

# A Guide to Informed Consent - Information Sheet

## Guidance for Institutional Review Boards and Clinical Investigators

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### Consent Document Content

For studies that are subject to the requirements of the FDA regulations, the informed consent documents should meet the requirements of 21 CFR 50.20 and contain the information required by each of the eight basic elements of 21 CFR 50.25(a), and each of the six elements of 21 CFR 50.25(b) that is appropriate to the study. IRBs have the final authority for ensuring the adequacy of the information in the informed consent document.

### IRB standard format

Many IRBs have developed standard language and/or a standard format to be used in portions of all consent documents. Standard language is typically developed for those elements that deal with confidentiality, compensation, answers to questions, and the voluntary nature of participation. Each investigator should determine the local IRB's requirements before submitting a study for initial

review. Where changes are needed from the standard paragraphs or format, the investigator can save time by anticipating the local IRB's concerns and explaining in the submission to the IRB why the changes are necessary.

### **Sponsor-prepared sample consent documents**

Sample or draft consent documents may be developed by a sponsor or cooperative study group. However, the IRB of record is the final authority on the content of the consent documents that is presented to the prospective study subjects.

Investigational New Drug Applications (IND) submitted to FDA are not required to contain a copy of the consent document. If the sponsor submits a copy, or if FDA requests a copy, the Agency will review the document and may comment on the document's adequacy.

For significant risk medical devices, the consent document is considered to be a part of the investigational plan in the Application for an Investigational Device Exemption (IDE). FDA always reviews these consent documents. The Agency's review is generally limited to ensuring the presence of the required elements of informed consent and the absence of exculpatory language. Any substantive changes to the document made by an IRB must be submitted to FDA (by the sponsor) for review and approval.

### **Revision of Consent Documents during the study**

Study protocols are often changed during the course of the study. When these changes require revision of the informed consent document, the IRB should have a system that identifies the revised consent document, in order to preclude continued use of the older version and to identify file copies. While not required by FDA regulations, some IRBs stamp the final copy of the consent document with the approval date. The investigator then photocopies the consent document for use. [Note: the wording of the regulations is provided in *italics*, followed by explanatory comments.]

### **21 CFR 50.20 General requirements for informed consent**

*Except as provided in §50.23, no investigator may involve a human being as a subject in research covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.*

The IRB should ensure that technical and scientific terms are adequately explained or that common terms are substituted. The IRB should ensure that the informed consent document properly translates complex scientific concepts into simple concepts that the typical subject can read and comprehend.

Although not prohibited by the FDA regulations, use of the wording, "I understand..." in informed consent documents may be inappropriate as many prospective subjects will not "understand" the scientific and medical significance of all the statements. Consent documents are more understandable if they are written just as the clinical investigator would give an oral explanation to the subject, that is, the subject is addressed as "you" and the clinical investigator as "I/we." This second person writing style also helps to communicate that there is a choice to be made by the prospective subject. Use of first person may be interpreted as presumption of subject consent, i.e., the subject has no choice. Also, the tone of the first person "I understand" style seems to misplace emphasis on legal statements rather than on explanatory wording enhancing the subject's comprehension.

Subjects are not in a position to judge whether the information provided is complete. Subjects may certify that they understand the statements in the consent document and are satisfied with the explanation provided by the consent process (e.g., "I understand the statements in this informed consent document.") They should not be required to certify completeness of disclosure (e.g., "This study has been fully explained to me," or, "I fully understand the study.")

Consent documents should not contain unproven claims of effectiveness or certainty of benefit, either explicit or implicit, that may unduly influence potential subjects. Overly optimistic representations are misleading and violate FDA regulations concerning the promotion of investigational drugs [21 CFR 312.7] or investigational devices [21 CFR 812.7(d)] as well as the requirement to minimize the possibility of coercion or undue influence [21 CFR 50.20].

