

**CONSORTIUM OF
INDEPENDENT
REVIEW BOARDS**

CIRB **CIRB**

October 4, 2004

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Comments on FDA Proposed Rule: Institutional Review Boards; Registration Requirements (Docket No. 2004N-0242)

Dear Sir/Madam:

The Consortium of Independent Review Boards ("CIRB") is pleased to respond to the solicitation for comments on the Food and Drug Administration's ("FDA") proposal to require institutional review boards ("IRB") registration. Sec 69 Fed. Reg. 40,556 (July 6, 2004). As FDA knows, IRBs are entities that review clinical research for the primary purpose of assuring that adequate protections have been implemented to protect the rights and welfare of human subjects participating in that research. CIRB is a consortium of independent IRBs located in the United States and Canada. The membership has a central mission of promoting the protection and rights of human research subjects, while providing an understanding of how independent IRBs support this goal. Approximately 40% of clinical research in the United States is conducted in non-academic settings and independent IRBs review a majority of this research. Therefore, CIRB has a significant interest in the proposed IRB registration requirement.

CIRB appreciates the benefits of creating a single database that contains information on all IRBs reviewing FDA-regulated research, and thus supports the IRB registration proposal. FDA proposes electronic registration at a site maintained by the Department of Health and Human Services ("HHS"), which would also be the point of registration for IRBs that review research funded by HHS.¹ CIRB commends both FDA and HHS on furthering the laudable goal of harmonizing FDA and HHS human subject protection regulations through this proposed rule. CIRB also generally supports the information submission requirements associated with the registration process, which includes contact information; the number, in terms of a range, of active protocols involving FDA-regulated research; and the type of FDA-regulated products involved in the protocols reviewed.

¹ 69 Fed. Reg. at 40,584 (July 6, 2004).

The stated objectives of the proposed rule are to foster communication with IRBs, and to assist in making FDA inspection decisions.² To assist FDA in assuring that the final rule meets these objectives, CIRB provides the following comments.

1. Registration of Foreign IRBs

Currently, FDA's proposal requires registration of all IRBs based in the United States.³ FDA requested comment on whether circumstances exist that would warrant either mandatory or voluntary registration of foreign IRBs. Because FDA's stated objectives support the need for contact information for all IRBs that review clinical research conducted in the United States, CIRB supports mandatory registration of foreign IRBs that review research conducted in the U.S. However, even if the foreign IRB does not review U.S.-based clinical research, it may wish to have the option to register with the FDA if it reviews foreign-based research that may be considered by FDA in a future marketing application. In this case, CIRB supports voluntary registration for the foreign IRB.

2. Registration Information

CIRB generally agrees with the information proposed to be collected in connection with IRB registration. However it has several comments and concerns. First, CIRB encourages FDA to reexamine the registration information it is proposing to collect from IRBs to (1) assure that the information is necessary to support the stated goals; and (2) identify information that will generally be deemed exempt from disclosure under the Freedom of Information Act ("FOIA"). For example, FDA proposes to collect information on the number of active protocols, expressed as a range, reviewed during the preceding calendar year. Specifically, 1 to 25 protocols in a given year would be deemed "small", 26 to 499 would be deemed "medium", and 500 or more protocols would be deemed "large."⁴ FDA states that this information would enable it to determine how active an IRB is and thus, to assign its inspection resources based on the activity level. CIRB does not believe that this information should be the sole basis for making inspectional decisions. Compliance, or lack thereof, with regulatory requirements is as much an issue for IRBs reviewing a "small" number of protocols as it is for IRBs reviewing a "medium" or "large" number of protocols in a given year. Therefore, CIRB questions the need for collection of this information.

However, if FDA decides to collect this information, CIRB requests that FDA acknowledge that the active protocol range information is confidential commercial information

² 69 Fed. Reg. at 40,556.

³ 69 Fed. Reg. at 40,562 (*proposed* 21 C.F.R. 56.106(a)).

⁴ 69 Fed. Reg. at 40,562 (*proposed* 21 C.F.R. 56.106(b)(3)).

under FOIA, and thus, should not be released to the public.⁵ The number of protocols reviewed in a given year is generally held in strict confidence by independent IRBs, and public release could damage an independent IRB's competitive position in the marketplace even if described in a range such as "small", "medium", or "large".

In addition, it would be helpful if FDA defined the term "protocol" for the purpose of determining the number of protocols reviewed in a given year. The question that arises in this context concerns a multisite study involving a single protocol. For example, an IRB is asked to serve as a central IRB for the purpose of reviewing the use of a single protocol by 50 different principal investigators, and hence 50 different sites. CIRB asks FDA to specify whether the reviewing IRB responsible for all 50 sites should identify the number of protocols in this case to be one protocol or 50 protocols.

