

## **ATTACHMENT B**

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**PROTECTION OF HUMAN SUBJECTS**  
**CODE OF FEDERAL REGULATIONS**  
**TITLE 45 PART 46.101(b)**

**EXEMPT ACTIVITIES**

**§ 46.101**

(b) Unless otherwise required by Department or Agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, 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.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

- (i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and
- (ii) 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 (b)(2) of this section, if:

- (i) the human subjects are elected or appointed public officials or candidates for public office; or

(ii) 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:

- (i) Public benefit or service programs;
- (ii) procedures for obtaining benefits or services under those programs;
- (iii) possible changes in or alternatives to those programs or procedures; or
- (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) 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 and Inspection Service of the U.S. Department of Agriculture.

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**TITLE 45 PART 46.102 (d) (f)**

DEFINITION OF RESEARCH

**§ 46.102**

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

DEFINITION OF HUMAN SUBJECT

**§ 46.102**

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) data through intervention or interaction with the individual, or

(2) identifiable private information.

*Intervention* includes both 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.

*Interaction* includes communication or inter-

personal contact between investigator and subject. *Private information* includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

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**TITLE 45 PART 46.110**

EXPEDITED ACTIVITIES

**§ 46.110**

Research activities involving no more than minimal risk *and* in which the only involvement of human subjects will be in one or more of the following categories (carried out through standard methods) may be reviewed by the Institutional Review Board through the expedited review procedure.

(1) Collection of: hair and nail clippings in a nondisfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction.

(2) Collection or excreta and external secretions including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of membrane prior to or during labor.

(3) Recording of data from subjects 18 years of age or older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects 18 years of age or older and who are in good health and not pregnant.

(5) Collection of both supra- and subgingival dental plaque and calculus provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

(6) Voice recordings made for research purposes such as investigations of speech defects.

(7) Moderate exercise by healthy volunteers.

(8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

(9) Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to the subjects.

(10) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

**PROTECTION OF HUMAN SUBJECTS**  
**CODE OF FEDERAL REGULATIONS**  
**TITLE 45 PART 46.111**

CRITERIA FOR IRB APPROVAL OF RESEARCH

**§ 46.111**

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized:

(i) by using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and

(ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any to subject, and the importance of the knowledge that may reasonable be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted

and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 46.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § 46.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

**PROTECTION OF HUMAN SUBJECTS**  
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**TITLE 45 PART 46.116**

GENERAL REQUIREMENTS FOR INFORMED CONSENT

**§ 46.116**

Except as provided elsewhere in this or other subparts, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

**(a) Basic elements of informed consent.**

Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

- (1) a statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;
- (2) a description of any reasonably foreseeable risks or discomforts to the subject;
- (3) a description of any benefits to the subject or to others which may reasonably be expected from the research;
- (4) a disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;
- (5) a statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) for research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) an explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) a statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled; and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

**(b) Additional elements of informed consent.** When appropriate, one or more of the following elements of information shall also be provided to each subject:

- (1) a statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;
- (2) anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;
- (3) any additional costs to the subject that may result from participation in the research;
- (4) the consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
- (5) a statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) the approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) 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: (i) public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) the research could not practicably be carried out without the waiver or alteration.

d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain

informed consent provided the IRB finds and documents that:

(1) the research involves no more than minimal risk to the subjects;

(2) the waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) the research could not practicably be carried out without the waiver or alteration; and

(4) whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable Federal, State, or local law. (Approved by the Office of Management and Budget under Control Number 9999-0020.)

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**TITLE 45 PART 46.117**

DOCUMENTATION OF INFORMED CONSENT

**§ 46.117**

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by Paragraph 46.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by Paragraph 46.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the

representative. However, the witness shall sign both the short form and a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) The IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(Approved by the Office of Management and Budget under Control Number 9999-0020.)