Supporting Statement for Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation

Background

The Department of Health and Human Services (HHS), Office for Human Research Protections is requesting a three-year extension of information requirements in OMB No. 0990-0260, Protection of Human Subjects: Assurance of Compliance with Federal Policy/Institutional Review Board (IRB) Review/IRB Recordkeeping/Informed Consent/Consent Documentation.

The Federal Policy for the Protection of Human Subjects, codified for HHS at 45 CFR part 46, subpart A (also known as the Common Rule) adopted in June 1991 (56 FR 28001), establishes Federal policy for the protection of human subjects involved in Federally conducted or supported research. The Common Rule requires applicant and awardee institutions to establish procedures to report, disclose, and maintain required information, including information related to informed consent and an assurance of compliance with the regulatory requirements. The principal respondents for the information collection requirements in OMB No. 0990-0260 are IRBs and institutions.

A. Justification

1. Need and legal basis

Section 491(a) of Public Law (P.L.) 99-158 (codified at 42 U.S.C. 289(a)) provides that:

> The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an "Institutional Review Board") to review biomedical and behavioral research involving human subjects conducted at or supported by such entity in order to protect the rights of the human subjects of such research.

Pursuant to 42 U.S.C. 289(a), HHS promulgated the Common Rule[1] that is followed by

1 The Basic HHS Policy for the Protection of Human Subjects was initially published on January 26, 1981 (46 FR 8366). On January 19, 2017, the Common Rule was revised (82 FR 7149), amended on January 22, 2018 (83 FR

20 departments and agencies, including HHS, and implements a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, which was established on November 9, 1974, by Pub. L. 95-622.

In addition, 42 U.S.C. 289(b) grants the Secretary authority to establish a program to provide clarification and guidance with respect to ethical issues raised in connection with human subjects research covered under this chapter, as well as a process for the prompt and appropriate response to alleged violations of the rights of human subjects involved in such research.

In this supporting statement, the term "pre-2018 Common Rule" (or "pre-2018 Requirements") refers to the Common Rule as published in the 2016 edition of the Code of Federal Regulations. The term "2018 Common Rule" (or "2018 Requirements") refers to the revised Common Rule as published in the July 19, 2018 edition of the Code of Federal Regulations. The 2018 Requirements published on January 19, 2017 (82 FR 7149) and were amended on January 22, 2018 (83 FR 2885) and June 19, 2018 (83 FR 28497).

The pre-2018 and 2018 Common Rule require each institution engaged in research involving human subjects that is not eligible for an exemption and is conducted or supported by any of the Common Rule departments or agencies to provide a written assurance satisfactory to the department or agency head that the institution, among other things, has provided for an IRB to review such research. The purpose of the IRB review is to ensure that the rights and welfare of human research subjects are adequately protected.

The Common Rule provides additional protections for human research subjects by including requirements for obtaining and documenting informed consent of the subjects. The Common Rule requires that informed consent to be sought from, and documented for, each subject to the extent required by 45 CFR 46.116 and .117 (in both the pre-2018 and 2018 Requirements), for all research to which the Common Rule applies. The 2018 Requirements also include an additional provision at 46.116(h) for one IRB-approved informed consent form used to enroll subjects to be posted on a publicly available Federal website.

The Federal departments and agencies that follow the Pre-2018 Requirements and the 2018 Requirements are listed below.

2885) and June 19, 2018 (83 FR 28497).

