

Overview of the Implications of the NPRM for Newborn Screening

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November 2, 2015



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Acknowledgements

- **U.S. Centers for Disease Control & Prevention**
- **Carla Cuthbert, Ph.D., F.A.C.M.G., F.C.C.M.G.,
Chief, Newborn Screening & Molecular
Biology Branch, National Center for
Environmental Health, CDC**
- **Denise Chrysler, J.D., Network for Public
Health Law**
- **Jerry Menikoff, M.D., J.D., Director, Office for
Human Research Protections**

Background

- **Current version of the Common Rule was adopted in 1991**
- **Goal was to create a uniform body of regulations to govern human subjects research in the U.S. across Federal departments and agencies**
- **Volume and landscape of research in U.S. has changed dramatically since Common Rule was promulgated, but oversight mechanism has remained largely unchanged**
- **ANPRM was published in 2011 to request comments on how the current regulations might be revised to become more effective**

NPRM: Most Significant Changes

1. **Improved informed consent by increasing transparency and imposing new requirements about the info that must be given to prospective subjects**
2. **Required informed consent for the use of stored biospecimens in secondary research**
3. **Exclude from the Common Rule ctn categories of activities that should not be deemed to be research**
4. **Add additional categories of exempt research**
5. **Change requirements for waiver of consent**
6. **Single IRB for cooperative research**
7. **Eliminate continuing review requirement for studies that undergo expedited review**
8. **Extend scope of policy to cover all clinical trials, regardless of funding source**

NPRM: Implications for Newborn Screening

- **Goal today is not to provide detailed information about NPRM as it pertains to all human subjects research**
- **Rather, to consider potential implications of NPRM on newborn screening and newborn screening research if rules are adopted as written**
- **3 types of research: De-identified data, identifiable private information, biospecimens; NPRM treats each differently**
- **NPRM is not yet law; Amendment 12 of NBS Saves Lives Reauthorization Act of 2014 is current law**
- **Amendment 12 applies only until new rules are promulgated under NPRM**
- **If new rules are not promulgated, Amendment 12 remains in effect**

NPRM: Implications Overview

- **Main areas of discussion:**
 - **Changes in definitions: human subjects research**
 - **Exclusions**
 - **Exemptions**
 - **What these terms mean for the secondary research use of identifiable private information and for DBS**
 - **Privacy safeguards req'ts**
 - **Changes in req'ts re informed consent**
 - **Req'ts for broad consent**

To What Does This Policy Apply?

§ 101 (a)(1) All research involving human subjects conducted, supported, or otherwise subject to regulation by any federal department or agency

- *BUT, there are EXCLUSIONS and EXEMPTIONS.*
 - **Exclusions:** *rules do not apply to these activities, no procedural, recordkeeping or other requirements apply to the activities.*
 - **Exemptions:** *only certain parts of the rules apply to exempt activities*
- *Some activities that use DBS or related info fall into these categories.*

Exclusions: Not Research

§ 101 (b)(1) Categories of activities that are excluded from the Common Rule because they are deemed not to be research

- (i) Data collection and analysis, including the use of biospecimens, for an institution's own internal operational monitoring and program improvement purposes, if the data collection and analysis is limited to the use of data or biospecimens originally collected for any purpose other than the currently proposed activity**

Explanation: Activities designed for administrative purposes related to using information to improve the quality of services provided by a specific institution (not designed to create generalizable knowledge)

Examples: Cases diagnosed through the NBS program, cases missed by screening, cases lost to follow up, cases that reside in the state and did not have screening by the State program

Exclusions: Not Research

§101 (b)(1)(iv) Quality assurance or improvement activities involving the implementation of an accepted practice to improve the delivery or quality of care or services. . . . If the purposes are limited to altering the utilization of the accepted practice and collecting data or biospecimens to evaluate the effects on the utilization of the practice.

