HUMAN SUBJECT REGULATIONS DECISION CHARTS: 2018 REQUIREMENTS

OHRP
Office for Human Research Protections

NOTE: This guidance is consistent with the 2018 Requirements (i.e., the revised Common Rule).

For use after January 20, 2019

SCOPE: The following graphic charts are intended to aid those who need to decide if an activity is research involving human subjects that must be reviewed by an institutional review board (IRB) and whether informed consent or the documentation of informed consent can be waived under the 2018 Requirements found for the U.S. Department of Health and Human Services (HHS) at 45 CFR part 46, Subpart A.

TARGET AUDIENCE: IRBs, institutions, investigators, and others

CONSIDERATIONS: These charts are necessarily generalizations and may not be specific enough for particular situations. Other guidance documents are available related to specific topics at https://www.hhs.gov/ohrp/regulations-and-policy/guidance/index.html. OHRP cautions that the full text of an applicable regulatory provision should be considered in making final decisions. The charts do not address requirements that may be imposed by other organizations, such as the Food and Drug Administration, the National Institutes of Health, other sponsors, or state or local governments.

CHART 01

IS AN ACTIVITY HUMAN SUBJECTS RESEARCH COVERED BY 45 CFR PART 46?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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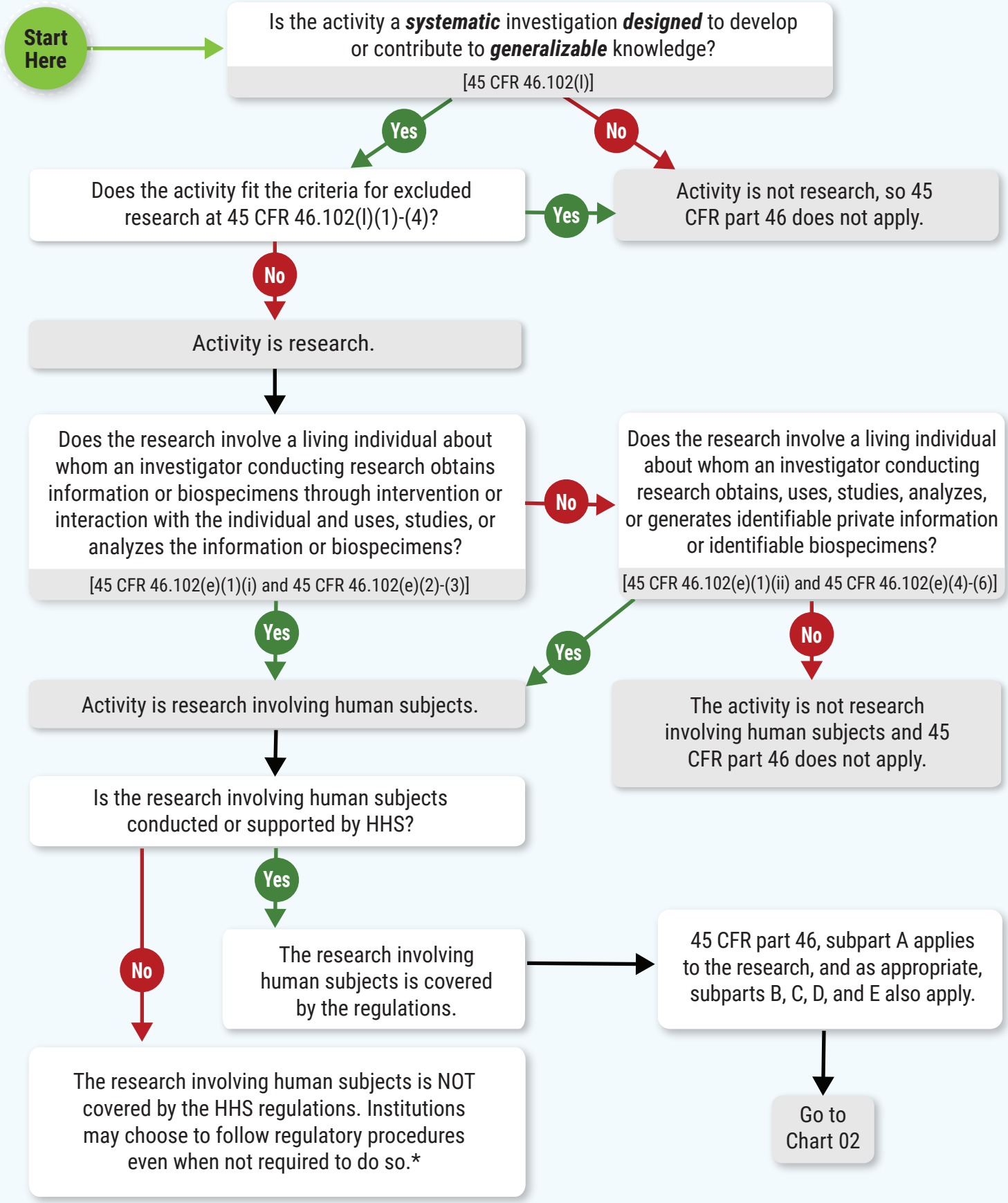

