Applying the Revised Common Rule Regulations

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Structure of Discussion

- OHRP
- Applying the regulations
  - Pre-2018 Common Rule
  - Revised Common Rule

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OHRP provides leadership in protecting the rights, welfare, and wellbeing of human subjects in research conducted or supported by HHS

OHRP's role is distinct from NIH and FDA

- **FDA** – regulates clinical investigations involving drugs, devices, and biologics (among other functions)
- **NIH** – conducts and supports research, some of which falls under the regulations

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OHRP's Role

OHRP holds regulatory authority for the Federal Policy for the Protection of Human Subjects at 45 CFR 46

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

Revised Common Rule published January 19, 2017
(general implementation date is January 19, 2018)

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Applying the Regulations: Pre-2018 Common Rule

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When Do the Regulations Apply?

The regulations apply to **non-exempt human subjects research** conducted or supported by HHS

Ask these questions **in this order**:

1) Does the activity involve **research**?
2) Does the research involve **human subjects**?
3) Is the research with human subjects **exempt**?

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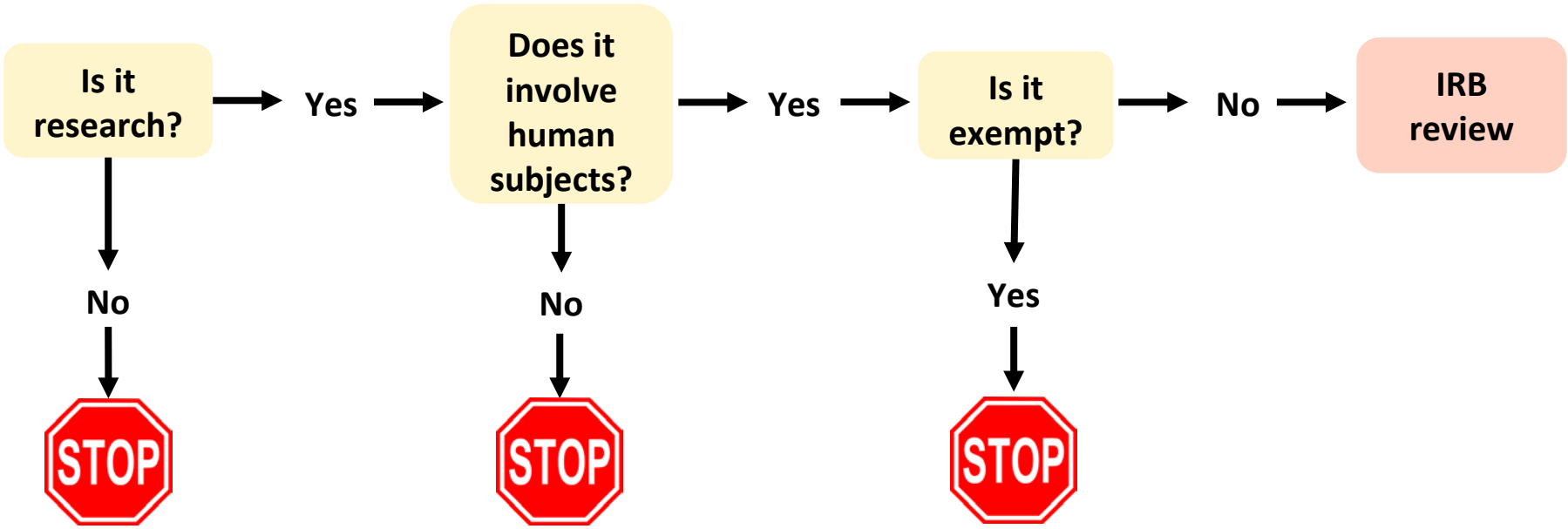
When Do the Regulations Apply?



OHRP recommends investigators not make the determination

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Question 1: Does the Activity Involve Research?

"Research refers to a **systematic investigation**, including research development, testing, and evaluation, designed to develop or contribute to **generalizable knowledge**"

(emphasis added)

45 CFR 46.102(d)

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Question 2: Does the Research Involve Human Subjects?

