

Changes to the 45CFR 46 Protection of Humans in Research “Common Rule”

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Introduction to terms:

1. 45CFR46: Subpart A: “Common Rule”
2. 2018 Rule (“revised rule”; in effect Jan. 21, 2019)
3. “Pre-2018 rule” (current rule; projects approved prior to Jan. 21, 2019.)

Burden reducing provisions:

1. Activities which are not HR.
2. No continuing review.
3. No grant congruency review.

Changes to definitions:

"Human Subject" to: "a living individual about whom an investigator (whether professional or student) conducting research:

- a. Obtains information or *biospecimens* through intervention or interaction with the individual, and uses, studies, or analyzes the information or *biospecimens*; or
- b. Obtains, uses, studies, analyzes, or generates identifiable private information or *identifiable biospecimens*."

46.102 (e)(2) *Intervention* includes both physical procedures by which information or biospecimens are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

"information or biospecimens" replaces "data"

46.102 (e)(3) *Interaction* includes communication or interpersonal contact between investigator and subject.

No change in definition but research activities that are not human research:

Four categories of activities excluded from consideration in the definition of human research:

1. Certain scholarly and journalistic activities such as oral history, journalism, biography, literary criticism, legal research, and historical scholarship.
2. Public health surveillance activities
3. Criminal justice activities targeted at criminal justice systems, not criminals.
4. Authorized operational activities in support of national security missions.

Definition added for the first time:

Clinical trial means a research study in which one or more human subjects are *prospectively* assigned to one or more *interventions* (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health related outcomes.

NIH examples of interventions:

- drugs/small molecules/compounds; biologics; devices;
- procedures (e.g., surgical techniques);
- delivery systems (e.g., telemedicine, face-to-face interviews);
- strategies to change health-related behavior (e.g., diet, cognitive therapy, exercise, development of new habits);
- treatment strategies; prevention strategies; and, diagnostic strategies.

OHRP Regulation: §46.116 (h) Posting of clinical trial consent form:

1. For each clinical trial conducted or supported by a Federal department or agency, one IRB-approved informed consent form used to enroll subjects must be posted by the awardee or the Federal department or agency component conducting the trial on a publicly available Federal Web site that will be established as a repository for such informed consent forms.
2. If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal Web site (e.g. confidential commercial information), such Federal department or agency may permit or require redactions to the information posted.
3. The informed consent form must be posted on the Federal Web site after the *clinical trial is closed to recruitment*, and *no later than 60 days after the last study visit by any subject*, as required by the protocol.

Actual transition: pragmatics first:

1. All new projects are subject immediately to the revised rule that goes into effect on January 21, 2019.
2. All projects that are closed to enrollment and in data analysis only, may never need to be transitioned to the revised rule. Or may be transitioned simply to remove some of the pre-2018 requirements such as continuing review.
3. All other projects, approved under the pre-2018 rule will be rolled into the revised rule when it makes sense.

New projects:

1. Must be reviewed under the 2018 rule.
2. Must use the currently IRB approved templates for protocol and consent found on the website.
3. Typically, minimal risk, non exempt, non FDA and non-DOD or Department of Energy studies will not have an expiration date.

Informed Consent:

Written Consent template

- Concise and focused presentation of key information
- Additional elements regarding data use
- Additional notices for disclosure and possible genome sequencing

Waiver of Consent

- The IRB must determine that the research could not practicably be carried out without using the information or biospecimens in an identifiable form

No Continuing Review:

Most expedited studies will not require continuing review.

Reasons for maintaining the continuing review requirement:

1. The project is regulated by the FDA or by another sponsor that requires continuing review.
2. The project involves additional regulatory oversight, such as a conflict of interest (COI) management plan.
3. The research will be conducted internationally or at non-NU sites and the NU IRB decides an annual review will be in everyone's best interest
4. A modification or incident report (RNI) reveals new information that requires additional oversight.
5. The investigator has previous serious non-compliance or a pattern of non-compliance that is of concern.
6. Something else the reviewer finds warrants review.

Currently approved projects: removal of the CR:

We started in August 2018 transitioning minimal risk studies to no-CR at the point of the submission of the regularly occurring CR.

Starting Jan. 21, 2019 we can begin to consider removing or approving the expiration date on projects that:

- Are in data analysis only, **including analysis of identifiable private information** or identifiable bio specimens; or
- Are **only accessing follow-up clinical data** from procedures the participants would undergo as part of clinical care.

New Processes related to no CR

- The watermark: “....on or after [approval date]”
- System generated and reminders in letters regarding: “Reminder of study team responsibilities and project closure”
- Still obligated to submit modifications, RNIs and to close their study when it is completed

Changes to exempt research:

1. There are some tweaky changes to Category 1, 2, 5 and 6 but those categories are largely the same.
2. Old category 3 removed and replaced with a new Category 3 which allows for:
 - “**benign behavioral interventions**’ which are brief, harmless, not likely to have a significant lasting impact, and the researcher has no reason to think participants will find the interventions offensive or embarrassing. “
3. Category 4: will now allow for prospective data, not just existing data.
4. Category 7 and 8 refer to secondary research with regard to the use and storage of identifiable private information or identifiable biospecimens. Both of these exempt categories require *limited IRB review*.

“Limited IRB Review”:

Some exemptions, specifically Category 2 if identifiers are retained and Categories 3, 7 and 8 will require "limited IRB review" as a condition of exemption.

“Limited IRB review” will be required to ensure there are:

- adequate confidentiality safeguards for potentially identifiable information.
- Limited IRB review, while similar to expedited review, will only be focused on the data management and data security plan.

Use of sIRB (single Institutional Review Board):

- Requires that U.S. institutions engaged in cooperative research rely on a single IRB for that portion of the research that takes place within the United States.
- NIH requirement goes into effect January 25, 2018.
- Other federal agencies sIRB will go into effect Jan. 20, 2020.
- Contact IRBreliance@northwestern.edu for assistance.

QUESTIONS?

