Australian Government
Department of Health
Therapeutic Goods Administration

Exceptional release of biologicals (post-market)

Australian Regulatory Guidelines for Biologicals (ARGB)

Version 1.0, July 2018

TGA Health Safety Regulation

Contents

If you are a sponsor of a biological included on the ARTG and you need to release a product that does not meet all of the usual safety or manufacturing standards, then you need to request approval for an **exceptional release** of a **non-conforming biological**.

Exceptional release of a non-conforming biological is only permitted under **prescribed circumstances and** for an **individual patient**.

Information on this page outlines:

- the prescribed circumstances when exceptional release is permitted
- sponsor's responsibilities before and after supplying a non-conforming biological
- how to access and complete the form for an exceptional release request.

Prescribed circumstances for exceptional release

To import, export or supply a non-conforming biological, **all of the following** criteria **must** apply:

- the patient has been assessed by the their medical practitioner to need the biological **urgently** to treat a serious condition
- a suitable and equivalent alternative that **is conforming** is **not available** or **not available within the necessary time** for treatment to occur
- a non-conforming biological that is included in the ARTG is available
- no other treatment option is suitable for the patient
- the non-conforming biological is assessed as the **most suitable treatment** for the patient
- the non-conforming biological is to be used only for the treatment of **one patient**

The above prescribed circumstances are set out in regulation 33A, *Therapeutic Goods Regulations 1990*.

Serious condition

A **serious condition**, in relation to **prescribed circumstances** for exceptional release, is generally accepted as needing a qualified health care practitioner:

- for diagnosis or treatment

OR

- to evaluate accurately, or treat safely, and needs regular supervision

The definition of serious condition is in regulation 2, *Therapeutic Goods Regulations 1990.*

Example of exceptional release

A paediatric heart valve becomes available at a valve bank for a critically ill baby, but it is not possible to wait 10 days for tissue microbial testing results.

This paediatric heart valve does not meet the required safety standards or current manufacturing standards, but the sponsor can release the product under the exceptional release provision due to the critical circumstances.

Sponsor responsibilities

You have specific responsibilities both before and after supplying a non-conforming biological.

Before you supply a non-conforming biological, you **must:**

- make sure **all the criteria** outlined in prescribed circumstances apply
- get a written statement from the treating medical practitioner
- get approval to release from the director of the supplying facility
- provide a copy of the approval-to-release letter to the treating medical practitioner
- ensure the approval-to-release letter is placed on the patient's medical records
- get written informed consent
- provide a copy of the informed consent to the treating medical practitioner
- ensure the informed consent is placed on the patient's medical records.

This information is specified in regulation 33B of the *Therapeutic Goods Regulations 1990* and subsection 15AB(1) of the *Therapeutic Goods Act 1989*.

Written statement from treating medical practitioner

You need a written statement from the treating medical practitioner including:

- how **all** of the prescribed circumstances apply
- confirmation that the patient, or guardian, has been told about the likely risks and benefits from using the non-conforming biological
- the reason the biological does not conform to applicable standards or manufacturing principles.

Approval to release a non-conforming biological

You need written approval from the medical or scientific director of the facility **supplying** the non-conforming biological.

Informed consent

Before the non-conforming biological is used, you **must** get:

- written informed consent from the patient or legal guardian

OR

- a statement from the treating medical practitioner explaining why the patient or guardian cannot give consent.

After supplying a non-conforming biological

After supplying a non-conforming biological through the exceptional release provision you are required to:

- notify the TGA within 28 days
- report to TGA within 6 months
- respond to the TGA's enquiries within 14 days.

Notify the TGA

You need to notify the TGA of an exceptional release within 28 days of supply, by sending us an exceptional release notification form with:

- written statement from the treating medical practitioner
- approval to release from the medical or scientific director
- informed consent signed **before** the non-conforming biological is used

The requirement to submit the Exceptional Release Notification Form is in regulation 33B(2)(a), *Therapeutic Goods Regulations 1990*.

Report to TGA

You must provide us with a report about the non-conforming biological within 6 months of supply that includes:

- date of release
- product identification details
- name and address of transplant center or medical practitioner to whom the non-conforming biological was released
- initials, gender and date of birth of the patient
- any adverse events relating to the use of the non-conforming biological

Reports are to be returned to the same address used for returning the form.

