Primer on the Revised Common Rule

for Investigators and Research Coordinators

University of Nebraska Medical Center

Abbreviated timeline


federal register

Tuesday
June 18, 1991

Part II

Federal Policy for the Protection of Human Subjects; Notices and Rules

Office of Science and Technology Policy
Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Consumer Product Safety Commission
International Development Cooperation Agency
Agency for International Development
Department of Housing and Urban Development
Department of Justice
Department of Defense
Department of Education
Department of Veterans Affairs
Environmental Protection Agency
Department of Health and Human Services
Office of the Secretary
Food and Drug Administration
National Science Foundation
Department of Transportation

- 1981 - HHS regulations (45 CFR 46)
- 1991 – Common Rule to include 15 additional federal departments and agencies
- July 2011 – ANPRM
- September 2015 – NPRM
- January 19, 2017 – Final rule issued
  - Compliance date set at January 19, 2018

Abbreviated timeline (continued)


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National Science Foundation
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- January 18, 2018 – HHS issues Interim final delaying effective date to July 19, 2018
- June 19, 2018 - Final rule to further delay the general compliance date to January 21, 2019

Compliance dates (§_.101(l)(3 and 4))

- Compliance date January 21, 2019
  - Research approved before January 21, 2019 is not subject to final rule unless the institution makes a determination on a case-by-case basis that it is subject to the rule

- Our plan:
  - Research approved before January 21, 2019 will continue to be regulated under the pre-2018 rule

What about FDA?

- FDA-regulated research not subject to Final Rule
- 21st Century Cures Act (2016) requires HHS, as much as possible, to harmonize 45 CFR part 46, subpart A, and FDA's human subject regulations (21 CFR 50, 56)

- Our plan:
  - We will apply the "most protective" regulations to research which falls under both HHS and FDA

Definition of “Identifiable”

- Under pre-2018 rule research with biospecimens or data which are not identifiable was not "human subject research"
  - "the identity of the subject is or may readily be ascertained by the investigator"
- Under final rule "identifiable" can change:
  - every 4 years agencies must re-assess the meaning of “identifiable” and assess whether new technologies should be considered to generate “identifiable”" private information or biospecimens

Definition of "Identifiable"

- Our plan:
  - we expect that WGS will be among the first technologies evaluated to see whether it should be on the list (FR 82:7169); therefore, we will presume that all research involving WGS involves an identifiable biospecimen and is therefore human subject research
    - May still be exempt under category 4

Definition of “Research”

- Final rule definition of "Research" unchanged
  - “systematic investigation … designed to develop or contribute to generalizable knowledge”

- Our plan:
  - We will continue to exclude case studies (not systematic), QI (not generalizable), classroom projects (not generalizable)
  - We will specifically exclude “Scholarly and journalistic activities" and “Public health surveillance activities"

Exempt activities (§_.104)

- Final rule does not designate who is allowed to make an exempt determination

- Our plan:
  - We will continue to require that the HRPP makes the sole determination of what is exempt

Exempt activities (§_.104(d))

- (1) Research, conducted in established or commonly accepted educational settings
- (2) Research that only includes interactions involving educational tests … , survey procedures, interview procedures, or observation of public behavior
- (3) Research involving benign behavioral interventions
- (4) Secondary research for which consent is not required

Exempt activities (§_.104(d))

- (5) Research and demonstration projects that are conducted or supported by a Federal department or agency
- (6) Taste and food quality evaluation and consumer acceptance studies
- (7) Storage or maintenance for secondary research for which broad consent is required
- (8) Secondary research for which broad consent is required

Exempt activities (§_.104(d))

- Exemption categories 2 ("educational tests … , survey procedures, interview procedures, or observation of public behavior") and 3 ("benign behavioral interventions") previously allowed only if subjects could not be identified
- Under Final Rule, exemption allowed even if subjects can be readily identified provided the IRB conducts a limited review
  - determine that there are adequate provisions to protect privacy and confidentiality

Exempt activities (§_.104(d))

- Our plan:
  - since the adequacy of "provisions to protect privacy and confidentiality" depends on the study design, target population, and risks of the research, the Exempt application will include questions related to those domains

Exempt activities (§_.104(d))

- Final rule allows for optional use of broad consent for storage and secondary research use of identifiable private information or identifiable biospecimens (exempt categories 7 and 8) in lieu of obtaining study-specific informed consent
  - applies to identifiable private information or identifiable biospecimens that are collected for other research studies or for non-research purposes

Exempt activities (§_.104(d))

- Our plan:
  - we will not utilize broad consent
    - investigators can continue to use biospecimens that are coded or de-identified, or seek waiver of consent for use of biospecimens with identifiers

Exempt activities (§_.104(d))

- Our plan:
  - specimens obtained under broad consent outside the institution may be utilized by UNMC investigators
    - IRB will review the broad consent to verify that it
      - includes the required additional broad consent elements
      - includes an adequate description of types of research such that "a reasonable person would expect that the broad consent would permit this type of research"

