IRB Policy 42: Department of Defense Research
Date: September 7, 2017

I. Summary Policy

Department of Defense (DoD) research must comply with applicable regulations/instructions. Research sponsored by the Department of Defense (DoD) involving collaboration with DoD, or involving DoD facilities or personnel (military or civilian) is subject to additional special requirements to enhance the protection of human subjects. These requirements include additional protections for research participants as well as additional review and reporting requirements for the IRB, institution, and investigator. Each DoD Component may have additional requirements beyond those included in this policy.

II. What Qualifies as DoD Research

Research is considered to involve the DoD when:

- **Funding:** The research is funded by a component of DoD. (Example: funded by Department of Navy, Army or Air Force)
- **Collaboration:** The research involves cooperation, collaboration or other type of agreement with a component of DoD.
- **Facilities:** The research uses property, facilities or assets of a component of DoD.
- **Personnel:** The subject population will intentionally include personnel (military and/or civilian) from a component of DoD.

The DoD components include, but may not be limited to:

- Navy
- Office of Naval Research
- Naval Academy
- U.S. Naval Observatory
- Army
- U.S. Army Corps of Engineers
- Military Academy (West Point)
- Air Force
- Air Force Academy
- Marines
- Coast Guard
- Coast Guard Academy
- National Guard
- Missile Defense Agency
- Defense Advanced Research Projects Agency (DARPA)
- Pentagon Force Protection Agency
- Defense Intelligence Agency

- National Geospatial-Intelligence Agency
- National Security Agency
- National War College
- Tricare Health System

III. Definitions

Administrative Review: A review of a research protocol and supporting documents (e.g., safety review, scientific review, IRB minutes) related to DoD-supported research involving human subjects which ensures the institution engaged in the research involving human subjects has met the requirements of all applicable regulations and policies. This review is NOT an IRB review.

The DoD Component must conduct an appropriate administrative review of the research involving human subjects. The DoD Component administrative review must be conducted before the research involving human subjects can begin, to ensure compliance with all applicable regulations and policies, including any applicable laws and requirements and cultural sensitivities of a foreign country when the research is conducted in a foreign country.

Continuing non-compliance: A pattern of noncompliance that suggests the likelihood that, without intervention, instances of noncompliance will recur. A repeated unwillingness to comply with DoD Instructions 3216.02, or a persistent lack of knowledge of how to comply with the DoD Instructions 3216.02.

DoD conducted research involving human subjects: Research involving human subjects that is performed by DoD personnel. Intramural research is one type of DoD-conducted research involving human subjects.

DoD personnel: DoD civilian employees and members of the military services.

Service members: Individuals appointed, enlisted, or inducted for military service under the authority of the Department of Defense. The Military Services are the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Reserve Components, which includes the Army and the Air National Guards of the United States. Members of the Reserve Components are included when in a duty status.

DoD-supported research involving human subjects: Research involving human subjects for which the Department of Defense is providing at least some of the resources. Resources may include but are not limited to funding, facilities, equipment, personnel (investigators or other personnel performing tasks identified in the research protocol), access to or information about DoD personnel for recruitment, or identifiable data or specimens from living individuals. It includes both DoD-conducted research

involving human subjects (intramural research) and research conducted by a non-DoD institution.

Minimal risk: When following Department of Defense regulations: The definition of minimal risk based on the phrase "ordinarily encountered in daily life or during the performance of routine physical or physiological examination or tests" shall not be interpreted to include the inherent risks certain categories of human subjects face in everyday life. For example, the risks imposed in research involving human subjects focused on a special population should not be evaluated against the inherent risks encountered in their work environment (e.g., emergency responder, pilot, soldier in a combat zone) or having a medical condition (e.g., frequent medical tests or constant pain).

Non compliance: Failure of a person, group, or institution to act in accordance with DoD Instruction 3216.02

Research Involving a Human Being as an Experimental Subject: An activity, for research purposes, where there is an intervention or interaction with a living individual for the primary purpose of obtaining data regarding the effect of the intervention or interaction (32 CFR 219.103(f) reference (c)). Research involving a human being as an experimental subject as defined in DODI 3216.02 is a subset of research involving human subjects. Further information surrounding this definition may be found at: http://www.dtic.mil/whs/directives/corres/pdf/321602p.pdf.

Serious noncompliance: Failure of a person, group, or institution to act in accordance with this Instruction and its references such that the failure could adversely affect the rights, safety, or welfare of a human subject; place a human subject at increased risk of harm; cause harm to a human subject; affect a human subject's willingness to participate in research; or damage or compromise the scientific integrity of research data.

UPIRTSO: Any incident, experience, or outcome that meets ALL three of the following conditions:

1. Is unexpected (in terms of nature, severity, or frequency) given the procedures described in the research protocol documents (e.g., the IRB-approved research protocol and informed consent document) and the characteristics of the human subject population being studied.
2. Is related or possibly related to participation in the research (in this Instruction, possibly related means there is a reasonable possibility that the incident, experience, or outcome may have been caused by the procedures involved in the research).
3. Suggests that the research places human subjects or others at a greater risk of harm (including physical, psychological, economic, or social harm) than was previously known or recognized, even if no harm has actually occurred.