- *This exclusion does not cover evaluation of an accepted practice itself.*

Exclusions: Not Research

- **Explanation: Studying the effectiveness of the practice would NOT satisfy the exclusion.**
- **Independent privacy, confidentiality, and security safeguards are in place for QI activities that minimize the risk of harm.**
- **“These efforts, some of which could be judged to be research, should be carried out because of the recognized public good they achieve. This exclusion is intended to avoid impeding such efforts where the Common Rule’s requirements might have a chilling effect on the ability to learn from and conduct, imp. Types of innovation.**

Exclusion: Not Research

- **“This exclusion is being proposed to deal with QI activities that are aimed at implementing practices that are already accepted, with the goal of improving the delivery or quality of treatments or services.”**
- **Exclusion does not include evaluations of different accepted practices themselves.**
- **Rationale: These activities are designed only to improve the implementation of a practice that is already accepted, not to evaluate the effectiveness and value of the accepted practice itself.**

Exclusions: Public Health Surveillance Activities

§101 (b)(1)(v) Public health surveillance activities, including the collection and testing of biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority and limited to those necessary to allow the public health authority to identify, monitor, assess, or investigate potential public health signals . . . Or conditions of public health importance. . .

Example: The use of DBS to determine prevalence of HIV in newborns may fall under this exclusion.

Exclusions: Low-risk Research

§101 (b)(2) Activities excluded because they are considered to be low-risk human subjects research, when already subject to independent controls without application of the regulatory requirements

- Exclusions do NOT apply when research includes the collection or analysis of biospecimens**

Exclusions: Low-risk

§101(b)(2)(ii) Research involving the collection or study of information that has been or will be acquired solely for non-research activities or were acquired for research studies other than the proposed research study, when either of the following criteria are met:

- (A) Sources are publicly available, or**
- (B) The information is recorded by the investigator in such a manner that the human subjects cannot be identified, directly or through identifiers linked to the subjects, the investigators does not contact the subjects and the investigator will not-reidentify subjects or o/w conduct an analysis that could lead to creating identifiable private information.**

Exclusions: Low-Risk

- *Explanation:* Exclusion does not include secondary research use of biospecimens
- Research does not involve direct interaction with human subjects and imposes no additional personal or informational risk to subjects b/c the information recorded b the investigator cannot be identified and no connection to or immediate involvement of subjects is contemplated
- Common Rule requirements would not provide any additional protections

Exclusions: HIPAA

§101 (b)(2)(iv) Research as defined by this policy that involves only data collection and analysis involving the recipient's use of identifiable health information when such use is regulated under 45 CFR parts 160 and 164, subparts A & E, for the purposes of "health care operations" or "research" . . . Or for the purpose of "public health activities" as described under 45 CFR 164.512(b).

- **If activities are covered under the HIPAA privacy rule**

Exclusion: Low-Risk

101(b)(3) The following activities are excluded because they are considered to be low-risk human subjects research activities that do not meaningfully diminish subject autonomy. . .

(i) The secondary research use of a non-identified biospecimen that is designed only to general information about an individual that is already known, including, but not limited to the development and validation of certain tests and assays (such as research to develop a diagnostic test for a condition using specimens for individuals known to have the condition and those known not to have the condition), quality assurance & control activities, and proficiency testing.

Exclusion: Already Known Information

- ***Explanation:*** Exclusion includes, but is not limited to:
 - The development and validation of certain tests and assays (such as research to develop a diagnostic test for a condition using specimens from individuals known to have the condition and those known not to have the condition)
 - QA/QC activities
 - Proficiency testing

Transition Provisions

101(K)(1) Use of prior collections of biospecimens. Research involving the use of prior collections of biospecimens that meets both of the following criteria need not comply with the req'ts of these regulations:

- (1) The biospecimens were collected for either research or non-research purposes before the compliance date for the additional reqts of this subpart at Section 102(e)(1)(iii) &**
- (2) Research use of the biospecimens occurs only after the removal of any individually identifiable information associated with the biospecimens**

Definitions

Section 102 (e)(1) Human subject means a living individual about whom an investigator (whether professional or student) conducting research:

(i) Obtains data through intervention or interaction with the individual, and uses, studies, or analyzes the data;

(ii) Obtains, uses, studies, analyzes, or generates identifiable private information; or

(iii) Obtains, uses, studies, or analyzes biospecimens. Note: Regardless of identifiability

Compliance with this provision would be delayed until 3 years after publication of a final rule.

