

<b>University of Kentucky Office of Research Integrity and Institutional Review Board Standard Operating Procedures</b>			
<b>Revision # 8</b>	<b>TITLE: Emergency Use: Single Subject</b>		<b>Page 1 of 4</b>
Approved By: ORI Director	Signature	Date	Date First Effective: 07-24-06
Approved By: Nonmedical IRB Chair	Signature	Date	
Approved By: Medical IRB Chair	Signature	Date	Revision Date: 05-09-19

## **OBJECTIVE**

To describe the procedure for the emergency use of a Food and Drug Administration (FDA) regulated investigational drug, biologic, or device in a single subject

## **GENERAL DESCRIPTION**

The need for an investigational drug, biologic, or device may arise in an emergency situation that does not allow time for submission of an investigational new drug (IND) application or investigational device exemption (IDE) in accordance with federal regulations. FDA provides guidance for clinicians or investigators regarding an Emergency Use IND or IDE.

Although the FDA may exempt the requirement for prior review and approval by the IRB in emergency use cases [21 CFR 56.104(c)], University of Kentucky (UK) Institutional Review Board (IRB) policy requires review and confirmation that use of the article meets FDA criteria by the IRB Chair, Vice Chair, or physician member in these situations. In accord with FDA regulations, investigators who administer an investigational treatment, in an emergency situation, without IRB approval, must submit a report of the use to the IRB within five (5) working days.

In addition, any subsequent use of the test article in another subject must first receive full IRB review. The FDA acknowledges, however, that it would be inappropriate to deny emergency treatment to a second individual if the only obstacle is that the IRB has not had sufficient time to convene a meeting to review the issue.

In activities regulated by 45 CFR 46, an investigator may not use data related to emergency care (i.e., single patient administration) as a prospectively planned systematic investigation designed to contribute to generalizable knowledge. Investigators may not aggregate such data with research data, even if the emergency protocol is identical to that of a research protocol subsequently approved by the IRB, nor may the investigator include the outcome of such care in any report of a research activity.

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If the activity involves emergency use of an FDA regulated test article in a life-threatening situation, the activity is research under FDA regulations, and the patient is a subject under FDA regulations. The FDA may require data from an emergency use of a test article in a life-threatening situation to be reported in a marketing application.

If use is for a life-threatening or serious disease but time is sufficient to obtain IRB approval, follow procedures in the Expanded Access Program (EAP) for Drugs SOP or the Compassionate Use or Treatment IDE section of the Medical Device SOP.

### *Definitions*

*Emergency Use* is defined as the use of a test article (e.g., investigational drug, biologic, or device) in a human subject in a life-threatening situation in which no standard acceptable treatment is available and in which there is not sufficient time to obtain IRB approval.

*Life-threatening*, for the purposes of 21 CFR 56.102(d), includes the scope of both life-threatening and severely debilitating, as defined below.

- *Life-threatening* means diseases or conditions where the likelihood of death is high unless the course of the disease is interrupted. Life-threatening situations include diseases or conditions with potentially fatal outcomes, where the end point of clinical trial analysis 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 subject must be in a life-threatening situation requiring intervention before review at a convened meeting of the IRB is feasible.
- *Severely debilitating* means diseases or conditions that cause major irreversible morbidity. Examples of severely debilitating conditions include blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis, or stroke.

### **RESPONSIBILITY**

Execution of SOP: Office of Research Integrity (ORI) Staff, IRB, IRB Chair, IRB Vice Chair, Physician IRB Member, Principal Investigator (PI)/Study Personnel

### **PROCEDURES**

1. Before administering the test article, the PI submits the following information directly to the IRB Chair for review and confirmation for emergency use of a test article in a single subject:
  - Written memorandum, email, or telephone call summary of explanation that justifies administration of the test article (e.g., life-threatening situation, no standard acceptable treatment available, and not sufficient time to obtain IRB approval);
  - Copy of the informed consent form; and

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- Completed IRB application, if possible, but the IRB Chair may accept a post administration application. The PI must include the words "EMERGENCY USE" and the name of the test article in the title.
2. However, if the immediate use of the test article is, in the healthcare provider's opinion, required to preserve the life of the patient and time is not sufficient to obtain assessment by the IRB chair or designee, the PI submits a report in writing within five (5) working days following the emergency use as described below.
  3. If the PI proposes to administer the test article in an emergency use situation without informed consent, the request to the IRB Chair should include a statement certifying in writing that all of the conditions listed in 21 CFR 50.23 are met. These conditions are as follows:
    - The subject is confronted by a life-threatening situation necessitating the use of the test article;
    - Informed consent cannot be obtained because of an inability to communicate with or obtain legally effective consent from the subject;
    - Time is insufficient to obtain consent from the subject's legal representative; and
    - There is no alternative method of approved or generally recognized therapy available that will provide an equal or greater likelihood of saving the subject's life.

If possible, this statement should include an evaluation by a physician who is not participating in the clinical investigation. However, if the immediate use of the test article without informed consent is, in the investigator's opinion, required to preserve the life of the subject and time is not sufficient to obtain the independent determination by a nonparticipating physician, the independent evaluation must be included in writing in the five (5) working days report described below.
  4. If the IRB Chair is not available, the PI should submit the information listed in item 1 and, if applicable, item 2 to the ORI.
  5. In the event a PI submits an emergency use request to the ORI, ORI staff forward the materials to the IRB Chair, Vice Chair, or physician member, as available.
  6. If time is not sufficient to obtain approval by the convened IRB, the IRB Chair, Vice Chair, or physician member assesses the request to determine whether it meets the regulatory requirements for emergency use and responds to the PI in writing. The IRB Chair, Vice Chair, or physician member may determine that the PI can proceed or may withhold confirmation. (See Emergency Use Checklist: Guidance for IRB Chair, Vice Chair, or Physician Member.)

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7. The IRB Chair, Vice Chair, or physician member forwards the request and his/her response to the ORI and ORI staff process the request.
8. Within five (5) working days of the emergency use, the PI must submit a report to the IRB regarding the emergency use of the test article. That report is to include:
  - A brief description of the life-threatening situation;
  - Justification for use of the test article;
  - Signed consent form or justification for administration without informed consent;
  - Statement of review and evaluation of the situation by a physician who is not participating in the clinical investigation (if administered without informed consent); and
  - A description of the outcome of administration.
9. At a convened IRB meeting, ORI staff inform the IRB that the IRB Chair, Vice Chair, or physician member assessed a request for emergency use using the regulatory definition, and the committee verifies the following criteria to approve the emergency use:
  - The subject was confronted by a life-threatening situation necessitating the use of the investigational drug, biologic, or device;
  - No alternative method of approved or generally recognized therapy was available that provided an equal or greater likelihood of saving the subject's life; and
  - Time was not sufficient to obtain IRB approval.
10. If an investigator fails to submit a request involving emergency use of an investigational test article to the IRB for review and confirmation prior to initiation, the IRB retrospectively reviews the situation to determine if the test article administration met the regulatory definition and whether failure to comply with this SOP meets the IRB definition of noncompliance. (See the Noncompliance SOP.)

#### **REFERENCES**

21 CFR 56.102(d)  
 21 CFR 56.104(c)  
 21 CFR 50.23