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

Background

The 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/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation. The purpose of the Federal Policy for the Protection of Human Subjects (also known as the Common Rule) is to provide a uniform government-wide standard for institutions engaged in research conducted or supported by the Department of Health and Human Services (HHS) to apply regarding the protection of human subjects involved in research. The HHS codification of the Common Rule is at 45 CFR part 46 subpart A. The respondents for this collection are institutions engaged in such research. Institutional adherence to the Common Rules also is required by other federal departments and agencies that have codified or follow the Common Rule which is identical to 45 CFR part 46, subpart A.

A. Justification

1. Need and legal basis

Section 491(a) of Public Law (P.L.) 99-158 states that the Secretary of HHS shall by regulation require that each entity applying for HHS support (e.g., a grant, contract, or cooperative agreement) to conduct research involving human subjects submit to HHS assurances satisfactory to the Secretary that it has established an institutional review board (IRB) to review the research in order to ensure protection of the rights and welfare of the human research subjects. IRBs are boards, committees, or groups formally designated by an entity to review, approve, and have continuing oversight of research involving human subjects. The pertinent authorizing legislation is provided in Attachment 1.a., (42 U.S.C. 289).

Pursuant to the requirement in P.L. 99-158, HHS promulgated regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects. The June 18, 1991 adoption of the common Federal Policy (56 FR 28003) by 15 departments and agencies 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. The Common Rule is based on HHS regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects. The Common Rule and the HHS regulations are included in Attachments 1.b. and 1.c., respectively.

As the Common Rule is based on the HHS regulations implementing this law, the Common Rule echoes the same requirements set forth in Pub. L. 99-158 in that it requires each institution engaged in research involving human subjects 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 established 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. To this end, the Common Rule requires that appropriate minutes of IRB meetings be maintained as documentation of the IRB review and approval and that an institution certify IRB review and approval to the departments and agencies conducting or supporting the research.

The Common Rule implements a common Federal policy for the protection of human subjects of research conducted, supported or regulated by the following Federal departments and agencies that have adopted the Common Rule:

- United States Department of Agriculture (7 CFR Part 1c)
- Department of Energy (10 CFR Part 745)
- National Aeronautics and Space Administration (14 CFR Part 1230)
- Department of Commerce (15 CFR Part 27)
- Consumer Product Safety Commission (16 CFR Part 1028)
- Agency for International Development (22 CFR Part 225)
- Department of Housing and Urban Development (24 CFR Part 60)
- Department of Justice (28 CFR Part 46)
- Department of Defense (32 CFR Part 219)
- Department of Education (34 CFR Part 97)
- Department of Veterans Affairs (38 CFR Part 16)
- Environmental Protection Agency (40 CFR Part 46)
- Department of Health and Human Services (45 CFR Part 46)
- National Science Foundation (45 CFR Part 690)
- Department of Transportation (49 CFR Part 11).

In addition to departments and agencies which have codified the Common Rule, the Central Intelligence Agency is required by Executive Order 12333 and the Department of Homeland Security is required by statute to follow all subparts of 45 CFR part 46 in their human research programs.

The Common Rule provides further protections for human research subjects by including at Sections 116 and 117 requirements for obtaining and documenting informed consent of the subjects. Sections 111(a)(4) and (5) of the Common Rule also require that informed consent will be sought from and documented for each subject, to the extent required by Sections 116 and 117, for all research to which the Common Rule applies.

2. Information Users

Information reported to the Federal departments and agencies under the Common Rule with respect to a satisfactory assurance is used to ensure that an institution engaged in research involving human subjects conducted or supported by a Common Rule department or agency has (1) established adequate administrative policies and procedures for protecting the rights and welfare of human subjects in research, and (2) accepts this responsibility. Other reporting requirements are used to assess whether the institution is following the established procedures; to ensure that no Federal funds are expended for unapproved human subjects research; and to determine if the approved status of an awarded grant, contract, or cooperative agreement should be reviewed, with the ultimate goal of maintaining or increasing human subject protections.
Specific information collection requirements established by the Common Rule are as follows:

Section 103(a) *Reporting* - Requires each institution engaged in research conducted or supported by a federal department or agency that has adopted the Common Rule to provide a written assurance satisfactory to the department or agency head that it will comply with the requirements of the Common Rule. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Human Research Protections (OHRP), HHS, and approved for federalwide use by that office. When existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by the Common Rule to be made to department and agency heads shall also be made to the Office for Human Research Protections, HHS, or any successor office.

Purpose: Assurances allow the Common Rule departments and agencies to verify that an institution engaged in federally-conducted or -supported human subjects research has formally committed to provide adequate protections for the human subjects involved in such research.