IV. Requirements

A. Federalwide Assurance

Any institution engaged in non-exempt research involving human subjects that is conducted or supported by the Department of Defense must have a Federal assurance consistent with section 219.103 of Title 32, Code of Federal Regulations and acceptable to the funding agency. A non-DoD institution that is engaged in DoD-supported non-exempt research involving human subjects may require a DoD assurance if the existing Federal assurance is not appropriate for the research being conducted. All researchers conducting non-exempt research involving human subjects must be covered either directly under their institution's Federal assurance or indirectly using an Individual Investigator Agreement.

B. Formal Agreements

When conducting DoD multi-site research, a formal agreement between organizations is required to specify the roles and responsibilities of each party is required. The PI is responsible for informing the ETSU IRB of any collaborative arrangements with other institutions or individuals not at ETSU or the James H. Quillen VAMC. This information is important for ensuring that the PI and ETSU (and VA, if applicable) are fully compliant with DoD requirements.

When conducting multi-site research, investigators should contact the East Tennessee State University Vice Provost for Research (or for VA, the VA Administrative Officer for Research) to ensure that a formal agreement between organizations is implemented. The purpose of the agreement is to specify the roles and responsibilities of each party. Collaborating institutions in multi-site research must hold a FederalWide Assurance.

Investigators must provide the following before IRB approval will be issued: documentation of IRB approval or IRB Authorization Agreement for engaged collaborators and a statement of compliance with special DoD requirements from each site. In addition, for studies that are greater than minimal risk, collaborating institutions must have arrangements for emergency treatment and necessary follow-up of any research related-injury. If the local site is the lead site, the IRB is responsible for evaluating adherence to this requirement across performance sites.

DoD institutions collaborating with non-DoD institutions may rely on a collaborating non-DoD institution's IRB if the following conditions are met:

• Each institution engaged in non-exempt human participant research must have a current federal assurance of compliance.
• The involvement of DoD personnel in the conduct of the research is secondary to that of the nonDoD institution.
• The DoD institution, non-DoD institution, and the non-DoD institution's IRB have a written agreement defining the responsibilities and authorities of each organization in complying with all legal requirements. This agreement must be approved by the DoD component prior to the DoD institution's engagement in the research.

C. Permissions
Command Approval for Military Personnel

Military personnel may need command approval before participating in human subjects research because some research may impact readiness in the field. As part of the IRB review, investigators will be asked to provide documentation of command approval. The ETSU IRB requires that the documentation be in the form of an attached letter or email of agreement, indicating that the PI has permission to conduct research at the location.

D. Scientific Merit

When the ETSU or ETSU/VA IRB reviews DoD-supported research, the IRB must consider the scientific merit of the research. New research and substantive modifications to approved research must undergo scientific review prior to or at the time of IRB review. The Department Chair (for ETSU) or the Service Chief (for VA) conducts this review and documents the review on the DoD Scientific Review Checklist. The IRB may rely on outside experts to provide an evaluation of scientific merit (refer to policy 2, consultant section) if needed.

A substantive modification is defined (definition from the USAMRMC ORP HRPO, Instructions from Investigators) as a change in Principal Investigator, change or addition of an institution, elimination or alteration of the consent process, change to the study population that has regulatory implications (e.g. adding children, adding active duty population, etc), significant change in study design (i.e. would prompt additional scientific review) or a change that could potentially increase risks to subjects.

E. Educational Requirements

Initial and continuing research ethics education is required for all personnel who conduct, review, approve, oversee, support or manage human research supported by the DoD or its components. At the present time, the ETSU IRB requires that individuals conducting human subjects research complete modules on human subjects protections as described in IRB Policy 2. Individual DoD components may have stricter or specific

educational requirements, and may require re-certifications more frequently than currently mandated by ETSU or the VA. The DoD component may evaluate the ETSU or VA education policies to ensure the personnel are qualified to perform the research, based on the complexity and risk of the research. Researchers should contact their Program Officer at the DoD, or DoD component, to ensure adherence to any unique requirements. It is the Principal Investigator's responsibility to ensure that all research staff have completed all educational requirements as mandated by DoD policy. The PI is required to submit information from the specific DoD component regarding required training with the New Protocol Submission xform. To ensure that researchers are aware of the specific requirements of DoD, the PI is required to complete a DoD attestation at the time of the initial submission. This attestation includes acknowledgement of the PI responsibility to educate their research staff. The HRPP Director will provide appropriate education to IRB staff, Chair and members about the DoD requirements. Whenever a DoD study is reviewed, IRB reviewers will complete a DoD supplemental xform that includes help text describing the DoD rules.

