federal register

Monday
November 10, 1997

Part III

Department of Health and Human Services

Food and Drug Administration
National Institutes of Health

Protection of Human Subjects: Suggested Revisions to the Institutional Review Board (IRB) Expedited Review List; Request for Comments; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0447]

Protection of Human Subjects: Suggested Revisions to the Institutional Review Board (IRB) Expedited Review List; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in consultation with the Office for Protection from Research Risks (OPRR), is requesting written comments relating to the proposed republication of the Expedited Review List that identifies certain research involving human subjects that may be reviewed by the Institutional Review Board (IRB) through the expedited review procedures authorized in FDA's regulations. Since the list was created, significant advances have been made in medicine and biological technology such that it is appropriate to consider revising this list to include additional categories of research. FDA seeks information and suggestions from the research community and the public on possible revisions to the Expedited Review List. The proposed list included in this notice is for discussion purposes only. FDA and OPRR will consider the comments received in deciding whether to revise the list.

DATES: Submit written comments on or before March 10, 1998.

ADDRESSES: Submit written comments to Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Because FDA and OPRR are simultaneously publishing identical lists, comments need not be sent to both agencies.

FOR FURTHER INFORMATION CONTACT: Paul W. Goebel, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1685.

SUPPLEMENTARY INFORMATION: FDA's regulations for protection of human subjects can be found under part 50 (21 CFR part 50), and the regulations for IRB's under part 56 (21 CFR part 56). The regulations require, with limited exceptions, review of research involving human subjects by an IRB and obtaining and documenting legally effective informed consent for all human subjects of research.

Section 56.110 provides for expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in previously approved research during the period for which approval is authorized. In the **Federal Register** of January 26, 1981 (46 FR 8392), FDA published the Expedited Review List that is referenced in § 56.110(a), which is a list of categories of research that could be reviewed by an IRB through the expedited review procedures set forth in FDA's regulations. In the **Federal Register** of January 27, 1981 (46 FR 8980), a separate Expedited Review List is referenced in 45 CFR part 46 that applies to matters under the Department of Health and Human Services' (HHS) jurisdiction was published. The HHS and FDA lists that published in 1981 differ slightly, in that item 9 on the 1981 HHS list pertains only to 45 CFR 46.110. Because behavioral research was not regulated by FDA, that category was not included in the list published by FDA in 1981, which is reproduced here to facilitate comparison with the proposed list.

Current List: Items Included in the List Published in 1981

The current (1981) list allows an IRB to utilize the expedited review procedure for research activities involving no more than minimal risk and in which the only involvement of human subjects will be in one or more of the following categories (carried out through standard methods):

(1) Collection of hair and nail clippings, in a non-disfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction.

(2) Collection of excreta and external secretions including sweat, uncannulated saliva, placenta at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor.

(3) Recording of data from subjects who are 18 years of age [of] older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighting, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. This category does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects who are 18 years of age or older and who are in good health and not pregnant.

(5) Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(6) Voice recordings made for research purposes such as investigations of speech defects.

(7) Moderate exercise by healthy volunteers.

(8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

(9) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

FDA, in consultation with OPRR, is proposing to revise the current Expedited Review List to include additional procedures or categories of research that may be reviewed under the expedited review procedure. FDA seeks comments from the public on procedures or categories of research involving human subjects that may be amenable to expedited review in accordance with the procedures outlined in § 56.110(b), instead of review at a convened meeting of the IRB. The proposed list is being published for discussion purposes only. FDA and OPRR intend to determine, after review of comments received, whether any changes should be made to the current list. FDA and OPRR have not determined that the suggested additional categories of research in the proposed list are appropriate for expedited review procedures. The proposed list does not bind FDA or OPRR to include any of the suggested categories in a list that is expected to be published after review of comments.

The following is a proposed revision of the current Expedited Review Lists published in the **Federal Register** of January 26, 1981 (46 FR 8392), and January 27, 1981 (46 FR 8980). In order to simplify review, the proposed revision is identical to the list published elsewhere in this issue of the **Federal Register** by OPRR. Judgment is reserved on whether FDA and OPRR will publish identical lists after comments are received and reviewed. FDA welcomes and encourages comments from the research community and the public.

Proposed List: Research Activities Which May Be Reviewed Through Expedited Review Procedures [1]

Research activities (carried out through standard methods) that: (1) Involve no more than minimal risk, and

[1] The expedited review procedure consists of a review of research involving human subjects by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB in accordance with the requirements set forth in § 56.110.

(2) appear in one or more of the following categories may be reviewed by the IRB through the expedited review procedure authorized in 45 CFR 46.110 and § 56.110. The activities that appear on this list should not be deemed to be of minimal risk simply because they are included on this list. Appearance on this list merely means that the activity is eligible for review through the expedited process when the specific circumstances of the proposed research involve no more than minimal risk to the human subjects. The categories in this list apply regardless of the age of subjects, except as noted.

