ELEMENT I.7.B. The organization has and follows written policies and procedures to ensure that the handling of investigational or unlicensed test articles conforms to legal and regulatory requirements.

COMMENTARY

This Element applies only to an organization that conducts research with investigational or unlicensed test drugs or devices or an independent IRB or EC that reviews a researcher's plan to control test articles.

An organization should describe the process for handling investigational or unlicensed test articles so that they are used only in approved protocols and under the direction of approved researchers. Possible methods organizations can use to control investigational drugs and devices are:

Protocol-by-protocol review and approval of the researcher's plan to control test articles along with training or evaluation of researchers on knowledge and compliance with the plan. Organizational control of test articles. For example, organizations can control investigational drugs by having a pharmacy store them and dispense them only under the prescription of an approved researcher.

Procedures for the control of investigational drugs and devices should apply to all settings in which the organization uses investigational drugs and devices, such as inpatient, outpatient, on-site, and off-site settings.

See AAHRPP Tip Sheet 11

REGULATORY AND GUIDANCE REFERENCES

- **FDA**: 21 CFR 312.61, 21 CFR 312.62, 21 CFR 312.69, 21 CFR 812.100, 21 CFR 812.110, 21 CFR 812.140(a)
- **VA**: Handbook 1108.04
- **ICH-GCP**: 2.12, 2.13, 4.6.1, 4.6.2 – 4.6.4

REQUIRED WRITTEN MATERIALS

(1) Essential requirements:

(a) Policies and procedures describe the control of investigational drugs.

(b) Policies and procedures describe the control of investigational devices.

(2) When following the ICH-GCP (E6) guideline:

(a) Policies and procedures include:

(i) A description of the manufacturing, handling, and storage in accordance with applicable good manufacturing practice.

(ii) Where allowed or required, the researcher or organization assigns some or all duties for investigational articles accountability at the clinical trial sites to an appropriate pharmacist or another appropriate individual who is under the supervision of the researcher or organization.

(iii) The researcher, pharmacist, or other designated individual maintains records of the product's delivery to the clinical trial site, the inventory at the site, the use by each participant, and the return to the sponsor or alternative disposition of unused products. These records include dates, quantities, batch or serial numbers, and expiration dates (if applicable), and the unique code numbers assigned to the investigational products and trial participants.

(iv) The researcher maintains records that document adequately that the participants are provided the doses specified by the protocol and reconcile all investigational products received from the sponsor.

OUTCOMES

- Investigational test articles are used only in approved research protocols and under the direction of approved researchers.
- The organization has a process to ensure the proper handling of investigational test articles.

ELEMENT I.7.C. The organization has and follows written policies and procedures for compliance with legal and regulatory requirements governing emergency use of an investigational or unlicensed test article.

COMMENTARY

This Element applies only to organizations that use investigational or unlicensed test articles in emergency situations, and the use constitutes research and is regulated. The Element also applies to independent IRBs or ECs that review research involving the emergency use of test articles.

Under the U.S. FDA regulations, the use of an investigational test article in an emergency situation is usually exempt from prior IRB or EC review. This exemption is used in a life-threatening situation in which no standard acceptable treatment is available and in which there is insufficient time to obtain IRB or EC approval.

Even without IRB or EC review, the consent of the participant or the participant's legally authorized representative should be obtained in order to use the investigational article. There are situations in which an exception can be made to the requirement to obtain consent.

An organization should allow researchers to notify the organization in advance of an emergency use to obtain guidance. The organization should review these notifications to determine whether the circumstances will follow regulatory or legal requirements for the emergency use of a test article.

The IRB or EC should be notified of all emergency uses within five days of the use and notified in writing of all exceptions to the requirement for consent within five days of the exception. IRBs or ECs should review these reports to determine whether the circumstances follow regulatory requirements for the emergency use of a test article, and whether consent was obtained in accordance with regulations or the circumstances met the exception to the requirement for consent.

The organization should monitor the emergency use of test articles to ensure that continued use does not occur, which constitutes research.

REGULATORY AND GUIDANCE REFERENCES

- **FDA**: 21 CFR 50.23, 21 CFR 50.24, 21 CFR 50.25(d), 21 CFR 56.102(d), 21 CFR 56.104(c), FDA Information Sheets: Frequently Asked Questions: IRB Procedures, FDA Information Sheets: Emergency Use of an Investigation Drug or Biologic, Emergency Use of Unapproved Medical Devices

REQUIRED WRITTEN MATERIALS

(1) Essential requirements:

(a) In order to use a test article in an emergency situation, policies and procedures describe the criteria that permit the emergency use of a test article.

(i) Policies and procedures indicate consent will be obtained in accordance with regulations or laws or meet the requirements for an exception to obtain consent.

(ii) Policies and procedures describe the role of the IRB or EC as appropriate.

(2) When following DHHS regulations:

(a) Policies and procedures state that patients receiving a test article in an emergency use as defined by FDA regulations may not be considered to be a research participant.

(b) DHHS regulations do not permit data obtained from patients to be classified as human participants research, nor permit the outcome of such care to be

REQUIRED WRITTEN MATERIALS

included in any report of a research activity subject to DHHS regulations.

(3) When following FDA regulations:

(a) In order to use a test article in a life-threatening situation without prior IRB or EC review, policies and procedures include the following criteria:

(i) The participant is in a life-threatening or severely debilitating situation.

(ii) No standard acceptable treatment is available.

(iii) There is not sufficient time to obtain IRB or EC approval.

(iv) The use is reported to the IRB or EC within five working days.

(v) Any subsequent use of the test article is subject to IRB or EC review.

(b) Policies and procedures indicate consent will be obtained in accordance with FDA regulations, or the circumstances meet the exception to the requirement for consent in FDA regulations.

(c) Policies and procedures state that under FDA regulations, the emergency use of a test article, other than a medical device, is a clinical investigation, the patient is a participant, and the FDA may require data from an emergency use to be reported in a marketing application.

(4) When following VA requirements:

(a) Policies and procedures state that a patient receiving a test article in an emergency use that is regulated by FDA is not considered to be involved in research and is not a research participant.

COMMON TYPES OF MATERIALS THAT MAY BE USED TO MEET THE ELEMENT

- Policies and procedures

OUTCOMES

- Emergency uses of investigational or unlicensed test articles follow regulations or laws.