A Review of the Common Rule and its Application

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Learning Objectives

• Explain the history and ethical principles that underlie the Federal regulations for human research protections

• Recognize the role of the HHS Office for Human Research Protections (OHRP)

• Understand the background for the revisions to the Common Rule

• Describe the basics on when to apply the Common Rule with particular reference to the revisions
HHS REGULATIONS ON PROTECTING HUMAN SUBJECTS IN RESEARCH
What is Research?

“A systematic investigation ... designed to develop or contribute to generalizable knowledge”

45 CFR 46.102(d)

- Research serves the common good
- Research subjects are the ‘means’ to achieve this goal
- Primary aim of research is to benefit society, not individual subjects
Ethical Challenge

Protecting the rights & welfare of individual research subjects so that they are not merely means to an end

Furthering research interests to maximize societal benefits
Regulations: Result of Increasing Ethical Concerns

1945  Nuremberg trials
1963  Jewish Chronic Disease Hospital study
1966  NEJM publishes Beecher’s “Ethics and Clinical Research”
1970  Willowbrook study ends (commenced in 1956)
1972  Tuskegee syphilis study publicized (commenced in 1932)
1974  National Research Act
1979  *Belmont Report* published
1981  Human Subjects Protection Laws (45 CFR 46)
The Belmont Report

Fundamental Ethical Principles

1. **Respect for Persons**
   - Respect autonomy

2. **Beneficence**
   - Maximize benefits, minimize harms

3. **Justice**
   - Equitable distribution of burden and benefits

The Belmont Report

Office for Human Research Protections
HHS Regulations on Human Research Protections 45 CFR Part 46

- **Subpart A – The Common Rule**
- **Subpart B – Pregnant women and fetuses**
- **Subpart C - Prisoners**
- **Subpart D – Children**
- **Subpart E – IRB Registration**
Revision of the Common Rule

• Originally promulgated in 1991
• Revisions needed to modernize and simplify current system, and better protect research subjects
• Brief overview of the rulemaking process:

  ANPRM
  July 2011
  Public Comment

  NPRM
  Sept. 2015
  Public Comment

  Revised
  Common Rule
  Published
  Jan. 19, 2017

• Implementation date for most of the rule:
  January 19, 2018
Summary of Goals and Major Changes of the 2018 Revisions

• Better Protect Research Subjects
  ▪ Changing requirements of informed consent
  ▪ Adding broad consent option for secondary research

• Reduce Administrative Burdens
  ▪ Removing activities from the definition of research
  ▪ Expanding exempt research
  ▪ Updating and simplifying expedited review
  ▪ Eliminating certain continuing continuing reviews
  ▪ Using single IRB review
  ▪ Adding provision on screening and recruitment
Applying the Common Rule with Particular Reference to the Revisions
How to Apply the Common Rule?

• Note: it applies to non-exempt human subjects research

• Ask these questions in this order to determine if it applies to your study:
  1. Does the activity involve Research?
  2. Does the research involve Human Subjects?
  3. Is the human subjects research Exempt?
Activities Deemed Not to be Research in the Revised Common Rule

1. Scholarly and journalistic activities that focus directly on the specific individuals about whom the information is collected
2. Public health surveillance activities limited to those necessary to identify, monitor, assess, or investigate conditions of public health importance
3. Collection and analysis of materials for criminal justice purposes
4. Authorized operational activities for national security purposes

§__.102(l)
A team of physicians see a patient with an unusual constellation of symptoms. They run a variety of diagnostic tests and procedures. Results of the test do not yield a known diagnosis.

They write a case summary of their observations and submit it to a medical journal for publication.

**Is this research?**

A. Yes  
B. No  
C. It depends  
D. I am not sure
A political science professor wishes to write a book about a former governor of his state. He plans to conduct extensive interviews with the former governor and a wide variety of people who have worked with him to obtain information on this individual.

Is this research?

A. Yes
B. No
C. It depends
D. I am not sure
A professor in education wishes to study the relationship between study habits and time to graduation. He plans to conduct surveys with students in several academic institutions and track their graduation status.

Is this research?

A. Yes
B. No
C. It depends
D. I am not sure
A physician reports an outbreak of an unusual type of meningitis. The public health authority in the area plans to collect the patients’ medical and demographic information to document trends, and identify signals and risk factors as a way to better manage this potential public health crisis.

Is this research?

A. Yes
B. No
C. It depends
D. I am not sure
Applying the Common Rule

Is it research?

Yes

Does it involve human subjects?