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)

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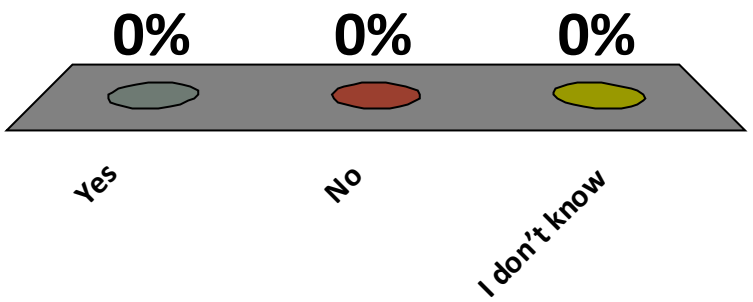
Test Your Knowledge

A team of physicians sees 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. I don't know

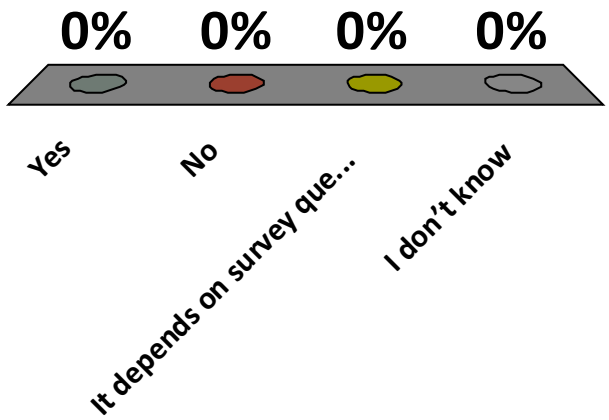


Test Your Knowledge

An education professor wishes to study the relationship between study habits and time to graduation. She plans to conduct surveys about study habits with graduate students in several universities and track their graduation status to determine if there's a correlation.

Is this human subjects research?

A. Yes
B. No
C. It depends on survey questions
D. I don't know



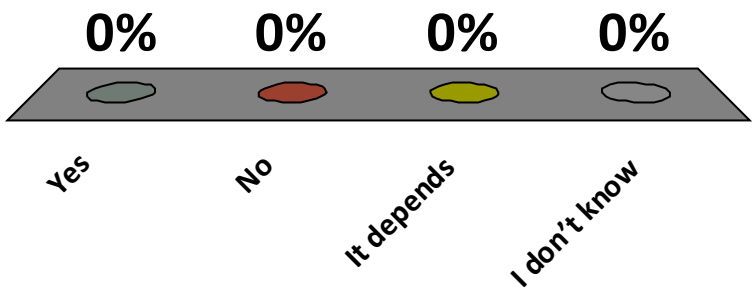
Test Your Knowledge

An investigator receives survey data on the use of opioid pain medications from an outside source.

The data were 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



Associated Regulatory Definitions

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

When is Research with Biospecimens or Private Information Human Subjects Research?

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

1) 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**.**

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Question 3: Is the Human Subjects Research Exempt?

(Note: Exemptions do not apply to research with prisoners)

1. Normal educational practices in established educational settings

2. Educational tests, surveys, interviews, or observation of public behavior—unless identified & sensitive*

3. Research on elected or appointed 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

* Does not apply to children

§46.101(b)(1-6)

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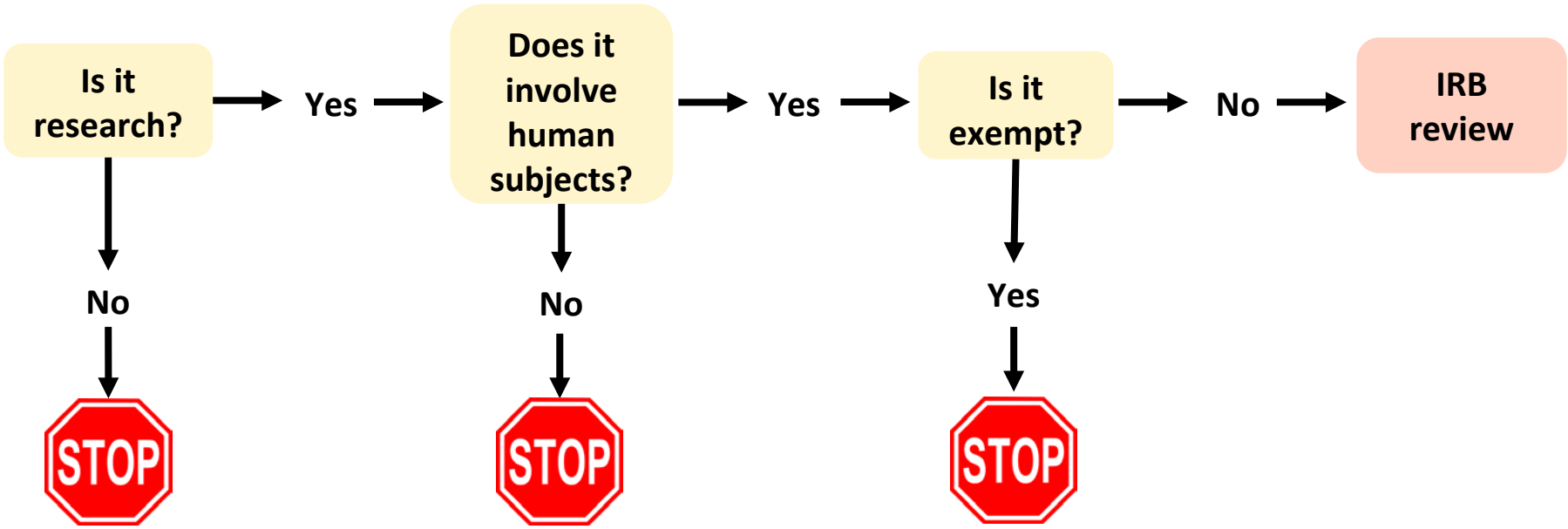
When Do the Regulations Apply?



