Section 10: Devices

10.1. Investigational Devices

Policy

Research that involves the use of investigational devices must conform to the Food and Drug Administration (FDA) and Department of Health and Human Services (DHHS) regulations. The FDA regulations for investigational devices are listed in 21 CFR 812; FDA informed consent and Institutional Review Board (IRB) regulations are listed in 21 CFR 50 and 56, respectively. The UIR IRB will document in their minutes any determination that a device is a significant risk or non-significant risk device.

Procedures

Medical Device	In part, any health care product that does not achieve its primary intended purposes by chemical action or by being metabolized. Medical devices include, among other things, surgical lasers, wheelchairs, sutures, pacemakers, vascular grafts, intraocular lenses, and orthopedic pins. Medical devices also include diagnostic aids such as reagents and tests kits for *in vitro* diagnosis of disease and other medical conditions such as pregnancy.
Significant Risk (SR) Device	A device that presents a potential for serious risk to the health, safety, or welfare of a subject, and 1) is intended as an implant; 2) is used in supporting or sustaining human life; 3) is of substantial importance in diagnosing, curing, mitigating, or treating disease, or otherwise prevents impairment of human health; or 4) otherwise presents a potential for serious risk to the health, safety, or welfare of a subject.
Non-significant Risk (NSR) Device	A device that does not meet the definition of a significant risk study. NSR device studies, however, should not be confused with the concept of "minimal risk," a term utilized in the IRB regulations.
510(k)	A new device determined by the FDA to be substantially equivalent to a device that was

	marketed prior to the passage of the Medical Device Amendments of 1976. Devices that qualify as 510(k) may be marketed immediately, without investigation of safety and efficacy. Research activities that involve a 510(k) do not require and IDE (see below) prior to approval by the UIR IRB; however, the UIR IRB will require written documentation that a 510(k) has been granted. This is usually obtained from the sponsor.
Investigational Device Exemption (IDE)	An exemption from certain regulations described in the medical device amendments that allows the shipment of an unapproved device for use in a clinical investigation. The sponsor of an SR device is required to apply to the FDA for an IDE before the clinical research may begin. There are abbreviated requirements for NSR devices that do not involve filing with the FDA.

Determining Exempt Status of Device

When research is conducted to determine the safety and effectiveness of a device, the first step is to determine whether the device fulfills one of the exemption criteria, and if not, whether it has an IDE or meets the requirements of an abbreviated IDE (NSR).

A device can be exempt from the IDE requirements. A claim that the device is exempt must reference the exemption category being claimed. There are seven exemption categories that may be claimed:

1. A device, other than a transitional device, in commercial distribution immediately before May 28, 1976, when used or investigated in accordance with the indications in labeling in effect at that time.
2. A device, other than a transitional device, introduced in commercial distribution on or after May 28, 1976, that the FDA has determined to be substantially equivalent to a device in commercial distribution immediately before May 28, 1976, and that is used or investigated in accordance with the indications in the labeling FDA reviewed under Subpart E of part 807 in determining substantial equivalence.
3. A diagnostic device, if the sponsor complies with applicable requirements in Section 809.10(c) and if the testing:
    i. Is non-invasive,
    ii. Does not require an invasive sampling procedure that presents significant risk,

iii. Does not by design or intention introduce energy into a subject, and
iv. Is not used as a diagnostic procedure without confirmation of the diagnosis by another, medically established diagnostic product or procedure.

4. A device undergoing consumer preference testing, testing of a modification, or testing of a combination of two or more devices in commercial distribution, if the testing is not for the purpose of determining safety or effectiveness and does not put subjects at risk,
5. A device intended solely for veterinary use,
6. A device shipped solely for research on or with laboratory animals and labeled in accordance with Section 812.5(c).
7. A custom device as defined in Section 812.3(b), unless the device is being used to determine safety or effectiveness for commercial distribution.

