WAYNE STATE UNIVERSITY

HIC Policy/Procedure

Wayne State University Human Investigation Committee	
Subject:	Emergency Single Time Use of a Test Article (Drug, Biologic, Device)
Section:	
Form Date:	11/06
Approvals	Office of the General Counsel 12/06/06, Steering Committee 1/17/07, Administrative Approval 03/19/07

Background

An exemption under Food & Drug Administration (FDA) regulations at 21 CFR 56.104(c) allows for the emergency use of an investigational drug, device, or biologic on a one-time basis per institution without Institutional Review Board (IRB) review and approval when all of the following conditions are met:

- A subject (participant) is in a life-threatening situation
- No standard acceptable treatment is available
- There is insufficient time to obtain IRB approval
- The emergency use is reported to the Wayne State University (WSU) Human Investigation Committee (HIC) within five (5) working days. (This is not to be construed as an IRB approval for the emergency use).
- The Principal Investigator (PI) obtains informed consent from the participant or legally authorized representative for such emergency use, except when there are circumstances that prevent obtaining consent.

Nothing in this HIC policy and procedure or in the Federal Regulations intends to place a limit on the authority of the physician to provide emergency care to the extent the physician is permitted to do so under applicable federal, state, or local law.

Health and Humans Service (HHS) regulations do not permit the commencement of research activities, even in an emergency, without prior IRB review and approval. However, when requesting a single time emergency use of a test article, IRB approval is not obtained. Therefore, when emergency medical care is initiated without prior IRB review and approval, the patient may not be considered a participant in the HHS supported research. The emergency care cannot be claimed as research nor can any of the data regarding such care be included in any report of a prospectively HHS supported research, except where required by FDA regulations, even if the emergency protocol is identical to that of a research protocol subsequently approved by the IRB.

Any subsequent use of the test article will require full board approval.

Scope

This policy/procedure **applies only** to single time emergency use of FDA regulated test articles without IRB review and approval and with or without informed consent. This policy/procedure **does not apply** when using an **approved** agent/device for a non-marketed (off-label) purpose when the goal is medical treatment or "compassionate use" for drugs or devices. (See HIC Policy/Procedures "Planned Emergency Research", "Investigational Drug Research" and "Approved and Unapproved Devices in Research")

Definitions

Emergency Use of a Test Article –The use of a test article (unapproved drug, device or biologic) on a human participant 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. [21 CFR 56.102(d)

Life-Threatening -- This includes both life-threatening and severely debilitating conditions, according to 21 CFR 56.102(d):

1. Life-threatening means a high likelihood of death unless the course of the patient/participant's condition is interrupted. It includes diseases or conditions with potentially fatal outcomes, where the end point of trial analysis is survival. Immediacy of death is not required. The participants must be in a life-threatening situation requiring intervention before IRB review at a convened meeting is feasible.
2. Severely debilitating means diseases or conditions that cause major irreversible morbidity such as blindness, loss of an extremity, loss of hearing, paralysis or stroke.

HIC Policy

There are several steps that must be completed for emergency single time use of a test article.

Emergency IND for Drugs and Biologics

The emergency use of an unapproved investigational drug or biologic requires an Investigational New Drug Exemption (IND) from the FDA. If the intended patient/participant does not meet the criteria for an existing study protocol, or an approved study protocol does not exist, the usual procedure is to contact the manufacturer and determine if the drug or biologic can be made available for the emergency use under the company's IND.

However, if there is not enough time for a submission of an IND, the sponsor should be consulted to verify that an IND exists. If no IND exists, a request must be made to the FDA to authorize shipment of the drug for emergency use in advance of the IND submission. These requests may be made by phone or other communication means (21 CFR 312.36). The phone numbers at the FDA are: 1) for biologicals-301-827-2000; 2) for all other drug products-301-827-4570; and 3) for nights and weekends-301-443-1240.

Emergency Investigational Device Exemption (IDE) for devices

An IDE is required for the single time emergency use of an unapproved device. The PI should contact the sponsor to determine applicability. Where an IDE for the device does not exist, and a physician wants to use a device in a way not approved under an existing IDE, or the physician is not an investigator under the existing IDE, the device may be used with the prior approval of the FDA. Follow-up reports must be

provided to the FDA that justify the emergency use of the device. Phone numbers for the FDA IDE questions are: 1) 301-594-1190; and 2) for nights and weekends-301-443-1240.

If there is not sufficient time to obtain FDA approval, the device may be used with the following protections in place:

1. Informed consent of the participant;
2. Clearance from the institution;
3. Concurrence of the HIC Chair;
4. Independent assessment of an uninvolved physician;
5. Authorization from the IDE sponsor (if an IDE exists).

IRB Notification for any Test Article

The WSU HIC requires notification prior to the single time emergency use of a test article. This notification should not be considered an IRB approval. If the HIC is closed and the patient's condition requires immediate action, the investigator and a physician who is not otherwise participating in the single time use of the test article, must certify in writing that all of the criteria for single time emergency use have been met (in accordance with 21 CFR 56.104(c) as listed above). Notification is used to track the use in order to ensure that the PI submits a report within the five day time-frame required by 21 CFR 56.104(c).

Informed Consent for Any Test Article

In an emergency use situation, the PI is required to obtain informed consent of the participant or the Legally Authorized Representative (LAR) unless both the PI and a physician who is not otherwise participating in the clinical investigation certify all of the following in writing:

1. The prospective participant is confronted by a life-threatening situation where the use of the test article is necessary;
2. Informed consent cannot be obtained because of an inability to communicate with, or obtain legally effective consent from the participant;
3. Time is not sufficient to obtain consent from the participant's legally authorized representative; and
4. No alternative method of approved or generally recognized therapy is available that provides an equal or greater likelihood of saving the prospective participant's life.

If immediate use of the test article is required to preserve life and there is insufficient time to obtain an independent physician's determination that the four conditions above apply, the PI should make the determination and within 5 working days after use of the test article, have the use reviewed and evaluated in writing by a physician who is not participating in the clinical investigation. The PI must notify the IRB within 5 working days after the use of the test article [21 CFR 50.23 (c)]. All documents will be maintained in the record. (HIC Policy and Procedure: "Document Retention of Research Protocols")

HIC Procedures

If full IRB approval cannot be obtained and use of the investigational drug, biologic or device meets the criteria for emergency use the following steps must be completed prior to the use:

1. The HIC should be notified prior to the single time emergency use. This is usually accomplished by a phone call and submission of the Single Time Emergency Use Form.

2. Unless the HIC is closed, verbal or written approval from one of the following must be obtained prior to use:
    a. The HIC Chair or Vice-Chair,
    b. Chairs of one of the Medical IRB Committees with appropriate clinical expertise, or
    c. Vice Chairs of one of the Medical IRB Committees with appropriate clinical expertise.

2. If the HIC is closed and the test article must be administered immediately both the investigator and a physician who is not otherwise participating in the single time use of the test article must certify in writing that all of the criteria for single time emergency use have been met.

3. A completed "Single Time Emergency Use of a Test Article" form, a copy of the informed consent or a written justification that informed consent could not be obtained, and any available documentation from the sponsor should be submitted within five (5) days working days to the HIC.

When a test article is used in a life-threatening situation without prior IRB review or review by the IRB Chair or designee, all documentation must be reviewed by the IRB Chair to determine/verify that the circumstances of the emergency use followed FDA regulations.

Any subsequent use of the test article will require submission of a research protocol for full board review and approval. See HIC Policy and Procedure: "Initial Protocol Submission Requirements".