Pre-2018 Requirements

Common Rule Department or Agency Signatories:

Number	Department or Agency	CFR Citation
1	Department of Agriculture	7 CFR Part 1c
2	Department of Energy	10 CFR Part 745
3	National Aeronautics and Space Administration	14 CFR Part 1230
4	Department of Commerce	15 CFR Part 27
5	Agency for International Development	22 CFR Part 225
6	Department of Housing and Urban Development	24 CFR Part 60
7	Department of Justice	28 CFR Part 60
8	Department of Defense	32 CFR Part 219
9	Department of Education	34 CFR Partm97
10	Department of Veterans Affairs	38 CFR Part 16
11	Environmental Protection Agency	40 CFR Part 26
12	Department of Health and Human Services	45 CFR Part 46
13	National Science Foundation	45 CFR Part 690
14	Department of Transportation	49 CFR Part 11
15	Consumer Product Safety Commission	16 CFR Part 1028

Common Rule Department or Agency Executive Order or Statutory Mandate:

Number	Department or Agency	EO/Statutory Mandate
1	Department of Homeland Security	Pub. L. 108-458, title VIII, section 8306
2	Social Security Administration	Pub. L. 103-296, Section 106
3	Office of the Director of National Intelligence	Executive Order 12333
4	Central Intelligence Agency	Executive Order 12333

2018 Requirements

Common Rule Department or Agency Signatories[2]:

Number	Department or Agency	CFR Citation
1	Department of Homeland Security	6 CFR Part 46
2	Department of Agriculture	7 CFR Part 1c
3	Department of Energy	10 CFR Part 745
4	National Aeronautics and Space Administration	14 CFR Part 1230
5	Department of Commerce	15 CFR Part 27

2 Department of Justice intends to become an official signatory.

6	Social Security Administration	20 CFR Part 431
7	Agency for International Development	22 CFR Part 225
8	Department of Housing and Urban Development	24 CFR Part 60
9	Department of Labor	29 CFR Part 21
10	Department of Defense	32 CFR Part 219
11	Department of Education	34 CFR Part 97
12	Department of Veterans Affairs	38 CFR Part 16
13	Environmental Protection Agency	40 CFR Part 26
14	Department of Health and Human Services	45 CFR Part 46
15	National Science Foundation	45 CFR Part 690
16	Department of Transportation	49 CFR Part 11
17	Consumer Product Safety Commission	16 CFR Part 1028

Common Rule Department or Agency Via Executive Order:

Number	Department or Agency	EO/Statutory Mandate
1	Office of the Director of National Intelligence	Executive Order 12333
2	Central Intelligence Agency	Executive Order 12333

2. Purpose and Use of the Information

The Common Rule is intended to ensure the protection of human subjects in research conducted or supported by a Common Rule department or agency. Generally, the Common Rule requires that an IRB approve nonexempt human subjects research conducted or supported by a Common Rule department or agency before such research can begin.

The following information collections required by the Common Rule are included in this information collection request:

45 CFR 46.109(d) [Pre-2018 and 2018 Requirements] *Disclosure* - Specifies the procedures for an IRB to notify the investigators and institutions in writing of its decision to approve or disapprove proposed research activities, or of modifications required to secure IRB approval of the research activities.

Purpose: Provides individuals responsible for conducting the research with the information necessary to initiate the research or to take required actions before initiation of the research is permitted.

45 CFR 46.115(a) [Pre-2018 and 2018 Requirements] *Recordkeeping* – Provides that an institution, or when appropriate an IRB, prepare and maintain adequate documentation of IRB activities, including: copies of all research proposals reviewed; minutes of IRB

meetings; records of continuing review activities [including the rationale for conducting continuing review of research that otherwise would not require continuing review as described in section 109(f)(1) of the 2018 Requirements]; copies of all correspondence between the IRB and the investigators; a list of IRB members in the same detail as described in section 103(b)(3) [Pre-2018 Requirements]/108(a)(2) [2018 Requirements]; written procedures for the IRB in the same detail as described in section 103(b)(4) and (5) [Pre-2018 Requirements]/108(a)(3) and (4) [2018 Requirements]; statements of significant new findings provided to subjects, as required by section 116(b)(5) [Pre-2018 Requirements]/116(c)(5) [2018 Requirements]; the rationale for an expedited reviewer's determination under section 110(b)(1)(i) [2018 Requirements] that research appearing on the expedited review list described in section 110(a) [2018 Requirements] is more than minimal risk; documentation relating to a limited IRB review through which the IRB made determinations required as a criterion of exemption under sections 104(d)(2)(iii), 104(3)(i)(C), 104(d)(7), or104(d)(8) [2018 Requirements]; and, documentation specifying the responsibilities that an institution and an organization operating an IRB each will undertake to ensure compliance with the requirements as described in section 103(e) [2018 Requirements].