OHRP recommends investigators not make the determination

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Applying the Regulations: Revised Common Rule

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Question 1: Does the Activity Involve Research?

…a **systematic investigation**, including research development, testing, and evaluation, designed to develop or contribute to **generalizable knowledge**

Revised Common Rule

- Citation moved from §46.102(d) to §_.102(l) in the revised rule
- **New:** four types of activities specifically deemed not to be research

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Activities Deemed Not to be Research in the Revised Common Rule

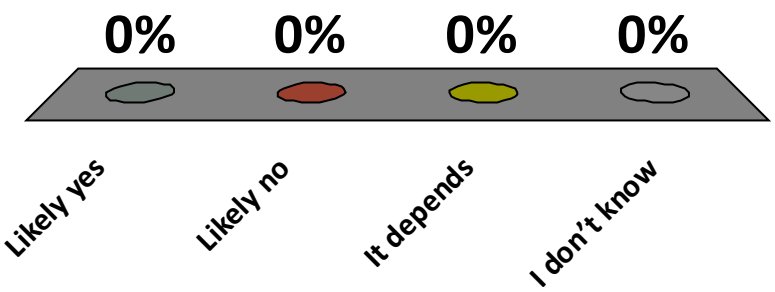
1) Scholarly and journalistic activities that focus directly on the specific individuals about whom the information is collected
2) Public health surveillance activities limited to those necessary to identify, monitor, assess, or investigate conditions of public health importance
3) Collection and analysis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

Test Your Knowledge

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 several people who worked with him.

Is this research?

A. Likely yes
B. Likely no
C. It depends
D. I don't know

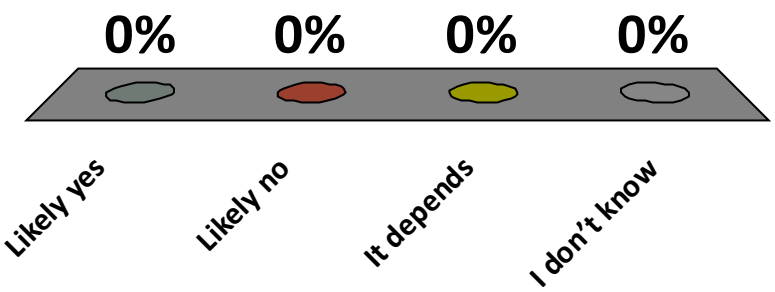


Test Your Knowledge

A physician reports an outbreak of an unusual type of meningitis. The public health authority in the area plans to collect 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. Likely yes
B. Likely no
C. It depends
D. I don't know



