MUSC
Medical University of South Carolina

I. Policy

A. The IRB must approve any undertaking in which an MUSC faculty, staff, or student (i.e., an employee or agent) conducts non-exempt human research.

B. Statement

This policy statement provides information for determining whether an activity is research involving human participants and covered by the Federal Regulations. In general, any activity that meets either (a) the Department of Health and Human Services (DHHS) definition of both "research" and "human subject" or (b) the Food and Drug Administration (FDA) definitions of both "clinical investigation" and "human subjects" is considered human research and requires review and approval by the MUSC IRB.

Unidentified Cell lines and unidentified tissue specimens are human subjects as defined by FDA when the research involves *in vitro* diagnostic device studies.

C. Guidance on Additional Requirements of Federal Funding Agencies

Please note that protocols conducted by MUSC and sponsored by any of the following federal agencies

- the Department of Defense (DOD),
- Department of Education,
- Department of Energy,
- Department of Justice (DOJ) / National Institute of Justice (NIJ) and Bureau of Prisons (BOP) or
- Environmental Protection Agency (EPA)

have additional operational and review requirements. In addition, protocols following the International Committee on Harmonisation – Good Clinical Practices (ICH-GHP) have additional requirements. Further information available on the MUSC IRB Resources & Guidance Webpage <http://research.musc.edu/ori/irb/resources.html>).

II. DEFINITIONS

As used in this document, human-subjects research encompasses activities that meet the DHHS definitions of *research* and *human subject* and/or the FDA definitions of *clinical investigation* and *human subject*. These definitions are found in HRPP Program Guide Section 1.3 – Definitions of terms.

A. Clinical Investigation (FDA)
B. Human Subject (DHHS)
C. Human Subject (FDA)
D. Identifiable Information
E. Interaction
F. Intervention
G. Private Information
H. Research (DHHS)

III. PROCEDURES

A. It is the responsibility of each investigator to seek IRB approval prior to initiation of any research involving human subjects or conducting any clinical investigation.

B. It is the responsibility of each investigator to obtain any and all required approvals by mentors, faculty departments and ancillary departments, as appropriate, as detailed in HRPP Program Guide Section 1.7 - "Mentor, Department and Ancillary Reviews".

C. The investigator is responsible for making a preliminary decision regarding whether the activities meet either (a) the DHHS definitions of both "research" and "human subjects" or (b) the FDA definitions of both "clinical investigations" and "human subjects".

D. Steps and criteria for evaluating an activity to determine whether the activity is human research:

1. **Step 1**: Is the activity "Human Research" according to DHHS regulations?

a) **Criterion 1**: The activity is research per 45 CFR 46.101(d) if ***either*** are true:

1) it is part of a systematic investigation (including research development, testing and evaluation) to test a hypothesis and permit conclusions to be drawn, usually described in a formal protocol that sets forth an objective and a set of procedures designed to reach that objective; **or**,

2) it is designed to (e.g., the primary purpose) contribute to generalizable knowledge (expressed, for example, in theories, principles, and statements of relationships, or published in medical journals as research).

3) if either (1) or (2) are true, proceed to **Criterion 2**.

4) if neither (1) or (2) are true, the activity is not "Human Research" according to DHHS regulations. Proceed to **Step 2** to determine whether the activity is "Human Research" according to FDA regulations.

b) **Criterion 2**: The research involves human participants per 45 CFR 46.101(f) because:

1) the investigator will obtain data about living individuals; **and**

2) the investigator will obtain this data through intervention or interaction with those participants; **or**

3) the information obtained by the investigator is both private information **AND** identifiable information.

4) if the statements in **Criterion 2** are true, the activity is human research according to DHHS regulation. Proceed to Step 2 to determine whether the activity is human research according to FDA regulations.

5) if the statements in **Criterion 2** are not true, the activity is not human research according to DHHS regulations. Proceed to **Step 2** to determine whether the activity is human research according to FDA regulations.