Section 103(b) *Reporting* - Specifies the contents of the written assurance.

Purpose: Allows collection of uniform and comparable information supporting decisions regarding whether regulatory requirements have been satisfied by each institution engaged in federally-conducted or -supported research involving human subjects.

Section 103(b)(3) *Reporting* - Specifies that a list of IRB members with names and qualifications must be included as part of the required assurance and that changes in IRB membership be reported to the appropriate department or agency head or to OHRP if the existence of an OHRP assurance approved for federalwide use is

accepted.

Purpose: Permits verification that regulatory requirements related to IRB member experience, areas of expertise, and institutional affiliation are met for IRBs reviewing federally-conducted or supported research involving human subjects.

Section 103(b)(4)(i) *Disclosure* - Specifies that IRB actions/findings for research undergoing initial or continuing review must be reported to the investigator and institution.

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.

Section 103(b)(4)(iii) *Disclosure* - Specifies that investigators must report to the IRB proposed changes in a research activity.

Purpose: Provides controls to ensure that all proposed changes to federally conducted or supported research that is not otherwise exempt are reviewed and approved by an IRB in order to protect the rights and welfare of human subjects participating in federally-conducted or –supported research

Section 103(b)(5) *Disclosure and Reporting* - Specifies certain situations which must be reported by the investigator and/or other institutional official(s) to the IRB, appropriate institutional officials, and the head of the department or agency that is conducting or supporting the research. For institutions holding an assurance approved by OHRP for federalwide use, these reports also must be submitted to OHRP, in accordance with section 103(a).

Purpose: To ensure that the IRB and individuals responsible for the protection of human subjects are made aware of situations occurring during the research that trigger the need for them to take further action in discharging their responsibilities to protect the rights and welfare of human subjects participating in federally-conducted or –supported research

Section 103(f) *Reporting* - Specifies that each application or proposal submitted under an approved assurance will contain certification that the project has been reviewed and approved by an IRB. The department/agency may specify a date later than the submission date for certification. Applications/proposals without an approved assurance must certify IRB review and approval within 30 days after receipt of a request for such certification from the department or agency.

Purpose: Provides control to ensure that federally-conducted or -supported research involving human subjects that is not otherwise exempt is reviewed and approved by an IRB.

Section 109(d) *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.

Section 113 *Disclosure and Reporting* - Specifies that any suspension or

termination of IRB approval must be reported by the IRB to the investigator, appropriate institutional officials, and the department or agency head and that such reports include a statement of the reasons for the IRB's action.

Purpose: To ensure that individuals responsible for the protection of human subjects are made aware of IRB actions regarding the research that trigger the need for them to take further action in discharging their responsibilities to protect the rights and welfare of human subjects participating in federally-conducted or –supported research.

Section 115(a) *Recordkeeping* - Specifies the documentation of IRB activities, including copies of all research proposals reviewed, minutes of IRB meetings, records of continuing review activities, 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), written procedures for the IRB in the same detail as described in Sections 103(b)(4) and (5), and statements of significant new findings provided to subjects, as required by section 116(b)(5). All records required by the Common Rule must be retained for at least three years after completion of the research and 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.

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.

Section 116 *Disclosure* - Specifies the general requirements for, and basic elements of, informed consent.

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.

Section 117 *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.

3. Improved Information Technology

Institutions submitting a new FWA may submit all information for initial FWAs, or updates and renewals of existing FWAs, except for the signature of the signatory official, via the internet using an interactive page on the OHRP website. The last page of the FWA with the signature of the signatory official still must be submitted

on paper via mail or facsimile. OHRP anticipates that the majority of institutions needing to submit an FWA

will do so via the internet. Currently more than 70% of institutions are submitting FWA information via the internet.

4. Duplication of Similar Information

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

5. Small Businesses

Support of research activities involving human subjects extends to small businesses. The committee that developed the Common Rule considered ways to reduce the burden on small businesses or organizations that receive Federal support and determined that it was not feasible to do so. However, institutions not having on file approved assurances for the proposed research (likely to be small organizations) do not have to certify IRB review until certification is requested by the agency or department sponsoring the research generally only when an award is expected to be made.

6. Less Frequent Collection

The reporting of IRB approval is required with the submission of an application or proposal for research funding, or at such later date as specified by the agency/department sponsoring the research. This is necessary to ensure that federally-supported research involving human subjects is subjected to the continuing IRB review and approval that is required by the Common Rule at least once per year, as the obligation to protect human subjects is an ongoing responsibility and not a one time effort. Changes in research protocols, new scientific or medical findings or innovations, as well as preliminary results or ongoing research, may change the degree of risks to the subjects or the subjects= willingness to continue participation in the research; therefore, IRB review is required to be conducted at least annually so that the rights and welfare of the human research subjects are protected throughout the research project. Reporting of the date of that review, and approval with the application describing any changes, notifies the department or agency conducting or supporting the research of IRB approval of the continued compliance of the protocol. Within HHS, the Federalwide Assurance (FWA) form approved by OMB for use through May 31, 2011 (OMB No. 0990-0278) must be renewed every three years. The other reporting requirements in the Common Rule are on occasion.