## **FDA approval of studies**

Investigational drug and biologic studies are not officially approved by FDA. When a sponsor submits a study to FDA as part of the initial application for an investigational new drug (IND), FDA has thirty days to review the application and place the study on "hold" if there are any obvious reasons why the proposed study should not be conducted. Therefore, subjects are likely to impute a greater involvement by the Agency in a research study than actually exists if phrases such as, "FDA has given permission..." or "FDA has approved..." are used in consent documents. If FDA does not place the study on hold within the thirty day period, the study may begin (with IRB approval).

FDA also believes that an explicit statement that an IRB has approved solicitation of subjects to participate in research could mislead or unduly induce subjects. Subjects might think that, because the IRB had approved the research, there is no need to evaluate the study for themselves to determine whether or not they should participate.

## **Non-English Speaking Subjects**

To meet the requirements of 21 CFR 50.20, the informed consent document should be in language understandable to the subject (or authorized representative). When the consent interview is conducted in English, the consent document should be in English. When the study subject population includes non-English speaking people or the clinical investigator or the IRB anticipates that the consent interviews will be conducted in a language other than English, the IRB should require a translated consent document to be prepared and assure that the translation is accurate. As required by 21 CFR 50.27, a copy of the consent document must be given to each subject. In the case of non-English speaking subjects, this would be the translated document. While a translator may be helpful in facilitating conversation with a non-English speaking subject, routine ad hoc translation of the consent document should not be substituted for a written translation.

If a non-English speaking subject is unexpectedly encountered, investigators will not have a written translation of the consent document and must rely on oral translation. Investigators should carefully consider the ethical/legal ramifications of enrolling subjects when a language barrier exists. If the subject does not clearly understand the information presented, the subject's consent will not truly be informed and may not be legally effective. If investigators enroll subjects without an IRB approved written translation, a "short form" written consent document, in a language the subject understands, should be used to document that the elements of informed consent required by 21 CFR 50.25 were presented orally. The required signatures on a short form are stated in 21 CFR 50.27(b)(2).

## **Illiterate English-Speaking Subjects**

A person who speaks and understands English, but does not read and write, can be enrolled in a study by "making their mark" on the consent document, when consistent with applicable state law.

A person who can understand and comprehend spoken English, but is physically unable to talk or write, can be entered into a study if they are competent and able to indicate approval or disapproval by other means. If (1) the person retains the ability to understand the concepts of the study and evaluate the risk and benefit of being in the study when it is explained verbally (still competent) and (2) is able to indicate approval or disapproval to study entry, they may be entered into the study. The consent form should document the method used for communication with the prospective subject and the specific means by which the prospective subject communicated agreement to participate in the study. An impartial third party should witness the entire consent process and sign the consent document. A video tape recording of the consent interview is recommended.

## **Assent of children**

See the response to #47 in the Frequently Asked Questions section of these Information Sheets, available at <http://www.fda.gov/RegulatoryInformation/Guidances/ucm126420.htm> ([/RegulatoryInformation/Guidances/ucm126420.htm](http://www.fda.gov/RegulatoryInformation/Guidances/ucm126420.htm)).

## 21 CFR 50.25 Elements of informed consent

- *Basic elements of informed consent. In seeking informed consent, the following information shall be provided to each subject:*

*(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.*

The statement that the study involves research is important because the relationship between patient-physician is different than that between subject-investigator. Any procedures relating solely to research (e.g., randomization, placebo control, additional tests ) should be explained to the subjects. The procedures subjects will encounter should be outlined in the consent document, or an explanation of the procedures, such as a treatment chart, may be attached to and referenced in the consent document.

Consent documents for studies of investigational articles should include a statement that a purpose of the study includes an evaluation of the safety of the test article. Statements that test articles are safe or statements that the safety has been established in other studies, are not appropriate when the purpose of the study includes determination of safety. In studies that also evaluate the effectiveness of the test article, consent documents should include that purpose, but should not contain claims of effectiveness.

*(2) A description of any reasonably foreseeable risks or discomforts to the subject.*

The risks of procedures relating solely to research should be explained in the consent document. The risks of the tests required in the study protocol should be explained, especially for tests that carry significant risk of morbidity/mortality themselves. The explanation of risks should be reasonable and should not minimize reported adverse effects.

