

# Exempt Human Subjects Research Policy

## Scope

Applies to researchers and Institutional Review Board (IRB) personnel when considering proposed human research activities that may qualify for exemption from IRB approval. exempt human subjects.

## Purpose

To describe research activities involving human subjects that meet exemption criteria under 45 CFR 46 and 21 CFR 56.

## Policy

1. It is the policy of the Mayo Clinic Office for Human Research Protection, Institutional Review Board (IRB), that all research activities under its jurisdiction involving human subjects must be reviewed to determine whether the research meets one or more exemption categories, as defined by Federal regulations.
2. Only the IRB may determine which activities qualify for exempt status. Investigators do not have the authority to make an independent determination that research involving human subjects is exempt and must contact the IRB concerning the status of proposed research or changes in ongoing research.
3. Exempt research activities are subject to the same human subject protections and ethical standards as outlined in the [Belmont Report](#). Exempt research activities offer no more than minimal risk to participants, selection of participants is equitable, and adequate provisions are in place to maintain the privacy interests of participants. If there is recording of identifiable information, there are adequate provisions to maintain confidentiality of the data. If there are interactions with participants, the IRB will determine whether there should be a consent process that will disclose such information as the activity involves research, a description of the procedures, that participation is voluntary, and the name and contact information for the researcher.
4. Determination of exempt status is generally performed during expedited review by a designated IRB reviewer with demonstrated knowledge (of at least one year) of the application of research ethics in human subject protections. IRB Chairs, convened IRB, and other IRB members will review requests for exemption submitted by investigators, when applicable.
5. The IRB review is documented in the IRB electronic system, including action taken by the reviewer and the permissible exempt category citation(s).
6. Continuing review is not required when a research project has been determined by the IRB to be exempt from further IRB review.

## Exemption Status and Research Project Modifications

1. Certain project modifications may disqualify the research from exempt status. Therefore, any proposed modification to an exempt study must be submitted to the IRB for review and approval prior to implementation.

## Investigator Responsibilities

1. The investigator may make a preliminary assessment that a research proposal is eligible for exemption based on the regulatory criteria. The [IRB Wizard](#) may be used to assist in the assessment.
2. The investigator must submit an application for IRB review and must not begin the project until the exempt status is confirmed by the IRB.

## Criteria for Exemption (pre-2018 Common Rule Requirements, applicable to IRB determinations prior to January 21, 2019)

Under 45 CFR 46.101 (b) (Department of Health and Human Services (DHHS)) the IRB may determine a research activity to be exempt where the only involvement of human subjects will be in one or more of the following six categories:

1. Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as
  - a. research on regular and special education instructional strategies, or
  - b. research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

2. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:
  - a. Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and
  - b. Any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.
3. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (2) of this section, if:
  - a. The human subjects are elected or appointed public officials or candidates for public office; or
  - b. Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.
4. Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.
5. Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:
  - a. Public benefit or service programs;
  - b. Procedures for obtaining benefits or services under those programs;
  - c. Possible changes in or alternatives to those programs or procedures; or
  - d. Possible changes in methods or levels of payment for benefits or services under those programs.
  - e. The program under study delivers 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).
  - f. The research is conducted pursuant to specific federal statutory authority.
  - g. There is no statutory requirement that an IRB review the research.
  - h. The research does not involve significant invasions or intrusions upon the privacy of subjects.
6. Taste and food quality evaluation and consumer acceptance studies,
  - a. (i) If wholesome foods without additives are consumed or
  - b. (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 and Inspection Service of the U.S. Department of Agriculture.

**Criteria for Exemption (2018 Common Rule Requirements, applicable to IRB determinations made on or after January 21, 2019)**

Under 45 CFR 46.104(d) (Department of Health and Human Services (DHHS)) the IRB may determine a research activity to be exempt where the only involvement of human subjects will be in one or more of the following eight categories:

1. Research, conducted in established or commonly accepted educational settings, that specifically involves 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 most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
2. 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:
  - 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 §46.111(a)(7).
3. 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 §46.111(a)(7).
  - d. For the purpose of this provision, benign behavioral interventions 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. Provided all such criteria are met, examples of such benign behavioral interventions would include having the subjects play an online game, having them solve puzzles under various noise conditions, or having them decide how to allocate a nominal amount of received cash between themselves and someone else.

- e. If the research involves deceiving the subjects regarding the nature or purposes of the research, this exemption is not applicable unless the subject authorizes the deception through a prospective agreement to participate in research in circumstances in which the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.
4. 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:
    - a. The identifiable private information or identifiable biospecimens are publicly available;
    - b. 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;
    - c. 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
    - d. The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch 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.
  5. 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.
    - a. 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.
  6. Taste and food quality evaluation and consumer acceptance studies:
    - a. (i) If wholesome foods without additives are consumed, or
    - b. (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 and Inspection Service of the U.S. Department of Agriculture.