Rationale

- **Concerned about risks from inappropriate disclosure of information generated from biospecimens**
- **One way to protect subjects from such risks is to bring under oversight research for which risks are greater of subjects being identified and info being inappropriately disclosed**
- **It may be difficult to identify individuals from their non-identified biospecimens at present**
- **Certain technologies can be used to generate data that are unique to the individual & those data can be combined with other data sources to identify the individual**
- **There is a possibility that it will be increasingly difficult, if not impossible, to make biospecimens fully non-identified**
- **It will not be possible to guarantee that an individual could never be identified from a biospecimen**

Alternative Proposal A: Expand Definition of “Human Subject” to Include WGS

- **Alternative proposal would expand definition to include only whole genome sequencing data, or any part of the data generated as a consequence of WGS, regardless of the identifiability of biospecimens**
- **Under this proposal, regulations would apply to research that would generate WGS data, the use of any part of the generated data, and to research involving secondary use of any part of WGS data that was originally generated for purposes other than the proposed research**
- **WGS data would meet the definition of human subject**
- **New exemption would be created to allow such research to be exempt if consent to secondary future research use were obtained & privacy protection stds were in place**
- **Would not matter if identifiers were removed for WGS data-need consent**
- **BUT other types of secondary research use of non-identified info or non-identified biospecimens would continue to fall outside of the scope of Common Rule**

Alternative Proposal B: Classifying Certain Biospecimens Used in Particular Technologies as Meeting Criteria for Human Subject

- **Would expand definition of human subject to include research use of info that was produced using a technology applied to a biospecimen that generates information unique to an individual such that it is foreseeable that, when used in combination with publicly available information, the individual could be identified. Info that meets this std would be referred to as bio-unique.**
- **Would require consent for genomic sequencing of even a small portion of a person's genome & for use of other technologies that might generate info unique to a person**

Alternative Proposal B

3 criteria:

- 1. Produced by applying to a biospecimen a technology that is capable of producing information that is unique to an individual**
 - 2. Produce enough information such that the info produced is likely to be unique to an individual**
 - 3. There would need to be publicly available information that, when combined with the info produced by the use of the technology, would create the possibility that some of the individuals whose biospecimens were analyzed using the technologies could be identified**
- Concern with this alternative is that HHS would continually have to evaluate new technologies**

Definitions

102(e)(4) Private information includes . . . information that has been provided for specific purposes by an individual & that the individual can reasonably expect will not be shared or made public

- (e.g., a medical record or clinically obtained biospecimen)**

(5) Identifiable private information is private information that is individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information)

Definitions

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

Exempt Research

- What does “*EXEMPT*” mean?
- NPRM proposes to require that exempt research comply with certain provisions of the proposed rule, such as privacy safeguards, but not all provisions of the rule (so different requirements than EXCLUDED research)

Decision Tool

§104 (c) Federal departments and agencies shall develop a decision tool to assist in exemption determination. Unless otherwise required by law, exemption determinations shall be made by an individual who is knowledgeable about the exemption categories and who has access to sufficient information to make an informed an reasonable determination, or by the investigator. . .

Who enters accurate information about the proposed research into the decision tool, which will provide a determination as to whether the study is exempt. If the decision tool is used, further assessment or evaluation of the exemption determination is not required.

Decision Tool

- **Investigator can enter information**
- **Decision tool is a “safe harbor” if accurate information is entered**
- **No audit requirement**

Exempt Research (Data)

§104(e) The following categories of exempt human subjects research allow for the collection of sensitive information about human subjects, must not involve biospecimens, must be recorded as required in paragraph (c) of this section, and require application of standards for information and biospecimen protection provided in Section 105. . .

(2) Secondary research use of identifiable private information that has been or will be acquired for non-research purposes, if the following criteria are met:

(i) Prior notice has been given to individuals to whom the identifiable information pertains that such information may be used in research; and

(ii) The identifiable private information is used only for purposes of the specific research study for which the investigator or recipient entity requested access to the information.

