



IN VITRO DIAGNOSTIC DEVICE STUDIES USING LEFTOVER HUMAN SPECIMENS THAT ARE NOT INDIVIDUALLY IDENTIFIABLE

3/26/2021

The U.S. Food and Drug Administration (FDA) has defined in vitro diagnostic products as those reagents, instruments, and systems intended for use in the diagnosis of disease or other conditions, including a determination of the state of health, in order to cure, mitigate, treat, or prevent disease or its sequelae. Such products are intended for use in the collection, preparation, and examination of specimens taken from the human body (21 CFR 809.3(a)).

A device study is defined as research involving one or more subjects to determine the safety and/or effectiveness of a device (21 CFR 813(h)). A subject, under the investigational device regulations, is defined as a human who participates in an investigation, either as an individual on whom **or on whose specimens** an investigational device is used (21 CFR 812.3(p)).

“Investigational” device studies may involve devices not cleared or approved for marketing by the FDA or may be studies evaluating modifications of or new intended uses of legally marketed devices.

All investigational device studies, unless exempt of the IDE regulations under 21 CFR 812.2(c), require an approved IDE before study initiation. Investigation of a non-significant risk device has an approved IDE under the abbreviated IDE regulations 21 CFR 812.2(b) when the IRB concurs with the risk determination from the sponsor and approves the study.

FDA regulated studies, except as provided under the emergency use regulations 21 CFR 50.24 and 21 CFR 56.104(c), require IRB approval and informed consent from the subject.

FDA has issued guidance for studies involving the use of an in vitro diagnostic device to analyze a sample whose donor is not individually identifiable.

<https://www.fda.gov/media/122648/download>

FDA will exercise enforcement discretion (choose not to enforce a regulation) with respect to its current regulations governing the requirement for informed consent when such human specimens are used for FDA regulated in vitro diagnostic (IVD) device investigations. If specific conditions (described below) are met, FDA does not intend to object to the use, without informed consent, of leftover human specimens -- remnants of specimens collected for routine clinical care or analysis that would otherwise have been discarded – for in vitro diagnostic device investigations.

FDA will only exercise such enforcement discretion, and thus not require informed consent, if all of the following are true:

- The investigation meets the IDE exemption criteria at 21 CFR 812.2(c)(3).
- The study uses leftover specimens, that is, remnants of specimens collected for routine clinical care or analysis that would have been discarded. The study may also use specimens obtained from specimen repositories or leftover specimens that were previously collected for other research purposes.
- The specimens are not individually identifiable, i.e., the identity of the subject is not known to and may not be readily ascertained by the investigator or any other individuals associated with the investigation, including the sponsor. If the specimen is coded, it will



DUKE UNIVERSITY HEALTH SYSTEM
Human Research Protection Program

be considered to be not individually identifiable if neither the investigator(s) nor any other individuals associated with the investigation or the sponsor can link the specimen to the subject from whom the specimen was collected, either directly or indirectly through coding systems.

- The specimens may be accompanied by clinical information as long as this information does not make the specimen source identifiable to the investigator or any other individual associated with the investigation, including the sponsor.
- The individuals caring for the patients are different from those conducting the investigation and do not share information about the patients with the investigator(s).
- The specimens are provided to the investigator(s) without identifiers and the supplier of the specimens has established policies and procedures to prevent the release of personal information.
- The study has been reviewed by an IRB in accordance with 21 CFR 56, except for the informed consent requirements described there.

Studies that do not fall within the intended enforcement discretion expressed in the FDA guidance would require informed consent of subjects. Such studies include, but are not limited to, those where any of the following conditions apply:

- The study does not meet the IDE exemption criteria at 21 CFR 812.2(c)(3);
- The specimens are individually identifiable, i.e., the identity of the subject is known to or may be readily ascertained by the investigator or any other individuals associated with the investigation, including the sponsor.
- The specimens were collected specifically for the proposed investigation. That is, the specimens are not leftover from routine clinical care or analysis or leftover from other research.
- The amount of specimen needed for the study is more than would be leftover from what is usually collected for routine clinical analysis, or
- The test results will be reported to the subject's health care provider. For example, in the course of comparative studies involving *Bacillus anthracis* detection devices, it would be inappropriate not to report positive results if they occur in the course of an investigation.

In vitro diagnostic (IVD) device research is still subject to FDA regulations governing research with humans (21 CFR 50, 54, and 56). Therefore, DUHS investigators who propose to conduct such research must submit an IRB protocol via the electronic system. The protocol must describe the proposed research and the source(s) of the samples to be analyzed using the investigational in vitro diagnostic device. The protocol must also provide information to support the seven findings, as described above, that the IRB must make. As with other investigational device studies, the investigator must submit all relevant supporting documents from the sponsor, including the investigator brochure, FDA cleared or approved device label, or other documentation of the device specifications and safety parameters, with the IRB application. Such research would ordinarily be eligible for review using the expedited procedure.

Previous Version Date(s): 4/24/2008, 3/1/2016