From: OC GCP Questions
To: [redacted]
Cc: Brown, Sheila (OGCP);
Subject: FW: 21 CFR 50, 56 vs 45 CFR 46
Date: Friday, May 08, 2015 2:02:00 PM

Dear [redacted] -

Thank you for your additional question to the mailbox. We were also notified by Julia Gorey of OHRP that you have a general IRB question and Julia forwarded your email to us. We are happy to assist in any way that we can.

FDA's Office of Good Clinical Practice (OGCP) is the focal point within FDA for Good Clinical Practice (GCP) and Human Subject Protection (HSP) issues arising in human research trials regulated by FDA. You can find more information about our group at http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/ucm134476.htm. We suggest that you send future GCP and HSP questions to our central mailbox at gcp.questions@fda.hhs.gov and we will respond, or suggest the appropriate group at FDA to contact.

As Doreen mentioned in her reply to your original device-specific question, it is best to consult CDRH with device-specific study questions at DICE@fda.hhs.gov as our OGCP office does not handle product specific questions, but we are happy to direct you to the appropriate Center resource, such as DICE, when needed. We appreciate the opportunity to help with your more general IRB and informed consent questions.

Your general question asks, "*I would simply like to know if a study that meets the definition of a clinical investigation of a device, but fits the criteria for exemption from IDE requirements (under the provisions of 21 CFR 812.2 (c)), still requires review under 21 CFR 50, 56. It is not clear if the exemption in 812.2 (c) is intended to apply only to the need for an IDE, or if it also applies to the need for IRB review under 21 CFR 50, 56. Put another way does 21 CFR 50, 56 apply only to clinical investigations of devices that are not exempt from IDE requirements or does 21 CFR 50, 56 apply as well to a clinical investigation of device that is exempt from IDE requirements?*"

The answer to your question is yes; even if a clinical investigation is determined to be exempt from needing an IDE, but is collecting data to support a clinical investigation or a marketing application, then that study must still comply with the requirements for informed consent (part 50) and IRB review (part 56). In other words, per 812.2(c), the study is exempt from needing an IDE, but is NOT exempt from informed consent and IRB requirements.

FDA has guidance titled "*Information Sheet Guidance for IRBs, Clinical Investigators, and Sponsors – Frequently Asked Questions About Medical Devices*" found at http://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM127067.pdf. Question #12 addresses what type of device studies the IDE regulations cover. Question #13 of this guidance addresses whether IDE exempt studies are subject to the requirements for informed consent and IRB review and approval under parts 50 and 56. Question #13 reads:

> ***13. Are IDE exempt studies subject to the requirements for informed consent and IRB review and approval under Parts 50 and 56?***
>
> *If an exempt study is being conducted to collect data to support either a clinical investigation or a marketing application, then the study must comply with 21 CFR Part 50 and should comply with 21 CFR Part 56. 21 CFR 50.1(a), 21 CFR 50.20, 21 CFR 56.101(a), 21 CFR 56.103.*

I also wanted to mention for future reference that for drug studies, the exemptions for needing an IND are found at 21 CFR 312.2. You will see that the drug regulations at 312.2(b)(iv) address the requirement for informed consent (part 50) and IRB (part 56) for a clinical investigation that is determined to be exempt from needing an IND.

Lastly, we have been made aware that today you also contacted Dr. Skip Nelson at FDA with 3 specific questions. We initially thought we would coordinate a single response but decided that we would send you a response to your general question (above) today so that you have a timely response.

I will be out of the office next week, but my colleague, Sheila Brown, will coordinate responding to those 3 questions you sent to Dr. Nelson and will reply directly to you. Since Sheila will likely need to consult others in CDRH on these 3 questions, she will respond back to you as soon as she is able.

I hope this information is useful. If you need further information and/or have additional questions, please feel free to contact us

once again at the official GCP mailbox, gcp.questions@fda.hhs.gov. You may also find it useful to access the set of redacted GCP e-mails found at http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/RepliestoInquiriestoFDAonGoodClinicalPractice/default.htm since we find that many questions and concerns are repeated over time.

Best Regards,

Janet

Janet Donnelly, RAC, CIP
Policy Analyst, Office of Good Clinical Practice
Office of the Commissioner, Food and Drug Administration

This communication does not constitute a written advisory opinion under 21 CFR 10.85, but rather is an informal communication under 21 CFR 10.85(k) which represents the best judgment of the employee providing it. This information does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate or commit the agency to the views expressed.

From: [redacted]
Sent: Thursday, May 07, 2015 1:35 PM
To: OC GCP Questions
Subject: RE: 21 CFR 50, 56 vs 45 CFR 46

Doreen,

Thank you for your prompt reply. Unfortunately I have had less luck with CDRH in getting a response from someone who is knowledgeable about when IRB review under 21 CFR 50/56 is required.

If I may put my question in a more general frame perhaps it is a question you could answer. I would simply like to know if a study that meets the definition of a clinical investigation of a device, but fits the criteria for exemption from IDE requirements (under the provisions of 21 CFR 812.2 (c)), still requires review under 21 CFR 50, 56. It is not clear if the exemption in 812.2 (c) is intended to apply only to the need for an IDE, or if it also applies to the need for IRB review under 21 CFR 50, 56. Put another way does 21 CFR 50, 56 apply only to clinical investigations of devices that are not exempt from IDE requirements or does 21 CFR 50, 56 apply as well to a clinical investigation of device that is exempt from IDE requirements?

If you don't feel comfortable addressing this more general question do you have a specific recommendation for someone at in CDRH or FDA in general who is quite knowledgeable about 21 CFR 50, 56 overall?

Thanks very much,

[redacted]

From: OC GCP Questions [mailto:gcp.questions@fda.hhs.gov]
Sent: Thursday, May 07, 2015 11:13 AM
To: [redacted]
Subject: 21 CFR 50, 56 vs 45 CFR 46

Good morning –

You will need to contact the Center for Devices (CDRH) to determine if the study you describe requires an IDE. Their email address is DICE@fda.hhs.gov. Also you might want to contact the Office for Human Research Protections' website below as they follow 45 CFR 46.

Office for Human Research Protections (OHRP) | HHS.gov

I hope this information is helpful.

Kind regards,

Doreen M. Kezer, MSN
Senior Health Policy Analyst
Office of Good Clinical Practice
Office of the Commissioner, FDA

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From [redacted]
Sent: Thursday, May 07, 2015 7:22 AM
To: OC GCP Questions
Subject: 21 CFR 50, 56 vs 45 CFR 46

A respected person in the IRB world suggested that you are a most helpful and responsive resource at FDA.

We are trying to determine whether a study should be reviewed under 21 CFR 50, 56 or under 45 CFR 46.

The study compares a group that receives [Redacted] interventions with a control group that receives only [Redacted].

[redacted]

[redacted]

Our questions

1) Would FDA consider this to be a clinical investigation of a device to determine safety and effectiveness (21 CFR 812.2(a))?

2) If so, would it qualify as an "Exempted investigation" under the provisions of 21 CFR 812.2 (c), since Class I devices don't have labeling requirements?

3) If FDA would consider this to be an exempted investigation of a device would review under 21 CFR 50, 56 be required, rather than review under 45 CFR 46?

Thanks very much for your consideration of these questions. [Redacted]

Sincerely,

[redacted]