45 CFR 46.115(b) [Pre-2018 and 2018 Requirements] stipulates that records required by the Common Rule must be retained for at least three years, and records relating to research that is conducted must be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency conducting or supporting the research at reasonable times and in a reasonable manner.

For the Common Rule departments and agencies that have adopted the HHS additional protections for certain populations of research subjects in subparts B, C, and D of 45 CFR part 46, 45 CFR 46.115(a) also require documentation of determinations that the IRB is required to make under these subparts, when applicable. Specifically, (1) in subpart B, the conditions under 45 CFR 46. 204 (Research involving pregnant women or fetuses.), 45 CFR 46.205 (Research involving neonates.), 45 CFR 46.206 (Research involving, after delivery, the placenta, the dead fetus or fetal material.), and 45 CFR 46.207 (Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women, fetuses, or neonates.), are met; (2) in subpart C, the conditions under 45 CFR 46.305 (Additional duties of the Institutional Review Boards where prisoners are involved.) and 45 CFR 46.306 (Permitted research involving prisoners.), are met; and, (3) in subpart D, the conditions under 45 CFR 46.404 (Research not involving greater than minimal risk), 45 CFR 46.405 (Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.), 45 CFR 46.406 (Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.), and 45 CFR 46.407 (Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.), are met. There is separate

approved information collection under OMB No. 0990-0481 for when an IRB or its institution requests an HHS consultation process pursuant to these subparts for proposed research involving, respectively: (1) pregnant women, human fetuses or neonates; (2) prisoners; or, (3) children, as subjects that are not otherwise approvable by an IRB.

Purpose: Provides a means for verification by the Common Rule departments and agencies that substantive regulatory requirements for operation of IRBs and conduct of research involving human subjects have been fulfilled.

45 CFR 46.116 (a) and (b) [Pre-2018 Requirements]/116(b), (c) and (d) [2018 Requirements] *Disclosure* - Specifies the general requirements for, and basic elements of, informed consent in section 116 (a) [Pre-2018 Requirements]/116(b) [2018 Requirements]. Additional elements of informed consent, when appropriate, are found in section 116(b) [Pre-2018 Requirements]/116(c) [2018 Requirements]. Section 116(d) [2018 Requirements] specifies elements of broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens.

Purpose: Provides human subjects with information on which to base their independent decisions regarding whether or not they choose to take the risks involved in the research in light of the potential benefits which may result.

45 CFR 46.116(h) [2018 Requirements] *Disclosure* – Specifies that for each clinical trial conducted or supported by a Federal department or agency, one IRB-approved consent form must be posted on a publicly available Federal website.

Purpose: Improves the quality of consent forms in federally funded research by assuring that the forms eventually would become subject to public scrutiny and provide useful models for others.

45 CFR 46.117 [Pre-2018 and 2018 Requirements] *Disclosure* - Specifies how informed consent is to be documented.

Purpose: Provides verification that the human research subjects have been provided information on which to base their independent decisions regarding whether or not they choose to take the risks involved in the research in light of the potential benefits which may result.

45 CFR 46.117(c)(2) [Pre-2018 and 2018 Requirements] *Disclosure* – Specifies that in cases in which the informed consent documentation is waived, the IRB may require the investigator to provide subjects or legally authorized representatives with a written statement regarding the research.

P*urpose*: Provides subjects with written information about the research in cases when the subjects have not signed an informed consent form (that would include information about the research).

3. Improved Information Technology

The Common Rule imposes no technological or standard format requirements for respondents. We encourage the use of automated, electronic technology if possible.

