Subject: Investigational Devices

Definitions:
1. Food and Drug Administration (FDA): The FDA is the federal oversight agency responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation’s food supply, cosmetics, and products that emit radiation. The FDA is also responsible for advancing the public health by helping to speed innovations that make medicines and foods more effective, safer, and more affordable; and helping the public get the accurate, science-based information they need to use medicines and foods to improve their health.
2. Investigational Device: Any healthcare product that does not achieve its primary intended purposes by chemical action or by being metabolized. A medical device that is the subject of a clinical study designed to evaluate the effectiveness and/or safety of the device. Investigational use also includes clinical evaluation of certain modifications or new intended uses of legally marketed devices.
3. Investigational Device Exemption: A FDA approved investigational device exemption (IDE) permits a device that otherwise would be required to comply with a performance standard or to have pre-market approval to be shipped lawfully for the purpose of conducting investigations of that device.
4. Non-significant Risk (NSR) Device Study: A study of a device that does not meet the definition for a significant risk device and does not present a potential for serious risk to the health, safety, or welfare of participants.
5. Significant Risk (SR) Device Study: A study of a device that presents a potential for serious risk to the health, safety, or welfare of a participant and 1) is intended as an implant; 2) is used in supporting or sustaining human life; or otherwise prevents impairment of human health; 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 participant.
6. Treatment IDE: A mechanism through the FDA for providing eligible participants with investigational devices for the treatment of a serious or life-threatening illness for which there are no satisfactory alternatives.
7. Unanticipated Adverse Device Effect: any serious adverse effect on health or safety or any life-threatening problem or death caused by, or associated with, a device, if that effect, problem, or death was not previously identified in nature, severity, or degree of incidence in the investigational plan or application (including a supplementary plan or application), or any other unanticipated serious problem to participants or others associated with a device that relates to the rights, safety, or welfare of participants.

Policy:
It is the policy of the Human Research Protections Program (HRPP) that all investigational device use be reviewed and approved by the IRB in accordance with applicable laws and regulations.

A. Unless exempt by the IDE regulations, an investigational device must be categorized as either a Significant Risk (SR) device or a Non-Significant Risk (NSR) device. The initial
risk assessment is determined by the sponsor, but the IRB must make a formal
determination during a convened meeting regarding the appropriate SR/NSR category.
See Section III.B. below.

B. Research involving the use of a Significant Risk (SR) device must be conducted in
accordance with the full requirements of the FDA and must have an approved IDE from the
FDA.

C. Research involving the use of a Non-significant Risk (NSR) device must be conducted in
accordance with the "abbreviated" requirements of the FDA as described in the FDA
regulations 21 CFR Sec. 812.2(b). In some cases, the FDA may notify the sponsor that it
does not agree with the NSR determination and will require the submission of an IDE.

Abbreviated criteria are:
1. The device is not a banned device;
2. The sponsor labels the device in accordance with 21 CFR 812.5;
3. The sponsor obtains IRB approval of the investigation after presenting the
reviewing IRB with a brief explanation of why the device is not a significant risk
device, and maintains such approval;
4. The sponsor ensures that each investigator participating in an investigation of the
device obtains from each subject under the investigator's care, consent under 21
CFR 50 and documents it, unless documentation is waived;
5. The sponsor complies with the requirements of 21 CFR 812.46 with respect to
monitoring investigations;
6. The sponsor maintains the records required under 21 CFR 812.140(b)(4) and (5)
and makes the reports required under 21 CFR 812.150(b)(1) through (3) and (5)
through (10);
7. The sponsor ensures that participating investigators maintain the records
required by 21 CFR 812.140(a)(3)(i) and make the reports required under
812.50(a)(1), (2), (5), and (7); and
8. The sponsor complies with the prohibitions in 21 CFR 812.7 against promotion
and other practices.

II. Exemptions from IDE requirements.
A. A device can be exempt from the IDE requirements. A claim that the device is exempt
must reference one of the seven exemption categories:
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 into commercial distribution
on or after May 28, 1976, that 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
809.10(c) and if the testing:
   (i) Is noninvasive,
   (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 812.5(c).
7. A custom device as defined in 812.3(b), unless the device is being used to determine safety or effectiveness for commercial distribution.

B. It is the sponsor’s responsibility to provide sufficient justification to support the exemption category being claimed.
C. An exemption from the IDE requirement is not an exemption from the requirement for prospective IRB review or informed consent.

