 Ombudsman will also send an acknowledgment letter to the sponsor identifying the deciding  
312 official, the due date for response to the FDRR, and the date of any meeting (if applicable). If an  
313 FDRR is not accepted, then the FDRPM or CBER Ombudsman will send a letter to the sponsor  
314 on behalf of the deciding official identifying the reasons why the request was not accepted and  
315 outlining a possible path forward for acceptance of the FDRR. Additionally, if a request for  
316 FDR is inappropriately submitted to CDER or CBER, then the FDRPM or CBER Ombudsman  
317 will re-direct the request to the appropriate entity within the FDA.

#### 318 319 **A. Responses to an Appeal**

320  
321 In general, the deciding official will send a written decision to a sponsor who submits an FDRR  
322 that is accepted for review. The written decision will grant or deny the appeal. If the deciding  
323 official does not agree with the sponsor's proposed outcome, he or she should provide the  
324 reasons why he or she does not agree, and possibly suggest other options to achieve resolution  
325 and identify any actions that the sponsor can take to address the concerns articulated by the  
326 deciding official. Before issuing a final decision on the FDRR, the deciding official may also  
327 provide an *interim response*, such as a request for additional clarifying information or a request  
328 for a meeting with the sponsor, before making a decision on the appeal.

#### 329 330 *1. Timelines for Reviewing Formal Dispute Resolution Requests for Human Drug* 331 *Applications Covered by PDUFA or BsUFA*

332  
333 As noted earlier, if a scientific and/or medical dispute concerns a human drug application  
334 covered by PDUFA or BsUFA, the deciding official should complete his or her review and  
335 provide an interim response or a decision on the appeal within 30 calendar days from receipt of  
336 an FDRR that has been accepted. The deciding official should respond to the sponsor within the  
337 30-day window in writing or by telephone (i.e., *30-day response*). If the response is by  
338 telephone, the deciding official should follow up with a written confirmation within 14 calendar  
339 days of the verbal response.

340  
341 If a sponsor requests a meeting as part of its appeal, CDER or CBER should treat the meeting  
342 request as a Type A meeting under PDUFA or as a BPD Type 1 meeting under BsUFA. If the  
343 meeting is granted, the deciding official should provide an interim response or a decision on the  
344 FDRR within 30 calendar days of the meeting date. This time period allows the deciding official  
345 to consider the discussion at the meeting in his or her decision making process.

346

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347 There may be instances when, to reach a decision, the deciding official needs additional  
348 clarifying information or input from other persons knowledgeable about the specific matter in  
349 dispute, or about the issue or area more generally. In such situations, the deciding official should  
350 issue an interim response identifying the additional information or input needed. If the drug is a  
351 human drug application covered by PDUFA or BsUFA, such interim responses should be made  
352 within 30 calendar days of receipt of the appeal.  
353

- 354 • In instances when the deciding official needs clarifying information from the sponsor,<sup>16</sup>  
355 a request for this information should be sent within 30 calendar days from receipt of the  
356 appeal. The deciding official should provide an interim response or a decision on the  
357 appeal within 30 calendar days from receipt of the information to the sponsor's  
358 application.  
359
- 360 • In instances when the deciding official decides a meeting with the sponsor is needed  
361 before a response can be issued, a meeting request should be sent within 30 calendar days  
362 from receipt of the FDRR. CDER or CBER should schedule any meetings as quickly as  
363 the sponsor and the FDA are able to agree on a mutually acceptable date and time. After  
364 the meeting is held, the deciding official should provide an interim response or a decision  
365 on the appeal within 30 calendar days from the meeting date.  
366
- 367 • In instances when the deciding official requires discussion with one or more members of  
368 an advisory committee or internal or external experts, CDER or CBER, within 30  
369 calendar days from receipt of the FDRR, should inform the sponsor that the deciding  
370 official requires this additional input. CDER or CBER should schedule such discussions  
371 with the members of an advisory committee or internal or external experts as quickly as  
372 possible. After this discussion takes place, the deciding official should provide an  
373 interim response or a decision on the appeal within 30 calendar days from the date of the  
374 discussion.  
375
- 376 • In instances when the deciding official decides to seek input from an advisory committee,  
377 CDER or CBER should inform the sponsor of this request within 30 calendar days from  
378 receipt of the FDRR. The deciding official should provide an interim response or a  
379 decision on the appeal within 30 calendar days after the date of the advisory committee  
380 meeting.  
381