*For information on whether an institution needs to revise its FWA because of the 2018 Requirements, see, https://www.hhs.gov/ohrp/education-and-outreach/revised-common-rule/revised-common-rule-q-and-a/index.html

CHART 02

IS THE RESEARCH INVOLVING HUMAN SUBJECTS ELIGIBLE FOR EXEMPTION UNDER 45 CFR 46.104(d)?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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Has HHS ***prohibited*** exemption of the human subjects research? (Most research involving prisoners, some research involving children.)

[45 CFR 46.104(b)]

Yes → No exemptions to 45 CFR part 46 apply. Provisions of 45 CFR part 46, subpart A apply, and subparts B, C, and D also apply if subjects are members of populations covered in those subparts.

No

Will the ***only**** involvement of human subjects be in one or more of the following categories?

Research conducted in ***established or commonly accepted*** educational settings, involving ***normal education practices***?

Yes → Exemption 45 CFR 46.104(d)(1) may apply. → Go to Chart 03

Or

Research only including interactions involving ***educational tests***, ***survey procedures***, ***interview procedures***, or ***observation of public behavior***?

Yes → Exemption 45 CFR 46.104(d)(2) may apply. → Go to Chart 04

Or

Research involving benign ***behavioral interventions*** and collection of information from ***adults*** with their agreement?

Yes → Exemption 45 CFR 46.104(d)(3) may apply. → Go to Chart 05

Or

Secondary research use of identifiable private information or identifiable biospecmens?

Yes → Exemption 45 CFR 46.104(d)(4) or (d)(8) may apply. → Go to Chart 06 & Chart 10

Or

Research studying, evaluating, or examining ***public benefit*** or ***service programs***?

Yes → Exemption 45 CFR 46.104(d)(5) may apply. → Go to Chart 07

Or

Research involving ***taste and food quality evaluation*** of ***consumer acceptance studies***?

Yes → Exemption 45 CFR 46.104(d)(6) may apply. → Go to Chart 08

Or

Storage or maintenance of identifiable private information or identifiable biospecimens for secondary research use?

Yes → Exemption 45 CFR 46.104(d)(7) may apply. → Go to Chart 09

Only** means that no nonexempt activities are involved. Research that excludes both exempt and nonexempt activities is ***not exempt. Research may involve activities exempt under more than one exemption category.