The first two categories pertain to devices that were either manufactured before 1976 or similar products manufactured after 1976. Categories 3 and 4 are the most commonly applied for exemptions. Categories 5 and 6 are pertinent to the use of devices in animals. Category 7 pertains to custom devices. It is the sponsor's responsibility to provide sufficient justification to support the exemption category being claimed. An exemption from the IDE requirement is not an exemption from the requirement for prospective IRB review or informed consent.

Distinguishing Between SR and NSR Device Studies

The consequences of the SR/NSR decision are very important. SR device studies are governed by the IDE regulations (21 CFR 812). NSR device studies are subject to fewer regulatory controls than SR studies, and are governed by the abbreviated requirements (21 CFR 812.2(b)). The major regulatory differences between the two concern the approval process, and record keeping and reporting requirements. The SR/NSR decision is also of consequence to the FDA because the UIR IRB serves, in a sense, as the FDA's surrogate with respect to the review and approval of NSR studies. Sponsors are responsible for the initial assessment of an investigational device. If it is determined that a device presents significant risk, the sponsor must apply to the FDA.

If an investigator or a sponsor proposes to the IRB to undertake an NSR investigation, the IRB must make a separate and independent determination that the study is, in fact, an NSR device study. The IRB's determination that a device is an NSR device must be documented in the Committee's minutes.

If the IRB believes that a study is an SR device study, the investigation may not begin until both the IRB and the FDA approve the study.

The NSR/SR Decision

The assessment of whether or not a device study presents an NSR is initially made by the sponsor. If the sponsor identifies a study as an NSR, the sponsor is to provide the IRB with an

explanation of its determination and any other information that may assists the IRB in evaluating the risk of the study. The sponsor is expected to provide the IRB with a description of the device, reports of prior investigations with the device, the proposed investigational plan, a description of patient selection criteria and monitoring procedures, as well as any other information the IRB deems necessary to make its decision. The IRB may also request an opinion from the FDA.

The IRB may agree or disagree with the sponsor's initial NSR assessment. If the IRB agrees with the initial assessment and approves the study, the study may begin without submission of an IDE application to the FDA. If the IRB disagrees, the sponsor is to notify the FDA that an SR determination has been made. The study may be conducted as an SR investigation following FDA approval of an IDE application.

The risk determination will be based on the proposed use of a device in an investigation, and not on the device alone. In deciding if a study poses an SR, the IRB will consider the nature of the harm that may result from use of the device. Studies in which the potential harm to subjects may be life-threatening, may result in permanent impairment of a body function or permanent damage to body structure, or may necessitate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to body structure, are to be considered SR. Moreover, if the subject must undergo a procedure as part of the investigation study (e.g., surgical procedure), the IRB must consider the potential harm that may be caused by the procedure in addition to the potential harm that may be caused by the device.

The FDA will make the ultimate decision in determining if a device study is SR or NSR. If the FDA does not agree with an IRB decision to identify a study as a NSR device study, an IDE application must be submitted to the FDA. On the other hand, if a sponsor files an IDE with the FDA because it is presumed to be an SR study, but the FDA classifies the device study as NSR, the FDA will return the IDE application to the sponsor and the study must be presented by the IRB as an NSR investigation.

UIR IRB Responsibilities Following SR/NSR Determination

If the IRB identifies the study as SR, the IRB will notify the investigator who will, in turn, notify the sponsor of the SR determination. An IDE will be obtained by the sponsor, and the IRB will review the protocol, applying the requisite criteria (21 CFR 56.111).

If the IRB identifies the study as NSR, the IRB will proceed to review the study, applying the requisite criteria (21 CFR 56.111). If the study is approved by the IRB, the sponsor and the investigator must comply with the abbreviated IDE requirements (21 CFR 812.2(b)), informed consent, and IRB regulations (21 CFR 50 and 56). The determination that a device is a NSR device must be documented in the IRB minutes.