F. DoD Notification of Review or Approval Process

1. If the ETSU IRB determines that a proposed DoD activity is not research involving human subjects, the IRB Coordinator will send a copy of that determination to the DoD HRPO. The IRB Coordinator will notify the submitter in writing that the DoD HRPO must concur with ETSU's determination before the activity can begin.
2. If the ETSU IRB determines that a proposed DoD activity is exempt research, the IRB Coordinator will send a copy of that determination to the DoD HRPO. The IRB Coordinator will notify the submitter in writing that the DoD HRPO must concur with ETSU's determination before the activity can begin.
3. Before any DoD human subjects research can begin, ETSU must receive a written notification from the DoD funding component that the IRB approval or exempt determination and assurance documentation have been accepted. IRB approvals for DoD research will be flagged by the IRB Coordinator in IRBManager as "internal only" and not released to the PI until this notification has been received.

G. Additional Reporting Requirements

1. The IRB Chair overseeing DOD supported research must promptly report (within 30 days except for UPIRTSO) to the DoD human research protection official (HRPO):

- When significant changes to the research protocol are approved by the IRB. The PI is responsible for ensuring that the DoD HRPO review

and accepts the IRB-approved substantive changes to an approved research protocol before they are implemented.

- The results of the IRB continuing review (For studies subject to the Army rules, for studies that are greater than minimal risk, a copy of the xform 107 and any attachments must also be submitted)
- If the IRB used to review and approve the research changes to a different IRB
- For Army-supported studies, the IRB Chair is responsible for promptly (within 5 days) reporting all unanticipated problems involving risk to subjects or others by telephone (301-619-2165), by email (usarmy.detrick.medcomusamrmc.other.hrpo@mail.mil), or by facsimile (301-619-7803) to the HRPO. A complete written report must follow the initial notification. In addition to the methods above, the PI must send the complete report to the US Army Medical Research and Materiel Command, ATTN: MCMR-RP, 810 Schreider Street, Fort Detrick, Maryland 21702-5000

2. The ETSU HRPP Director will promptly report (within 30 days) to the DoD human research protection official when ETSU is notified by any Federal department, agency or national organization that any part of the human research protection program is under for cause investigation of a research protocol involving a DoD supported research protocol.

   For a VA study, The VA IO will promptly report (within 30 days) to the DoD human research protection official when the James H. Quillen VA is notified by any Federal department, agency or national organization that any part of the human research protection program is under for cause investigation of a research protocol involving a DoD supported research protocol.

3. For ETSU studies, For ETSU studies, the ETSU HRPP Director will report any determinations of serious or continuing noncompliance of DoD-supported research promptly (within 30 days) to the DoD human research protection officer. The ETSU HRPP Director will report any unanticipated problems involving risks to participants or others for any DoD-supported research promptly (within 30 days) to the DoD human research protection officer. The ETSU HRPP Director will report any suspension or termination of DoD supported research promptly (within 30 days) to the DoD human research protection officer. Refer to Policy 34 for additional requirements for reporting UPIRTSOs, suspensions, terminations, and serious or continuing non-compliance.
   For VA studies, the RCO assumes these responsibilities.

4. See section of this policy regarding required reporting when a participant becomes a prisoner.

5. Some components have additional reporting requirements.

   For Navy-supported research, for ETSU studies, the ETSU HRPP Director is responsible for promptly reporting (within 30 days) any of the following. For VA studies, the AO for Research assumes this responsibility for this reporting:

   - All audits, investigations, or inspections of DON-supported research protocols.
   - All audits, investigations, or inspections of the institution's HRPP conducted by outside entities (e.g., the FDA or OHRP)
   - Significant communication between institutions conducting research and other federal departments and agencies regarding compliance and oversight.
   - All restrictions, suspensions, or terminations of institutions' assurances.

6. For Air Force studies:
   In addition to other required documentation, the IRB Reviewer must document in the appropriate reviewer checklist:
   - For Air-Force studies: The Research Focus Area must be documented. The definition of "research focus area" is a general category of military medicine in which a study's relevance may be described. The Research focus area of an investigative study may include any of the following five categories: Medical Readiness (MR), Prevention (Primary P-1, Secondary P-2, Tertiary P-3), Medical Utilization (MU), Managed Care (MC), or Treatment, Diagnosis or Other (TDO).

     If the study is reviewed by the convened board, this determination must be documented in the IRB minutes.

H. Inclusion of women and minorities in clinical research

Public Law 103-160 section 252 charges the Secretary of Defense with ensuring that include women and members of minority groups who are members of the Armed Forces are included as subjects in each project of DoD-conducted or –supported clinical research involving human subjects. A waiver of this requirement may be granted by the Secretary of Defense in certain situations. The ETSU IRB, when reviewing clinical

research that is supported by DoD, will ensure that women and minorities are not inappropriately excluded.