Rationale: Secondary Research Use of Identifiable Private Information

- Goal of new exemption category at §104(e)(2) is to facilitate secondary research using identifiable private information that has been or will be collected for non-research purposes when prior notice has been given & privacy safeguards are in place.
- Technological developments & creation of lg databases have significantly increased the potential benefits of secondary research
- Such secondary research is considered to be low-risk, IRB review would provide little or no additional protection
- Intended to allow IRB's to focus on higher risk research
- Consent not req'd
- Data sharing not permitted
- Exemption applies only if following criteria are met:
 - Prior notice given that info may be used in research
 - Privacy safeguards of section 105 are required
 - Info is used only for purposes of the specific research for which the investigator requested access to information (permissible uses/releases under Section 105 (c) would not apply to research covered by this exemption)



Exempt Research: Broad Consent

§104(f): The following categories of exempt human subjects research involve biospecimens or identifiable private information, must be recorded as required in paragraph c, require application of standards for information and biospecimen protection as described in section 105, and require informed consent and limited IRB review to the extent described in each category or otherwise required by law:

Exempt Research: Broad Consent for Storage

§104(f)(1)(i) Storage or maintenance for secondary research use of biospecimens or identifiable private information that have been or will be acquired for research studies other than for the proposed research study, or for non-research studies, if the following criteria are met:

(A) Written consent for the storage, maintenance, and secondary research use of the information or biospecimens is obtained in accordance w/ Sec. 116(c) & (d)(2) and the template published by the Sec of HHS must be used.

(B) The reviewing IRB makes the determinations required by Sec. 111(a)(9).

Exempt Research: Broad Consent for Research

§104(f) (2)(i) Research involving the use of biospecimens or identifiable private information that have been stored or maintained for secondary research use, if consent for the storage, maintenance, and secondary research use of the information & biospecimens was obtained in paragraph (f)(1)(i)(A) of this section.

§

(ii) If the investigator anticipates that individual research results will be provided to a research subject, the research may not be exempted under this provision & must be reviewed by the IRB & informed consent for the research must be obtained to the extent required by § 116(a) & (b).

Rationale In General

- **Goal of this proposed rule is to enable the conduct of research with biospecimens while recognizing the autonomy interests of people to decide whether or not to participate**
- **Growing evidence that people want some control over the circumstances in which an investigator can derive info about them-distinct from concerns about inappropriate disclosure**
- **Concern that if did not give appropriate weight to autonomy interests, could diminish public support for biospecimen research**
- **Continuing to allow secondary research use of biospecimens collected without consent for research is not consistent with the majority of the public's wishes**

Rationale for Exemption for Storage

- **Allows only for the storage or maintenance for secondary research use of biospecimens or identifiable private information**
- **Does NOT exempt creation of any data or the actual new collection of any biospecimens**
- **This exempt category is for the storage of biospecimens & identifiable private information & applies to biospecimens & identifiable private info that were initially collected for purposes other than the proposed research activity**
- **Exemption include a requirement for limited IRB review Section 111 (a)(9): Purpose is to ensure that the process of obtaining consent will occur in an appropriate way**

Rationale for Exemption for Research

- **Proposes to require that consent be obtained for research use of non-identified biospecimens, but to allow for that consent to be broad**
- **Would not require study-specific consent for the research use of non-identified biospecimens**
- **Research activities falling under this exemption would be subject to requirements at 104(c) - decision about exemption must be made by someone knowledgeable of the regulations or through use of exemption determination tool**

Rationale for Exemption for Research

- **The second exemption is for research involving the use of biospecimens or identifiable private information that have been stored or maintained for secondary research use, if consent for storage & maintenance of the information & biospecimens was obtained using the Secretary's template**
- **Not exempt if the researcher anticipates that individual research results will be provided to research subjects**
- **If not exempt, must be reviewed by IRB, informed consent must be obtained**
- **This exemption is for actual secondary research for biospecimens and identifiable private information that have been stored for unspecified research**