**Note: Mayo Clinic is not implementing broad consent for use of identifiable private information or identifiable biospecimens at this time. Therefore, exempt categories (7) and (8) are not applicable and not included in the Mayo Clinic IRB application.**

## Limited IRB Review

1. For exempt categories (2) and (3), a "limited IRB review" is required when the investigator records information in such a manner that the identity of the human subjects can readily be ascertained directly or through identifiers linked to the subjects, and disclosure of the human subjects' responses outside the research could place them at risk. This "limited IRB review" is satisfied by the Mayo Clinic IRB policy and practice that all research activities involving human subjects must be reviewed by the IRB to determine whether the research meets one or more exemption categories, as defined by Federal regulations.

## Food and Drug Administration (FDA) Exemption Criteria

1. Under 21 CFR 56.104 FDA, the following categories of clinical investigations are exempt:
  - a. Any investigation which commenced before July 27, 1981 and was subject to requirements for IRB review under FDA regulations before that date, provided that the investigation remains subject to review of an IRB which meets FDA requirements in effect before July 27, 1981.
  - b. Any investigation which commenced before July 27, 1981 and was not otherwise subject to requirements for IRB review under Food and Drug Administration regulations before that date.

- c. Emergency use of a test article, provided that such emergency use is reported to the IRB within 5 working days. Any subsequent use of the test article at the institution is subject to IRB review.
- d. Taste and food quality evaluations and consumer acceptance studies, if wholesome foods without additives are consumed, or 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 and Safety Inspection Service of the U.S. Department of Agriculture.

## Research Involving Pregnant Women, Human Fetuses, and Neonates

Each of these exemptions may be applied to research involving pregnant women, human fetuses, and neonates, if the conditions of the exemption are met.

### Research Involving Prisoners

These exemptions do not apply to research involving prisoners, except for research aimed at involving a broader subject population that only incidentally includes prisoners.

### Research Involving Children

*Pre-2018 Common Rule Requirements, effective prior to January 21, 2019:*

1. The exemptions specified in DHHS 45 CFR 46.101(b) [exemption categories](#) (1), (3), (4), (5), and (6) apply to research involving children.
2. The exemption specified in DHHS 45 CFR 46.101(b) [exemption category](#) (2) only applies to research involving observation of public behavior when the investigator does not participate in the activities being observed.
3. Exemption does not apply where the research involves survey or interview procedures or any direct interaction with the subjects being observed.

*2018 Common Rule Requirements, effective on January 21, 2019:*

- a. The exemptions specified in DHHS 45 CFR 46.104(d) categories (1), (4), (5) and (6) [categories (7) and (8) are not applicable at Mayo Clinic] may be applied to research involving children if the conditions of the exemption are met.
- b. The exemptions specified in DHHS 45 CFR 46.104(d) categories (2)(i) and (ii) of this section only may apply to research involving children and educational tests or the observation of public behavior when the investigator(s) do not participate in the activities being observed.
- c. Exemption does not apply where the investigator records information in such a manner that the identity of the human subjects can readily be ascertained directly or through identifiers linked to the subjects, and disclosure of the human subjects' responses outside the research could place them at risk. (DHHS 45 CFR 46.104[d][2][iii]).

### Additional information regarding Exempt Research, Category 4 research

4. Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, when at least one of the following criteria is met:
  - d. The identifiable private information or identifiable biospecimens are publicly available;
  - e. 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 the subjects;
  - f. The research involves only information collections 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 (HIPAA), 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

The research is conducted by, or on behalf of, a Federal department or agency using government generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology.

## Policy Notes

N/A

## Related Procedures

N/A

## Related Documents

[IRB Wizard](#)

## Definitions

**Exempt Research:** Research that qualifies for exemption from the requirements of federal regulations 45 CFR 46 or 21 CFR 56.104, including continuing review by the Institutional Review Board (IRB), and that meets the criteria within one or more of the six exempt categories designated in the federal regulations.

**Human Research Subject (as defined by DHHS):** A living individual about whom an investigator (whether professional or student) conducting research obtains information or biospecimens through intervention or interaction with an individual and uses, studies, or analyzes the information or biospecimens; or obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

**Interaction:** Includes communication or interpersonal contact with a subject or their private identifiable information.

**Intervention:** Physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

**Research:** A systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

## References

[45 CFR 46](#)

[21 CFR 56.104](#) Exemptions from IRB Criteria

[Belmont Report](#)

OHRP Guidances:

[Exempt Research and Research That May Undergo Expedited Review](#)

[Exemption for Research and Demonstration Projects on Public Benefit and Service Programs](#)

[Guidance on Research Involving Coded Private Information or Biological Specimens](#)

## Owner

[Michelle K. Daiss](#) on behalf of Office for Human Research Protection

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## Revision History

Date	Synopsis of Change
09/27/2022	Scheduled review. Scope updated. Addition of information related to exempt category 4. Other minor edits. Changed Owner to Michelle Daiss.
01/21/ 2019	Updated to reflect 2018 Revised Common Rule. Changed Owner to Tammy Neseth.
02/12/ 2018	Scheduled Review - updated to new template no other changes at this time due to AAHRPP Accreditation cycle.

03/01/2016

Scheduled Review - Added "Revision History" to end of document

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