I. Research Monitor

For studies involving greater than minimal risk, appointment of an independent research monitor, by name, is required. The IRB will consider the appointment of a research monitor for minimal risk studies, and if appropriate, the IRB or organizational official can also require this for research involving no more than minimal risk.

- The Principal Investigator is responsible for providing the name, contact information and responsibilities of the monitor to the IRB in the submission.
- The monitor must have current human subject's protection training.
- The monitor must have no apparent conflict of interest. (Submission of a potential conflict of interest form used for consultants must be obtained from the proposed monitor. If a conflict is disclosed, the individual may not serve as a monitor). The monitor must be independent of the team conducting the research.
- The monitor cannot be under the supervision of any of the researchers.
- The IRB must appoint this independent research monitor by name.
- If the study involves HIPAA, the ETSU Privacy Officer and, if VA, the VA Privacy Officer must be consulted to determine whether revision of any HIPAA Authorization or other HIPAA-related items is needed.
- The research monitor(s) shall have expertise consonant with the nature of risk(s) identified within the research protocol, and shall be independent of the team conducting the research. Medical monitors shall be independent of the research team and shall possess sufficient educational and professional experience to serve as the subject/patient advocate. Medical monitors shall be physicians, dentists, psychologists, nurses, or other healthcare providers capable of overseeing the progress of research protocols, especially issues of individual subject/patient management and safety.
- There may be more than one research monitor for a study (e.g., if different skills or experiences are necessary).
- The monitor may be an ombudsman or a member of the data safety monitoring board.
- The IRB must approve a written summary of the monitor's duties, authorities, and responsibilities. The IRB must document the required duties and responsibilities of the monitor and communicate this information to the monitor.
- The IRB or Institutional Official must communicate with the research monitors to confirm their duties, authorities, and responsibilities.
- The duties of the research monitor shall be determined by the IRB on the basis of specific risks or concerns about the research. They may perform oversight functions. Depending on the nature of the study, the research monitor may be assigned to assess one or more of the following functions of the research

project: observation of subject recruitment, enrollment, or the consent process, oversight of study interactions or interventions, oversight of data matching, data collection, or data storage and analysis, and review of monitoring plans and unanticipated problems involving risk to participants or others.

- At the discretion of the IRB, the research monitor may be assigned to discuss the research protocol and progress with the investigators, interview subjects, and consult on individual cases, or evaluate adverse event reports.
- The research monitor has the authority to stop a research study in progress, remove individuals from a study, and/or take any steps to protect the safety and well-being of subjects until the IRB can assess the monitor's report.
- The research monitor has the responsibility to promptly report their observations and findings, including any discrepancies or problems, to the IRB or designated official.
- The Heads of the OSD and DoD Components may waive the requirement to have a research monitor on a case by case basis when the inclusion of a research monitor is not necessary to provide additional protections for human subjects.
- The IRB may also choose to appoint a monitor for research that is no more than minimal risk.

J. Consent Issues

Research Related Injury

The Department of Defense components may have stricter requirements regarding research-related injury than those outlined in the policies of ETSU and federal regulations. Investigators should work with their Program Officer within the DoD component to identify such requirements. Additional language regarding specific requirements by the DoD should be incorporated into the informed consent document as appropriate.

As an example, the Navy (SECNAVINST 3900.39D) requires that "every project involving greater than minimal risk shall include an arrangement for emergency treatment and necessary follow-up of any research related injury." The ETSU IRB is responsible for determining whether research involving minimal risk might include a similar arrangement for research-related injury.

The IRB is responsible for ensuring that the disclosure for research related injury follows the requirements of the DoD component.

Other Consent Language:

The following must appear in the consent form:

• A statement that the DoD or a DoD organization is funding the study.

• A statement that representatives of the DoD are authorized to review research records.

• In the HIPAA Authorization or HIPAA authorization section of the consent form, representatives of the DoD must be listed as one of the parties to whom private health information may be disclosed.

• If the study involves the participation of a research monitor (as defined by DoDI 3216.02), consideration should be given as to whether the research monitor should also be listed in the HIPAA Authorization as one of the parties to whom private health information may be disclosed.

Waiver of Consent

If the research subject of a study funded by the DoD or its components meets the definition of "experimental subject" then a waiver of consent [including an exception from informed consent in emergency medicine research] by the IRB is prohibited unless a waiver is obtained from the Assistant Director of Defense for Research and Engineering.* This places limitations on research involving deception, decisionally-impaired individuals, or research being conducted under emergency conditions where the subject may not be able to provide consent. This statute applies only to certain intervention studies. If the research subject does not meet the definition of an "experimental subject," as defined in DODI 3216.02, then the IRB may waive the consent process.

Waivers are prohibited for classified research. When conducting emergency medicine research, the Secretary of Defense must approve a waiver of the advance informed consent provision of 10 USC 980. The Army "Instructions for Investigators" notes that 10 USC 980 does not apply to retrospective studies, observational studies, blood draws, and tissue collections. The ETSU IRB Chair will consult with the DoD if clarification is needed regarding the applicability of 10USC 980 to a proposed research project.