The Decision to Approve or Disapprove a Study

Once the SR/NSR decision is reached, the IRB is to consider whether or not the study should be approved. The criteria for deciding if SR and NSR studies should be approved are the same as those for any other study. If a device is classified as a significant risk device, the IRB will require written documentation from the sponsor which includes the IDE number. If the investigator also serves as the sponsor of a significant risk device, a copy of the letter from the FDA will be requested which assigns the IDE number. This information should be submitted as part of the protocol application and the protocol approval will not be released until the information is provided. The RSS Specialist will be responsible for making sure this information is obtained prior to release of the approval notification and informed consent document. The IRB is to ensure that the risks to subjects are minimized, and are reasonable in relation to the anticipated benefits and knowledge to be gained; that subject selection is equitable, that informed consent materials and procedures are adequate; and that provisions for monitoring the study and protecting the privacy of subjects are acceptable. To ensure that the risks to subjects are reasonable in relation to the anticipated benefits, the risks and benefits of the investigation are to be compared to the risks and benefits of alternative devices or procedures. The minutes of IRB meetings must document whether a device has been determined to be a significant risk or non-significant risk device and the rationale for SR/NSR decisions, as well as the subsequent approval or disapproval decisions regarding the clinical investigation.

Any protocol that is considered SR is to be reviewed by the full IRB. Generally, the IRB review, at a convened meeting, is also required when NSR studies are reviewed because the Committee must agree that the study is an NSR device investigation.

At the time of continuing review the IRB may request additional documentation to be certain the investigator is following the IDE requirements. If the investigator holds the IDE for a significant risk device, a copy of the annual reports to the FDA may be requested.

Control of Investigational Devices

Investigators are responsible for control of the investigation devices used in their studies. The actual control plan will depend upon the type of device, the number of units to be received at any one time, and the proposed use. The protocol application submitted to the IRB must include a description of the following:

- Location and manner of the receipt of the device
- Location and manner of the secure storage of the device
- Those who have access to the device and how access is controlled
- How the device will be tracked when utilized in a patient

10.2. Requirements for Investigators Who are Also Considered Sponsors of Investigational Devices

Policy

- A Sponsor Investigator is an individual investigator who both initiates and conducts a clinical trial and assumes all the responsibilities of the sponsor.
- A Sponsor Investigator of a clinical trial involving a medical device with the intention to collect safety and effectiveness data required to support a Premarket Approval (PMA) application or a Premarket Notification (510(k)) submission to the FDA must be knowledgeable of the regulatory requirements found in 21 CFR Part 812 – Investigation Device Exemptions (IDE) and be familiar with FDA guidance documents.
- Prior to initiating a clinical trial involving a medical device, the Sponsor-Investigator must obtain an approved IDE from the IRB (for Non-significant Risk Devices (NSR)) or from both the IRB and the FDA (for Significant Risk Devices (SR)).

Procedures

The following is an overview of the FDA requirements for Sponsors with Investigational Device Exemption (IDE). This overview is divided into two sections, *Responsibilities of Sponsors for Significant Risk Device studies* and *Responsibilities of Sponsors for Non-significant Risk Device Studies*, and it cites the appropriate FDA regulation for each item. Before referencing the overview, please review the federal regulations (21 CFR 812.3(m)) to determine if the device is a Significant Risk Device or a Non-significant Risk Device.

Responsibilities of Sponsors for Significant Risk Device Studies

If an investigator is also the sponsor for a Significant Risk Device, the following requirements must be met:

- **Maintain effective IDE**
    1. Obtain FDA and IRB approval for IDE. — 21 CFR 812.42
    2. Conduct an evaluation of unanticipated adverse events and terminate the study if necessary. — 21 CFR 812.46
    3. Resume terminated studies only after receiving approval from the FDA and IRB. — 21 CFR 812.46
    4. Comply with federal regulations regarding emergency use. — 21 CFR 812.47
- **Prompt Reporting to FDA and Investigators**
    1. Supply the investigator(s) with — 21 CFR 812.45

copies of the investigational plan and copies of prior device investigations.