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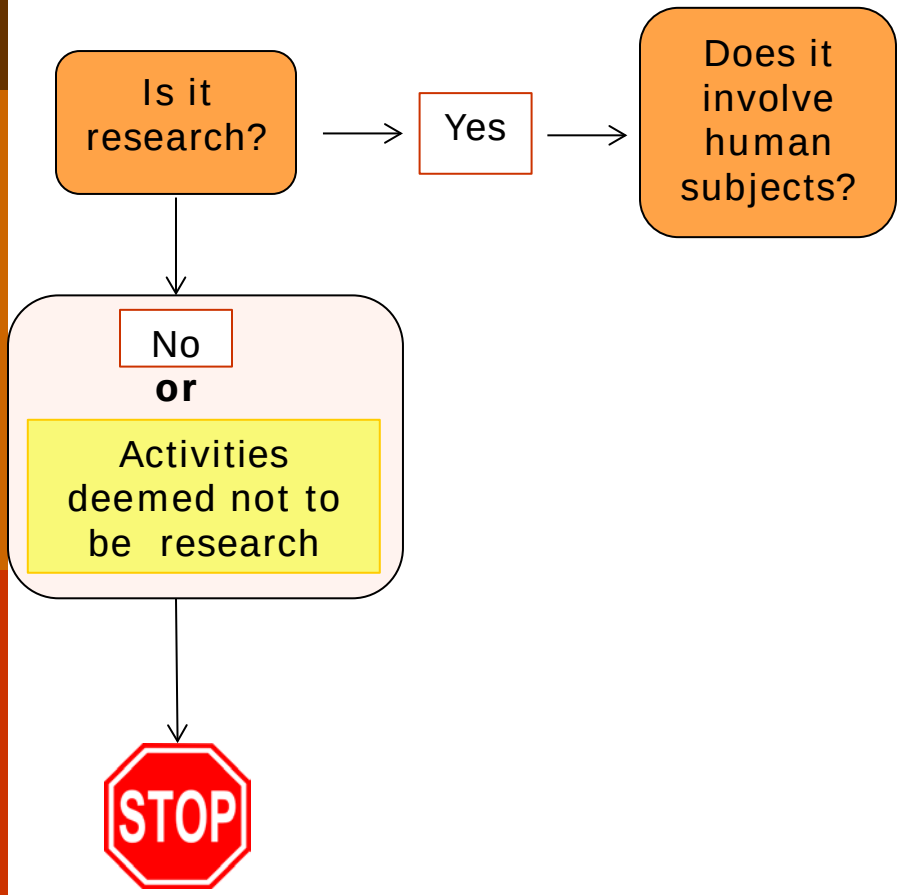

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Legend: New with the revised Common Rule

Question 2: Does the Research Involve Human Subjects?

No substantive change in the interpretation of human subject definition in the **Revised Common 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)

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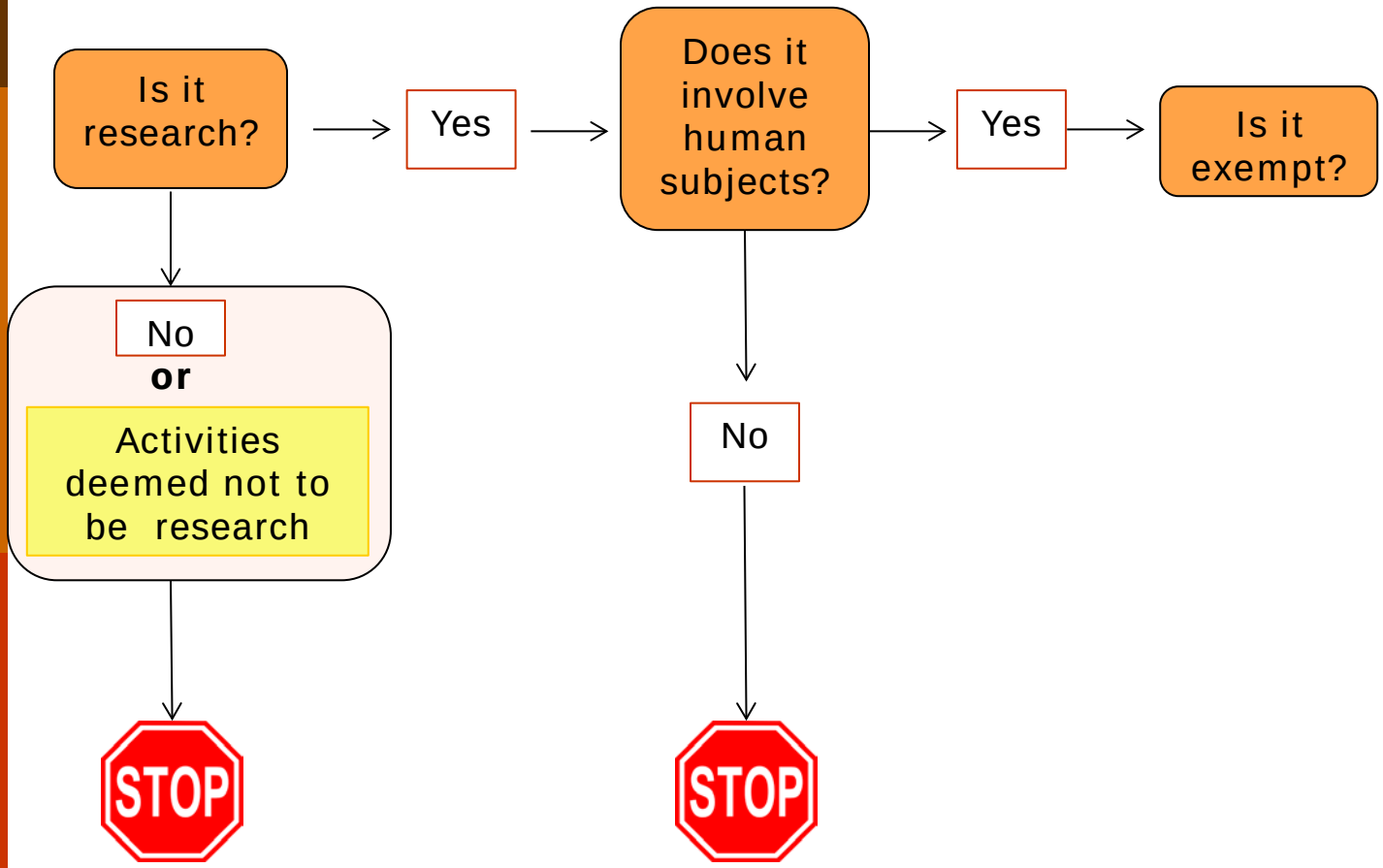

