Exempt Research Categories

Spectrum Health IRB Guidance Document

Purpose

This document provides guidance on the Exemption review categories provided under the Department of Health and Human Services (DHHS) regulations found at 45 CFR 46.104. Per these regulations, the IRB may determine that the proposed research is exempt from IRB review if it is 1) no more than minimal risk and 2) all procedures fit into one or more of the defined categories. This document provides guidance on each of the categories of exempt research, provides guidance on what fits into each applicable category and provides examples of each exemption type.

Regulatory Citations

The following regulations form the foundation for the discussion and guidance in this document.

Exemption Criteria at 45 CFR 46.104
https://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/common-rule-subpart-a-46104/index.html

HIPAA Privacy Rule
https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-160?toc=1

SACHRP Recommendations/Guidance on the Revised Common Rule Exemptions
https://www.hhs.gov/ohrp/sachrp-committee/recommendations/attachment-b-november-13-2018/index.html#:~:text=Recommendations%20for%20Exempt%20Category%201,be%20made%20explicit%20in%20guidance.

Discussion and Guidance

Certain categories of Human Research may be exempt from the regulatory requirement of IRB review and approval. Even if the research is determined to be exempt from regulations requiring IRB review, it may still be subject to the HIPAA Privacy Rule and institutional policy. Certain exempt categories will require a limited IRB review to ensure that there are adequate provisions in place to protect the research participants' privacy and confidentiality.

It is the responsibility of the IRB, not the investigator, to determine whether proposed Human Research is exempt from IRB review. The IRB will review an initial submission and determine what, if any, categories of exempt research apply and will communicate this to the investigator. An investigator is to submit an Initial Application in the IRB Submission system to begin the process of determination of exemption.

Although the regulations at 45 CFR 46.104 list eight exemption categories, SH IRB has determined that it will not implement categories #7 and #8 at this time (which apply to the use of broad consent). Of the six exemption categories listed below, only exemption category #6 (for taste and food quality evaluation and consumer acceptance studies) applies to studies that are FDA-regulated. Exemptions do not apply to research with the intention to include prisoners as subjects, except for research aimed at involving a broader subject population that may incidentally include prisoners.

In addition to determining if a proposed research study meets the criteria for exemption, the IRB will review to ensure that ethical research standards are still met. This includes ensuring the risks are no more than minimal, there are adequate provisions to protect privacy and confidentiality, and if consent to be obtained, it is sufficient given the study procedures.

It is a general ethical principle that all research participants should be given the decision whether or not to participate in the given research study. For this reason, voluntary informed consent should be obtained from participants for any exempt research where the investigator will be interacting with participants. The minimum requirements for consent in exempt studies are listed below:

- The investigator's name and the study title
- A statement that participation is voluntary, and subjects can stop participation at any time
- A short explanation of the purpose of the study, the procedures and timeframe of participation
- If any private identifiable information (e.g., name, email address, etc.) will be collected
- A statement that describes the risks and benefits; or how confidentiality will be maintained
- A statement that describes any compensation or payment
- Investigator's (or other study team member's) contact information for questions about the study
- SH IRB contact information

Studies that qualify for exemption do not undergo continuing review; however, the IRB requires the review of major changes to procedures in exempt research. The SH IRB has generated a separate guidance document on submitting modifications to the IRB for exempt studies.

Category 1 Exempt

Research conducted in established or commonly accepted educational settings, involving normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes things, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

Discussion and Guidance:

Category 1 states that in order for the research to be exempt, it must be "conducted in *established* or *commonly accepted* educational settings." To determine what an established or commonly accepted educational setting is, the Spectrum Health IRB will apply the definition from SACHRP, "one where specific educational offerings *normally take place* or a setting where one would go in order to have an educational experience."