The requirement to submit the Exceptional Release Notification Form is in regulation 33C(a), *Therapeutic Goods Regulations 1990*.

Respond to TGA

We may request further information from you such as information about:

- the supply, including the decision-making process
- any adverse events.

You must provide the requested information within 14 days, under regulation 33C(b), *Therapeutic Goods Regulations 1990*.

Accessing and completing the exceptional release notification form

A copy of the form, accompanied by the required documentation, must be forwarded to TGA within 28 days of the date of release of the non-conforming biological.

The exceptional release notification form is available at: Exceptional release of a biological.

When to use this form

Use this form to notify us of the exceptional release of a non-conforming biological. Non-conforming biologicals may only be released for use in:

- prescribed circumstances

AND

- patients with serious medical conditions

Be aware of your responsibilities when supplying non-conforming biologicals.

Patient and product details

The following details must all be completed by the sponsor:

1. **Patient details (initials, DOB and sex):** The patient is not to be identified, this is only for traceability purposes.

Please do not identify the patient: this is important for privacy reasons.

2. **Diagnosis:** The indication or condition that the non-conforming biological will be, or was, used to treat.
3. **Name of biological:** The product name that appears on the ARTG.
4. **ARTG number:** The product's ARTG number.
5. **Reason why the biological is non-conforming:** Summarise the reason the biological does not conform with the applicable standards or was not manufactured in accordance with relevant manufacturing principles.

6. **Australian sponsor of product:** The name of the Australian sponsor, as recorded on the ARTG.
7. **Dosage form:** The form in which the biological is, or was, administered to the patient (for example, an implant or a paste), as recorded on the ARTG.
8. **Quantity to be supplied:** The amount or number of units of the non-conforming biological supplied.
9. **Route/Method of administration:** The method in which the biological is administered to the patient (for example, intra-arterial) , as recorded on the ARTG.
10. **Dosage**: The optimum therapeutic dose and optimum interval between doses.
11. **Unique identifiers(s) of biological:** This can include the unique identification number/ alphanumeric linked to donor; date and time of collection and/or batch number (if applicable).
12. **Name and address for supply of product (Hospital Pharmacist or Doctor):** The name of the person to which the non-conforming biological was supplied, and the address of the facility to where the non-conforming biological was supplied.
13. **Date of release (dd/mm/yyyy):** The date that the non-conforming biological was released by the sponsor or sponsor's facility.

Facility director

14. **Name(s):** The name or names of the facility's medical or scientific director who has given the approval to release the non-conforming biological.
15. **Position(s):** The official title or position of the person specified in 'Name(s)'.
16. **Email:** The contact email address of the person or persons specified in 'Name(s)'.
17. **Phone:** The contact phone number of the person or persons specified in 'Name(s)'.
18. **Date of Approval (dd/mm/yyyy):** The date that the person or persons specified in 'Name(s)' gave approval to release the non-conforming biological.

Sponsor contact person

19. Complete the contact details for the contact person, or people from the sponsor of the biological.
20. **Name of Person completing this form:** Name of Person completing this form, especially if it is someone other than the sponsor contact person.
21. **Signature(s):** The form needs to be signed by all contacts listed on the form.

Attachments

Remember to submit the following documentation **with** the form:

- written statement from the treating medical practitioner
- approval to release from the medical or scientific director
- informed consent signed **before** the non-conforming biological is used.

Return the form

Send all notifications and reports:

- attention Medical Officer – Exceptional Release
- to the Biological Science Section.

TGA acknowledgement

We will write to acknowledge receiving the Exceptional Release Notification form within 28 days of receipt.

Version history

Version	Description of change	Authors	Effective date
V1.0	Original publication incorporating new legislative changes and information previously published on the TGA website.	Biological Science Section Regulatory Guidance Team	July 2018

Therapeutic Goods Administration

PO Box 100 Woden ACT 2606 Australia
Email: info@tga.gov.au Phone: 1800 020 653 Fax: 02 6203 1605
https://www.tga.gov.au

Reference/Publication # D18-10614292