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Legend: New with the revised Common Rule

Question 3: Is the Human Subjects Research Exempt?

Pre-2018 Rule

- 6 exemptions found under §46.101(b)(1)-(6)

Revised Common Rule

- 8 exemptions found under §_.104(d)(1)-(8)
- Exemptions 3, 7, and 8 – new
- Exemption 1, 2, 4, and 5 – modified
- Exemption 6 – no change

Summary of Changes to Exemptions

Pre-2018 Rule		Revised Common Rule
• Exemption 1	→	Restrictions added
• Exemption 2	→	Expanded
• Exemption 3	→	Removed and replaced with a new exemption 3
• Exemption 4	→	Expanded old and added new
• Exemption 5	→	Expanded with changes
• Exemption 6	→	No change
		*New Exemption 7
		*New Exemption 8
		**New - limited IRB review*

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Exemption 1: *Restrictions Added*

Normal educational practices in established or commonly accepted educational settings

- What's new?

  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

§_.104(d)(1)

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Exemption 2: *Expanded*

Research that only includes educational tests, surveys, interviews, and observations of public behavior exemption when

- Information recorded cannot be readily linked back to subjects, **or**
- Any information disclosure would not place subjects at risk of certain harms (including to educational advancement), **or**
- Identifiable information recorded, and IRB conducts limited IRB review for privacy and confidentiality protection under §_.111(a)(7)

§_.104(d)(2)

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Test Your Knowledge

A college professor wants to study whether students' educational test scores improve if they are exposed to low decibel, calming music during the exam. One group of students will take the educational test in a quiet classroom environment; the other group will take it in a room with calming background music. The professor will collect the educational tests without individually identifiable information.

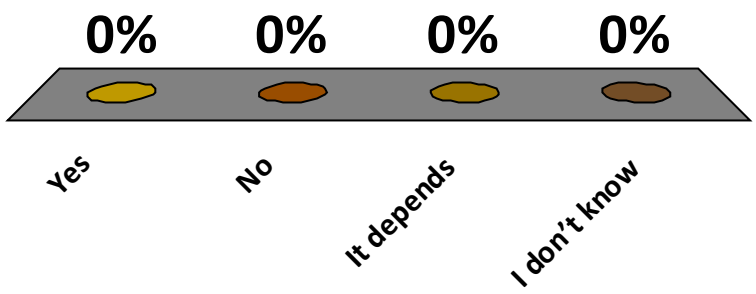
Would this research meet the criteria for the revised exemption 2?

A. **Yes**

B. **No**

C. **It depends**

D. **I don't know**



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What Happened to Exemption 3?

Removed in revised Common 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 protection of 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.