CHART 03

DOES EXEMPTION 45 CFR 46.104(d)(1) FOR EDUCATIONAL PRACTICES APPLY?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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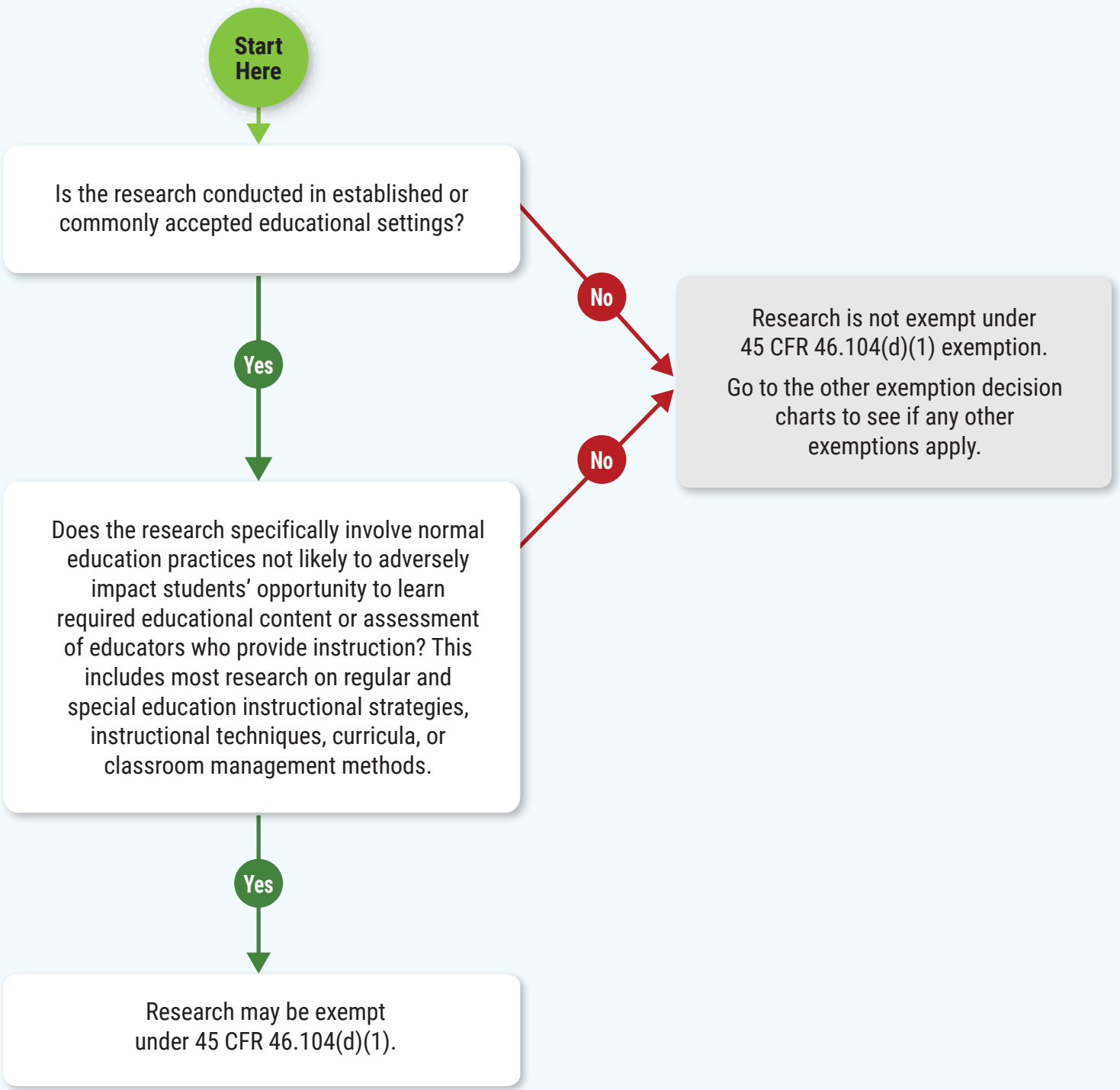

CHART 04

DOES EXEMPTION 45 CFR 46.104(d)(2) FOR EDUCATIONAL TESTS, SURVEYS, INTERVIEWS, OR OBSERVATION OF PUBLIC BEHAVIOR APPLY?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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Start Here

Does the research only include interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recordings)?

No → The research is not exempt under 45 CFR 46.104(d)(2). Go to the other exemption decision charts to see if any other exemptions apply.

Yes

Is the information obtained 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?

[45 CFR 46.104(d)(2)(i)]

Yes → The exemption may apply. However, when the subjects are children, this may only apply to research involving educational tests or the observation of public behavior when the investigator ***does not participate*** in the activities being observed.

[45 CFR 46.104(b)(3)]

Or

Is it the case that 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?

[45 CFR 46.104(d)(2)(ii)]

Yes → The exemption may apply. However, when the subjects are children, this may only apply to research involving educational tests or the observation of public behavior when the investigator ***does not participate*** in the activities being observed.

[45 CFR 46.104(b)(3)]

Or

Is the information obtained 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 has an IRB conducted a limited review to make the determination required by 45 CFR 46.111(a)(7)?

[45 CFR 46.104(d)(2)(iii)]

No → The research is not exempt under 45 CFR 46.104(d)(2). Go to the other exemption decision charts to see if any other exemptions apply.

Yes → The exemption may apply unless the research involves children. This condition ***does not apply*** to research subject to Subpart D.