The explanation of risks of the test article should be based upon information presented in documents such as the protocol and/or investigator's brochure, package labeling, and previous research study reports. For IND studies, the IRB should assure that the clinical investigator submits the investigator's brochure (when one exists) with the other study materials for review.

*(3) A description of any benefits to the subject or to others which may reasonably be expected from the research.*

The description of benefits to the subject should be clear and not overstated. If no direct benefit is anticipated, that should be stated. The IRB should be aware that this element includes a description not only of the benefits to the subject, but to "others" as well. This may be an issue when benefits accruing to the investigator, the sponsor, or others are

different than that normally expected to result from conducting research. Thus, if these benefits may be materially relevant to the subject's decision to participate, they should be disclosed in the informed consent document.

*(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.*

To enable a rational choice about participating in the research study, subjects should be aware of the full range of options available to them. Consent documents should briefly explain any pertinent alternatives to entering the study including, when appropriate, the alternative of supportive care with no additional disease-directed therapy. While this should be more than just a list of alternatives, a full risk/benefit explanation of alternatives may not be appropriate to include in the written document. The person(s) obtaining the subjects' consent, however, should be able to discuss available alternatives and answer questions that the subject may raise about them. As with other required elements, the consent document should contain sufficient information to ensure an informed decision.

*(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that the Food and Drug Administration may inspect the records.*

Study subjects should be informed of the extent to which the institution intends to maintain confidentiality of records identifying the subjects. In addition, they should be informed that FDA may inspect study records (which include individual medical records). If any other entity, such as the sponsor of the study, may gain access to the study records, the subjects should be so informed. The consent document may, at the option of the IRB, state that subjects' names are not routinely required to be divulged to FDA. When FDA requires subject names, FDA will treat such information as confidential, but on rare occasions, disclosure to third parties may be required. Therefore, absolute protection of confidentiality by FDA should not be promised or implied. Also, consent documents should not state or imply that FDA needs clearance or permission from the subject for access. When clinical investigators conduct a study for submission to FDA, they agree to allow FDA access to the study records. Informed consent documents should make it clear that, by participating in research, the subject's records automatically become part of the research database. Subjects do not have the option to keep their records from being audited/reviewed by FDA.

*(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.*

Informed consent documents should describe any compensation or medical treatments that will be provided if injury occurs. If specific statements cannot be made (e.g., each case is likely to require a different response), the subjects should be informed where further information may be obtained. The consent should also indicate whether subjects will be billed for the cost of such medical treatments. When costs will be billed, statements

such as "will be billed to you or your insurer in the ordinary manner," "the sponsor has set some funds aside for medical costs related to.... Here's how to apply for reimbursement if you think you might be eligible" or "no funds have been set aside..." are preferred. Statements such as: "will be the responsibility of you or your insurance company" or "compensation is not available," could appear to relieve the sponsor or investigator of liability for negligence, see 21 CFR 50.20.

## Compensation v. Waiver of Subject's Rights

The consent document must explain whether there is compensation available in case of injury but must not waive or appear to waive the rights of the subject or release or appear to release those conducting the study from liability for negligence. When no system has been set up to provide funds, the preferred wording is: "no funds have been set aside for" "[the cost] will be billed to you or your insurance," or similar wording that explains the provisions or the process. Wording such as: "will be your responsibility or that of your third-party payor" has been erroneously interpreted by some subjects to mean the insurance company is required to pay.

*(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.*

This requirement contains three components, each of which should be specifically addressed. The consent document should provide the name of a specific office or person and the telephone number to contact for answers to questions about: 1) the research subjects' rights; 2) a research-related injury; and 3) the research study itself. It is as important for the subject to know why an individual should be contacted as it is for the subject to know whom to contact. Although a single contact might be able to fulfill this requirement, IRBs should consider requiring that the person(s) named for questions about research subjects' rights not be part of the research team as this may tend to inhibit subjects from reporting concerns and discovering possible problems.

*(8) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.*

This element requires that subjects be informed that they may decline to participate or to discontinue participation at any time without penalty or loss of benefits. Language limiting the subject's right to withdraw from the study should not be permitted in consent documents. If the subjects who withdraw will be asked to permit follow-up of their condition by the researchers, the process and option should be outlined in the consent document.