2. Provide required reports to the IRB, investigator(s), and FDA in a timely manner. — 21 CFR 812.150

- **Select Qualified Investigators**
  1. Select investigator(s) with appropriate training and experience. — 21 CFR 812.43
  2. Create an investigator agreement and obtain a signed copy from each participating investigator that including items specified in FDA regulations. — 21 CFR 812.43
- **Monitoring of Investigations**
  1. Select monitors qualified by training and experience to monitor the investigation in accordance with FDA regulations. — 21 CFR 812.43
  2. Ensure that investigator(s) are complying with FDA, IRB, and sponsor requirements. — 21 CFR 812.46
- **Ensure Control and Representation of Investigational Device**
  1. Ship investigational devices only to qualified investigators. — 21 CFR 812.43
  2. Label the device in accordance with FDA requirements. — 21 CFR 812.5
  3. Promote the device in accordance with IRB and FDA requirements. — 21 CFR 812.7
  4. Ensure the minimum current good manufacturing practice of devices in compliance with 21 CFR 820, Quality System Regulation. — 21 CFR 820
- **Record Keeping and Documentation**
  1. Maintain accurate and complete records in accordance with FDA — 21 CFR 812.140

regulations.

2. Maintain, complete and accurate records documenting the financial interests (FDA form 3454 or 3455) of all participating clinical investigators, including sponsor payments. — 21 CFR 812.43; 21 CFR 54

3. Ensure any electronic data and source documentation meets the same fundamental elements of data quality that are expected or paper records. — 21 CFR 11

Responsibilities of Sponsors with Non-significant Risk Device Studies

If an investigator is also the sponsor for a Non-significant risk (NSR) Device, the following requirements must be met:

- **Maintain Effective IDE**
  1. Obtain IRB approval of the investigation as a Non-significant risk device study and maintain IRB approval during the investigation. — 21 CFR 812.2

- **Monitoring of Investigations**
  1. Comply with FDA requirements for monitoring the study. — 21 CFR 812.46
  2. Ensure that each investigator obtains consent for each subject unless the IRB grants a waiver. — 21 CFR 812.2
  3. Ensure that each investigator maintains accurate and complete records in accordance with FDA regulations and reports the results to the appropriate parties. — 21 CFR 812.140; 21 CFR 812.150

- **Ensure Control and Representation of Investigational Device**
  1. Label the device in accordance with FDA requirements. — 21 CFR 812.5
  2. Ensure the minimum current good — 21 CFR 820

manufacturing practice of devices in compliance with 21 CFR 820, Quality System Regulation.

3. Promote the device in accordance with IRB and FDA requirements. — 21 CFR 812.7

- **Record Keeping and Documentation**
  1. Ensure that each investigator maintains accurate and complete records in accordance with FDA regulations and reports the results to the appropriate parties. — 21 CFR 812.140; 21 CFR 812.150
  2. Create an investigators agreement and obtain a signed copy from all participating clinical investigator(s), including complete and accurate records documenting the financial interests (FDA form 3454 or 3455). — 21 CFR 812.43; 21 CFR 54
  3. Ensure any electronic data and source documentation meets the same fundamental elements of data quality that are expected of paper records. — 21 CFR 11

10.3. Humanitarian Use Devices

Policy

Based on FDA regulatory requirements, it is the policy of the University of Illinois Rockford IRB to review and approve the use of Humanitarian Use Devices.

Procedures

Definitions

Humanitarian Use Device (HUD): A device that is intended to benefit patients by treating or diagnosing a disease or condition that affects fewer than 4,000 individuals in the United States per year.

Humanitarian Device Exemption (HDE): A Food & Drug Administration (FDA) approval for a physician to use an HUD in clinical treatment or in clinical investigation. An approved HDE authorizes marketing of an HUD.