Requirements for Exemption

- **§ 104(f)(2) (for research) requires that the privacy safeguards of Section 105 are met, & that broad consent to the earlier storage or maintenance of the biospecimens & information had already been obtained c/w requirements of 104(f)(1).**
- **For secondary research using biospecimens, informed consent must have been obtained using a consent form using the Secretary's template**
- **"IT IS PRESUMED THAT RESEARCH INVOLVING NEWBORN BLOOD SPOTS WOULD FREQUENTLY TAKE PLACE USING THIS PROVISION."**

Rationale for Exemption

- **These exemptions provide for obtaining broad consent for subjects for the research use of specimens**
- **Honors principle of respect for persons**
- **Provides protections for information involved through privacy safeguards at section 105**
- **Limited IRB review proposed at section 111(a)(9) ensures that privacy safeguards and informed consent are adequate**

Return of Results

- **The exemption does not apply if the return of research results is anticipated.**
- **IRB review and approval would then be required**
- **Informed consent would be required**
- **If Return of Results is not anticipated, but team later decides to return results, IRB must review & approve plan for returning results**
- **Caveat: Clinical care requirements may demand prompt reporting**

Return of Results Implications

- The proposed rule does not impose an obligation on investigators to provide such information to participants so long as the consent form is clear that no such information will be given to participants.
- This rule could have a negative impact on current efforts to increase willingness of people to allow their biospecimens to be used in research, if they are less inclined to provide broad consent to such research when investigators are not making any commitment to return important information that is unexpectedly learned about a participant.
- This could lead some investigators to decide to include in their protocols provisions to return results, BUT:
 - These protocols would NOT be eligible for 104(f)(2) exemption
 - Would undergo full IRB review for purpose of determining what information participants should be provided regarding “unexpected” genetic findings

Question for Public Comment

- **Public comment is sought whether the proposal of exemption under §104(f)(2) is the best option**

Protection of Biospecimens & Identifiable Private Information

§ 105 (a) In general. Institutions & investigators conducting research that is subject to this policy, or that is exempt from this policy under section 104(e) or (f) involving the collection, storage, or use of biospecimens or identifiable private information, shall implement and maintain reasonable & appropriate safeguards as specified in paragraph (b) of this section to protect biospecimens or identifiable private information that they collect, obtain, receive, maintain, or transmit for research.

The safeguards shall reasonably protect against anticipated threats or hazards to the security or integrity of the information or biospecimens, as well as reasonably protect the information & biospecimens from any intentional or unintentional use, release, or disclosure that is in violation of paragraph (c) of this section. IRB review of the safeguards required by this section is not req'd, except to the extent required by section 104(f)(1).

§105(b) Safeguards Requirements

The Sec. of HHS shall establish & publish for public comment a list of specific measures that the institution or investigator may implement that will be deemed to satisfy the requirements for reasonable & adequate safeguards.

- The list will be evaluated as needed, at least Q8 yrs.

Institutions and investigators shall implement paragraph (a) by choosing either to apply the safeguards identified by the Sec. as necessary to protect the security or integrity of and limit disclosures of biospecimens & electronic & non-electronic identifiable private information or to apply HIPAA privacy standards

Limitations on Use, Release, & Disclosure

§ 105 Unless otherwise required by law, institutions & investigators shall use or release biospecimens or use or disclose identifiable private information collected or maintained for research only:

- 1) for human subjects research regulated by this policy**
- 2) for public health purposes**
- 3) for any lawful purpose with the consent of the subject; or**
- 4) for other research purposes if the institution or investigator has obtained adequate assurance from the recipients that: safeguards will be maintained, research has been approved (unless excluded or exempt), & recipient will not further release biospecimens or disclose identifiable information except for human subjects research regulated by this policy, or for other purposes permitted by this paragraph.**