The Assistant Secretary for Defense for Research and Engineering may waive the requirements for consent when all of the following are met:

• The research is necessary to advance the development of a medical product for the Military Services.

• The research may directly benefit the individual experimental subject.

• The research is conducted in compliance with all other applicable laws and regulations.

Consent from Legally Authorized Representative

Research involving consent by a legally authorized representative is only permissible if the research is intended to be beneficial to each individual subject. The determination that the research is intended to be beneficial to the experimental subject must be made by the IRB. Per military law and DOD directive, informed consent may be provided by a legally authorized representative of subjects if: (1) the subject lacks capacity (due to age, condition, or other reason) to make a decision regarding consent to participate in the research; AND (2) the IRB has determined that the research is intended to be beneficial to the individual subjects. ETSU IRB has additional requirements for those who are decisionally impaired as outlined in Chapter 14. As a protocol reviewed by the ETSU IRB would need to meet both sets of requirements, the more restrictive policy would apply.

K. Study Participants

Studies Involving Department of Defense Personnel

Undue Influence

For research involving military personnel, the following additional protections must be in place and articulated in the IRB application to minimize undue influence:

- Superiors (e.g., military and civilian supervisors, unit officers and non-commissioned officers) cannot influence the decision of their subordinates to participate in the research.
- Superiors of Service members (e.g, unit officers, senior non-commissioned officers and equivalent civilians) cannot be present at any recruitment sessions or during the consent process in which members of units under their command are afforded the opportunity to participate.
- When applicable, the superiors so excluded shall be provided the opportunity to participate as research subjects in a separate recruitment session.
- In research involving Service members when recruitment occurs in a group setting, the IRB shall appoint an ombudsman. The ombudsman shall not be associated in any way with the research, and shall be present during the recruitment in order to monitor that the voluntary involvement of recruitment is clearly and adequately stressed, and that the information provided about the research is clear, adequate and correct.

Studies Involving DoD Civilians as Subjects

- Supervisors (e.g., military and civilian supervisors, or anyone in the supervisory structure) cannot influence the decision of their subordinates to participate in the research.
- Superiors of Service members (e.g., military and civilian supervisors, or anyone in the supervisory structure) cannot be present at any recruitment sessions or

during the consent process in which DoD civilians under their supervision are afforded the opportunity to participate.
- When applicable, the supervisors so excluded shall be provided the opportunity to participate in a separate recruitment session.
- For research involving civilians, and when recruitment occurs in a group setting, the IRB shall discuss appointing an ombudsman. The IRB's decision to require the appointment of an ombudsman should be based in part on the population, the consent process, and the recruitment strategy.

The DoD Supplemental xform requires that the PI documents military status of research team members who will obtain consent so that the IRB will be able to assess this requirement.

Civilian researchers attempting to access military volunteers should seek collaboration with a military researcher familiar with service specific requirements.

L. Compensation

The DoD has very specific requirements regarding compensation paid to DoD employees, whether they are active duty military or DoD civilian employees (DoD Instruction, 11. Compensation to Human Subjects for Participation in Research). Investigators who plan to compensate subjects may need to ask subjects about their military status in order to comply with the requirements below. Investigators should describe their plan for this assessment of military status in the new protocol submission xform if payments are part of the project.

Title 5 section 5536 prohibits an employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation from receiving additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law. The following limitations on dual compensation for U.S. military personnel apply for DoD funded research:

- An individual may not receive pay from more than one position for more than 40 hours of work in one calendar week. This limitation on dual compensation includes temporary, part-time and intermittent appointments.
- Individuals may receive compensation for research activities if the research activities take place outside of scheduled work hours.
- Federal employees while on duty and non-Federal persons may be compensated for blood draws for research up to $50 for each blood draw. Payment to Federal employees and Active Duty military personnel for participation in research while on duty is limited to payment for blood donation. They may not receive any other payment or non-monetary compensation for participation in a research study unless they are off duty or on leave during the time they are participating in the protocol.

- Non-Federal persons may be compensated for research participation other than blood draws in a reasonable amount approved by the IRB according to local prevailing rates and the nature of the research.

The PI is responsible for ensuring that the funder allows payment to participants. There are restrictions on the use of federal funds for payment of research participants.

M. International Research

When DoD-sponsored research involves human subjects who are not U.S. citizens or DoD personnel and the research is conducted outside the United States, and its territories, the Principal Investigator must obtain permission from the host country. The laws, customs, regulations and practices of the host country and those required by the ETSU IRB will be followed by the researcher. An ethics review by the host country, or local DoD IRB with host country representation is required. Evidence of permission to conduct the research in the host country by certification or local ethics review must be submitted to the ETSU IRB prior to initiation of the project. When the research involving human subjects is being conducted in a foreign country, the ETSU must confirm all applicable national laws and requirements of the foreign country have been met and consider the cultural sensitivities in the setting where the research will take place.