IRB Review of HUD Use Within its Labeled Indication

For a HUD to be used in treatment, diagnosis, or research, the IRB and the FDA must approve it and a Humanitarian Device Exemption (HDE) must be issued by the FDA. While the effectiveness of the device does not have to be demonstrated, the IRB will consider the HDE brochure and the information provided about risks and benefits. The IRB approval must verify that the use of the HUD, as proposed, is consistent with current labeling of the device and does not exceed the scope of the FDA approved indication. The device's labeling must state that the device is a humanitarian use device and that, although the device is authorized by Federal Law, the effectiveness of the device for the specific indication has not been proven or demonstrated.

The initial review of a HUD is to be completed by a convened IRB. A separate application has been developed for HUD submissions and they include asking for the following information:

1. The generic and trade name of the device;
2. The FDA HDE number;
3. The date of HUD designation;
4. The indication(s) for use of the device;
5. A description of the device;
6. Contraindications, warnings, and precautions for use of the device;
7. Adverse effects of the device on health;
8. Alternative practices and procedures;
9. The HUD brochure;
10. Marketing history; and
11. A summary of studies using the device.

The investigator utilizing the HUD must use the HUD only in accordance with the labeling of the device, intended purpose, and in the designated population for which the FDA approved its use. If the investigator plans to collect data for a new use of the device, then the IDE regulations must be followed.

The IRB may approve use of the HUD without any further restrictions, or under a protocol, or on a case-by-case basis.

Informed Consent

The IRB requires that documented informed consent will be obtained from a patient prior to the use of a HUD. The consent is to describe the status of the device and the intended use. In addition, if an investigator proposes to collect prospective data when the device is used, this data collection should be addressed in the consent. The consent also needs to indicate that the effectiveness of the device for a specific indication has not been demonstrated. The document should not use the term "research" to refer to the use of the device. It is also suggested that the

investigator provide the HUD brochure (prepared by the manufacturer, if available) to the patient, and review it with the patient prior to use.

Continuing Review

Continuing IRB review is required and may occur using expedited procedures if the HUD is not being used in the course of a research study. At the time of continuing review, the investigator must report the HUD activities for the previous year.

Unanticipated Event Reporting

Adverse events and unanticipated problems that results from the use of a humanitarian device are subject to "Unanticipated Problem" reporting requirements (Section 5.4).

FDA regulations require that if a physician or health care provider receives or otherwise becomes aware of information, from any source, that reasonably suggests that a HUD has or may have caused or contributed to the death or serious injury of a patient, the physician or health care provider must report such findings to the FDA **as soon as possible, but no later than 10 business days** after the investigator first learns of the effect or problem. This reporting is in addition to, not a substitute for, FDA and/or manufacturer reporting requirements in accordance with 21 CFR 803.30.

Using HUD in Emergency Use Situations

If a physician in an emergency situation determines the use of a HUD outside of the approved indicated use represents an opportunity to prevent serious harm or death to a patient, a HUD may be used in accordance with the emergency exemption procedures (see emergency exemption policies). This use would need to be reported to the sponsor and the investigator is responsible for all reporting as consistent with emergency use procedures.

Using HUD When There Are No Alternatives in Non-Emergency Situations

If an investigator wants to use a HUD outside its approved indication(s), but it is not an emergency situation, the investigator should contact RSS for guidance. Investigators will likely need to submit the same information required for an emergency exemption and also will be required to contact the HDE holder prior to use.

10.4. Emergency Exemptions

Policy

Federal regulations recognize that, in a life threatening situation where standard treatment is unavailable, and treatment with an investigational product or procedure is thought to be in the

best interest of the subject, the ability to obtain full Institutional Review Board (IRB) approval may not be possible.