[45 CFR 46.104(b)(3)]

CHART 05

DOES EXEMPTION 45 CFR 46.104(d)(3) FOR BENIGN BEHAVIORAL INTERVENTIONS APPLY?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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Start Here

Does the research involve ***benign behavioral interventions**** in conjunction with collection of information from adults through verbal or written responses (including data entry) or audiovisual recording?

Yes → Have the subjects prospectively agreed to the intervention and information collection?

Yes → Is the information obtained ***recorded*** in such a manner that human ***subjects can be readily identified***, directly or through identifiers linked to the subjects?

Yes → Has an IRB conducted a limited review to make the determinations required by 45 CFR 46.111(a)(7); that, when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data?

No → Could ***any disclosure*** of the human subjects' responses outside the research reasonably ***place the subjects at risk*** of criminal or civil liability ***or be damaging*** to the subjects' financial standing, employability, educational advancement, or reputation?

No → Research may be exempt under 45 CFR 46.104(d)(3).

Yes → The research is not exempt under 45 CFR 46.104(d)(3). Go to the other exemption decision charts to see if any other exemptions apply.

No → The research is not exempt under 45 CFR 46.104(d)(3). Go to the other exemption decision charts to see if any other exemptions apply.

Yes → The research is not exempt under 45 CFR 46.104(d)(3). Go to the other exemption decision charts to see if any other exemptions apply.

No → The research is not exempt under 45 CFR 46.104(d)(3). Go to the other exemption decision charts to see if any other exemptions apply.

Exemption 45 CFR 46.104(d)(3) does not apply if the research involves deceiving subjects regarding the nature or purposes of the research unless the subject authorizes the deception through prospective agreement to be unaware of or misled regarding the nature or purposes of the research.

***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.

CHART 06

DOES EXEMPTION 45 CFR 46.104(d)(4) FOR SECONDARY RESEARCH THAT DOES NOT REQUIRE CONSENT APPLY?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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Start Here

Does the research involve ***secondary uses*** of identifiable private information or identifiable biospecimens? *

Yes

Is the identifiable private information or are the identifiable biospecimens publicly available?

[45 CFR 46.104(d)(4)(i)]

Yes

Or

Is the information, which may include information about biospecimens, 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?

[45 CFR 46.104(d)(4)(ii)]

Yes

Or

Does the research involve 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 purposes of "healthcare operations" or "research" as defined at 45 CFR 164.501 or for "public health activities and purposes" as described under 45 CFR 164.512(b)?

[45 CFR 46.104(d)(4)(iii)]

Yes

Or

Is the research conducted or supported by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, and the research generates identifiable private information that is or will be maintained on information technology subject to and in compliance with section 208(b) of the E-Government Act of 2002, and 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, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995?

[45 CFR 46.104(d)(4)(iv)]

Yes

Research may be exempt under 45 CFR 46.104(d)(4).

No

The research is not exempt under 45 CFR 46.104(d)(4).

Go to the other exemption decision charts to see if any other exemptions apply.

No

No

*Research use of identifiable private information or identifiable biospecimens collected for either research studies other than the proposed research, or for nonresearch purposes.

CHART 07

DOES EXEMPTION 45 CFR 46.104(d)(5) FOR PUBLIC BENEFIT OR SERVICE PROGRAMS APPLY?