382 If the deciding official is unable to complete the review and provide either an interim response or  
383 a decision on the FDRR within 30 calendar days, CDER or CBER should notify the sponsor,  
384 explain the reasons for the delay, and discuss the time frame for completing the review. In these  
385 cases, the PDUFA or BsUFA goal for the appeal response would not be met.  
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<sup>16</sup> *Clarifying information* does not include new information or reanalysis of data that has not been reviewed by the division. As stated previously, the FDA considers new analyses of previously reviewed data to be new information because the original deciding official might have made a different decision had he or she had the opportunity to review the new analysis.

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387 2. *Timelines for Reviewing Formal Dispute Resolution Requests for Human Drug*  
388 *Applications not Covered by PDUFA or BsUFA*  
389

390 As noted earlier, in GDUFA, the FDA agreed to specific performance goals for the review of  
391 generic drug applications. For disputes involving drug applications covered by GDUFA, the  
392 GDUFA goal is to aspire to respond to an appeal of a dispute above the original signatory  
393 authority within 30 calendar days of the center's receipt of the written appeal.  
394

395 If the matter under appeal does not pertain to a human drug application covered by PDUFA,  
396 BsUFA, or GDUFA, the FDA should make all reasonable efforts to resolve the dispute as  
397 expeditiously as possible and should provide a written or telephone response to the sponsor in a  
398 timely manner. If the response is by telephone, CDER or CBER should follow up with a written  
399 confirmation within 14 calendar days of the verbal notification.  
400

401 **B. Additional Considerations Regarding Responses to Appeals That Request**  
402 **Advisory Committee Review**  
403

404 If a sponsor seeking resolution of a scientific and/or medical dispute requests advisory  
405 committee review of the matter, CDER or CBER should determine whether such review is  
406 appropriate and would be helpful to CDER or CBER at that time in the FDR process. CDER or  
407 CBER should communicate this determination to the sponsor following the procedures described  
408 in section V.A., Responses to an Appeal.  
409

410 1. *Granting of a Request for Advisory Committee Review*  
411

412 If a sponsor's request for review by an advisory committee is granted, the matter should be  
413 brought to the next scheduled advisory committee meeting for which there is adequate time  
414 available on the agenda for discussion of the issue(s). Because of administrative concerns  
415 related to organizing each advisory committee meeting (e.g., establishing an agenda, sending  
416 background information to the advisory committee members before the meeting), it may not be  
417 feasible to raise the matter at the next scheduled meeting of the appropriate advisory committee.  
418

419 As discussed in FDA regulations (21 CFR 14.5(b)) and the preamble to the final rule amending  
420 21 CFR 10.75,<sup>17</sup> the advice and recommendations of an advisory committee do not bind CDER  
421 or CBER to a particular action or policy. After receiving the advice of the advisory committee,  
422 the deciding official should provide the sponsor with an interim response or a decision within 30  
423 calendar days.  
424

425 2. *Denial of a Request for Advisory Committee Review*  
426

427 If CDER or CBER does not grant the request for advisory committee review, CDER or CBER  
428 should notify the sponsor in writing of such decision, including the reason(s) for the denial and  
429 any steps the sponsor may take to address CDER or CBER's concerns about the appropriate  
430 involvement of an advisory committee.

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<sup>17</sup> See "Administrative Practices and Procedures; Internal Review of Decisions" (63 FR at 63980, November 18, 1998).

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**VI. REPEAT APPEALS**

If a sponsor’s FDRR is denied at one management level, the sponsor can appeal the same matter to the next higher management level in the center chain of command. A new FDRR should be submitted for each appeal to the next management level and should follow the process and timelines provided in this guidance. If the sponsor has exhausted the center’s management levels and remains unsatisfied with CDER’s or CBER’s decision, a sponsor may request review of the matter by the Commissioner of Food and Drugs (Commissioner) (21 CFR 10.75(c)). Requests for review by the Commissioner should be submitted to the FDA’s Ombudsman, with copies provided to the centers as described in section IV.A., How to Request Formal Dispute Resolution. Review of such matters by the Commissioner is discretionary.<sup>18</sup>

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<sup>18</sup> See 40 FR 40682, 40693 (September 3, 1975).