CIRB's second comment addressing the information requirements concerns the definition of "senior official" set forth in the preamble to the proposed rule.⁶ The proposed regulation states that "senior official" contact information must be provided by the IRB, and in the preamble to the proposed rule, FDA states that the senior official must not be an IRB staff member or board member. Most IRBs clearly separate IRB staff functions from IRB member functions, and CIRB believes this separation is important to assure the integrity and independence of the board. However, because of corporate structure issues, the senior official in an independent IRB organization may be considered to be part of the IRB administration or loosely, the "staff". Thus, CIRB believes clarification of what is meant by "IRB staff" is necessary. As an alternative, FDA may wish to consider revising its preamble statement concerning who cannot be a "senior official" in order to delete "IRB staff" from the list.

Finally, as to the proposed requirement to submit IRB accreditation status information, CIRB is concerned that this information will quickly become outdated between the time of registration and the need to renew registration 3 years later. For example, IRBs previously not accredited may obtain accreditation during that time period, or IRBs listed as accredited may have that status suspended or revoked during the relevant time period. Thus, in order to assure receipt of accurate information on accreditation, CIRB believes that FDA would be better served by seeking this information from the various accrediting agencies. Currently, the two largest accrediting organizations, AAHRP⁷ and PHRP⁸ keep an accurate and current roster of accredited IRBs and research organizations on their websites.⁹

⁵ See 5 U.S.C. § 552(b)(4); 21 C.F.R. 20.61(b).

⁶ 69 Fed. Reg. at 40,558.

⁷ The Association for the Accreditation of Human Research Protection Programs, Inc.®

3. IRB Registration Process

CIRB applauds FDA's decision to propose an electronic registration system and encourages FDA to ensure that the system is able to accommodate all electronic platforms. However, CIRB questions the proposed 30-day waiting period following registration for new IRBs. The proposal requires new IRBs to submit initial registration at least 30 days prior to review of clinical research.¹⁰ Currently, there is no 30-day waiting period specified in the regulations associated with IRB activities. Moreover, registration has not traditionally been the basis for waiting periods in connection with other entities required to register with FDA (i.e., food facilities, pharmaceutical facilities, medical device facilities).¹¹ Further, as the purpose of the registration process is merely to identify IRBs for future inspections, there appears to be no need to implement a waiting period. Therefore, CIRB encourages FDA to remove the 30-day waiting period requirement for new IRBs.

CIRB also encourages FDA to implement an electronic registration program that results in immediate registration once the submitter completes and sends the electronic form. Currently, the proposed regulation states that IRB registration becomes effective when HHS posts the IRB's information on its website.¹² However, no time frame is provided. In this regard, CIRB respectfully requests FDA to review its own electronic registration process for food facilities.¹³ Once a food facility submitter completes and submits an electronic registration submission, FDA automatically provides the submitter with an electronic confirmation of registration and a permanent registration number.¹⁴ FDA considers the food facility registered once FDA transmits confirmation and the registration number to the food facility submitter.¹⁵ CIRB believes the IRB registration proposed rule should be modified to adopt a process similar to FDA's food facilities electronic registration process. As such, the submitter of an electronic IRB registration should

(Footnote continued from previous page)

⁸ The Partnership for Human Research Protection, Inc.

⁹ www.aahrpp.org; www.phrp.org

¹⁰ 69 Fed. Reg. at 40,562 (*proposed* 21 C.F.R. 556.106(c)).

¹¹ 21 C.F.R. parts 1 (subpart H), 207, and 807.

¹² 69 Fed. Reg. at 40,562 (*proposed* 21 C.F.R. 56.106(c)).

¹³ See 21 C.F.R. part 1, subpart H.

¹⁴ See 21 C.F.R. 1.231(a).

¹⁵ Id.

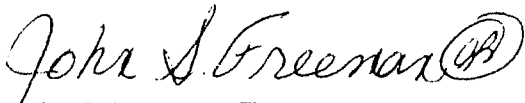
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receive immediate confirmation of receipt and of registration after submitting the completed form.

Finally, CIRB requests clarification on IRB site registration. CIRB would expect that, consistent with registration requirements for other entities such as drug and medical device manufacturing companies, multiple registrations would be required if a single organization has several boards located at different facilities. Specifically, separate registrations would be required for each facility housing a board. However, CIRB requests FDA to confirm that a research organization or independent IRB that has more than one board at the same location need only register the site once, providing the name of each individual board chair in connection with that single registration.

CIRB thanks the FDA for the opportunity to comment on this proposed rule and is hopeful that the comments are helpful to FDA as it considers how to proceed.

Sincerely,

A handwritten signature in cursive script that reads "John S. Freeman" followed by a circled "ESQ" monogram.

John S. Freeman, Esq.
Chair

cc: CIRB Membership