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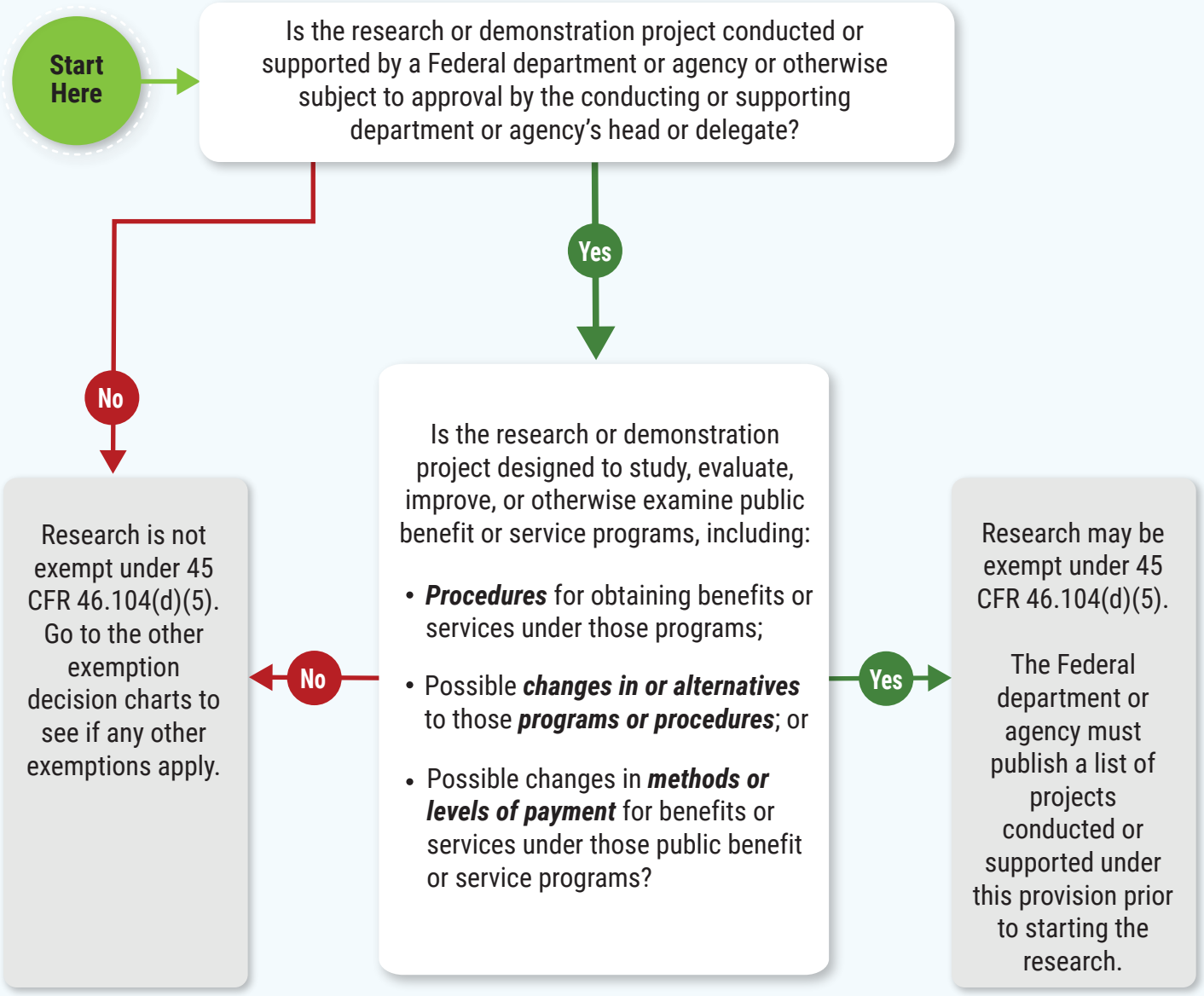

