AAH RSPP GUIDANCE
Exemptions

PURPOSE
The purpose of this document is to provide guidance to researchers on human subject research that qualifies as ‘exempt’ from on-going IRB oversight.

Definitions of *Italicized words* can be found in the AAH RSPP Glossary.

GUIDANCE
What human subject research qualifies as ‘Exempt’?
Exempt human subjects research is a specific sub-set of “research involving human subjects”.

- Exempt research activities offer no more than minimal risk to participants, and all of the research procedures must fit within one or more of the exemption categories in the Code of Federal Regulations.
- Exempt research activities are subject to the same human subject protections and ethical standards as outlined in the Belmont Report.

While the regulations identify several different categories of minimal risk research as being exempt from ongoing IRB oversight, this does not mean that they are exempt from review. Researchers are required to obtain an Exempt Determination prior to initiating research activities (see RSPP SOP #1).

What are the DHHS exempt research categories?
The Revised Common Rule includes eight exempt research categories [45 CFR 46.104(d)(1-8)/OHRP Guidance].

*NOTE: Advocate Aurora Health (AAH) has made an institutional decision that broad consent will not be permitted at this time. As a result, the RSPP will not consider applications under (new) exempt categories 7 and 8, which require broad consent.*

Do the DHHS exempt categories allow inclusion of ‘vulnerable’ populations?
DHHS places no restrictions on the inclusion of pregnant women and fetuses in exempt research.

DHHS regulations prohibit the conduct of research involving prisoners from qualifying as exempt research except for research aimed at involving a broader subject population that only incidentally includes prisoners.

Children may be included in exempt research with the following limitations:
1. Children may only be enrolled in research that qualifies for exempt category 2 [surveys, interviews, public observations] if the investigators do not participate in the activities being observed, and the information is being recorded without identifiers;
2. Children may not be enrolled in research qualifying for exempt category 3 [benign behavioral interventions]. Examples of these interventions 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.

**Does the FDA allow any exemptions to IRB review?**
The FDA regulations detail only three types of exemption:

1. Research which started before July 27, 1981, and either did not require FDA approval before that date, or, was subject to requirements for IRB review prior to that date, and remains subject to review by an IRB which meets FDA requirements;
2. Emergency use of a test article, provided any such use is reported to the AAH IRB within 5 working days AND any future use of the test article at AAH is subjected to AAH IRB review;
3. The taste and food quality evaluation provided in the DHHS exempt category 6.

Any other research subject to FDA regulation cannot be exempt. Research is subject to FDA regulations if it involves a drug, medical device, food, or other product regulated by the FDA.

**Who makes the exemption determination?**

- AAH authorizes the RSPP Office (see AAH system policy: Research Involving Humans or their Identifiable Data or Biospecimens), *not the investigator*, to make the determination whether the proposed research involving human subjects or their identifiable private information is eligible for exemption from ongoing IRB oversight.
  - One of the individuals from the RSPP named in RSPP SOP #2 will use the RSPP Exempt Determination checklist, the federal regulations and OHRP guidance to determine whether the proposed human subject research study meets one or more of the exempt categories for research.
  - A copy of the Exempt Checklist documenting the reviewer’s determination of exempt status/category will be kept in the study file with the submission application.
  - The RSPP reviewer reserves the right to not exempt a study and to require review by the convened IRB or via expedited review, particularly if the research may involve a sensitive population or sensitive topic.
- Several of the exempt categories in the revised Common Rule require Limited IRB Review. Limited IRB Review will be conducted via expedited IRB review (see RSPP Guidance – Expedited Review) by a designated expedited reviewer.
- Documentation of the exemption determination will be provided to the submitter in the form of a letter from the RSPP. The Determination letter will include a citation to the specific regulatory category justifying the exemption.