- *Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:*

*(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are*

*currently unforeseeable.*

A statement that there may be unforeseen risks to the embryo or fetus may not be sufficient if animal data are not available to help predict the risk to a human fetus. Informed consent documents should explain that mutagenicity (the capability to induce genetic mutations) and teratogenicity (the capability to induce fetal malformations) studies have not yet been conducted/completed in animals. [Note: The lack of animal data does not constitute a valid reason for restricting entry of women of childbearing potential into a clinical trial.] Subjects, both women and men, need to understand the danger of taking a drug whose effects on the fetus are unknown. If relevant animal data are available, however, the significance should be explained to potential subjects. Investigators should ensure that the potential risks that the study poses are adequately explained to subjects who are asked to enter a study. If measures to prevent pregnancy should be taken while in the study, that should be explained.

FDA guidance on the inclusion of women in clinical trials [58 FR 39406] now gives IRBs broader discretion to encourage the entry of a wide range of individuals into the early phases of clinical trials. FDA urges IRBs to question any study that appears to limit enrollment based on gender and/or minority status. Statements such as, "you may not participate in this research study if you are a woman who could become pregnant" should not routinely be included in informed consent documents.

*(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.*

When applicable, subjects should be informed of circumstances under which their participation may be terminated by the investigator without the subject's consent. An unexplained statement that the investigator and/or sponsor may withdraw subjects at any time, does not adequately inform the subjects of anticipated circumstances for such withdrawal.

A statement that the investigator may withdraw subjects if they do not "follow study procedures" is not appropriate. Subjects are not in a position to know all the study procedures. Subjects may be informed, however, that they may be withdrawn if they do not follow the instructions given to them by the investigator.

*(3) Any additional costs to the subject that may result from participation in the research.*

If the subjects may incur an additional expense because they are participating in the research, the costs should be explained. IRBs should consider that some insurance and/or other reimbursement mechanisms may not fund care that is delivered in a research context.

*(4) The consequences of a subjects' decision to withdraw from the research and procedures for orderly termination of participation by the subject.*



When withdrawal from a research study may have deleterious effects on the subject's health or welfare, the informed consent should explain any withdrawal procedures that are necessary for the subject's safety and specifically state why they are important to the subject's welfare. An unexplained statement that the subject will be asked to submit to tests prior to withdrawal, does not adequately inform the subjects why the tests are necessary for the subject's welfare.

*(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.*

When it is anticipated that significant new findings that would be pertinent to the subject's continued participation are likely to occur during the subject's participation in the study, the IRB should determine that a system, or a reasonable plan, exists to make such notification to subjects.

*(6) The approximate number of subjects involved in the study.*

If the IRB determines that the numbers of subjects in a study is material to the subjects' decision to participate, the informed consent document should state the approximate number of subjects involved in the study.

## The Consent Process

Informed consent is more than just a signature on a form, it is a process of information exchange that may include, in addition to reading and signing the informed consent document, subject recruitment materials, verbal instructions, question/answer sessions and measures of subject understanding. Institutional Review Boards (IRBs), clinical investigators, and research sponsors all share responsibility for ensuring that the informed consent process is adequate. Thus, rather than an endpoint, the consent document should be the basis for a meaningful exchange between the investigator and the subject.

The clinical investigator is responsible for ensuring that informed consent is obtained from each research subject before that subject participates in the research study. FDA does not require the investigator to personally conduct the consent interview. The investigator remains ultimately responsible, even when delegating the task of obtaining informed consent to another individual knowledgeable about the research.

In addition to signing the consent, the subject/representative should enter the date of signature on the consent document, to permit verification that consent was actually obtained before the subject began participation in the study. If consent is obtained the same day that the subject's involvement in the study begins, the subject's medical records/case report form should document that consent was obtained prior to participation in the research. A copy of the consent document must be provided to the subject and the original signed consent document should be retained in the study records. Note that the FDA regulations do not require the subject's copy to be a signed copy, although a photocopy with signature(s) is preferred.