CHART 08

DOES EXEMPTION 45 CFR 46.104(d)(6) FOR FOOD, TASTE, AND ACCEPTANCE STUDIES APPLY?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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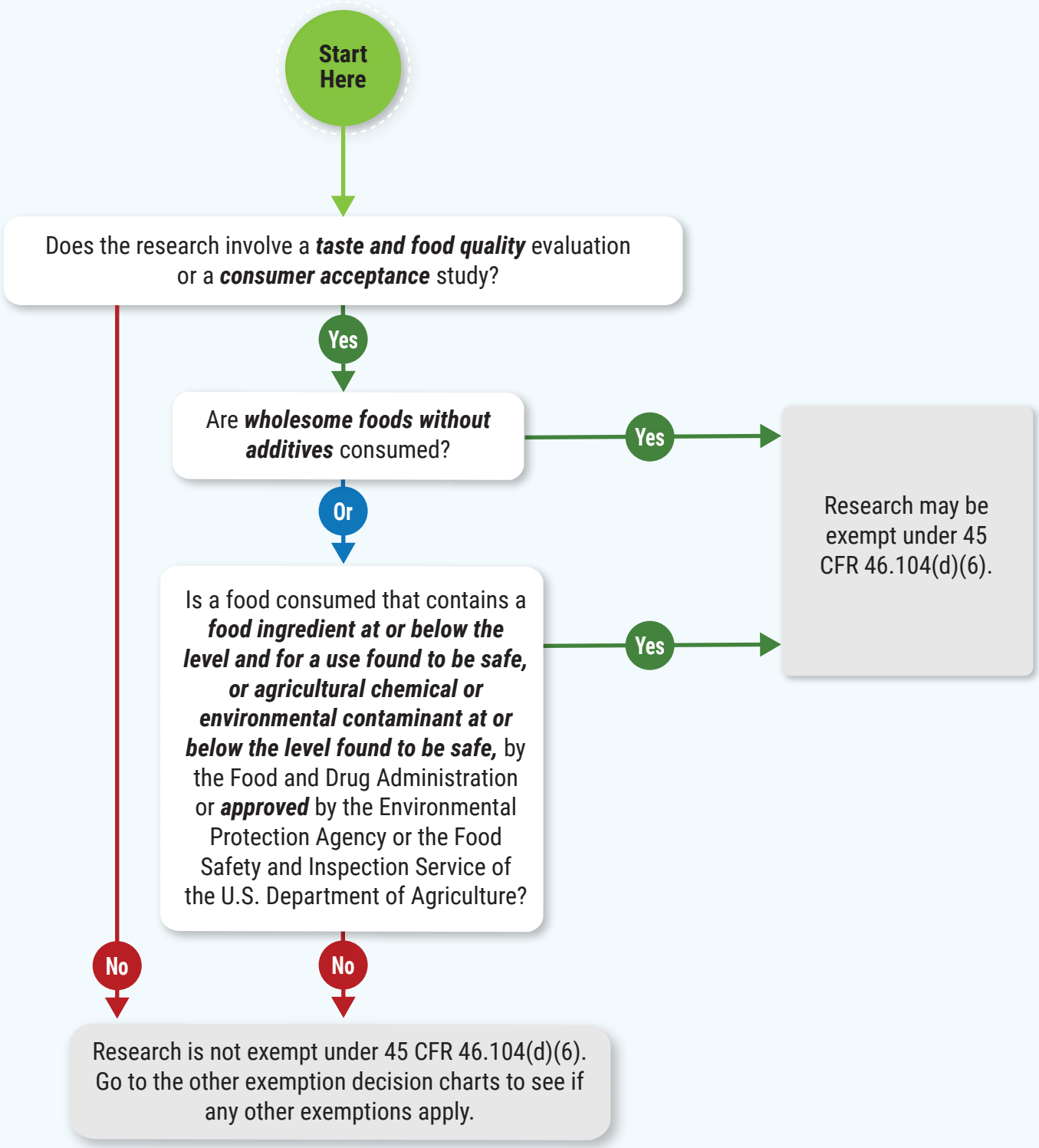

CHART 09

DOES EXEMPTION 45 CFR 46.104(d)(7), STORAGE FOR SECONDARY RESEARCH FOR WHICH BROAD CONSENT IS REQUIRED, APPLY?

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Start Here

Does the research involve storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research?*

Yes

Has an IRB conducted a limited review and made the determinations required by 45 CFR 46.111(a)(8) that:

broad consent for storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens is obtained in accordance with 45 CFR 46.116(a)(1)-(4), (a)(6), and (d);

And

broad consent is appropriately documented or waiver of documentation is appropriate, in accordance with 45 CFR 46.117;

And

if a change is made for research purposes in the way the identifiable private information or identifiable biospecimens are stored or maintained, there are adequate provisions to protect the privacy of subjects and maintain the confidentiality of data?

Yes → Research may be exempt under 45 CFR 46.104(d)(7).

No

No → Research is not exempt under 45 CFR 46.104(d)(7).
Go to the other exemption decision charts to see if any other exemptions apply.

Secondary research involving storage or maintenance of private information or biospecimens that are not identifiable does not involve human subjects and 45 CFR part 46 does not apply.

*Research use of identifiable private information or identifiable biospecimens collected for either research studies other than the proposed research, or for nonresearch purposes.

CHART 10

DOES EXEMPTION 45 CFR 46.104(d)(8) FOR SECONDARY RESEARCH FOR WHICH BROAD CONSENT IS REQUIRED APPLY?

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Start Here

Does the research involve use of identifiable private information or identifiable biospecimens for secondary research?*

Yes

Was broad consent for storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens obtained in accordance with 45 CFR 46.116(a)(1)-(4), (a)(6), and (d)?

Yes

Was documentation of informed consent obtained, or was documentation of informed consent appropriately waived in accordance with 45 CFR 46.117?