Some examples given by SACHRP of these educational settings include:

- K-12 schools and college classrooms, after-school programs, preschools, vocational schools, and alternative education programs
- professional development seminars
- practice fields for school sporting events
- Medical school
- Training simulators (e.g., medical simulators, flight simulators, etc)

A normal educational setting and practice may include a cooking class in a grocery store, professional development workshops or skills development in children's summer camps, etc. It is not necessarily limited to primary and secondary public/private educational settings.

In addition to the setting in which the research will take place, in order to apply Category 1 "*normal* educational practices" must only be included. Per SACHRP "Normal educational practices are those activities that *are routinely used in similar educational settings* and/or are *considered proven* educational practices *with the population* under study." If the study includes experimental education methodology that is novel or unproven, or established education methods used in a novel population/setting, it may not qualify for exemption under Category 1.

Examples of Category 1 Exempt:

- A study comparing two curricula that are currently being implemented in a school. Investigators will observe classrooms as well as interview instructors about their experiences implementing the instructional materials (the activities are not focused on specific students).
- A study comparing driver's education curricula offered by area driving schools. The investigator will observe classes and compare driving test scores at the end of the courses.

Category 2 Exempt

Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:

(i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects.

(ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or

(iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 45 CFR 46.111(a)(7).

Discussion and Guidance:

Exempt Category 2 does not apply to research with children and can only be conducted on adult subjects, except for research involving educational tests (cognitive, diagnostic, aptitude, achievement) or observations of public behavior when the investigator(s) do not participate in the activities being observed.

For research activities relating to "observations" those must be of a public behavior and in a public setting. For example, the IRB would not consider classrooms and/or medical offices to be public settings but would consider a public park or a shopping mall to be a public setting.

Examples of Category 2 Exempt:

- A study that sends a survey to Spectrum Health employees or residents about satisfaction with certain elements of their workplace culture (when information is recorded in a way that the IRB can deem that one of the above confidentiality elements is met)
- A study involving focus groups with expectant mothers regarding their perceptions of parenting education
- Surveying teachers, nurses, or doctors about a technique or an outcome
- Conducting a focus group about an experience or an opinion of a community program

Category 3 Exempt

Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:

(A) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;

(B) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or

(C) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 45 CFR 46.111(a)(7).

Discussion and Guidance:

This category cannot include children as subjects. All research subjects must be over the age of 18.

Benign behavioral interventions are defined in the regulations as follows, "brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing." Examples of benign behavioral Interventions include having the subjects play an online game, having subjects solve puzzles under various noise conditions, or having subjects decide how to allocate a nominal amount of received cash between themselves and someone else. No physical or medical interventions are allowed.

There is no specific timeframe provided in the regulations for "brief in duration" and so this will be assessed on a case-by-case basis. It does not necessarily mean that the intervention must occur within one session but keep in mind that the intervention should be able to be completed in a relatively small amount of time, or over the course of small amounts of time, in order to fit this exemption criteria. "Brief in duration" is intended to refer to the intervention as opposed to the intervention and the data collection activities together. Thus, the data collection activities could proceed over a longer period of time without precluding the applicability of this exemption.

If the research involves the use of deception the exemption can only apply if the subject is prospectively made aware of the use and agrees to the use of deception in the research intervention. If this does not fit the research intervention, then the research can be put into another category such as expedited research.

Examples of Category 3 Exempt:

- A study that involves asking subjects to play an online game that takes 30 minutes to complete.
- A study that involves asking subjects to solve puzzles under various noise conditions. Study procedures take about 2 hours.
- Healthy adult subjects are asked to take part in two 2 hour-long assessments of memory, attention

and information processing speed before and after 1 hour of cognitive enhancement exercise using specially designed computer software.