§105 Exemption Subject to Documentation Privacy Safeguards

- Applies to secondary research use of identifiable private information originally collected for non-research purposes where notice was given
- Section 105 Rationale: One of functions of IRB review when study presents only informational risk is to ensure sufficiency of plan to protect identifiable private information
- NPRM proposes to eliminate need for IRB review of studies involving secondary analysis of identifiable private info if proposed privacy safeguards are met
- 3 ways to meet privacy safeguards
 1. Compliance with HIPAA rules
 2. Activity conducted by federal departments
 3. Compliance with Sec.'s privacy safeguards, checklist

Criteria for IRB Approval of Research

§111 (a)(9) for purposes of conducted the limited IRB review as required by §104(f)(1), the IRB need not make the determinations at paragraph (a)(1) through (8) of this section, and shall determine that the following requirements are satisfied:

- i. The procedures for obtaining broad consent for storage, maintenance, & secondary research use of biospecimens or identifiable private information will be conducted in accordance with the requirements of the 1st paragraph of section 116.
- ii. If there will be a change for research purposes in the way the biospecimens or information are stored or maintained, that the privacy and information protection standards at section 105 are satisfied for the creation of any related storage database or repository.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children. . . Additional safeguards have been included in the study to protect the rights and welfare of these subjects.

General Requirements for Informed Consent

§ 116 Except as provided elsewhere in this policy, no investigator may involve a human 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. . .

The prospective subject or representative must be provided with information that a reasonable person would want to have in order to make an informed decision about whether to participate.

Information must be presented in sufficient detail and must facilitate the prospective subject's understanding of the reasons why one might or might not want to participate.

The investigator must first present the information required by this section, before providing other information, if any, to the subject. Any informed consent form must include only the requirements of informed consent under this section, and appendices that include other information provided to the subject or the representative.

Requirements for Informed Consent

§ 116 (a) Except as provided in paragraph (c),(e), or (f) of this section, in seeking informed consent, the following information shall be provided to each subject or representative:

- 1-8 Traditional elements of informed consent

(9) One of the following statements about any research that involves the collection of identifiable private information:

- A statement that identifiers might be removed from the data & the data that is not identifiable could be used for future research studies without additional consent , if this might be possible; or
- A statement that the subject's data collected as part of the research, from which identifiers are removed, will not be used or distributed for future research studies.

Additional Elements of Informed Consent

§116 (b) Except as provided in paragraph (c), (e), or (f) of this paragraph, when appropriate, 1 or more of the following elements or information shall also be provided to the subject or representative:

- (7) A statement that the subject's biospecimen may be used for commercial profit & whether the subject will or will not share in commercial profit;**
- (8) A statement whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions; &**
- (9) An option for the subject or the representative to consent, or refuse to consent, to investigators re-contacting the subject to seek additional information or biospecimens or to discuss participation in another research study.**

Elements of Informed Consent for Broad Consent to the Storage, Maintenance, & Secondary Research Use of Biospecimens or Identifiable Private Information

§116 (c)(1) If the subject or representative will be asked to provide broad consent to the storage or maintenance of biospecimens or identifiable private information, collected either for research studies other than the proposed research or non-research purposes, and the secondary research use of this stored material, the information required in this section (risk, benefits, confidentiality of information, who to contact with questions, whether results will be returned, use for commercial profit, re-contact options) shall be provided to each subject with the following information:

Additional Information

§116 (c)(1)(i) A general description of the types of research that may be conducted with information and biospecimens and the information that is expected to be generated from the research, the types of institutions that might conduct research with the biospecimens or information;

(ii) A description of the scope of the informed consent must be provided, including:

(A) A clear description of the types of biospecimens or information that were or will be collected and the period of time during which biospecimens or information will occur. This may include all biospecimens & info from the subject's medical records or other records existing at the institution at the time informed consent is sought; and

Additional Information

§116 (c)(1)(ii)

(B) For purposes of paragraph (c)(1)(ii)(A) of this section (the preceding paragraph), the period of time during which biospecimen collection will occur cannot exceed 10 years from the date of consent. For research involving children as subjects, that time period cannot exceed 10 years after parental permission is obtained or until the child reaches the legal age for consent, . . . Whichever is shorter.

(iii) A description of the period of time during which an investigator can continue to conduct research using the subject's biospecimens & information. (e.g., a certain number of years, or indefinitely).