No or Activities deemed not to be research

STOP

Legend: sections in yellow apply only to the revised Common Rule
Human Subjects as Defined in the Pre-2018 Common Rule

• Human subject - a living individual about whom an investigator conducting research obtains
  (1) Data through intervention or interaction with the individual, or
  (2) Identifiable private information

§46.102(f)
Does it Involve Human Subjects? As Defined in the Revised Common Rule

• Definition in the revised Common Rule is substantively the same as the pre-2018 rule
• Human subject - a living individual about whom an investigator 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

§102(e)(1)
Associated Regulatory Definitions

- No substantive changes for definitions on intervention, interaction, identifiable private information
  - **Intervention** includes both physical procedures by which information or biospecimens are gathered...and manipulations of the subject or the subject’s environment performed for research purposes
  - **Interaction** includes communication or interpersonal contact between investigator and subject
  - **Private information** means information an individual can reasonably expect that will not be made public
  - **Individually identifiable** means that the identity of the subject is or may readily be ascertained by the investigator or associated with the information or biospecimens
- Added definition for “identifiable biospecimen” in the revised Common Rule for clarification
A researcher wants to observe online chatroom behavior in various environments. She periodically posts opinion questions to the chatrooms to elicit chat room responses.

**Is this human subjects research?**

A. Yes  
B. No  
C. It depends  
D. I am not sure
An investigator receives survey data from an unrelated group on the use of opioid pain medications obtained for a previous and unrelated research study, not the current research. The investigator cannot identify the survey participants.

Is this human subjects research?

A. Yes
B. No
C. It depends
D. I don’t know
For the purpose of your research, you have contracted a commercial firm to collect specific types of biospecimens for you. The commercial firm will only provide you with coded biospecimens stripped of identifiers.

Is this human subjects research?

A. Yes
B. No
C. It depends
D. I am not sure
You are working in a large collaborative study. For this study, you will receive coded biospecimens to conduct a special type of analysis that your lab has expertise on. When you are done, your analysis will be returned to the investigators that provided you with the tissue samples that they had collected for the research.

Is this human subjects research?

A. Yes
B. No
C. It depends
D. I am not sure
Research With Coded Biospecimens or Private Information

If research involves only coded biospecimens or private information and meets both conditions:

1) is not collected specifically for the research in question and

2) investigator(s) cannot readily ascertain identity of the individual(s) to whom data/specimens pertain, then it is not human subjects research

(See OHRP’s Coded Private Information or Specimens Use in Research Guidance (2008) at

Applying the Common Rule

Is it research? Yes

Does it involve human subjects? Yes

Is it exempt? Yes

No or

Activities deemed not to be research

STOP

Legend: sections in yellow apply only to the revised Common Rule
Is the Human Subjects Research Exempt?

Pre-2018 Rule (Current)
• 6 exemptions found under §46.101(b)(1)-(6)

Revised Common Rule
• 8 exemptions found under §__.104(d)(1)-(8)
• Exemptions 3, 7, & 8 – new!
• Exemption 1 – added more restrictions
• Exemptions 2, 4, & 5 – expanded
• Exemption 6 – no change
List of Exemptions in the Pre-2018 Rule

1. Normal educational practices in established educational settings
2. Educational tests, surveys, interviews, or observation of public behavior, unless identifiable and sensitive
3. Research on public officials or candidates for public office
4. Research using existing data, if publicly available or recorded without identifiers
5. Evaluation of public benefit service programs
6. Taste and food quality evaluation and consumer acceptance studies

§46.101(b)
Summary of Changes in Exemptions from Pre-2018 to Revised Common Rule

Pre-2018 Rule (Current) | Revised Common Rule
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• Exemption 1 | Restrictions added
• Exemption 2 | Expanded
• Exemption 3 | Removed and replaced with a new exemption 3
• Exemption 4 | Expanded, and added new
• Exemption 5 | Expanded with changes
• Exemption 6 | No change

✓ New exemption 7
✓ New exemption 8

* (Also new - limited IRB review)
What Happened to Exemption 3 under the Pre-2018 Rule?

• Removed in revised rule: Pertained to research involving the use of educational tests, survey procedures, or observation of public behavior if:
  ▪ The human subjects are elected or appointed public officials or candidates for public office, or
  ▪ Federal statute requires protects confidentiality without exception.