**What does Limited IRB review mean?**
The Common Rule provides a **Limited IRB Review** process, which is a required **expedited review** of recruitment and consent materials as well as plans to maintain participant privacy and data confidentiality for exempt 2 and 3 projects that collect or use sensitive and identifiable data. **Limited IRB Review** is necessary in certain categories (2, 3) of projects that collect or use sensitive and identifiable data. For example, in exempt categories 2 & 3, the requirement for limited IRB review is triggered when:
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**

- Any disclosure of the human subjects’ responses outside the research would reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects’ financial standing, employability, educational advancement, or reputation.

Limited IRB is also required for exempt categories 7 & 8 [Broad Consent] which is not available at AAH at this time (see AAH system policy 2467 IV.B.9).

In Limited IRB Review, the IRB is not required to consider all of the IRB approval criteria in §46.111. However, the IRB must determine that certain conditions, specified in the regulations, are met. These conditions include that the research study includes adequate protections in place for the privacy of subjects, and the maintenance of data confidentiality.

**What must the IRB consider when conducting Limited IRB Review?**

The preamble to the revised Common Rule provides some guidance for IRBs when considering whether adequate provisions are provided by the research study to protect subject privacy and data confidentiality. These include:

- The extent to which identifiable private information is or has been de-identified and the risk that such de-identified information can be re-identified;
- The use of the information;
- The extent to which the information will be shared or transferred to a third party or otherwise disclosed or released;
- The likely retention period or life of the information;
- The security controls that are in place to protect the confidentiality and integrity of the information; and
- The potential risk of harm to individuals should the information be lost, stolen, compromised, or otherwise used in a way contrary to the contours of the research under the exemption.

Even though the research has undergone Limited IRB review, continuing review is not automatically required. However as noted above, the IRB does have the latitude to require continuing review for research that undergoes Limited IRB review.

When changes to exempt research are proposed that fall within the scope of the Limited IRB review requirement (e.g., changes to privacy and confidentiality), the changes must undergo Limited IRB review and be approved before implementation (except when necessary to eliminate apparent immediate hazards to subjects).

**Does Exempt Research undergo continuing review?**

In general, researchers are **not** required to provide continuing review in exempt research. However, for projects that undergo Limited IRB review as required by the regulations, the IRB may determine that a periodic continuing review is necessary. If continuing review is required, the date of continuing review will be established at initial review, and provided to the PI in the Exempt Determination letter. The period required for the continuing review may be longer than 1
year, and will be established at the discretion of the Expedited Reviewer [e.g. 1, 2 or 3 years from the date of approval].

**Does Exempt Research have an expiration date?**
In general, exempt research has no expiration date.

Any active exempt research study may be subject to periodic ‘check-ins’ with the RSPP or Advocate Aurora Research Institute (AARI). These check-ins will help determine if (not exhaustive list):
- the exempt research objectives/design/procedures have been altered since initial review such that the project no longer qualifies for exempt status;
- resource expenditure remains warranted;
- the project is completed and if there have been any publications as a result of the research;
- there are any new personnel taking part in the research that require institutional agreements.

Failure to respond to a request for ‘check-in’ with the RSPP/AARI has consequences, the greatest of which may result the institutional termination of the research study.

The RSPP reserves the right to require re-submission of any research project that is determined to have veered from the initial submission objectives/design.

**What are the on-going responsibilities of investigators in exempt research?**
Investigators of exempt human subject research are required by RSPP SOP #3 to submit to the RSPP:
- any changes in the research - **prior to implementation**
  - related to the study design or conduct of the research that are substantial in nature (i.e. that which may disqualify the research from its exempt status);
  - in the study PI or **Key Personnel**;
- reports of Noncompliance and Unanticipated Problems in the research as defined and outlined in RSPP SOPs 5 and 7 respectively;
- a Final Report when the research is completed.

**REQUIREMENTS**
- DHHS regulations: 45 CFR 46.104
- OHRP Guidance: Revised Common Rule Q&A
- FDA Regulations: 21 CFR 56.104
- AAHRPP Accreditation Standards/Elements: II.2.A-C
- AAH System Policy 2467: Research Involving Humans or their Identifiable Data
- AAH RSPP SOPs: 1, 2, 3
- AAH RSPP Guidance: Expedited Review