(1) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

(2) Collection of blood samples by finger stick or venipuncture as follows:

(a) From healthy, nonpregnant adults [2] who weigh at least 110 pounds (lb), in amounts not exceeding 550 milliliters (mL) in an 8-week period and no more than 2 times per week.

(b) From healthy, pregnant adults who weigh at least 110 lb, in amounts not exceeding 100 mL in an 8-week period and no more than 2 times per week.

(c) From healthy children, in amounts not exceeding 3 mL/kilograms (kg) in an 8-week period and no more than 2 times per week.

(d) From medically vulnerable adults who weigh at least 110 lb, in amounts not exceeding 50 mL in an 8-week period and no more than 2 times per week.

(3) Prospective collection for research purposes of the following biological specimens:

(a) Hair and nail clippings in a nondisfiguring manner.

(b) Deciduous teeth at time of exfoliation, or if routine patient care indicates a need for extraction.

(c) Permanent teeth if routine patient care indicates a need for extraction.

(d) Excreta and external secretions (including sweat).

(e) Uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue.

(f) Placenta removed at delivery.

(g) Amniotic fluid obtained at the time of rupture of the membrane prior to or during labor.

(h) Supra-and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(i) Stool cultures obtained by rectal swab.

(j) Mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings.

(k) Sputum collected after saline mist nebulization.

(4) Research involving existing identifiable data, documents, records, or biological specimens (including pathological or diagnostic specimens) where these materials, in their entirety, have been collected prior to the research, for a purpose other than the proposed research.

(5) Research involving solely (a) prospectively collected identifiable residual or discarded specimens, or (b) prospectively collected identifiable data, documents, or records, where (a) or (b) has been generated for nonresearch purposes.

(6) Collection of data through use of the following procedures:

(a) Noninvasive procedures routinely employed in clinical practice and not involving exposure to electromagnetic radiation outside the visible range (i.e., not involving x-rays, microwaves, etc.).

(b) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy.

(c) Weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, echography, sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.

(d) Moderate exercise, muscular strength testing, body composition assessment, and flexibility testing involving healthy subjects.

(7) Collection of data from voice, video, or image recordings made for research purposes where identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(8) Research on individual or group characteristics or behavior (including but not limited to research involving perception, cognition, surveys, interviews, and focus groups) as follows:

(a) Involving adults, where (i) the research does not involve stress to subjects, and (ii) identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(b) Involving children, where (i) the research involves neither stress to subjects nor sensitive information about themselves, or their family; (ii) no alteration or waiver of regulatory requirements for parental permission has been proposed; and (iii) identification of the subjects and/or their responses would not reasonably place them or their family members at risk of criminal or civil liability or be damaging to the financial standing, employability, or reputation of themselves or their family members.

(9) Research previously approved by the convened IRB as follows:

(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or

(b) Where the research remains active only for the purposes of data analysis; or

(c) Where the IRB has determined that the research involves no greater than minimal risk and no additional risks have been identified; or

(d) Where no subjects have been enrolled and no additional risks have been identified.

The following tabulation of changes is included to enable readers to more easily compare the categories of research included in both lists.

[2] Throughout this document, when FDA refers to ''adult,'' FDA defers to state law for determining the age of majority.