- The UIR IRB may agree that a situation represents an emergency exemption for the use of an unapproved drug, device, or procedure without full IRB approval in accordance with Food and Drug Administration (FDA) and the Department of Health and Human Services (DHHS) regulatory standards.
- FDA regulations (21 CFR 56.104(c)) contain a specific provision for this exemption from IRB review. DHHS regulations do not contain such a provision, but contain a section 45 CFR 46.116(f) that specifies that nothing in the DHHS regulations is intended to limit the authority of a physician to provide emergency care to the extent the physician is permitted to do so under applicable federal, state, and local law.

Procedures

Definitions

The term **life threatening** encompasses both "life threatening" and "severely debilitating."

Life threatening	A disease(s) or condition(s) where the likelihood of death is high unless the course of the disease is interrupted, and diseases or conditions with potentially fatal outcomes where the endpoint of a clinical trial is survival. The criteria for life threatening do not require the condition to be immediately life threatening or to immediately result in death. Rather, the situation is likely to be life threatening before review occurs at a fully convened IRB meeting.
Severely debilitating	A disease(s) or condition(s) that may cause serious irreversible damage before review occurs at a fully convened IRB meeting.

Criteria for Emergency Exemptions

In the interests of optimal patient care, a mechanism for the use of an emergency exemption process has been developed for situations where an individual patient:

- Presents with a life threatening condition; or
- A situation in which the health of an ill patient may be subject to severe debilitation by waiting for the next scheduled meeting; and

- There is no conventional or approved investigational intervention of proven clinical benefit; and
- The proposed treatment is believed to be in the best interests of the subject.

This process should not be construed as UIR IRB "approval," but rather an acknowledgement by the Committee that the proposed use of the investigational product or procedure meets the regulatory emergency criteria for allowing the procedure to 1) go forward without full IRB review and approval as an emergency exemption, and 2) fulfills the regulatory requirements for informed consent.

What is Required?

In these situations, investigators are asked to immediately contact the Research Support Services (RSS) Specialist or the IRB chair. When time permits, investigators will be asked to provide in advance:

- A brief summary of the clinical history of the patient
- The proposed therapy and rationale for therapy
- Copies of materials, protocols, and investigational brochures provided by the sponsor, if applicable
- Statement on the known risks and benefits
- A consent form with all of the required elements
- Information regarding the sponsor and FDA IND or IDE information, if applicable
- A statement of the reasons why the therapy cannot wait until the next scheduled IRB meeting.

If all of the above mentioned materials are submitted and reviewed, and a determination has been made that the situation fits the criteria for an emergency exemption, prior to use of the product or procedure, the above mentioned written materials meets the FDA requirements for submitting a report to the IRB within 5 business days.

In the unusual situation when there is no time to contact the RSS Specialist or the IRB chair prior to the emergent initiation of an investigational procedure or use of an investigational product, the investigator is required to submit the written documentation listed above regarding the emergency use within 5 business days after use of the article or procedure.

Obtaining an Emergency IND for Drugs and Biologics

The emergency use of an unapproved investigational drug or biologic requires an IND. If the intended subject does not meet the criteria of an existing study protocol, or if an approved study protocol does not exist, standard procedure is to contact the manufacturer to determine if the drug or biologic can be made available for the emergency use under the company's IND.

The need for an investigational drug or biologic may arise in an emergency situation that does not allow time for submission of an IND. In such cases, the FDA may authorize shipment of the test article in advance of the IND submission. Requests for such authorization may be made by telephone or other rapid means of communication.

Emergency Use of Unapproved Medical Devices

The FDA recognizes that emergencies arise in which an unapproved device may offer the only possible life-saving alternative, but an IDE for the device does not exist, or the proposed use is not approved under an existing IDE, or the physician or institution is not approved under the IDE. Using its enforcement discretion, the FDA does not object if a physician chooses to use an unapproved device in such an emergency, provided the physician later justifies to the FDA that an emergency actually existed.