Exemption 3: *New*

Research involving **benign behavioral interventions** with **adults** who **prospectively agree** when information collection is limited to verbal or written responses (including data entry) or audiovisual recording, and:

- Information recorded cannot be readily linked back to subjects, **or**
- Any information disclosure would not place subjects at risk of certain harms, **or**
- Identifiable information recorded, and IRB conducts limited IRB review for privacy and confidentiality protection under §_.111(a)(7)

§_.104(d)(3)

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Exemption 3 (cont.)

- 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 the investigator has no reason to think the subjects will find the interventions offensive or embarrassing
- Includes authorized deception research

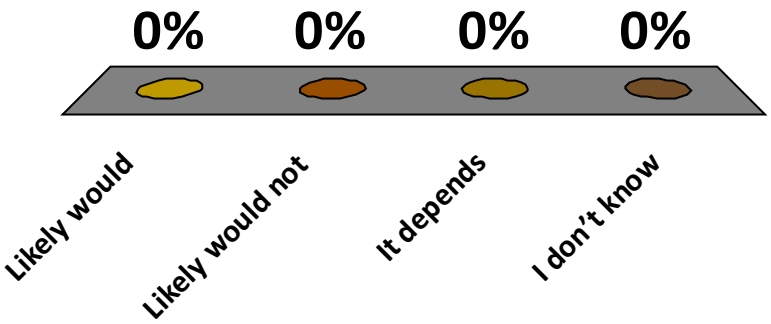
§_.104(d)(3)

Test Your Knowledge

A college professor wants to study whether students' educational test scores improve if they are exposed to low decibel, calming music during the exam. One group of students will take the educational test in a quiet classroom environment; the other group will take it in a room with calming background music. The professor will collect the educational tests without individually identifiable information.

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

A. **Likely would**
B. **Likely would not**
C. **It depends**
D. **I don't know**



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Exemption 4: *Expanded*

NEW: materials no longer need to be "existing"

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

i. Identifiable private information or identifiable biospecimens are publically available, **or**

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 be readily ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects or re-identify subjects, **or**

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Exemption 4 (cont.)

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

iii. Investigator's use is regulated under HIPAA as "health care operations," "research," or "public health" **or**

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

§_.104(d)(4)

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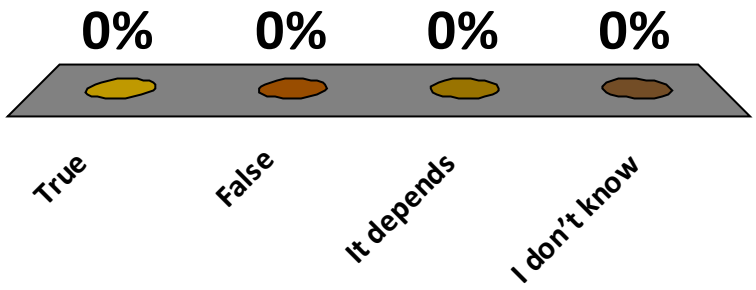
Test Your Knowledge

As long as the proposed secondary research activities fit into the criteria of one of the provisions in exemption 4 under the revised Common Rule, no IRB review is required.

True or False?

A. **True**
B. **False**
C. **It depends**
D. **I don't know**



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Test Your Knowledge

You have a collection of pancreatic tissue blocks with patient identifiers in storage. These were leftover clinical specimens. You now wish to conduct research with these specimens. As your study progresses, you will receive more pancreatic tissues leftover from clinical care. These will be available with identifiable information of the patients.

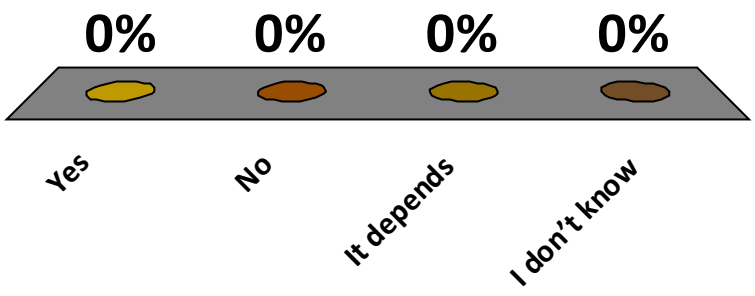
Would you be able to do this research under exemption 4 of the revised Common Rule?