Additional Information

§116(c)(1)

(iv) A statement that participation is voluntary. . . And that the subject may withdraw consent, if feasible, for research use or distribution. . . The statement must make clear that information or biospecimens that have already been distributed may not be retrieved;

(v) If applicable, a statement notifying the subject or representative that the subject or representative will not be informed of the details of specific research studies that might be conducted, including the purposes of the research, that will use the subject's information or biospecimen.

Additional Information

§116 (c)(1)

(vi) If applicable, a statement notifying the subject or the subject's representative of the expectation that the subject's information & biospecimens are likely to be used by multiple investigators & institutions & shared broadly for many types of research studies in the future, & this information & the biospecimens might be identifiable when shared;

(vii) The names of the institutions or set of institutions at which the subject's biospecimens or information will be collected, . . . And

(viii) If relevant, an option for an adult subject or the representative to consent, or refuse to consent, to the inclusion of the subject's data, with removal of the identifiers. . . In a database that is publicly & openly accessible to anyone. This option must be prominently noted, & must include a description of risks of public access to the data.

Informed Consent for Storage of Biospecimens - Template

§116 (d)

(1) The Sec. of HHS will establish, & publish in the federal register for public comment, templates for consent that will contain all of the required elements of informed consent under paragraph (c) of this section. IRB review of the broad secondary use informed consent form obtained in accordance with paragraph (c) of this section is required unless the consent is obtained using only this template, without any changes.

Template

§116(d)

(2) If Section 104(f)(1) requires written consent, the consent for research use of biospecimens or identifiable private information must be documented by the use of a written consent form signed by the subject representative. The template for consent for research use established by the Sec. may serve as the written consent form. A copy shall be given to the person signing the form. . .

(4) If the subject or the representative declines to consent to the research use of biospecimens or identifiable private information, this must be documented appropriately.

- *Note: So must document refusal, too.*

Screening

§116 (g) An IRB may approve a research proposal in which investigators obtain, through oral or written communication or by accessing records, identifiable private information without individual's informed consent for the purpose of screening, recruiting, or determining the eligibility of prospective human subjects of research, provided that the research proposal includes an assurance that the investigator will implement standards for protecting the information obtained, in accordance with and to the extent required by §105.

NPRM: Implications Summary

- **Main areas of discussion:**
 - **Changes in definitions: human subjects research, alternative proposals**
 - **Exclusions**
 - Internal operations
 - QA/QA implementation activities
 - Public health surveillance activities
 - Information that is already known about an individual
 - **Exemptions**
 - Data if notice given, for specific research
 - Broad consent for storage and secondary research, must use template, security safeguards, limited IRB
 - **What these terms mean for the secondary research use of identifiable private information and for DBS**
 - **Privacy safeguards req'ts**
 - **Changes in req'ts re informed consent**
 - **Req'ts for broad consent**

Topics for Discussion

- **What do these proposed changes mean for newborn screening?**
- **What did OHRP get right in the proposed changes?**
- **What types of activities will be difficult to conduct if these proposed changes are adopted?**
- **Are there any activities that will become impossible?**

Questions for Public Comment

- **Would providing a definition of biospecimen be helpful in implementing this provision?**
- **Which of the 3 proposals regarding the definition of human subject achieves the most reasonable tradeoff between principles of autonomy versus beneficence (facilitating research)?**
- **Any concerns that you have about each of the 3 proposal, including concerns about implementation or burden to investigators & institutions**

Public Comment Sought

- **Should individuals be given the opportunity to opt out of having their identifiable private information used for research? Q 50**
- **What should constitute notice for purposes of this exemption category? Q 51 What type of notice, in terms of dissemination and scope, should be considered to meet this requirement of the proposed exemption?**
- **Is prior notice necessary? Q 52 Is this req't meaningful and important to respect autonomy? Current practice suggests that IRBs often waive informed consent for studies involving the secondary use of identifiable private information collected for non-research purposes.**
- **Does this exemption provide appropriate protections for research conducted by clinical data registries? Q 53**

Thank you for your attention