



GUIDELINE FOR DETERMINING HUMAN SUBJECT RESEARCH

According to OHSP Policy 301 Scope and Authority of the RSRB, the RSRB has the authority to determine whether a project meets the criteria for human subject research. When the RSRB office is consulted to discuss the proposed activity, or when a project is submitted for RSRB review, RSRB staff make the determination whether HHS or FDA criteria for review apply. Investigators, study teams and RSRB staff will consider the definitions provided and then follow the procedures below for confirming this determination. The Human Subjects Research Determination Form (Appendix 1) may be used as a tool, as well as the HHS [Human Subject Regulations Decision Charts](#).

Definitions

Human subject: *a living individual about whom an investigator (whether professional or student) conducting research (1) obtains information or biospecimens through intervention or interaction with the individual and uses, studies, or analyzes the information or biospecimens, OR (2) obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.*

- a. **Living Individual** means specimens/data/information collected from living subjects. Cadavers, autopsy specimens or specimens/information from subjects now deceased does not meet the definition of human subject.
- b. **Intervention** includes both physical procedures by which data are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.
- c. **Interaction** includes communication or interpersonal contact between investigator and subject. This includes fact-to-face, e-mail, and phone interaction, as well as other modes of communication.
- d. **Private Information** includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place (e.g., public restroom, waiting room), and information that has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (e.g., medical, psychological, employment and educational records).
- e. **Identifiable Biospecimen** means biospecimens for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.
- f. **Identifiable Private Information** means information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information (e.g., date of birth, social security number).

- **Note:** Projects based on data that contain individual identifiers, but are also publicly available, might not constitute human subject research (i.e., identifiable but not private). However, the term “publicly available” is intended to refer to data sets that are readily available to the broad public, such as census data, federal health, labor, or educational statistics, and might also apply to information posted on social media sites such as Facebook, Twitter and Instagram.
- g. **Research** is a *systematic investigation*, including research development, testing, and evaluation, designed to develop or contribute to *generalizable knowledge*. The activities are described in a formal protocol that set forth an objective or hypothesis and a set of procedures to reach that objective.
- a. **Systematic** is an activity that involves a methods of data collection (either quantitative or qualitative), and analysis of that data to answer a question.
 - b. **Investigation** is an activity that involves development, testing a hypothesis, evaluation, or search for information.
 - c. **Generalizable knowledge** is an outcome or result that might draw general conclusions, inform policy, or is universally or widely applicable; contributing to generalizable knowledge typically involves public dissemination of that information:
 - Knowledge is disseminated with the intent to influence behavior or practice.
 - Publication, presentation, or other distribution of the results is intended to inform the field of study.
 - The results are expected to be generalized to be applicable to a larger population beyond the site of data collection or population studied.
 - The results are intended to be, or may be, replicated in other settings.

Research results do not have to be published or presented to qualify the experiment or data gathering as research. The intent to contribute to "generalizable (scholarly) knowledge" makes an experiment or data collection research, regardless of publication. Research that never is published is still research and subjects deserve protection whether or not the research is published.

- **Note:** Thesis or dissertation projects involving human subjects, that are conducted to meet the requirement of a graduate degree, are considered generalizable and require RSRB review. If an instructor determines that there is a possibility that a student's proposed research project might result in a formal presentation or publication, he/she should advise the student to submit the project for RSRB review ***before beginning the study***.

Review Procedures

1. Assess Criteria for “Human Subject”

RSRB staff will consider the definition of “human subject” under the following HHS 45 CFR 46.102(e) definitions. Applications that include FDA regulated activities will be reviewed under the FDA definition of human subject according to 21 CFR 56.102(e).

2. Assess Criteria for “Research”

RSRB staff will consider the definition of “research” under the following HHS 45 CFR 46.102(l) definition that includes two elements: 1) systematic investigation, and 2) generalizable knowledge. Projects that include FDA regulated activities will be reviewed under the FDA definition of research according to 21 CFR 56.102(c).

3. Do Pilot (Feasibility) or Concept Activities Require RSRB Review?

Pilot Project includes activities that are tested or “piloted” on relatively few subjects so that preliminary data can be collected and parameters can be assessed before a larger study is developed or to support a grant submission.

Conducting Research at a Pilot or Feasibility Phase:

Investigators sometimes conduct a preliminary *investigation* of the feasibility of study activities using *human subjects*, usually on a small scale and exploratory in nature. The protocol *includes a systematic investigation* and activities are *designed* to help the Investigator refine data collection procedures and instruments, or prepare a more precise research design. Although data collected through pilot or feasibility studies (including those involving only one human subject) may not be used in research reports and publications, pilot studies represent part of the research process that leads to the development of or contribution to *generalizable knowledge*. Therefore, these activities meet the regulatory definition of “research” and require the same regulatory oversight as full-scale research studies. Pilot studies should be identified as such in the protocol and the consent document should clearly identify the project as a pilot or feasibility study.