III. IRB Approval of the Use of an Investigational Device.

A. Where a protocol is subject to review under more than one department or agency’s regulations, the requirements of each set of regulations must be met. This situation may arise, for example, with IDEs where both the FDA and HHS have jurisdiction over the research. The use of an investigational significant risk device requires an FDA investigational device exemption (IDE).

B. If a risk determination has not been made by the FDA and the sponsor determines the device is non-significant risk, the IRB must determine whether it is in agreement with the rendering of the decision by the sponsor. If the IRB is in agreement with the sponsor’s determination of NSR, the IDE is in effect. However, the sponsor must be notified if the IRB disagrees with the sponsor’s NSR determination.

C. The IRB may approve or disapprove the proposed research based on local context and its responsibilities to protect human subjects in research even when approval of the device has been granted by the FDA.

D. The Investigator is responsible for the tracking and oversight of FDA-regulated devices in research and must meet the following requirements in order to use an investigational device in research conducted under the jurisdiction of the IRB:
   1. The investigational device must be used only by the Investigator or under his/her direct supervision;
   2. The investigational device must be used only as approved by the FDA and as described in the currently approved IRB documents;
   3. The Investigator must not supply the investigational device to any persons not authorized under the IDE; and
   4. Informed consent from the participant or the participant’s legally authorized representative must be prospectively obtained, unless waived by the IRB.

E. Research with the use of an investigational device must be conducted under all HRPP applicable policies and procedures.

IV. Advertising or Recruitment for Studies That Involve an IDE. (See HRPP Policy X.G on Recruitment and Advertising).

A. Advertisements or recruiting tools must not include the term “new treatment”, without explaining that the IDE is “investigational, meaning non-FDA approved”. A phrase such as “receive new treatment” implies that all study subjects will be receiving newly marketed products of proven worth. It is not a treatment since its effectiveness has not been proven or established. The term “new” is misleading as it gives the participant hope of a new intervention when the outcome is unknown. This could be viewed as coercive; and

B. Advertisements or recruiting tools must not include the promise of “free medical treatment” when the intent is only to say that participants will not be charged for taking part in the investigation or experimental intervention (e.g. device). The use of the word “free” could be viewed as coercive as it may entice someone to participate in a study for the perceived benefits.

V. Informed Consent in Research That Involves an IDE.

A. Informed consent must meet the requirements outlined in the IRB Informed Consent policies and procedures (See HRPP Policy IV.A);
B. No claims are to be made which state or imply, directly or indirectly, that the IDE is safe or effective for the purposes under investigation or that the device is in any way superior to any other device;

C. The informed consent document must contain a statement that the IDE is “investigational, meaning non-FDA approved”, or approved for another indication and “investigational in this study”;

D. The informed consent document must contain a statement that the FDA may have access to the participant’s medical records as they pertain to the study; and

E. The Investigator must ensure that throughout the consenting process and study participation the participant understands that the IDE is experimental, and that its benefits for the condition under study are unproven.

VI. Additional Reporting Requirements.

A. Devices may have an unanticipated adverse device effect to participants or others. An investigator must submit to the sponsor and to the IRB a report of any unanticipated adverse device effect to participants or others occurring during an investigation as soon as possible, but in no event later than 7 calendar days after the investigator first learns of the effect. Should the IRB determine that the new information gained in the adverse effect report changes its risk assessment, the IRB has the ability to reconsider its prior NSR decision and ask for FDA review.

B. A sponsor must immediately conduct an evaluation of any unanticipated adverse device effect to participants or others.
   1. A sponsor who determines that an unanticipated adverse device effect presents an unreasonable risk to subjects must terminate or suspend all investigations or parts of investigations presenting that risk as soon as possible. Termination or suspension must occur no later than 5 working days after the sponsor makes this determination and no later than 15 working days after the sponsor first received notice of the effect.
   2. If the device is a significant risk device, a sponsor may not resume a terminated or suspended investigation without IRB and FDA approval. If the device is not a significant risk device, a sponsor may not resume a terminated or suspended investigation without IRB approval and, if the investigation was terminated or suspended for an unanticipated adverse device effect that presented an unreasonable risk to participants or others, FDA approval.

C. Within 3 months after termination or completion of the investigation or the Investigator’s part of the investigation, the Investigator must submit a final report to the sponsor and the IRB.

References:
21 CFR 812
21 CFR 50 and 56
45 CFR 46