2. **Step 2**: Is the activity "Human Research" according to FDA regulations?

a) **Criterion 1**: The activity involves an FDA regulated test article because at least one of the following statements are true per 21 CFR 50.3(c) and 21 CFR 56.102(c):

1) the activity involves the use of a drug, other than the use of a marketed drug in the course of medical practice; **or**

2) the activity involves the use of a device to evaluate safety or effectiveness of that device; **or**

3) data from the activity will be submitted to, or held for inspection by, the FDA in support of a marketing or research application for an FDA-regulated product.

4) if any of the above are true, proceed to **Criterion 2**.

5) if none of the above are true, the activity is not Human Research according to FDA regulations.

b) **<u>Criterion 2</u>**: The activity involving an FDA-regulated test article involves human participants per CFR 50.3(g) and 21 CFR 56.102(e) because at least one of the following statements are true:

1) the test article will be used on one or more humans; **or**

2) the data obtained from controls will be submitted to, or held for inspection by the FDA in support of a marketing or research application for an FDA-regulated product; **or**

3) the data obtained from use of a device on tissue specimens will be submitted to, or held for inspection by, the FDA in support of a marketing application or research application for an FDA regulated product.

4) if any of the above are true, the activity is human research according to FDA regulations.

5) if none of the above are true, the activity is not Human Research according to FDA Regulations.

3. **<u>Step 3</u>**: Summary of "Human Research" determinations (DHHS & FDA).

   a) DHHS – If the activity is considered research (Step 1, criterion 1) and involves human participants (Step1, criterion 2), it is considered human research according to DHHS regulations and requires IRB approval.

   b) FDA – If the activity involves an FDA regulated test article (Step 2, criterion 1) and involves human participants (Step2, criterion2), it is considered human research according to FDA regulations and requires IRB approval.

4. Investigators proposing activity which is "research" per 45 CFR 46.102(d) but does not involve obtaining information about living individuals per 45 CFR 416.102(f), may request for "Not Human Research" determination by the IRB by completing the "Not Human Research" application in eIRB.

E. Use of Cell Lines Obtained from Commercial Sources

1. Federal regulations (45 CFR 46.102(f)) defines a human subject as a living individual about whom an investigator (professional or student) conducting research obtains:

   a) Data through intervention or interaction with the individual; or
   b) Identifiable private information.

2. Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information to meet the criterion of human subject.

3. The Office of Human Research Protections has further clarified that "non-identifiable" material must be submitted to a repository (e.g. ATCC) without any identifiable private data or information. That is, no codes or linkers of any sort may be maintained, either by the submitter or by the repository, that would permit access to identifiable private data or information about the living individual from whom the material was obtained.

4. If either of the above criteria [1 a) or 2 b)] is met, then an application for Exempt Status MUST be submitted and approved by the IRB prior to use of the cell line.

5. If neither of the above criteria are met, then an application to the IRB is NOT required.

F. The Principal Investigator will submit the application for Not Human Research by indicating on the "Human Subjects Research" eIRB SmartForm page the basis for requested determination. The applicable justification will be indicated on the subsequent SmartForm page "Not Human Subjects Research". The protocol is then uploaded on the following SmartForm page.

IV. REFERENCES

A. OHRP Human Subject Regulations Decision Charts – (Note: These decision charts do not address requirements of other organizations, such as the Food and Drug Administration, National Institutes of Health, other sponsors, or state or local governments.)

1. Chart 1 – Is an Activity Research Involving Human Subjects?
2. Chart 2 - Is the Human subjects Research Eligible for Exemption?
3. Chart 3 - Does Exemption 45 CFR 46.101(b)(1)(for Educational Settings) Apply?
4. Chart 4 – Does Exemption 45 CFR 46.101(b)(2) or (b)(3)(for Tests, Surveys, Interviews, Public Behavior Observation) apply?
5. Chart 5 – Does Exemption 45 CFR 46.101(b)(4) (for Existing Data, Documents, records and Specimens) apply?
6. Chart 6 – Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) apply?
7. Chart 7 – Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) apply?
8. Chart 8 – May the IRB Review be done by Expedited Procedures?
9. Chart 9 – May the IRB Continuing Review by done by Expedited Procedures?

10. Chart 10 – May Informed Consent be Waived or Consent Elements be Altered under 45 CFR 46.116(d)?

11. Chart 11 – May Documentation of Informed Consent be Waived under 45 CFR 46.117(c)?