Yes

Has an IRB conducted a limited review and made the determination required by 45 CFR 46.111(a)(7) and determined that the research is within the scope of the broad consent referenced in 45 CFR 46.104(d)(8)(i)?

Yes

Does the investigator include returning individual research results to subjects in the study plan?

No → Research may be exempt under 45 CFR 46.104(d)(8).

Yes

Research is not exempt under 45 CFR 46.104(d)(8).
Go to the other exemption decision charts to see if any other exemptions apply.

No (from Does the research involve use of identifiable private information or identifiable biospecimens for secondary research?*)

No (from Was broad consent for storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens obtained in accordance with 45 CFR 46.116(a)(1)-(4), (a)(6), and (d)?)

No (from Was documentation of informed consent obtained, or was documentation of informed consent appropriately waived in accordance with 45 CFR 46.117?)

No (from Has an IRB conducted a limited review and made the determination required by 45 CFR 46.111(a)(7) and determined that the research is within the scope of the broad consent referenced in 45 CFR 46.104(d)(8)(i)?)

No (from Does the investigator include returning individual research results to subjects in the study plan?)

Secondary research involving storage or maintenance of private information or biospecimens that are not identifiable does not involve human subjects and 45 CFR part 46 does not apply.

*Research use of identifiable private information or identifiable biospecimens collected for either research studies other than the proposed research, or for nonresearch purposes.

CHART 11

IS CONTINUING REVIEW REQUIRED UNDER 45 CFR 46.109(f)?

NOTE: This chart is consistent with the 2018 Requirements (i.e., the revised Common Rule)

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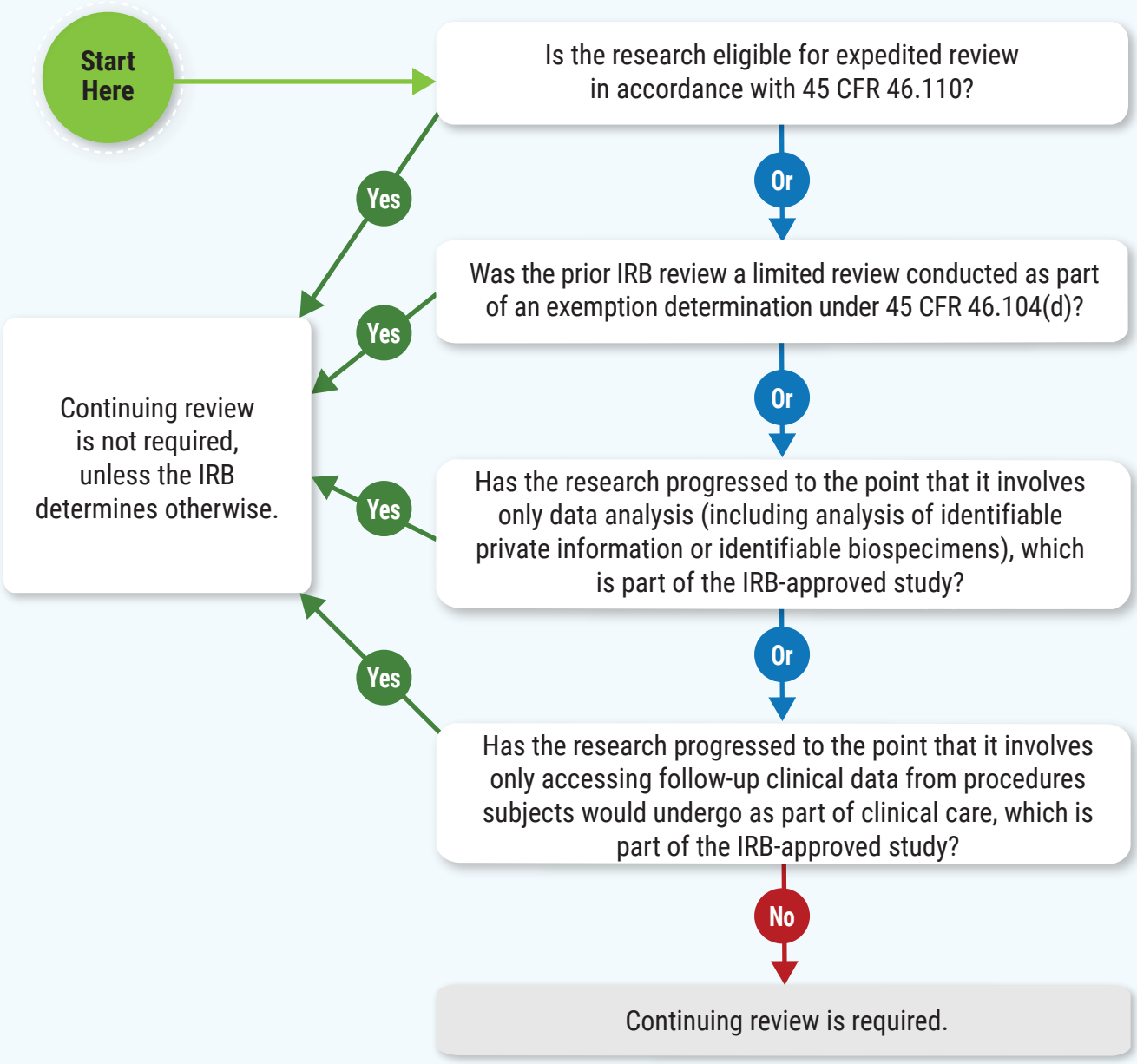

