Decision Chart for Drugs used in Human Subject Research Studies Looking at Safety and Efficacy

Is this substance considered a "**drug**"(1) under the Federal Regulations?

- Yes: continue with questions
- No: drug section does not need to be filled out *(for example, using medical foods or dietary supplements as intended for research does not require an IND. Studies using these for research need to fill out the Emory IRB Dietary Suplements and/or Medical Foods Worksheet, and upload under miscellaneous documents*)

Is the use of this drug **IND exempt**? (2)

- Yes: study team must complete the Drug section in eIRB and upload the IRB Investigator Justification for IND Exemption Form. *NOTE: a substance not approved for marketing as a "drug" by the FDA cannot be IND exempt (for example, medical foods or dietary supplements sold over the counter, or non-FDA approved drugs)*
- No: continue with questions

Is this drug under an IND for this study?

- No: if this study is not IND exempt, the IRB requires submission of an IND application to the FDA and documentation of FDA determination
- Yes: the study team should have an IND number on the study protocol, letter from the sponsor, or FDA correspondence indicating the IND may proceed uploaded under the Drug section in eIRB (the latter is required for S-I studies). No additional actions are required.
  - *Note: Make sure the FDA correspondence applies to this study, and it is not an IND submitted for another investigation*

(1) A drug is defined as:

- A substance recognized by an official pharmacopoeia or formulary.
- A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.
- A substance (other than food) intended to affect the structure or any function of the body.
- A substance intended for use as a component of a medicine but not a device or a component, part or accessory of a device.
- Biological products are included within this definition and are generally covered by the same laws and regulations, but differences exist regarding their manufacturing processes (chemical process versus biological process.)

(2) IND Exempt Investigations

A clinical investigation of a marketed drug is exempt from the IND requirements if all of the criteria for an exemption in § 312.2(b) are met:

- The drug product is lawfully marketed in the United States.
- The investigation is not intended to be reported to FDA as a well-controlled study in support of a new indication and there is no intent to use it to support any other significant change in the labeling of the drug.
- In the case of a prescription drug, the investigation is not intended to support a significant change in the advertising for the drug.
- The investigation does not involve a route of administration, dose, patient population, or other factor that significantly increases the risk (or decreases the acceptability of the risk) associated with the use of the drug product (21 CFR 312.2(b)(1)(iii)).
- The investigation is conducted in compliance with the requirements for review by an IRB (21 CFR part 56) and with the requirements for informed consent (21 CFR part 50).
- The investigation is conducted in compliance with the requirements of § 312.7 (i.e., the investigation is not intended to promote or commercialize the drug product).

The potential sponsor or sponsor-investigator of a planned clinical investigation using a marketed drug is responsible for determining whether the investigation meets the criteria for an exemption. If there is uncertainty about whether the exemption criteria are met, the potential sponsor or sponsor-investigator can seek advice from FDA on the applicability of the IND regulations (§ 312.2(e)).

References:

- FDA Guidance for Clinical Investigators, Sponsors, and IRBs Investigational New Drug Applications (INDs) — Determining Whether Human Research Studies Can Be Conducted Without an IND
- Emory IRB Dietary Supplements and/or Medical Foods Worksheet
- FDA-CDER Chronicles: Drug, Not a drug, or More