



UNIVERSITY OF  
SOUTH ALABAMA

**IRB SOP 108**  
**Implementation of the Final Common Rule**

## **Purpose**

The purpose of this document is to describe the USA Institutional Review Board transition plan to the 2018 Common Rule and the management of pre-existing studies.

## **Definitions**

**Final Rule:** In this policy, the term “Final Rule” refers to the Common Rule as published in the July 19, 2018 edition of the Code of Federal Regulations. The 2018 Requirements were originally published on January 19, 2017 and further amended on January 22, 2018 and June 19, 2018. The 2018 Requirements may also be referred to as the “revised Common Rule” or “2018 Requirements”. The Final Rule is effective as of January 21, 2019.

**Grandfathered:** In this policy, the term “grandfathered” refers to research approved under pre-2018 requirements. The pre-2018 requirements were originally promulgated in 1991, and subsequently amended in 2005. The pre-2018 requirements may also be referred to as the pre-2018 Common Rule.

**Transitioned Study:** In this policy, the term “transitioned study” refers to grandfathered studies that have been transitioned to the Final Rule. Studies initiated before January 21, 2019 will be grandfathered and continue to be subject to the pre2018 Common Rule.

## **Policy**

Studies initiated (approved) on or after January 21, 2019 are subject to the Final Rule.

The University of South Alabama IRB elected to transition eligible studies during the delay period of July 19, 2018 through January 20, 2019 for purposes of elimination continuing review.

The USA IRB will allow for a grandfathered study to transition to comply with the Final Rule. The IRB must document the date and the determination to transition a study to the Final Rule. Transitioned studies must adhere to all aspects of the Final Rule.

The FDA intends to harmonize, to the extent possible, the FDA's regulations with the Final Rule but has not yet done so as of date of this policy. The Common Rule (Final Rule) regulations are separate from FDA regulations and have not changed. Until such a time when FDA harmonized regulations become final, the USA IRB will review studies subject to **FDA** regulations as follows:

- **Informed Consent**

The informed consent "key information" requirement related to the content, organization and presentation of information included in the consent form and process, as well as the basic and additional elements of informed consent in the Final Rule are not inconsistent with the FDA's current policies and guidance. However, until such time the FDA harmonizes with the Final Rule, the USA IRB will not implement the new informed consent elements.

- **Expedited Review**

The FDA regulation 21 CFR 56.110(b) allows for expedited review procedures for certain kinds of research appearing on the published list in the Federal Register, 1981. In order to use the expedited review procedure, the IRB reviewer must find that the research involves no more than minimal risk. The Final Rule changed the expedited review procedures in 45 CFR 46.110(b).

The Final Rule states that the IRB may use expedited procedures for research appearing on the published list unless the IRB determines that the study involves more than minimal risk. Because the FDA has not revised its regulations, the USA IRB must continue to comply with the FDA's regulation (21 CFR 56.110(b)) for FDA-regulated studies, including studies that are subject to both HHS and FDA regulations.

- **Continuing Review**

The FDA regulation 21 CFR 56.109(f) states that IRBs are required to conduct continuing review of research at intervals appropriate to the degree of risk, but not less than once per year.

The Final Rule eliminated the requirement to conduct continuing review in certain circumstances (45 CFR 46.109(f)(1)). Because the FDA has not revised its regulations, the USA IRB must continue to comply with the FDA's regulation (21 CFR 56.109(f)) for FDA-regulated studies, including studies that are subject to both HHS and FDA regulations.

## Procedures

- 1.0 Procedures for the Transition of Grandfathered Studies to the Final Rule
  - 1.1. IRB staff will evaluate grandfathered studies during continuing review applications to determine whether the study is recommended for transition to the Final Rule. Factors that will influence recommendation to transition include but are not limited to:
    - 1.1.1. Studies with closed enrollment
    - 1.1.2. Studies that are in long-term follow-up
    - 1.1.3. Chart reviews
    - 1.1.4. Expedited studies with no consent document
  - 1.2. If a study is ideal for transitioning to the Final Rule, the IRB staff member responsible for the internal review will notify the investigator. If necessary, guidance will be provided to the investigator about compliance to the Final Rule
  - 1.3. Documentation that the grandfathered study will be transitioned to the Final Rule is documented in the IRB letter of approval and study protocol in IRBNet. The date of transition determination is the approval date of the continuing review or the amendment. The date of transition determination also serves as the date the study is in compliance with the Final Rule. Investigators will receive documentation of the transition determination in the approval letter.

## Regulated Documentation

45 CFR 46

## HISTORY

Effective Date: January 21, 2019

Revisions:

## Responsible Party:

Office of Research Compliance and Assurance