COMPARISON OF THE PROPOSED LIST WITH THE CURRENT LIST

Proposed Expedited Review List	1981 (Current) Expedited Review List
1. Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.	Unchanged; currently number 9.
2. Collection of blood samples by finger stick or venipuncture as follows:	Currently number 4, limited to venipuncture; ''finger stick'' not included.
(a) From healthy, nonpregnant adults, in amounts not exceeding 550 mL in an 8-week period and no more than 2 times per week.	Amounts currently limited to 450 ml.
(b) From healthy, pregnant adults, in amounts not exceeding 100 mL in an 8-week period and no more than 2 times per week.	Not included.
(c) From healthy children, in amounts not exceeding 3 mL/kg in an 8-week period and no more than 2 times per week.	Not included.
(d) From medically vulnerable adults, in amounts not exceeding 50 mL in an 8-week period and no more than 2 times per week.	Not included.
3. Prospective collection for research purposes of the following biological specimens:	''Prospective'' and ''for research purposes'' currently not included.
(a) Hair and nail clippings in a nondisfiguring manner.	Currently part of number 1; unchanged.
(b) Deciduous teeth at time of exfoliation, or if routine patient care indicates a need for extraction.	Currently part of number 1; ''deciduous teeth'' included without qualifiers.
(c) Permanent teeth if routine patient care indicates a need for extraction.	Currently part of number 1; ''routine'' not included.
(d) Excreta and external secretions (including sweat).	Currently part of number 2; unchanged.
(e) Uncannulated saliva collected either in an unstimulated fashion or stimulated by chewing gumbase or wax or by applying a dilute citric solution to the tongue.	Currently part of number 2; ''uncannulated saliva'' included without qualifiers.
(f) Placenta removed at delivery.	Currently part of number 2; unchanged.
(g) Amniotic fluid obtained at the time of rupture of the membrane prior to or during labor.	Currently part of number 2; unchanged.
(h) Supra- and subgingival dental plaque and calculus, provided the collection procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.	Currently number 5; ''procedure'' is not qualified with the word ''collection.''
(i) Stool cultures obtained by rectal swab.	Not included.
(j) Mucosal and skin cells collected by buccal scraping or swab, skin swab, or mouth washings.	Not included.
(k) Sputum collected after saline mist nebulization.	Not Included.
4. Research involving existing identifiable data, documents, records, or biological specimens (including pathological or diagnostic specimens) where these materials, in their entirety, have been collected prior to the research, for a purpose other than the proposed research.	Currently number 8; stated as: ''The study of existing data, documents, records, pathological specimens, or diagnostic specimens.''
5. Research involving solely (a) prospectively collected identifiable residual or discarded specimens, or (b) prospectively collected identifiable data, documents, or records, where (a) or (b) has been generated for nonresearch purposes.	Not included.
6. Collection of data through use of the following procedures:	Currently number 3; ''recording'' instead of ''collection.''
(a) Noninvasive procedures routinely employed in clinical practice and not involving exposure to electromagnetic radiation outside the visible range (i.e., not involving x-rays, microwaves, etc.).	Currently number 3; limited to subects 18 years of age or older.
(b) Physical sensors that are applied either to the surface of the body or at a distance and do not involve input of significant amounts of energy into the subject or an invasion of the subject's privacy.	Currently number 3; limited to subjects 18 years of age or older.

COMPARISON OF THE PROPOSED LIST WITH THE CURRENT LIST—Continued

Proposed Expedited Review List	1981 (Current) Expedited Review List
(c) Weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, electroretinography, echography, sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.	Currently number 3; limited to subjects 18 years of age or older; limited echography to ''diagnostic echography''; does not include ''sonography, ultrasound, magnetic resonance imaging (MRI), diagnostic infrared imaging, doppler blood flow, and echocardiography.''
(d) Moderate exercise, muscular strength testing, body composition assessment, and flexibility testing involving health subjects.	Currently number 7; limited to ''Moderate exercise by healthy volunteers.''
7. Collection of data from voice, video, or image recordings made for research purposes where identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.	Currently number 6; stated as: ''Voice recordings made for research purposes such as investigations of speech defects.''
8. Research on individual or group characteristics or behavior (including but not limited to research involving perception, cognition, surveys, interviews, and focus groups) as follows:	Not included.
(a) Involving adults, where (i) the research does not involve stress to subjects, and (ii) identification of the subjects and/or their responses would not reasonably place them at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.	
(b) Involving children, where (i) the research involves neither stress to subjects nor sensitive information about themselves, or their family; (ii) no alteration or waiver of regulatory requirements for parental permission has been proposed; and (iii) identification of the subjects and/or their responses would not reasonably place them or their family members at risk of criminal or civil liability or be damaging to the financial standing, employability, or reputation of themselves or their family members.	
9. Research previously approved by the convened IRB as follows:	Not included.
(a) Where (i) the research is permanently closed to the enrollment of new subjects; (ii) all subjects have completed all research-related interventions; and (iii) the research remains active only for long-term follow-up of subjects; or	
(b) Where the research remains active only for the purposes of data analysis; or	
(c) Where the IRB has determined that the research involves no greater than minimal risk and no additional risks have been identified; or	
(d) Where no subjects have been enrolled and no additional risks have been identified.	

Dated: November 4, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–29651 Filed 11–5–97; 3:51 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Protection of Human Subjects: Suggested Revisions to the Institutional Review Board (IRB) Expedited Review List

AGENCY: Office for Protection from Research Risks, National Institutes of Health, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Office for Protection from Research Risks (OPRR), in consultation with the Food and Drug Administration (FDA), is requesting written comments relating to the proposed republication of the list that identifies certain research involving human subjects which may be reviewed by the Institutional Review Board (IRB) through the expedited review procedure authorized in § 46.110 of 45 CFR Part 46. This list was originally published in 1981 and subsequently referenced in the Federal Policy (Common Rule) for the Protection of Human Subjects (56 FR 28003). Pursuant to § 46.110(a), the Secretary, HHS, has the authority to amend and republish the list. In the 16 years since the list was created, significant advances have been made in medicine and biological technology such that it is appropriate to consider revising this list