ASIP
American Society for Investigative Pathology

WILLIAM B. COLEMAN, PHD
EXECUTIVE OFFICER
1801 Rockville Pike, Suite 350, Rockville, MD 20852 (USA)
Tel: 240-283-9700 • Fax: 301-984-4047 • Email: wbcoleman@asip.org • www.asip.org

May 1, 2019

Norman E. Sharpless, M.D.
Commissioner of Food and Drugs
Food and Drug Administration
10903 New Hampshire Ave
Silver Spring, MD 20993-0002

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

Subject: Request for Comment on Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Informed Consent for *In Vitro* Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable [Docket No. FDA-2012-N-0560]

Dear Dr. Sharpless:

The American Society for Investigative Pathology (ASIP) is pleased to provide written comments on the informed consent for *in vitro* diagnostic device studies using leftover human specimens that are not individually identifiable [Docket No. FDA-2012-N-0560]. ASIP is a nonprofit educational 501(c)(3) organization primarily representing the academic pathology research community. We are a society of biomedical scientists who investigate disease, linking the presentation of disease in the whole organism to its fundamental cellular and molecular mechanisms. Our members use a variety of structural, functional, and genetic techniques, seeking to ultimately apply research findings to the diagnosis and treatment of patients. Our society represents approximately 1000 physicians and doctoral scientists who perform or are involved with pathology research in academic medicine, government and private industry. As such, ASIP believes that it is in a unique position to provide insight to the Food and Drug Administration (FDA) on the use of not individually identifiable human specimens.

The 2006 FDA Guidance on Informed Consent for *In Vitro* Diagnostic Device Studies Using Leftover Human Specimens that are Not individually Identifiable[1] (hereinafter 2006 Guidance) stated FDA's intention to use enforcement discretion, noting that FDA "does not intend to object to the use, without informed consent, of leftover human specimens." This Guidance represented a substantial, positive step toward reducing administrative burden for investigators, streamlining effectiveness, and harmonizing FDA requirements with the requirements of the Common Rule.[2] **ASIP continues to support the FDA's policies as outlined in the 2006 Guidance and suggests some modifications to increase the quality, utility and clarity of the Guidance.**

Under the previous and now updated Common Rule, de-identified specimens are generally outside of the purview of Common Rule requirements. FDA's 2006 Guidance allows for similar treatment of de-identified specimens consistent with the 20 Common Rule agencies. The FDA 2006 Guidance recommends that: (a) principal investigators in adherence with their organization's policies maintain written documentation, including the policies followed to ensure that the subject cannot be identified; and (b) IRBs review this documentation before approving an investigation. Please note that

[1] Guidance on Informed Consent for *In Vitro* Diagnostic Device Studies Using Leftover Human Specimens that are Not Individually Identifiable Guidance for Sponsors, Institutional Review Boards, and Food and Drug Administration Staff issued April 25, 2006 as downloaded (accessed on March 27, 2019) from https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM071265.pdf .

[2] Common Rule, Department of Health & Human Services, 45 CFS Part 46 as in effect in 2006 and updated effective 2019.

the second step requires a review of every research study using de-identified human tissue - a significant additional step beyond Common Rule requirements - to determine whether the FDA's 2006 Guidance applies.

In the Request for Comment, FDA specifically solicits comments on the following items. ASIP is pleased to provide its responses.

(1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility.

ASIP strongly supports further harmonization between the updated Common Rule and FDA regulations. Although we support the FDA's 2006 Guidance and discretionary enforcement, scientists would welcome expanded efforts to remove investigations using de-identified human tissues from FDA's human subject regulations, consistent with the Common Rule. We see little practical utility of FDA's maintaining de-identified specimens as part of human subject investigations. As is currently demonstrated under the Common Rule, removing de-identified specimens from human subject requirements allows for safety and ethical considerations while reducing administrative burden for investigators and streamlining effectiveness. There is a longstanding tradition of research using de-identified human tissue in a way that demonstrates adherence to the Belmont principles of justice, beneficence and respect for persons.

(2) The accuracy of FDA's estimate of the burden of the proposed collection information, including the validity of the methodology and assumptions used.

ASIP is concerned that four hours per recordkeeper may be a significant underestimation. As currently stated in the 2006 Guidance Section V., FDA recommends the following: (a) principal investigators in adherence with their organization's policies maintain written documentation, including the policies followed to ensure that the subject cannot be identified; and (b) IRBs review this documentation before approving an investigation. This second step requires a review of every research study using de-identified human tissue - a significant additional step beyond Common Rule requirements that exempt such research - to determine whether the FDA's 2006 Guidance applies. This two-step process amounts to both a general review of policies and procedures AND a study-by-study IRB review to ensure compliance. ASIP believes that requiring reviews at the level of individual FDA investigations will lead to an aggregate of more than four hours per year per recordkeeper.

(3) Ways to enhance the quality, utility and clarity of the information to be collected.

Removing de-identified specimens from human subject requirements allows for safety and ethical considerations while reducing administrative burden for investigators and streamlining effectiveness. While we support the FDA's 2006 Guidance and discretionary enforcement, scientists would welcome further efforts to remove investigations using de-identified human tissues from human subject regulations, consistent with the Common Rule. We see little practical utility of FDA's maintaining de-identified specimens as part of human subject investigations.

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Although we support the FDA's 2006 Guidance and discretionary enforcement, scientists would welcome further efforts to remove investigations using de-identified human tissues from FDA's human subject regulations. This would provide consistency between the Common Rule and FDA regulations, thereby decreasing administrative burden.

We welcome the opportunity to discuss our comments further.

Sincerely,

William B. Coleman, PhD, Executive Officer