Developmental Proposals – Concept Review:

Funding agencies might be unwilling to consider proposals in the development or concept stage without IRB approval, yet given the early stage of the project, the Investigator may not be able to provide a complete protocol or consent document. In these situations, the Investigator should include a scope of work to describe the activities being considered for review as part of the submission (i.e., to clarify whether there is any subject enrollment or data/specimen collection). Note that any research activities involving human subjects may not begin until a new study is submitted to RSRB for approval.

4. Activities Generally Not Human Subject Research

The following are examples of activities that generally do not require RSRB review; however, the RSRB should be consulted as needed:

- a) Scholarly and Journalistic Activities: These activities are designed to create a record of specific historical events and might include, for example, oral history, journalism, biography, literary criticism, legal research, and historical scholarship. These activities may include the collection and use of information that focus directly on the specific individuals about whom the information is collected.
- b) Case Report: A case report is an account of what occurred as part of clinical care. The information collected may include medical history and other relevant information which was initially collected for the purposes of diagnosing the individual's condition and/or for educational purposes. This information was not created or collected with any intent to test hypotheses or to produce produce 'generalizable' knowledge (e.g., using statistical methods for subgroup comparisons), the activity does not meet the criteria for 'research' [45 CFR 46.102(l)].

The following exceptions should be considered to ensure appropriate RSRB oversight when necessary:

- The situation might yield a Case Series, which is a group of case reports that includes information on more than one patient. However, this only rises to the level of a systematic investigation when analysis is planned to contribute to generalizable knowledge (i.e., the activity meets the regulatory criteria for 'research').
- There is a protocol/study plan to perform the treatment on some individuals but not on others.
- Investigational drug(s) or device(s) are involved (off-label use of an approved drug or device is permissible).
- There is a clear intent before treating the patient to use procedures to systematically collect data that wouldn't ordinarily be collected in the course of clinical practice in reporting and publishing the case.
- There is intent to manipulate medications (even FDA approved medications) to determine maximum effectiveness, or to test if they work consistently well.
- Extra tests are conducted for reporting purposes.
- Separate sets of records or data sheets are maintained (particularly with identifiers).
- The primary purpose is to answer a research question, not to provide care.

➤ **Note:** For case reports and case series, compliance with HIPAA authorization is required when applicable.

- c) Program Evaluations: The systematic collection and analysis of information about the effectiveness of the program in order to make judgments about the program, improve program effectiveness, and/or inform decisions about future program development. The intent of these projects is to inform the organization/institution/corporation about the program's effectiveness and needs rather than to contribute to generalizable knowledge, and, as such, are not considered research. However, should the feedback be extended to public presentation or publication beyond the 'internal' program/organization, this would be considered generalizable knowledge and, therefore, considered "research".
- d) Quality Assurance and Quality Improvement (QA/QI) Projects: These activities do not require RSRB review, except when they are conducted with the intent to develop or contribute to

generalizable knowledge and, therefore, involve “research” as defined by the federal regulations indicated above. In general, QA/QI projects are focused primarily on improving patient care within a given patient care environment (e.g., hospital or health care organization) and, as such, the outcome of the project may not be generalizable to other patient care environments. *Publication of a quality assurance project does not, per se, render that project “research”*; however, if the outcome of a quality assurance project is published, attention should be given to avoiding any reference to “research” in the publication.

- e) Educational Activities: Those activities conducted as an assigned class course. The purpose of these courses is to train students and provide them with a closer view of social, educational, or psychological processes, and an opportunity to practice various educational methods. The data won't result in a master's thesis, doctoral dissertation, poster session, abstract, or other publication or presentation. The students or other individuals are informed that the activities are for instructional purposes and not actual research according to the federal definition.
- f) Coded private information or biological specimens: Data or specimens that were collected for purposes other than the currently proposed project, and the Investigator cannot link the coded data/specimens back to an individual, either directly or indirectly through a unique code (or the Investigator enters into an agreement with the data/specimen provider that states under no circumstances will the identity of the subjects be released to the Investigator).
- g) Research performed on individuals who have been declared legally dead and/or research involving the collection of tissues from deceased individuals.
- h) Public Health Surveillance Activities: Includes the collection and testing of information or biospecimens by a public health authority and limited to those activities necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance.
- i) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.
- j) Authorized operational activities (as determined by the relevant federal agency) in support of intelligence, homeland security, defense, or other national security missions.

5. **Completing an Electronic Application or Consulting the RSRB Office**

Investigators proposing new projects that might meet the federal and institutional criteria for human subject research, as defined above, should complete an application through the RSRB online review system to receive an RSRB review determination. Researchers may also consult the RSRB to determine whether a project qualifies as “human subjects” or “research”, and whether an RSRB online application is appropriate. The RSRB staff may be able to address inquiries by phone; however, staff might need to provide written materials and/or might need to discuss the proposal at a face-to-face meeting.