N. Vulnerable Populations

Research supported or conducted by the Department of Defense that affects vulnerable classes of subjects must meet the additional protections of 45 CFR Part 46, Subparts B, C, and D. The DoD and the IRB will consider the need for similar safeguards for other vulnerable populations such as those with cognitive impairment, mental illness, physical disability or any other circumstance that might require special protections. Determinations authorizing or requiring any action by an official of DHHS are under the authority of the Director, Defense Research and Engineering.

In addition to the vulnerable populations with which researchers may be familiar, the Navy also includes severely ill patients, employer/employee, student/teacher, supervisor/subordinate, and deployed personnel as among the groups that may require additional protection. (SECNAVINST 3900.39D November 6, 2006 – 6. Policy (a)(6) Vulnerability and Additional Protections)

Research with Minors

The exemption at 45 CFR 46.101 (b) (2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed (See 32 CFR 219.101.)

Service Members and Their Status as Adults For purposes of legal capacity to participate in DoD-conducted or supported research involving human subjects, all active duty Service members and all Reserve Component members in a Federal duty status are considered for the purpose of DoD Instruction 3216.02 to be adults. When Service members are under 18 years of age, students at Service Academies, or trainees, the IRB shall carefully consider the recruitment process and the necessity to include such members as human subjects.

Research with Prisoners

DoD research involving prisoners as subjects cannot be reviewed by the IRB through an expedited review procedure. When the convened IRB reviews research involving prisoners, at least one prisoner representative must be present for quorum. The prisoner representative may be a prisoner, an employee of the prison, or an individual not affiliated with the prison.

Captured or detained personnel: -The DOD Directive 3216.02 prohibits research involving a detainee. (Section 4.4.2- The involvement of prisoners of wars as human subjects of research is prohibited) Detainee is defined as any individual captured by, or transferred to the custody or control of, DoD personnel pursuant to the law of war. This does not include persons being held solely for law enforcement purposes, except where the United States is the occupying power. Detainees who are U.S. citizens or U.S. resident aliens will continue to enjoy all applicable rights and privileges under U.S. law and DoD regulations. This prohibition does not apply to research involving investigational drugs and devices when the same products would be offered to US military personnel in the same location for the same condition. Refer to the DOD Directive 3216.02 for limit of applicability of this prohibition when the purpose is diagnosis or treatment of a medical condition in studies with and IND or IDE. Before the IRB reviews a DoD study in which prisoners or detainees could potentially be present, the IRB Coordinator will obtain the definition of prisoner of war for the Department of Defense component supporting the research in order and provide this to the IRB to ensure that this requirement is met.

In addition to the allowable categories of research on prisoners in 45 CFR Part 46, Subpart C, this additional category is allowable:

1. Epidemiological research is allowable when:

- The research describes the prevalence or incidence of a disease by identifying all cases or studies the potential risk factor associations for a disease.
- The research presents no more than minimal risk.
- The research presents no more than an inconvenience to the participant.
- Prisoners are not a particular focus of the research.

When a previously enrolled human subject becomes a prisoner and the relevant research protocol was not reviewed and approved by the IRB in accordance with the requirements noted above, the PI shall promptly notify the IRB (within 5 days of becoming aware). If the researcher asserts to the IRB that it is in the best interest of the prisoner-participant to continue to participate in the research while a prisoner, the IRB chair may determine that it is in the best interest of the prisoner-participant to continue to participate in the research while a prisoner, until the convened IRB can review this request to approve a change in the research protocol and until the organizational official and DoD Component office review the IRB's approval to change the research protocol. Otherwise, the IRB Chair shall require that all research interactions and interventions with the prisoner-participant (including obtaining identifiable private information) cease until the convened IRB can review the request to approve a change in the research protocol.

This type of request for change cannot be reviewed and approved by the IRB using expedited procedures. It must be reviewed by the convened board.

The convened IRB, upon receipt of notification that a previously enrolled human participant has become a prisoner, must promptly re-review the research protocol to ensure that the rights and wellbeing of the human subject, now a prisoner, are not in jeopardy. The IRB should consult with a subject matter expert having the expertise of a prisoner representative if the IRB reviewing the research protocol does not have a prisoner representative. If the prisoner-participant can continue to consent to participate and is capable of meeting the research protocol requirements, the terms of the prisoner participant's confinement does not inhibit the ethical conduct of the research, and there are no other significant issues preventing the research involving human participants from continuing as approved, the convened IRB may approve a change in the study to allow this prisoner participant to continue to participate in the research. This approval is limited to the individual prisoner-participant and does not allow recruitment of prisoners as participants.

In addition, ETSU shall promptly report all decisions related to this to the DoD HRPO. The applicable DoD Component Officer must concur with the IRB before the prisoner-participant can continue to participate while a prisoner.

Pregnant Women

For the purposes of applying 45 CFR Part 46, Subpart B, the phrase "biomedical knowledge" shall be replaced with "generalizable knowledge."

