

## **Appendix 4: Investigator's Responsibilities for Significant Risk Device Investigations**

### **1. General Responsibilities of Investigators (21 CFR 812.100)**

- a. Ensuring that the investigation is conducted according to the signed agreement, the investigational plan and applicable FDA regulations
- b. Protecting the rights, safety, and welfare of subjects under the investigator's care
- c. Controlling devices under investigation
- d. Ensuring that informed consent is obtained from each subject in accordance with 21 CFR Part 50

### **2. Specific Responsibilities of Investigators (21 CFR 812.110)**

- a. Awaiting IRB approval and any necessary FDA approval before requesting written informed consent or permitting subject participation
- b. Conducting the investigation in accordance with:
  - (1) the signed agreement with the sponsor
  - (2) the investigational plan
  - (3) the regulations set forth in 21 CFR Part 812 and all other applicable FDA regulations, and
  - (4) any conditions of approval imposed by an IRB or FDA
- c. Supervising the use of the investigational device. An investigator shall permit an investigational device to be used only with subjects under the investigator's supervision. An investigator shall not supply an investigational device to any person not authorized under 21 CFR Part 812 to receive it.
- d. Financial disclosure. A clinical investigator shall disclose to the sponsor sufficient accurate financial information to allow the applicant to submit complete and accurate certification or disclosure statements under Part 54.
- e. Disposing of the device properly. Upon completion or termination of a clinical investigation or the investigator's part of an investigation, or at the sponsor's request, an investigator shall return to the sponsor any remaining supply of the device or otherwise dispose of the device as the sponsor directs.

### **3. Maintaining Records (21 CFR 812.140)**

An investigator shall maintain the following accurate, complete, and current records relating to the investigator's participation in an investigation:

- a. Correspondence with another investigator, an IRB, the sponsor, a monitor, or FDA
- b. Records of receipt, use or disposition of a device that relate to:
  - (1) the type and quantity of the device, dates of receipt, and batch numbers or code marks
  - (2) names of all persons who received, used, or disposed of each device
  - (3) the number of units of the device returned to the sponsor, repaired, or

- otherwise disposed of, and the reason(s) therefore
- c. Records of each subject's case history and exposure to the device, including:
    - (1) documents evidencing informed consent and, for any use of a device by the investigator without informed consent, any written concurrence of a licensed physician and a brief description of the circumstances
    - (2) justifying the failure to obtain informed consent
    - (3) document all relevant observations, including records concerning adverse device effects (whether anticipated or not), information and data on the condition of each subject upon entering, and during the course of, the investigation, including information about relevant previous medical history and the results of all diagnostic tests
    - (4) a record of the exposure of each subject to the investigational device, including the date and time of each use, and any other therapy
  - d. The protocol, with documents showing the dates of and reasons for each deviation from the protocol
  - e. Any other records that FDA requires to be maintained by regulation or by specific requirement for a category of investigations or a particular investigation.

#### 4. Inspections (21 CFR 812.145)

Investigators are required to permit FDA to inspect and copy any records pertaining to the investigation including, in certain situations, those which identify subjects.

#### 5. Submitting Reports (21 CFR 812.150)

An investigator shall prepare and submit the following complete, accurate, and timely reports:

- a. To the sponsor and the IRB:
  - (1) Any *unanticipated adverse device effect* occurring during an investigation. (Due no later than 10 working days after the investigator first learns of the effect.)
  - (2) *Progress reports* on the investigation. (These reports must be provided at regular intervals, but in no event less often than yearly. If there is a study monitor, a copy of the report should also be sent to the monitor.)
  - (3) Any *deviation from the investigational plan* made to protect the life or physical well-being of a subject in an emergency. (Report is due as soon as possible but no later than 5 working days after the emergency occurs. Except in emergency situations, a protocol deviation requires prior sponsor approval; and if the deviation may affect the scientific soundness of the plan or the rights, safety, or welfare of subjects, prior FDA and IRB approval are required.)
  - (4) Any use of the device *without obtaining informed consent*. (Due within 5 working days after such use.)
  - (5) A *final report*. (Due within 3 months following termination or completion of the investigation or the investigator's part of the investigation. For additional guidance, see the discussion under the

section entitled "Annual Progress Reports and Final Reports.")  
(6) *Any further information* requested by FDA or the IRB about any aspect of the investigation.

b. To the Sponsor:

(1) *Withdrawal of IRB approval* of the investigator's part of an investigation. (Due within 5 working days of such action).

## **6. Investigational Device Distribution and Tracking**

The IDE regulations prohibit an investigator from providing an investigational device to any person not authorized to receive it (21 CFR 812.110(c)). The best strategy for reducing the risk that an investigational device could be improperly dispensed (whether purposely or inadvertently) is for the sponsor and the investigators to closely monitor the shipping, use, and final disposal of the device(s). Upon completion or termination of a clinical investigation (or the investigator's part of an investigation), or at the sponsor's request, an investigator is required to return to the sponsor any remaining supply of the device or otherwise to dispose of the device as the sponsor directs (21 CFR § 812.110(e)). Investigators must also maintain complete, current and accurate records of the receipt, use, or disposition of investigational devices (21 CFR § 812.140(a)(2)). Specific investigator recordkeeping requirements are set forth at 21 CFR § 812.140(a).

## **7. Prohibition of Promotion and Other Practices (21 CFR § 812.7)**

The IDE regulations prohibit the promotion and commercialization of a device that has not been first cleared or approved for marketing by FDA. This prohibition is applicable to sponsors and investigators (or any person acting on behalf of a sponsor or investigator), and encompasses the following activities:

- a. Promotion or test marketing of the investigational device
- b. Charging subjects or investigators for the device a price larger than is necessary to recover the costs of manufacture, research, development, and handling
- c. Unduly prolonging an investigation beyond the point needed to collect data required to determine whether the device is safe and effective, and
- d. Representing that the device is safe or effective for the purposes for which it is being investigated.

## **8. Annual Progress Reports and Final Reports**

The IDE regulations do not specify the content of the annual progress or final reports. With respect to reports to the IRB, the IRB itself may specify what information it wishes to be included in these reports. Because FDA does require the information listed below, it is suggested that, at a minimum, the annual progress and final reports to the sponsor and the IRB also include the following items:

- a. IDE number

- b. Device name
- c. Indications for use
- d. Brief summary of study progress in relation to investigational plan
- e. Number of investigators and investigational sites
- f. Number of subjects enrolled
- g. Number of devices received, used, and the final disposition of unused devices
- h. Brief summary of results and conclusions
- i. Summary of anticipated and unanticipated adverse device effects
- j. Description of any deviations from investigational plan
- k. Reprints of any articles published by the investigator in relation to the study