CHART 12

WAIVER OR ALTERATION OF INFORMED CONSENT IN RESEARCH INVOLVING PUBLIC BENEFIT AND SERVICE PROGRAMS CONDUCTED BY OR SUBJECT TO THE APPROVAL OF STATE OR LOCAL GOVERNMENT OFFICIALS (45 CFR 46.116(e))

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Start Here

Has an IRB found and documented that the research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine any of the following:

- Public benefit or service programs;
- 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?

[45 CFR 46.116(e)(3)(i)]

No → No waiver or alteration of informed consent is allowed.

Yes

Has an IRB found and documented that the research could not practicably be carried out without the waiver or alteration?

[45 CFR 46.116(e)(3)(ii)]

No → No waiver or alteration of informed consent is allowed.

Yes

Waiver: An IRB may waive the requirement to obtain informed consent, provided the IRB satisfies the requirements for waiver at 45 CFR 46.116(e). However, if an individual was asked to provide broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens in accordance with the requirements at 45 CFR 46.116(d), and refused to consent, an IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable private information or identifiable biospecimens.

[45 CFR 46.116(e)(1)]

Or

Alteration: An IRB may approve a consent procedure that omits some, or alters some or all, of the elements of informed consent found at 45 CFR 46.116(b) and (c) provided the IRB satisfies the requirements at 45 CFR 46.116(e). However, an IRB may not omit or alter any of the requirements described at 45 CFR 46.116(a). If a broad consent procedure is used, an IRB may not omit or alter any of the elements required at 45 CFR 46.116(d) as stipulated under 45 CFR 46.116(e)(2).

[45 CFR 46.116(e)(2),(3)]

CHART 13

WHEN CAN INFORMED CONSENT BE WAIVED OR ALTERED UNDER 45 CFR 46.116(f)?

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Start Here

Has an IRB found and documented that ***all*** of the following conditions have been met?

- The research involves no more than minimal risk to the subjects;
- The research could not practicably be carried out without the requested waiver or alteration;
- If the research involves using identifiable private information or identifiable biospecimens, the research could not practicably be carried out without using such information or biospecimens in an identifiable format;
- The waiver or alteration will not adversely affect the rights and welfare of the subjects; and
- Whenever appropriate, the subjects or legally authorized representatives will be provided with additional pertinent information after participation.

[45 CFR 46.116(f)(3)]

No → No waiver or alteration of informed consent is allowed.

Yes

Waiver: An IRB may waive the requirement to obtain informed consent for research provided the IRB satisfies this requirement. However, if an individual was asked to provide broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens in accordance with the requirements at 45 CFR 46.116(d), and refused to consent, an IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable private information or identifiable biospecimens.

[45 CFR 46.116(f)(1)]

Or

Alteration: An IRB may approve a consent procedure that omits some, or alters some or all, of the elements of informed consent set forth in 45 CFR 46.116(b) and (c) provided the IRB satisfies this requirement. However, an IRB may not omit or alter any of the requirements described at 45 CFR 46.116(a). If a broad consent procedure is used, an IRB may not omit or alter any of the elements required under 45 CFR 46.116(d).

[45 CFR 46.116(f)(2)]

CHART 14

CAN DOCUMENTATION OF INFORMED CONSENT BE WAIVED UNDER 45 CFR 46.117(c)?

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