BERKELEY LAB

Not Human Subjects Research Determination (for Researchers)	Document No.:	HSC-2021-003
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Guidance for Determinations of Human Subjects Research

A. Purpose

To establish a standardized process for the determinations by HARC and the HSC of whether a study proposal is considered Human Subjects Research (HSR), which would thereby require the review and approval of the HSC.

B. Persons Affected

- All investigators performing work at Berkeley Lab that require a determination of whether the proposed study constitutes HSR.
- HARC Staff, and all HSC members should be aware of the determination process in order to properly evaluate proposals.

C. Exceptions

Principle Investigators may not rely solely on their own judgement, and are expected to consult the HARC office about any activities that ***could*** be considered by a reasonable person to constitute human subjects research. All determinations must be made as defined in this policy.

D. Policy Statement

The Human Subjects Committee (HSC) is committed to the protection of human subjects in research performed by or funded through Berkeley Lab. Any projects that meet the federal definition of HSR are required to be reviewed by the HSC. If there is any question as to whether a project meets this definition, the HARC office ***must*** make a determination. Any person who works on or with the project may submit an initial inquiry to HARC for determination, including but not limited to PIs, coordinators, research administrators, procurement specialists, and OSPIP personnel. The regulations, 45 CFR 46 (HHS) & 21 CFR 56 (FDA), provide definitions to help identify human subjects research that must be reviewed.

Research (45CFR46.102(l)) is defined as "a systematic investigation, including development, testing, and evaluation, designed to develop or contribute to generalizable knowledge." The two pieces of this definition that must be applied to the project and interpreted are "systematic investigation" and "generalizeable knowledge."

Quality Assurance and Quality Improvement activities are commonly not considered to be research, however, if the information collected is intended to be used to inform a broad field and not solely for application at the institution in which it is performed, then the research definition may apply. The Common Rule has defined an additional 4 categories of activities that are not

considered research in need of review by the cognizant IRB, and the FDA has 1 additional category.

1. Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected. OHRP Guidance clarifies that the objective should not be to develop generalized knowledge. If the activity involves using the information for purposes of drawing general conclusions about the overall group, then the activity *would* be considered research for the purposes of the regulations. 2) the determination about whether an activity is research should be made by looking at the specific activities in question, rather than by looking at the academic discipline in which that activity is situated

2. Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those 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 (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters).

3. 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.

4. Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

5. Taste and food quality evaluations and consumer acceptance studies (with conditions).

Human subject means a living individual about whom an investigator (whether professional or student) conducting research:

i. Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or

ii. Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

This definition includes any work with data or specimens that are publicly available if the data/specimens are identifiable. Even de-identified data may need review by the HSC, and should always be submitted for a determination. Specifically, the combining of multiple de-identified datasets is not allowed unless the project has been reviewed by the HSC, and requires

submission of a full protocol. Additionally, the HSC ***must*** be consulted when coded private information or biospecimens are to be obtained from another researcher or private company for secondary research purposes, as there are data agreements required to be in place for this research to occur.

Procedures

1) Contact the HARC office by phone or email in order to initiate a determination of whether the project is HSR or not.

2) Investigators will be asked to provide a thorough description of the project, including funding information, methods, source information for publicly available data/biospecimens, and sharing of agreements in place.

3) Once all of the information is believed to have been gathered, the Compliance Specialist will meet with the HSC Chair in order to go over the details of the project.

4) Determinations

- **a.** Not HSR, which would result in a NHSR Determination Letter being given to the PI to keep on file; OR
- **b.** HSR, which would require the PI to complete a protocol in HARP.

E. Roles & Responsibilities

Role	Responsibility
Any individual working on or with a project	Initiate contact with the HARC office to ask that a determination be made if there is any question as to whether the project meets the definition of human subjects research.
Principal Investigator	The PI on the study is responsible for continuing a dialogue with the HARC office in order to communicate all of the necessary information to receive a determination on the project.
HSC Chair	The Chair is responsible for making a final determination based on the evidence presented, as well as asking questions if there is not enough information provided to make such a determination.
HARC Compliance Specialist	HARC is responsible for collecting the appropriate information from the PLI in order to accurately describe the project being discussed. They are expected to help the Chair in making the determination based on applicable regulations. HARC is also responsible for communicating with the PLI regarding the determination, and maintaining documentation.

F. Definitions/Acronyms

a. **Research:** A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition and do not fall under one of the exclusions at 45 CFR 46.102(l)(1)-(4) constitute research for purposes of this policy whether or not they are conducted or supported under a program which is considered research for other purposes.
   i. **Systematic Investigation:** a study or examination involving a methodical procedure or plan.
   ii. **Generalizable knowledge:** The information is expected to expand the knowledge base of a scientific discipline or other scholarly field of study and yield one or both of the following:
      1. Results that are applicable to a larger population beyond the site of data collection or the specific subjects studied. OR
      2. Results that are intended to be used to develop, test, or support theories, principles, and statements of relationships, or to inform policy beyond the study.
      3. Usually includes results shared at conferences and public forums, included in abstracts, or published in journals or other literature, outside the institution.

b. **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. In clinical research, a subject is someone who becomes a participant in research, either as a recipient of the test article or as a control.
   i. **Intervention** includes both physical procedures by which data or biospecimens are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.
   ii. **Interaction** includes communication or interpersonal contact between investigator and subject.
   iii. **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, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (e.g., a medical record).

c. **HARC:** The Human and Animal Regulatory Committees office. Operated as a part of the EH&S division, staff are responsible for the administration of the Human Subjects Committee, Animal Welfare and Research Committee, and the Radioactive Drug Research Committee.

d. **HARP:** The Human/Animal Research Protocol Management System. The system housing online "smart" forms that lead all Berkeley Lab researchers through protocol application, renewal, amendment, and adverse/unexpected event reporting processes.

e. **Protocol Lead Investigator:** The researcher with primary responsibility for conducting

human subjects research under a specific protocol.

G. Recordkeeping Requirements

All determination letters shall be maintained by HARC for reference to the project for at least 7 years, or when applicable, for the lifetime of the project in question.

H. Implementing Documents

Document Number	Document Title	Type
N/A	Human Subjects Committee	Website
N/A	Human/Animal Research Protocol Management System	Website
	Pub-3000 Chapter 22. Human and Animal Research	Website

Other References

https://www.hhs.gov/ohrp/regulations-and-policy/decision-charts-2018/index.html

https://www.hhs.gov/ohrp/regulations-and-policy/guidance/guidance-on-engagement-of-institutions/index.html

https://www.reliasmedia.com/articles/146763-combining-large-data-sets-challenges-irbs-researchers-to-ensure-privacy

https://www.hhs.gov/ohrp/regulations-and-policy/guidance/faq/quality-improvement-activities/index.html

https://www.hhs.gov/ohrp/coded-private-information-or-biospecimens-used-research.html

I. Contact Information

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J. Revision History