• Almost all such research would be exempt under the new exemption 2. If researchers record sensitive identifiable information about public officials, it must be kept confidential.
Exemptions Applicability - Subparts C & D

• **Pre-2018 Rule (Current)**
  - Subpart C prisoners research – none apply
  - Subpart D children research - exemption 2 for research involving survey or interview procedures or observations of children by investigators who participate in the activity being observed does not apply; other exemptions apply

• **Revised Common Rule**
  - Subpart C prisoners research expanded – exemptions do not apply except for research intended to involve a broader subject population and only incidentally includes prisoners
  - Subpart D children research:
    - Same restrictions as above for exemption 2 plus new provision §104(d)(2)(iii) also not applicable
    - New exemption 3 does not apply
Exemptions in the
Revised Common Rule §__.104(d)
Exemption 1: Restrictions Added

• Normal educational practices in established or commonly accepted educational settings

• **New**: normal educational practices that are not likely to adversely impact:
  - Students’ opportunity to learn required educational content, or
  - Assessment of educators who provide instruction

\[\text{s\text{\text{\text{s}}}.104(d)(1)}\]
Exemption 2: Expanded

Research that only includes interactions involving educational tests, surveys, interviews, and observations of public behavior, exempt when

i. Information recorded cannot be readily linked back to subjects, or

ii. Any information disclosure would not place subjects at risk of harm, or

iii. Identifiable information recorded, with limited IRB review for privacy and confidentiality protection under §__.111(a)(7)
A professor is interested in studying whether students’ educational test scores would improve if they are exposed to low level calming music during the tests. For the study, one group of students will do the educational test in normal classroom environment; the other will do it in a room with gentle calming background music. The professor will collect the educational tests without individually identifiable information for analysis.

Would this research meet the criteria for the revised exemption 2?

A. Likely yes
B. Likely no
C. It depends
D. I am not sure
Exemption 3: New

Research involving benign behavioral interventions with collection of information - verbal or written (including data entry) or audiovisual recording - from adults who prospectively agree when

A. Information recorded cannot be readily linked back to subjects, or
B. Any information disclosure would not place subjects at risk of harm, or
C. Identifiable information recorded, with limited IRB review for privacy and confidentiality protection under §___.111(a)(7)
Exemption 3, Cont’d

• Explanation of term “benign behavioral interventions”
  These are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and investigator has no reason to think the subjects will find the interventions offensive or embarrassing

• Includes authorized deception research
  §104(d)(3)(ii)-(iii)
A professor is interested in studying whether students’ educational test scores would improve if they are exposed to low level calming music during the tests. For the study, one group of students will do the educational test in normal classroom environment; the other will do it in a room with gentle calming background music. The professor will collect the educational tests without individually identifiable information for analysis.

**Would this research meet the criteria for the revised exemption 3?**

A. Likely yes
B. Likely no
C. It depends
D. I am not sure
Exemption 4: Expanded and Added New

Secondary research use of identifiable private information or identifiable biospecimens for which consent is not required

- Requirement for data to be existing at the start of the study is removed

Exempt if:

- Identifiable private information or identifiable biospecimens are publically available, or

- Information is recorded by the investigator in an unidentifiable manner, and the investigator does not contact and will not re-identify the subjects, or
Exemption 4, cont’d

Or if:

- Investigator’s use is regulated under HIPAA as “health care operations,” “research,” or “public health”, or

- Research is conducted by, or on behalf of, a Federal agency using information collected or generated by the government for non research purposes, and the information is protected by federal privacy standards

§__.104(d)(4)
Revised Common Rule: Other Exemptions

5. Evaluation of public benefit service programs - expanded and added new

6. Taste and food quality evaluation and consumer acceptance studies - same

7. Storage or maintenance of identifiable private information or identifiable biospecimens for secondary research with broad consent - new

8. Secondary research use of identifiable private information or identifiable biospecimens with broad consent - new

§__104(d)(5)-(8)
Applying the Common Rule

Legend: sections in yellow apply only to the revised Common Rule.
Limited IRB Reviews

- Required for exemptions 2(iii), 3(i)(C), 7, and 8 in the revised Common Rule
- Expedited review mechanism can be used for limited IRB review
- One time only, no continuing review required
- Exemptions 2(iii) and 3(i)(C) review: For privacy and confidentiality protection under §111(a)(7)
- Exemptions 7 & 8 reviews: different requirements
Please refer to the text of the revised Common Rule available on OHRP’s website for a complete and accurate description of the regulatory requirements.
Questions About the Revisions?

• OHRP has developed resources to explain the revised Common Rule. Check out www.hhs.gov/ohrp

• Submit your questions to OHRP@hhs.gov

• Stayed connected with us. Join our listserv at https://www.hhs.gov/ohrp/news/sign-up-for-announcements/index.html
THANK YOU FOR YOUR ATTENTION