Note: If a funding agency requires documentation of an IRB determination, complete the RSRB on-line application and a notification from the RSRB will be generated for your records.

6. **RSRB Determination of Review Level**

RSRB staff may request additional information from the Investigator or study staff in order to ensure an appropriate determination is made as to whether the activity involves human subject research. At any point during the review process, RSRB staff may determine that the activity qualifies as human subject research, in which case additional reviews will be applied to determine whether the activity qualifies under an exemption category defined by the federal regulations (see [Guideline for Determining Exempt Research](#)), or that the research activity needs to be considered for additional board review (e.g., expedited review – see [Guideline for Expedited Review](#)).

7. **RSRB Confirmation/Notification of Review Determination**

Upon RSRB review of the activity (e.g., via consultation or through the on-line application), the Investigator will be notified of the review determination.

Note: Activities that receive a “Not Human Subjects Research” determination (i.e., activity does not involve humans or is not research according to the respective regulatory definitions) are not under the oversight of the RSRB. Therefore, such activities, and personnel conducting those activities, are under the oversight and responsibility of the respective department.

Appendix 1 – Human Subjects Research Determination Form

Is it human research under DHHS Regulations?

A. “Human”

1. Does activity involve obtaining information **about living** individuals? Yes No
2. Does activity involve the prospective collection of data or information through **intervention** or **interaction** with the individual? Yes No
3. Does activity involve the collection or use of **Individually Identifiable** and/or **Private Information**? Yes No

If “Yes” to Q1 and Q2, **or** Q1 and Q3, activity involves human subjects per DHHS regulations.

B. “Research”

4. Is the activity **systematic**? Yes No
5. Is the activity an **investigation**? Yes No
6. Is the activity designed to **generate or contribute to generalizable knowledge**? Yes No

If “Yes” to Q4, Q5, **and** Q6, the activity meets the definition of research per DHHS regulations.

If the activity involves “human subjects” and “research” according to Section A & Section B above, use the appropriate [RSRB Protocol Template](#) and submit an application for a review determination. Continue through the remainder of the form for activities that may require further assessment.

Is it human research under FDA Regulations?

7. Are any of the following statements true?

- a. Activity is conducted in the United States and involves use of a drug in one or more human subjects (as recipients of a test article or as controls, patient or healthy, [21 CFR 50.3](#)), but is **not** the use of an approved drug in the course of medical practice. Yes No
- b. Activity is conducted in the United States and evaluates the safety or effectiveness of a device in one or more human subjects. Yes No
- c. Data regarding subjects (including controls) will be submitted to or held for inspection by FDA as part of an application for a research or marketing permit. Yes No
- d. Data regarding the use of a device (IVD) on human specimens (including de-identified/anonymous specimens) will be submitted to or held for inspection by FDA as part of an application for a research or marketing permit. Yes No

If “Yes” to **any** of 7a-7d, the activity is human research per FDA regulations.

Retrospective Data/Specimen Analysis Considerations

8. Does the activity involve retrospective data/specimen analysis? (If no, skip to next section)

If Yes, answer the following:

- | | | |
|--|------------------------------|-----------------------------|
| a. The entity sending the data/specimens will remove all identifiers, including any codes that can be linked to identifiers, before sending the data/specimens to UR investigator. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b. Data/specimens to be obtained are coded, but the holder of the key (to identifiers) and gatekeeper enter into an agreement (such as a code access agreement) prohibiting the release of the key to the UR investigator. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c. UR investigator has documentation of written policies/SOPs from a repository/data source that prohibits the release of the key to UR investigator. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d. There are other legal requirements prohibiting release of identifiers to UR investigator | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| e. The data (with or without identifiers) are publicly available. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If “Yes” to **any** of 8a-8e above, the activity might not be human subject’s research as defined by federal regulations. Consult the RSRB.

Quality Improvement Considerations

9. Does the project involve quality improvement, and does not meet the federal definition of research”?

(If no, form is complete). **If Yes, answer the following:**

- | | | |
|---|------------------------------|-----------------------------|
| a. The goal of the project is to inform/improve performance on a specific service, site or program and not to establish scientific evidence to share beyond the scope of the unit/site/institution. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b. The unit/site administrators approve this as a QI project to be systematically implemented; activities do not require the consent of individual participants. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c. If there is a possibility of publishing the outcomes of the QI initiative, the personnel involved will include the following statement with manuscripts, “This project was undertaken as a QI initiative, and as such was not approved by the University of Rochester’s RSRB”. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If “Yes” to 9a-9c, the activity might not be human subject’s research as defined by federal regulations. Consult the RSRB.