A. **Yes**

B. **No**

C. **It depends**

D. **I don't know**



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Exemption 5: *Expanded*

Public benefit and service programs research and demonstration projects

- Expanded to apply to such Federally-supported research (no longer limited to Federally-conducted research)
- Added requirement that Federal agency publish a list of projects covered by this exemption prior to commencing the research

§_.104(d)(5)

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Exemption 6: *No Change*

Taste and food quality evaluation and consumer acceptance studies

§_.104(d)(6)

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Exemptions 7 and 8: *New*

Two new exemptions

- Exemption 7: Storage or maintenance of identifiable private information or identifiable biospecimens for secondary research
- Exemption 8: Secondary research using identifiable private information or identifiable biospecimens

Both require:

- Broad consent
- Limited IRB review

Allowing the Use of Broad Consent for Secondary Research

- **Optional:** An alternative to traditional informed consent or waiver of informed consent
- Applicable to:
  - The storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens
    - Collected for either a different research study, or for non-research purposes
- Creates future regulatory flexibilities

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No Waiver if Broad Consent Refused

IRB cannot waive consent if individuals were asked, and refused, to provide broad consent to the storage, maintenance and use of identifiable private information or identifiable biospecimens

§_.116(f)(1)

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Limited IRB Review

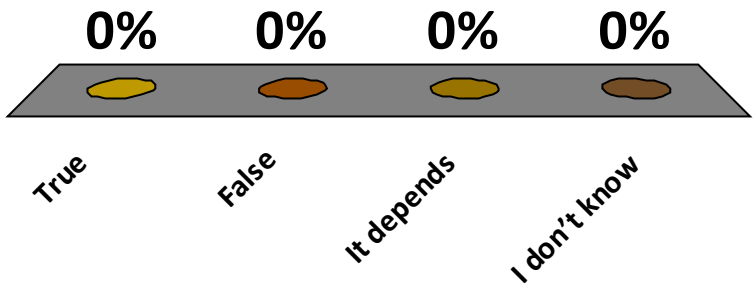
- Required for exemptions 2(iii), 3(i)(C), 7, and 8 in the revised Common Rule
- Expedited review can be used
- One time only, no continuing review required
  - **Exemptions 2(iii) and 3(i)(C)** review:
    - For privacy and confidentiality protection under §_.111(a)(7)
  - **Exemptions 7 and 8** review:
    - For other safeguards related to privacy and confidentiality protection, and broad consent

Test Your Knowledge

Your institution decides to make use of the new exemptions 7 and 8 to facilitate future secondary research where investigators will need access to identifiable patient information. Every patient is now asked to provide broad consent for future secondary use of their biospecimens. For the few who decline, the IRB will be allowed to waive informed consent if their use is vital to the scientific validity of the research.

True or False?

A. **True**
B. **False**
C. **It depends**
D. **I don't know**



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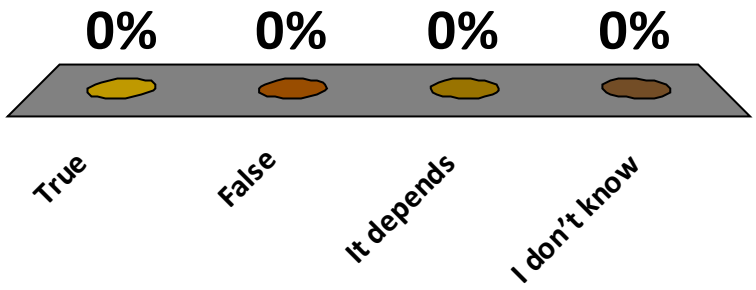
Test Your Knowledge

As long as there is broad consent for secondary research use of the subjects' identifiable private information or identifiable biospecimens, researchers can use exemption 8 without limited IRB review.

True or False?

A. True
B. False
C. It depends
D. I don't know



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Exemptions Applicability Subparts C & D

	Pre-2018 Rule (Current)	Revised Common Rule
Subpart C *Prisoners Research*	• **None apply**	• **Research expanded:** Exemptions do not apply **except** for research aimed at involving a broader subject population that only incidentally includes prisoners
Subpart D *Research with Children*	• **Exemption 2 does not apply** for research involving survey or interview procedures or observations of children by investigators who participate in the activity being observed • **Other exemptions apply**	• **Same restrictions** as before for exemption 2 • **Plus** new provision §_.104(d)(2)(iii) also not applicable (identifiable information obtained, and limited IRB review) • **New exemption 3 does not apply**