The applicability of Subpart B is limited to research involving pregnant women in research that is more than minimal risk and includes interventions or invasive procedures to the woman or the fetus or involving fetuses or neonates as participants.

Fetal Research

Fetal research funded by the DOD must comply with the US Code Title 42, Chapter 6A, Subchapter III, Part H, 289g.

O. Records / Archiving of Records

Researchers are required by DoD policy to maintain an extensive number of research-related and compliance-related documents in their file. PIs are responsible for maintain records required by DoD and provide DoD with all documents required by DoD.

Generally, research records should be kept for the length of time required by ETSU (or for VA studies, VA) or other requirements (e.g, FDA). However, individual DoD components may have additional requirements, including the transfer of records to the DoD component. Retained records shall be made accessible for inspections and copying by authorized representatives of the DoD.

Records maintained that document compliance or non-compliance with DoD regulations must be made accessible for inspection and copying by representatives of the DoD at reasonable times and in a reasonable manner as determined by the supporting DoD component.

P. Surveys

Surveys involving Department of Defense personnel must be submitted, reviewed, and approved by the Department of Defense after the research protocol is reviewed and approved by the IRB. When a survey crosses DoD Components, additional review is required. Any requested DoD changes must subsequently be submitted to the IRB for review. Research involving the administration of surveys to, or interviews of, DOD personnel (military or civilian) may require DOD approval of the survey or interview questions. For example, see the Navy Survey Policy entitled OPNAV Instruction 5300.8D. Check with your DoD component regarding any additional review requirements and the timing of the review (before or after IRB review). Provide documentation of this review to the IRB.

Q. Exclusions

Research involving human subjects for testing of chemical or biological warfare agents is generally prohibited by section 1520a of title 50, United States Code (U.S.C.), subject to possible exceptions for research for prophylactic, protective, or other peaceful purposes.

By policy, ETSU IRB does not conduct or review DoD classified research.

Investigators doing research with the Navy may not be designated as sponsors of an Investigational New Drug (IND) or Investigational Device Exemptions (IDE). Only the Surgeon General, Commanders, and Commanding Officers may be sponsors. (SECNAVINST 3900.39D(6)(h). Research Involving the Use of Investigational Test Articles.)

A VA facility's own internal IRB cannot serve as an IRB of record for any non-VA entity except a DoD facility or a VA nonprofit research and educational foundation.

R. Responsibilities

PI:

1. If the project meets the definition of DoD research, PI must list DoD as a funding source in the funding section of the New Protocol Submission xform.
2. The PI is responsible for informing the ETSU IRB of any collaborative arrangements with other institutions or individuals not at ETSU or the James H. Quillen VAMC.
3. Investigators must provide the following before IRB approval will be issued: documentation of IRB approval or IRB Authorization Agreement for engaged collaborators and a statement of compliance with special DoD requirements from each site.
4. DOD related research typically requires additional compliance activities, documentation, and subject protections. PIs should anticipate and plan for these requirements, which may require significant coordination of timing and activities among offices and institutions.
5. The PI must sign an attestation of compliance with DoD regulations before submission of a DoD protocol to the IRB.
6. PI must complete the DoD addendum xform and submit with the new protocol submission xform.
7. For studies that involve Military personnel, PI must submit documentation of command approval. The ETSU IRB requires that the documentation be in the form of an attached letter or email of agreement, indicating that the PI has permission to conduct research at the location.
8. PI must provide DoD with documents required by DoD.
9. PI must provide the IRB documentation that any DOD-required training has been fulfilled, at initial submission, at continuing review and with any modification that adds study staff.
10. DoD requires that the PI provide the IRB with copies of publications, presentations, and reports resulting from the research. PI should provide these at time of continuing review, unless prompt reporting criteria is met.

11. Before submitting a modification request, the PI is responsible for assessing the DoD Supplemental xform to determine if the modification changes any prior responses. If the DoD Supplemental xform will not still accurately reflect the research, the PI must submit a revised DoD Supplemental xform at the time of modification submission.
12. The PI is responsible for ensuring that the DoD HRPO review and accepts the IRB-approved substantive changes to an approved research protocol before they are implemented.
13. If an existing study was not previously DoD related but the proposed modification will make it DoD related, the PI is required to submit an entire new protocol submission xform as well as the DoD supplemental xform instead of a modification xform.
14. For studies that are greater than minimal risk, the Principal Investigator is responsible for providing the name, contact information and responsibilities of the monitor to the IRB in the submission, as well as the CV of the monitor and other information relevant to their skill/expertise.
15. The PI is responsible for maintaining records required by DoD and providing DoD with all documents required by DoD.
16. The PI is responsible for reporting of events as outlined in this policy and by the DoD component.