Category 4 Exempt

Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:

(i) The identifiable private information or identifiable biospecimens are publicly available;

(ii) Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;

(iii) The research involves only information collection and analysis involving the investigator's use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164, subparts A and E, for the purposes of "health care operations" or "research" as those terms are defined at 45 CFR 164.501 or for "public health activities and purposes" as described under 45 CFR 164.512(b); or

(iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for non research activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

Discussion and Guidance:

This category covers the re-using of identifiable data or identifiable biospecimens that are collected for some other "primary" or "initial" activity. Research covered by this exemption would include collecting data from the already existing medical records or research records of patients or from a pre-existing registry. It does not cover any primary collections of data or specimens for research.

Category 4(i) would apply to secondary research use of publicly available sources. Some examples would be: archives in a public library, government or other institutional records where public access is provided on request, or from a commercial entity if the information is provided to members of the public on request. It would also apply if a commercial entity made identifiable biospecimens publicly available to anyone on request or for a fee.

Category 4(ii) allows the use of information about human subjects, or information from existing biospecimens, so long as at the time of recording this information, the investigator removes all identifiable information and does not create a link (or code) that can be used to re-identify participants at any time. Also, the research must not include any plans to contact participants.

Category 4(iii) only applies to the use of protected health information (PHI) that has been collected for non-research purposes – such as in the delivery of health care or health care operations. The data must also

be held or maintained by a HIPAA covered entity; for example, the health information contained within Spectrum Health's electronic medical record (EPIC). Biospecimens are not included in this category.

For information collection under 4(iii) please note that HIPAA regulations still apply. Under HIPAA, these protections include, where appropriate, requirements to obtain the individual's authorization for future, secondary research uses of protected health information, or waiver of that authorization by the IRB.

Examples of Category 4 Exempt:

- A researcher is given two datasets that contain private, identifiable information. The researcher uses the identifiers to merge the two datasets but strips the resulting (merged) data of identifiers immediately after the merge and before conducting data analysis. The resulting data used for the analysis is completely de-identified with no link to identifiers
- A researcher performs a review of existing medical records from the Spectrum Health EPIC electronic medical records
- A researcher reviews records from a publicly available data set they obtain from the internet (for example census data) and combine with medical records they obtain from Spectrum Health EPIC records

Category 5 Exempt

Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs. Such projects include, but are not limited to, internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended.

(i) Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal Web site or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.

Discussion and Guidance:

A program must deliver a public benefit (e.g., financial, or medical benefits as provided under the Social Security Act) or service (e.g., social, supportive, or nutrition services as provided under the Older Americans Act). The research or demonstration project must be conducted pursuant to specific statutory authority. There must be no statutory requirement that the project be reviewed by an IRB. The project must be posted on a Federal Web Site.

This type is rarely applicable to research at Spectrum Health.

Example of Category 5 Exempt:
Research studies that include, but are not limited to, internal studies by Federal employees, and studies under contracts of consulting arrangements, cooperative agreements, or grants.

Category 6 Exempt

Taste and food quality evaluation and consumer acceptance studies:

(i) If wholesome foods without additives are consumed, or

(ii) If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety

Discussion and Guidance:

Taste and food quality evaluation studies conducted under this exemption may not involve the consumption of any type or volume of food that would present any risk to the subjects and should fall into what would be considered reasonable eating behaviors by the subject.

The food must be “wholesome” (no additives), or if it involves plants or animals raised for food products, the level of chemical additives or environmental contaminants must be at or below the levels approved by the FDA, EPA, or USDA. Studies involving the consumption of alcohol, vitamins, and other supplements do not qualify for exempt status.

It is important to note that this type is rarely applicable to research at Spectrum Health.

Example of Category 6:

- A research study involving a taste-test on different varieties of a fruit to determine consumer preference, when the fruits do not have any additives and subjects are asked to indicate which fruit they prefer.
- A research study that involves taste-testing of various beef products from cattle that have been given feed

Conclusions

If you are unsure if your study fits a category of exempt research, please reach out to the SH IRB to discuss your study in more detail prior to submission. Keep in mind that there may be additional considerations not listed above that the IRB may incorporate into their review. You may contact the SH IRB at irbassist@spectrumhealth.org .