Requirements for Emergency Use of an Investigational Device

All of the following conditions must exist to justify emergency use:

1. The patient is in a life threatening condition that needs immediate treatment;
2. No generally acceptable alternative for treating the patient is available; and
3. Because of the immediate need to use the device, there is not time to follow existing procedures to secure FDA approval for the use.

The FDA expects the physician to determine whether these criteria have been met, to assess the potential for benefits from the unapproved use of the device, and to have substantial reason to believe that benefits will exist. The physician is not to conclude that an "emergency" exists in advance of the time when treatment may be needed based solely on the expectation that IDE approval procedures may require more time than available. Physicians should note that the FDA expects them to exercise reasonable foresight with respect to potential emergencies, and to make appropriate arrangements under the IDE procedures far enough in advance to avoid creating a situation in which such arrangements are impracticable.

In the event a device is to be used in circumstances that meet the criteria listed above, the device developer is to notify the Center for Devices and Radiological Health (CDRH), Program Operation Staff, immediately after shipment is made.

The FDA expects the physician to follow as many subject protection procedures as possible. These include:

1. Obtaining an independent assessment by an uninvolved physician;
2. Obtaining informed consent from the patient or a legal representative;
3. Notifying institutional officials as specified by institutional polices;

4. Notifying the IRB; and
5. Obtaining authorization from the IDE holder, if an approved IDE for the device exists.

Informed Consent Requirements

A physician is required to obtain the informed consent of the patient, or a legally authorized representative, for the emergency use of an investigational product or procedure unless both the physician and a physician who is otherwise not involved in the care of the patient certify, in writing, that the emergency situation fulfills the following criteria:

1. The subject is confronted by a life threatening situation that necessitates the use of the investigational product or procedure.
2. Informed consent cannot be obtained because of an inability to communicate with or obtain legally effective consent from the subject, if over the age of 18, or parent/guardian if under the age of 18.
3. Time is not sufficient to obtain consent from the patient's legally authorized representative.
4. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the patient's life.

If, in the investigator's opinion, immediate use of the test article is required to preserve the subject's life, and if time is not sufficient to obtain an independent physician's determination that the four conditions above apply, the clinical investigator is to make the determination. The physician must then have his or her determination reviewed and evaluated, in writing, by a physician who is not participating in the clinical investigation. This evaluation is to be provided to the UIR IRB within five business days.

Emergency Exemption Review for Drugs and Devices

The request will be reviewed by the IRB chair and/or other Committee members. Concurrence of exemption from full IRB review will be acknowledged for one patient only. Subsequent requests for the same therapy must be submitted as a research protocol to the full IRB at a convened meeting. The FDA does acknowledge that if a second patient were to require the same therapy, it would be inappropriate to deny clinically appropriate emergency treatment to the second individual if the only obstacle is a lack of sufficient time for the IRB to convene a meeting to review the issue.

If an event that qualifies for an emergency exemption occurs on a weekend or in the evening or time is so short that it is not possible to submit the required materials prior to using the test articles or procedure, the investigator may proceed to administer and/or treat the subject. Immediately following the start of business hours, the investigator must notify the RSS or the Chair by phone, email, or in writing that the test article or therapy was initiated. The investigator then has five business days to submit the required written materials. The RSS Specialist will be

provided with the retrospective documentation to determine that the criteria for an emergency were met. The emergency exemption form will then be reviewed with the Chair and the acknowledgment of this review will be provided to the investigator.

After the Emergency Exemption

After the first emergency exemption is acknowledged, investigators are to weigh the probability that additional patients may require the same treatment. If this is likely, the investigator is to immediately submit a protocol to the full IRB for future use.

Data from a patient treated by emergency exemption may not be claimed or included as prospective research in accordance with DHHS regulations. However, if the individual received a test article under the jurisdiction of the FDA, it is considered research and the recipient of the test articles is a research participant. Data from this participant may be used by the FDA in support of a marketing application.

At the next convened IRB meeting, the Committee is to receive a copy of the full letter sent to the principal investigator that acknowledges the emergency exemption.