Informed consent (§_.116)

- General requirements for informed consent largely unchanged (§_.116(a))
  - Legally effective
  - Sufficient opportunity to discuss and consider participation
  - Minimized possibility of coercion or undue influence
  - No exculpatory language
- Final Rule added additional requirements
  - Language understandable
  - Information that a reasonable person would want

Informed consent (§_.116)

- Final Rule requires that CF must begin with a "concise and focused presentation of the key information"
- Our plan:
  - We will require an "Executive Summary"
    - (1) consent is being sought for research, and participation is voluntary; (2) purpose, expected duration, procedures; (3) reasonably foreseeable risks; (4) reasonably expected benefits; (5) appropriate alternatives
    - no more than 2 pages

Informed consent (§_.116)

- Final Rule requires that CF "as a whole must present information in sufficient detail organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates … understanding"
- Our plan:
  - We will require simplification of CFs, including FDA regulated research not subject to the Common Rule
  - extensive lists of risks may be included as an addendum to the CF

Basic elements of consent (§_.116(b))

- Final Rule adds:
  - for research involving identifiable private information, or identifiable biospecimens, CF must include one of the following
    - Statement that identifiers might be removed and then the information or biospecimens could be used by the investigator or others for future research without additional consent; OR
    - Statement that the subject's information or biospecimens (even if de-identified) will not be used or distributed for future research

Basic elements of consent (§_.116(b))

- Our plan:
  - Both options will be available in online application system (RSS)
  - if investigator chooses option #2 ("information or biospecimens (even if de-identified) will not be used or distributed for future research") they must describe the plan for tracking specimens

Additional elements of consent (§_.116(c))

- Final Rule adds:
  - statement that biospecimens may be used for commercial profit and whether subject will share in profit
  - statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions
  - whether the research will or might include WGS
- Our plan:
  - Boilerplate language will be available in online application system (RSS); investigator must choose appropriate responses

Public posting of consent forms (§_.116(h))

- For each federally funded clinical trial, awardee must post one IRB-approved CF used to enroll subjects on a publically available Federal website
  - After closed to recruitment but no later than 60 days after last study visit by any subject
  - Does not have to be “final version” of CF
- Our plan:
  - Since "Federal website" is not yet identified, and no guidance from agencies is available, we will await further information

Screening, recruiting and determining eligibility (§_.116(g))

- Final rule allows an IRB to approve a research proposal in which investigators, for eligibility screening and recruitment, obtain PHI about prospective subjects without informed consent

- Our plan:
  - We will allow access to identifiable private information subject to existing Ethical Access policies

Cooperative research (§_.114)

- "Any institution located in the United States that is engaged in cooperative research must rely upon approval by a single IRB …" (§_.114(b)(1))
  - compliance date January 20, 2020
- "all [domestic] sites participating in multi-site studies involving non-exempt human subjects research funded by the NIH will use a single Institutional Review Board" (NOT-OD-16-094, June 2016)
  - effective date January 25, 2018

Cooperative research (§_.114)

- Our plan:
  - we will continue current policy:
    - rely on NIH funded consortium IRBs (NCI CIRB, NeuroNext, etc)
    - rely on another institution's IRB when they are the prime awardee of an NIH grant
    - serve as sIRB as appropriate for federally funded consortia and multi-site studies
    - allow use of select commercial IRBs for phase II and III sponsored clinical trials

Cooperative research (§_.114)

- Our plan:
  - investigator must complete CIRB Application
  - decision to allow use a sIRB for non-NIH funded research made by the IRB and the Institutional Official (Chris Kratochvil, MD)

- "each institution is responsible for safeguarding the rights and welfare of human subject" (§_.114(a))

Continuing review (§_.109)

- Final Rule eliminates continuing review for:
  - studies which qualify for expedited review
  - studies which have undergone limited IRB review
  - studies in data analysis (even if identifiable), OR clinical follow-up phase (accessing clinical data from procedures that subjects would undergo as part of clinical care)

Continuing review (§_.109)

- Our plan:
  - Expedited studies: email yearly, asking status of study.
    - upon response, CF expiration date will be updated. If no response, CF will be stamped "void" and study closed.
  - Full Board studies:
    - yearly CR
    - when status changes to "clinical follow-up" or "data analysis" further CR not required; subsequent email yearly, asking status of study (as above)

Continuing review (§_.109)

- Note:
  - investigators still have obligations to report various developments (such as UPs and proposed changes) to the IRB

Submission and review process

- An extensively revised on-line IRB Application compliant with the new Rule, and with new consent form templates, will be available shortly in RSS
- RSS will be unavailable for new applications from Wednesday January 16, 2019 through January 23, 2019
  - Applications already started may be continued and completed, or may be transferred to the new on-line application

- Call the IRB Office (402 559-6463) or email (IRBORA@unmc.edu) with any concerns or questions