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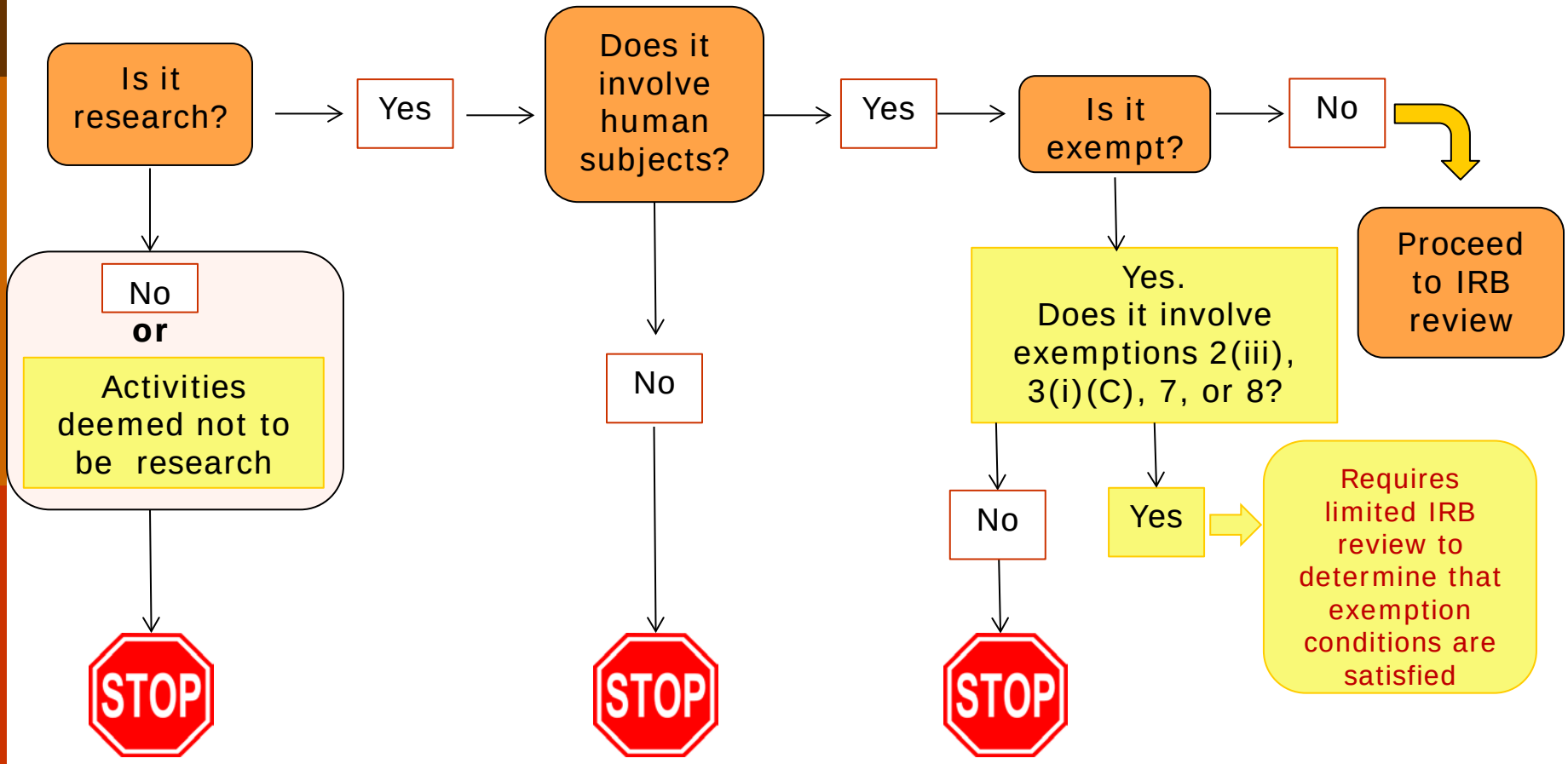
Applying the Revised Common Rule



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Legend: New with the revised Common Rule

Please refer to the text of the revised Common Rule available on **OHRP's website (hhs.gov/ohrp)** for a complete and accurate description of the regulatory requirements

Questions About the Revised Common Rule?

- Submit your questions to OHRP@hhs.gov
- Stayed connected! Join our listserv at:

  https://www.hhs.gov/ohrp/news/sign-up-for-announcements/index.html

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THANK YOU!

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