

Congress, in its wisdom, decided that FDA was very busy and device companies were very small and did not need added bureaucracy. Congress established that if an IRB considered a device to be non-significant risk would be considered to have an IDE. The question is how to decide.

*The following is the simplest possible primer on devices. Many nuances and technicalities are lost in the simplification. The FDA Information Sheets are required reading.*

**CRITICAL:** Regardless of this decision, under the IRB regulations the IRB must still make decisions about risk/benefit, risk minimization, and the risk statement on the consent document. These are separate decisions!

**WHAT DOES SIGNIFICANT RISK MEAN?** 21 CFR 812.3(m) says, "Significant risk device means an investigational device that:

1. is intended as an implant  
AND presents a potential for serious risk to the health, safety, or welfare of a subject;
2. is purported or represented to be for a use in supporting or sustaining human life  
AND presents a potential for serious risk to the health, safety, or welfare of a subject;
3. is for a use of substantial importance in diagnosing, curing, mitigating or treating disease, or otherwise preventing impairment of human health  
AND presents a potential for serious risk to the health, safety, or welfare of a subject;
4. OR otherwise presents a potential for serious risk to the health, safety, or welfare of a subject.

One could shorten the definition to say that a significant risk device is an investigational device that presents a potential for serious risk to the health, safety, or welfare of a subject.

### HOW IS THE DEFINITION INTERPRETED?

The first paragraph of FDA's September 1998 guidance says, The Investigational Device Exemption (IDE) regulations... describe two types of device studies.... This simple change from "device" to "device study" is critical. It derives from 812.2(b)(ii); an IRB approves a study after presentation of a brief explanation of why the device is not a significant risk device. FDA believes there to be one decision: approval after presentation. It could be that there are two IRB decisions

- (1) is the device, as it is to be used in the context of the protocol, an SR device and
- (2) can the study be approved?

## **IRB POLICIES**

IRC's policy is at 3.5.2.C

## **WHAT IS THE EFFECT OF THE IRB's DECISION?**

There is only one direct effect: a decision of SR means FDA becomes involved. A decision of NSR means that the study can begin immediately without involvement of FDA!

## **HOW MIGHT AN IRB DECIDE?**

At the time of IRB submission the sponsor should have decided on a course of action. If the sponsor believes the device (or device study) to be SR, the IDE application should be obtained or under review. If the sponsor believes the device (or device study) to be NSR, it should make that contention to the IRB.

1. **Make the claim**  
The sponsor should be clear that they are contending that the device (or device study) is NSR.
2. **Support the claim (Do not repeat the definition!)**  
Identify all of the potential risks. Describe whether they are risks of the clinical care, of a study related procedure or are of the investigational device. Evaluate each one in terms of severity and frequency. If there is a difference in the potential for harm between something used outside research and used in a study (where, perhaps, there is closer observation), make that difference clear.
3. **Describe any steps being taken to minimize the risks**  
If something could cause a life-threatening infection if left untreated but is being monitored the risk, in that context, is lowered.

## **CAN THE IRB BE WRONG? IF SO, WHAT HAPPENS?**

No. The IRB can, however, make a reasonable and rationale and documented decision that is not acceptable to the FDA.

The IRB, as a surrogate for FDA, has made a good faith decision based on available information. The sponsor has elected to proceed without double-checking with the FDA. The sponsor is taking an economic gamble.