The IRB should be aware of who will conduct the consent interview. The IRB should also be informed of such matters as the timing of obtaining informed consent and of any waiting period (between informing the subject and obtaining the consent) that will be observed.

The consent process begins when a potential research subject is initially contacted. Although an investigator may not recruit subjects to participate in a research study before the IRB reviews and approves the study, an investigator may query potential subjects to determine if an adequate number of potentially eligible subjects is available.

## **21 CFR 50.27 Documentation of Informed Consent**

- a. *Except as provided in 56.109(c), informed consent shall be documented by the use of a written consent form approved by the IRB and signed and dated by the subject or the subject's legally authorized representative at the time of consent. A copy shall be given to the person signing the form.*
- b. *Except as provided in 56.109(c), the consent form may be either of the following:*
  1. *A written consent document that embodies the elements of informed consent required by 50.25. This form may be read to the subject or the subject's legally authorized representative, but , in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed.*
  2. *A short form written consent document stating that the elements of informed consent required by 50.25 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining the consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative in addition to a copy of the short form.*

The informed consent documentation requirements [21 CFR 50.27] permit the use of either a written consent document that embodies the elements of informed consent or a "short form" stating that the elements of informed consent have been presented orally to the subject. Whichever document is used, a copy must be given to the person signing the document.

When a short form consent document is to be used [21 CFR 50.27(b)(2)], the IRB should review and approve the written summary of the full information to be presented orally to the subjects. A witness is required to attest to the adequacy of the consent process and to the subject's voluntary consent. Therefore, the witness must be present during the entire consent interview, not just for signing the documents. The subject or the subject's legally authorized representative must sign and date the short form. The witness must sign both the short form

and a copy of the summary, and the person actually obtaining the consent must sign a copy of the summary. The subject or the representative must be given a copy of the summary as well as a copy of the short form. While the regulations do not prohibit the use of multiple consent documents, FDA suggests that they be used with caution. Multiple consent documents may be confusing to a research subject and if, inadvertently, one document is not presented, critical information may not be relayed to the research subject. For some studies, however, the use of multiple documents may improve subject understanding by "staging" information in the consent process. This process may be useful for studies with separate and distinct, but linked, phases through which the subject may proceed. If this technique is used, the initial document should explain that subjects will be asked to participate in the additional phases. It should be clear whether the phases are steps in one study or separate but interrelated studies. For certain types of studies, the Agency encourages the process of renewing the consent of subjects.

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*Also see these FDA information sheets:*

**"Sponsor-Investigator-IRB Interrelationship"**

**(/RegulatoryInformation/Guidances/ucm126425.htm)**

**"Acceptance of Foreign Clinical Studies"**

**(/RegulatoryInformation/Guidances/ucm126426.htm)**

**"Emergency Use of an Investigational Drug or Biologic"**

**(/RegulatoryInformation/Guidances/ucm126491.htm)**

**"Screening Tests Prior to Study Enrollment"**

**(/RegulatoryInformation/Guidances/ucm126430.htm)**

**"Recruiting Study Subjects" (/RegulatoryInformation/Guidances/ucm126428.htm)**

**"Payment to Research Subjects" (/RegulatoryInformation/Guidances/ucm126429.htm)**

**"Evaluation of Gender Differences in Clinical Investigations"**

**(/RegulatoryInformation/Guidances/ucm126552.htm)**

**"Comparison of FDA and HHS Human Subject Protection Regulations"**

**(/ScienceResearch/SpecialTopics/RunningClinicalTrials/EducationalMaterials/ucm112910.htm)**

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**Combination Products Guidance Documents**  
**(/RegulatoryInformation/Guidances/ucm122047.htm)**

**Import and Export Guidance Documents (/RegulatoryInformation/Guidances/ucm122048.htm)**

**International Council for Harmonisation (ICH) Guidance Documents**  
**(/RegulatoryInformation/Guidances/ucm122049.htm)**

**Veterinary International Conference on Harmonization (VICH) Guidance Documents**  
**(/RegulatoryInformation/Guidances/ucm122050.htm)**