

SOP - Emergency Use

Version #: 008	Effective Date: 7/14/22	Supersedes Document: 007
This Policy Pertains to: Emergency Use		
Responsibility for executing this policy: Director, Assistant Director and COMIRB Chairs		
Last Reviewed on: 7/6/2022	Result: Updated	
Approval Authority: Director		
Approved by: <u>John Heldens</u>	Date: <u>7/14/22</u>	

1. PURPOSE

To delineate steps required for permitting and reporting emergency use of an unapproved investigational drug, biologic or medical device.

2. POLICY

Emergency use of an unapproved investigational drug or biologic requires an emergency IND from the FDA, or authorization for shipment from the FDA if there is not time for an IND submission, and must be reported to the IRB within 5 working days of use.

Emergency use of an investigational device should only take place under an existing IDE, and must be reported to COMIRB within 5 working days.

(COMIRB Policies and Procedures for the Protection of Human Subjects, 22.7 Emergency Use).

3. DEFINITIONS

3.1.1 Emergency Use: the use of an unapproved investigational drug, biologic or medical device for the treatment of a patient with a life threatening or severely debilitating condition.

3.1.2 Life Threatening: disease or condition where the likelihood of death is high unless the course of disease is interrupted, and 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 subject must be in a life-threatening situation requiring intervention before review at a convened meeting of the IRB is feasible.

3.1.3 Severely Debilitating: disease or condition that causes major irreversible morbidity (e.g., blindness, loss of arm, leg, hand or foot, loss of hearing, paralysis or stroke).

3.1.4 Institution: The University of Colorado Denver | Anschutz Medical Campus, and each of its affiliates are considered to be separate institutions.

3.1.5 COMIRB Management: The COMIRB Director, Assistant Director, or IRB Manager.

4. SPECIFIC PROCEDURES

4.1 Initial Queries

4.1.1 All questions for possible emergency use should be forwarded to the Director, Assistant Director or IRB Managers.

4.1.2 COMIRB leadership will notify physicians of the requirement for an Emergency IND, or Emergency IDE, direct them to contact the FDA to obtain an Emergency IND, and to notify COMIRB within 5 days of the use of the test article.

4.2 Written Notification to COMIRB

4.2.1 Physicians are required to provide the following to COMIRB within 5 working days of emergency use of an unapproved investigational drug, biologic or medical device:

- Emergency IND approval from the FDA (for drugs and biologics)
- Emergency IDE approval from the FDA (for devices)
- FDA Form 3926 (if used)
- Protocol (if any)
- Documentation of emergency use waiver of consent if applicable
- Investigator's Brochure (if any)
- Consent form. If it was not possible to obtain consent from the patient or legally authorized representative, the treating physician and an independent physician not otherwise involved in the case should also certify in writing to all of the following:
 - The human subject was confronted by a life-threatening situation necessitating the use of the test article.
 - Informed consent could not be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject.
 - Time was not sufficient to obtain consent from the subject's legal representative.
 - There was available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject.
 - Evidence that an independent physician

4.2.2 COMIRB Management will upload these documents to the submission record.

4.2.3 If the manufacturer requires a letter from the IRB prior to shipment, an acknowledgement will be sent by COMIRB management by email or letter (Emergency Use Request Acknowledgement). A copy of the acknowledgement will be added to the submission record.

4.2.3 Emergency use notifications will be directed to an IRB Chair. If the Emergency Use is for a pediatric patient, the notification will be directed to a Chair for an IRB that reviews pediatric research.

4.2.4 The IRB Chair will review the notification using an Emergency Use Checklist, CF-056.

4.2.5 The notification to the IRB will be acknowledged by email or letter (Emergency Use Acknowledgement). A copy of the acknowledgement will be added to the submission record.

4.2.6 For any request or report received within 5 days of the emergency use, after the report is acknowledged by the IRB Chair, the determination status of the submission record in the IRB electronic system will be changed to "Closed."

4.3 COMIRB Records, Tracking and Reporting

4.3.1 Emergency use documents are stored in the IRB electronic system.

4.3.2 COMIRB Management will create a submission record in the IRB electronic system for the emergency use, and upload all related documents (e.g., those documents listed above as well as official letters or emails between COMIRB and the PI). The involved physician will be named in the PI field. The following naming conventions will be used for the submission title: "eIND #[IND Number] - [Drug]," or "eIDE #[IDE number] - [Device]."

4.3.3 A report of Emergency Uses is available through the IRB electronic system.

4.3.4 COMIRB Management will follow-up with physicians monthly for any intended uses that were not formally reported within 5 days. Specifically, COMIRB Management will review the IRB electronic system for emergency use submissions that were created but not yet "Closed."

4.4 Subsequent emergency uses

4.4.1 If the FDA issues subsequent Emergency INDs for the same drugs or biologics at the same institution, the emergency use is allowed under the same process described above.

4.4.2 If the FDA refuses to issue additional emergency use INDs at the same institution, the physician will be obligated to pursue different strategies to use the test article (e.g., single patient IND, intermediate size IND, etc.).

4.5 Full Board Reviews

4.5.1 Reports of Unanticipated Problems or potential Serious or Continuing Noncompliance involving the emergency use are required to be reported to COMIRB and reviewed in accordance with COMIRB Policies and Procedures, sections 19 and 20.

4.5.2 Emergency Use of an unapproved investigational drug or biologic without an Emergency Use IND or authorization to ship from the FDA shall be reported to the IRB as potential serious noncompliance.

4.5.3 Failure to report Emergency Use of an unapproved investigational drug, biologic or medical device to COMIRB within 5 business days shall be reported to the IRB as potential serious noncompliance.

5. RESPONSIBILITY

The COMIRB Director is responsible for implementing this SOP.

5.1 APPLICABLE REGULATIONS AND GUIDELINES

- 21 CFR 50.23
- 21 CFR 56.102(d)
- 21 CFR 56.104(c)
- 21 CFR 312.36
- FDA Information Sheets “Emergency Use of an Investigational Drug or Biologic”
- FDA Information Sheet: “Individual Patient Expanded Access Applications: Form FDA 3926”
- FDA Web Page: “For Physicians: How to Request Single Patient Expanded Access (“Compassionate Use”)”
- FDA Information Sheets “Expanded Access for Medical Devices”
- FDA Information Sheet Guidance For IRBs, Clinical Investigators, and Sponsors Frequently Asked Questions About Medical Devices”

6.1 ATTACHMENTS

- CF-049 Emergency Use of Investigational Drug / Device Request Form, Form
- CF-056 Emergency Use Chair Checklist, Form
- CF-055a Emergency Use Letter Template – Pre-Shipment
- CF-055b Emergency Use Letter Template (1st use)
- CF-055-2 Emergency Use Warning Letter (2nd use)
- CF-055-3 Emergency Use Letter Template (3rd or subsequent use)
- CG-21 Emergency Use of an Investigational Drug Guidance for Investigators

PROCEDURES EMPLOYED TO IMPLEMENT THIS POLICY

Who	Task
Director	Provide instruction to physicians, COMIRB staff and Chairs on compliance with FDA regulations and guidance on emergency use, and COMIRB policies and procedures. Collect all necessary records to document compliance. Reviews notification, completes checklist, signs letter
Assistant Director	
IRB Managers	
Chair	