4. Efforts to Identify Duplication

The Common Rule establishes the only Federal standards for the performance of federally conducted or supported research involving human subjects.

5. Small Businesses

The information collection poses no undue burden on small entities. A substantial majority of IRB reviews are conducted at large institutions such as universities, research and teaching hospitals, and entities operating independent IRBs. The recordkeeping requires what OHRP believes is the minimal documentation necessary to ensure both the effective operation of IRBs and implementation of human subject protection requirements. Likewise, a substantial majority of investigators conducting regulated research conduct those studies at large institutions such as universities, medical schools, and research and teaching hospitals. Through its functions, OHRP assists respondents concerned with the protection of human subjects in research to conform to the requirements in the Common Rule

6. Consequences of Collecting the Information Less Frequently

The information collection schedule is consistent with and supports Agency regulations pertaining to the protection of human subjects as set forth in 45 CFR part 46, subpart A.

7. Special Circumstances

There are no special circumstances.

8. Federal Register Notice/Outside Consultation

Public comments were solicited for a 60-day period in the *Federal Register* published on June 3, 2024 (89 FR 47578). No comments were submitted.

9. Payment/Gift to Respondents

No payment or gifts are provided to respondents.

10. Assurance of Confidentiality

IRB records, such as minutes, would generally be maintained by the institution or organization that operates the IRBs. As such these IRB-operating entities would be responsible for appropriate record maintenance. Similarly, these institutions would manage disclosures per institution policy.

The requirement at 45 CFR 46.116(h) of the 2018 Requirements for posting clinical trial consent forms publicly is intended to increase transparency; per these requirements, "[i]f the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal Web site (e.g. confidential commercial information), such Federal department or agency may permit or require redactions to the information posted."

11. Sensitive Questions

None of the information collection requirements in the Common Rule ask questions of a sensitive nature. The information collection does not collect demographic information. SOGI data is not collected.

12. Estimates of Annualized Burden Hours and Cost

The recordkeeping burden estimates include section .115 of the pre-2018 and 2018 Requirements for preparation and documentation of IRB activities. The disclosures burden estimates include the section .109(d) (both pre-2018 and 2018 Requirements) for written notification of IRB approval or disapproval of research; section .116(a) and (b) (pre-2018 Requirements) and section .116 (b), (c) and (d) (2018 Requirements) for elements of informed consent and broad consent; section .116(h) (2018 Requirements) for posting clinical trial consent form; section .117(a) (pre-2018 and 2018 Requirements) for documentation of informed consent; and section .117(c)(2) (pre-2018 and 2018 Requirements) for written statement about the research when informed consent documentation is waived.

Burden estimates that correspond to other approved information collections related to the pre-2018 or 2018 Requirements are not calculated here. These include the following:

Table 1 – Other Common Rule Approved Information Collections

Common Rule Provision	Description	Approved Information Collection	Approved Through Date

.103(b)(5) [Pre-2018 Requirement] and .108(a)(4) [2018 Requirement]	Unanticipated problems involving risks to subjects or others; serious or continuing noncompliance; suspension or termination of IRB approval	0990-0477	May 31, 2024 (submission for renewal underway)
.103(f) [Pre-2018 Requirement] and .103(d) [2018 Requirement]	IRB certification/exempt status	0990-0263	June 30, 2024 (submission for renewal underway
.103(b)(2) and .107 [Pre-2018 Requirement] and .107 and .108 [2018 Requirement]; subpart E of 45 CFR 46	IRB roster and membership requirements; IRB registration	0990-0279	June 30, 2025
.103 [Pre-2018 and 2018 Requirement]	FWA	0990-0278	October 31, 2026

12a. Annualized Hour Burden Estimate

Respondents to this information collection include IRBs, investigators and other persons or entities subject to the Common Rule requirements. As of February 21, 2024, there are 4,959 active IRB organizations with 5,816 IRBs registered with OHRP. We are rounding the active registered IRBs to be 6,000.