IRB:

1. IRB Coordinator is responsible for verifying that the PI has submitted the DoD addendum xform for studies identified as DoD.
2. IRB Coordinator screen the DOD Supplement form for completeness, including the required attachments, before IRB review. IRB Coordinator obtains missing information or clarification from the researcher.
3. IRB Coordinator is responsible for verifying IRB the presence of the PI signature on the DoD attestation.
4. For studies that involve Military personnel, the IRB Coordinator ensures the presence of approval from the commanding officer before final approval is issued.
5. Before the IRB reviews a DoD study, the IRB Coordinator will obtain the definition of prisoner of war for the Department of Defense component supporting the research in order and provide this to the IRB to ensure that this requirement is met.
6. The IRB reviewers are responsible for completing the DoD checklist to ensure that the research complies with DoD requirements. This checklist includes verification of review of scientific merit, documentation of Air Force Research

focus area, level of research risk, whether a research monitor is needed, benefits to individual subjects if a legally authorized representative may provide the research consent; documentation of IRB approval or IRB Authorization Agreement for engaged collaborators and a statement of compliance with special DoD requirements from each site; and for studies that are greater than minimal risk where the local site is the lead site, verification of collaborating institutions' arrangements for emergency treatment and necessary follow-up of any research related-injury; and for minimal risk studies, the determination of whether a similar arrangement for research-related injury needs to be included; and verification that the disclosure for research related injury follows the requirements of the DoD component.

7. If a Research Monitor is required, the IRB Coordinator will ensure the following:
    a. The IRB has the CV and any other needed material to assess the proposed Research Monitor's expertise and credentials
    b. Ensure that the IRB determines, and ensures that the minutes document the IRB determinations regarding the monitor's educational and professional experience, independence from the research personnel and the designated authorities and responsibilities
    c. Ensure that the investigator provides the IRB with a letter from the Research Monitor accepting the assignment and responsibilities
8. IRB Coordinator will ensure that documentation of IRB approval or IRB Authorization Agreement for engaged collaborators and a statement of compliance with special DoD requirements from each site is submitted prior to issuing final approval.
9. On submission of a modification request, for research that is already DOD-related (i.e., prior to the Modification request) and that has already been reviewed by the ETSU IRB as DOD-related, the IRB Coordinator screens the Modification form, within the context of the existing DOD Supplemental xform. If the Supplemental xform no longer accurately reflects the research, the IRB Coordinator asks the researcher for a revised Supplement (and any additional documentation). The modification xform will be rejected back to the PI so that both can be submitted together.
10. If the Modification involves substantive changes, as determined by the IRB Chair, the IRB Coordinator ensures that the researcher provides documentation of scientific review prior to IRB review of the modification.
11. If an existing study was not previously DoD related but the proposed modification will make it DoD related, the IRB Coordinator returns the modification request xform to the PI with instructions that the PI is required to submit an entire new protocol submission xform as well as the DoD supplemental xform instead of a modification xform.

12. At the time of continuing review, the IRB Coordinator screens the Status Report form to ensure that the following two DOD requirements have been fulfilled. If not, the staff contact the researcher so that the requirements can be met before the continuing review.
    - Continuing education about human subjects.
    - Research results: copies of publications, presentations, and reports resulting from the research.

References

- 32 CFR 219
- 10 USC 980
- DoD Directive 3216.2, "Protection of Human Subjects and Adherence to Ethical Standards in DOD Supported Research"
- DoD Dual Compensation Act, 24 U.S.C 301
- Public Law 103-160 section 252
- DoD Directive 2310.01E
- Section 980 of Title 10, United States Code
- Department of Defense (DOD) Instruction 6200.02, "Application of Food and Drug Administration (FDA) Rules to Department of Defense Force Health Protection Programs, February 27, 2008.
- Under Secretary of Defense Memorandum, HA Policy 05-003, March 28, 2005, "Policy for Protection of Human Subjects in Department of Defense Sponsored Research"
- Department of Defense Instruction 1100.13, November 21, 1996, "Surveys of DOD Personnel"
- Section 209 of Title 18, United States Code
- 48 CFR 207, "Acquisition Planning" part of Defense Federal Acquisition Regulations Supplement (DFARS). Specifically: 48 CFR 207.172
- 48 CFR 235, "Research and Development Contracting" part of Defense Federal Acquisition Regulations Supplement (DFARS). Specifically: 48 CFR 235.072
- Secretary of the Navy, SECNAV INSTRUCTION 3900.39D, "Human Research Protection Program".
- Naval Operations, OPNAV INSTRUCTION 5300.8B
- Air Force Instruction 40-402, "Protection of Human Subjects in Biomedical and Behavioral Research", May 5, 2005.
- Headquarters United States Army Medical Research and Materiel Command, HQ USAMRMC Institutional Review Board Policies and Procedures Version 1; 23 March 2010
- Army Regulation 70-25, January 25, 1990, "Use of Volunteers as Subjects of Research"

This is not an authoritative list of all regulations or guidance that may apply to DoD-supported human subjects research. Check with the DoD contact for more information.