The burden tables are organized to include specific regulatory provisions in each row for Pre-2018 Requirements and/or 2018 Requirements information collections. Table 2 regulatory provisions are identified as a recordkeeping burden and table 3 regulatory provisions are identified as a third-party disclosure burden.

Table 2 –Estimated Annual IRB Recordkeeping Burden

Common Rule Provision	No. of Respondents	No of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours

.115 [Pre-2018 and 2018 Requirement] – Preparation and documentation of IRB activities	6,000	16	96,000	12	1,152,000
TOTAL			96,000		1,152,000

Table 3 – Estimated Annual Third-Party Disclosure Burden

	No. of Respondents	No of Disclosures per Respondent	Total Annual Disclosures	Average Burden per Disclosure	Total Hours
.109(d) [Pre-2018 and 2018 Requirements] – Written notification of IRB approval or disapproval of research	6,000	25	150,000	0.5	75,000
.116(a) and (b) (Pre-2018 Requirements)/ .116 (b), (c) and (d) [2018 Requirements] – Elements of informed consent and broad consent	6,000	25	150,000	0.5	75,000
.116(h) – [2018 Requirements] – Posting clinical trial consent form	425	5	2,125	0.5	1,063
.117(a) [Pre-2018 and 2018 Requirements] –	6,000	20	120,000	0.5	60,000

	No. of Respondents	No of Disclosures per Respondent	Total Annual Disclosures	Average Burden per Disclosure	Total Hours
Documentation of informed consent					
.117(c)(2) [Pre-2018 and 2018 Requirements] – Written statement about the research when informed consent documentation is waived	6,000	5	30,000	.5	15,000
TOTAL			452,125		226,063

12b. Annualized Estimated Cost Burden

The hourly rate for this PRA renewal request was adjusted to $53.87 based on the 2024 OPM hourly pay tables. This is equivalent to a GS 12, step 5. When multiplied by the total number of burden hours (1,378,063), we estimate the information collection costs respondents an average of $74,236,254 annually.

13. Capital Costs (Maintenance of Capital Costs)

There are no direct capital costs to respondents.

14. Annualized Cost to the Federal Government

The estimated annualized cost to the Federal government for the collection of information is $1,992,000.

15. Program or Burden Changes

For annual IRB record keeping burden, we estimate that there will be an average of 16 responses per institution annually (6,000 x 16 = 96,000), taking 12 hours per response, accounting for the estimated 1,152,000 burden hours. For annual third-party disclosure burden, we estimate 452,125 total annual disclosures with the average burden per disclosure estimated to take 30 minutes to complete, for a total of 226,063 burden hours. With the combined annual IRB record keeping and third-party disclosure burden, we estimate the total burden to be 1,378,063 hours. The burden calculations have been adjusted to include more accurate estimates. We estimate fewer responses to provisions at

sections .117(a) and .117(c)(2) compared to the previously approved collection. Also, we adjusted the burden to cut redundancy by omitting responses to the provisions at sections .103(b)(5) and .103(a)(4) because that information is collected separately in OMB.0990-0477. Lastly, the burden reflects increases in responses to the provision at section .117(h) for clinical trial consent form postings. The burden calculation for this provision is estimated based on current data from clinicaltrials.gov.

16. Publication and Tabulation Dates

There are no plans to publish or tabulate the information.

17. Expiration Date

Display of OMB expiration date is appropriate.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.

LIST OF ATTACHMENTS

Attachment 1 - Legal Authorities
- a. 42 U.S.C. Section 289
- b. 56 F.R. 28001 (Common Rule)
- c. 45 CFR part 46

Attachment 1 - Legal Authorities
a. 42 U.S.C. Section 289

Attachment 1 - Legal Authorities

b. 56 F.R. 28001 (Common Rule)

Attachment 1 - Legal Authorities
c. 45 CFR part 46

Access here: https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=83cd09e1c0f5c6937cd9d7513160fc3f&pitd=20180719&n=pt45.1.46&r=PART&ty=HTML