All the disclosure requirements in the Common Rule are Aon occasion.@

The regulations require that minutes of each IRB meeting be taken and kept. The IRB's continuing review, as indicated above, is required annually. Less frequent review would compromise protection of research subjects.

7. Special Circumstances

The request fully complies with the regulations.

8. Federal Register Notice/Outside Consultation

A notice announcing a 60-day period for public comments on the information collection was published in the *Federal Register* on September 30, 2008. Pg. number 56828, Vol. 73 No public comments were submitted.

9. Payment/Gift to Respondents

No payment or gifts are provided to respondents.

10. Confidentiality

The information collected under the FWA is, and always has been, considered releasable under the Freedom of Information Act (FOIA). The database used to track FWA data, referred to as the Human Assurance Tracking System (HATS), is currently being redesigned to utilize Microsoft SQL Server tables stored on a server maintained by the Center for Information Technology, National Institutes of Health. The redesigned HATS application screens and associated FWA tables/server utilize a username/password and appropriate session variables to access and modify the FWA data. Without the appropriate username/password, unauthorized users will not gain access to the FWA database. FWA database tables will never be provided outside of OHRP. Requests for FWA information under the FOIA are fulfilled via printed reports or disk files containing extracted information. The public can retrieve data from FWA database tables via the internet search screens found on the OHRP website at http://ohrp.cit.nih.gov/search/asearch.asp. This link provides read only access to the name, location, and FWA assurance number of institutions holding an OHRP-approved FWA. Information provided to the public via the OHRP website does not include the names and contact information of the FWA signatory official or human protections administrator identified in the FWA form. This information is only accessible to appropriate representatives of the other Federal departments and agencies that have adopted the Federal Policy via a secure internet connection requiring a username and password. Of note, the public and other agencies do not have the ability to modify the FWA database tables.

Documentation of IRB activities is the property of and maintained by the awardee institution and is not submitted to agencies. Records required under Section 115 are to be available for inspection and copying by authorized representatives of an agency or department. Records that are copied by authorized representatives of an agency or department may be releasable by the agency or department under the FOIA.

Although the regulations at Section .117 require that informed consent be documented, the documentation is maintained by the institutions conducting the research in accordance with State laws. The Federal departments and agencies generally do not collect the signed written informed consent documents from the

institutions. Typically, in cases of biomedical research, documentation of consent is maintained by a research institution or hospital in the medical records of the patient/subject. Similarly, the other disclosure requirements in the rule, for the most part, are within the institution performing the research.

11. Sensitive Questions

None of the information collection requirements in the Common Rule are of a sensitive nature.

12. Burden Estimate (Total Hours and Wages)

The information being requested related to the Common Rule should be readily available to the institution or organization that registers the IRB.

The burden estimates for the Common Rule include those recently approved for use of the Federalwide Assurance (FWA) form under Control Number 0990-0278 and for the IRB Registration Form that was recently approved under Control Number 0990-0279, and for the institutional review board (IRB) verification (former Optional Form 310) currently being reviewed by OMB under Control Number 0990-0263. Those burden estimates are not included as part of the burden estimate presented below.

The separate burden estimates for the sections of the Common Rule that require reporting or recordkeeping are shown in the burden table below. The number of respondents is the number of IRBs registered utilizing OMB 0990-0279. The total burden is 1,138,230 hours, for a dollar cost of $26,409,600.

Total Estimated Annualized Burden - Hours

Title	Number of Respondents	Number of responses per respondent	Average burden per response (in hours)	Total Burden hours
.103(b)(4), .109(d)IRB Actions, .116 and .117 Informed Consent	6,000	39.33	1	235,980
.115(a) IRB Recordkeeping	6,000	15	10	900,000
.103(b)(5) Incident Reporting, .113 Suspension or Termination Reporting	6,000	0.5	45/60	2,250
Total				1,138,230

Total Estimated Annualized Burden - Dollars

Title	Total Burden Hours	Hourly Wage Rate	Total Burden Dollars
.103(b)(4), .109(d) IRB Actions, .116 and .117 Informed Consent	235,980	$20.00	$4,719,600
.115(a) IRB Recordkeeping	900,000	$24.00	$21,600,000
.103(b)(5) Incident Reporting, .113 Suspension or Termination Reporting	2,250	$40.00	$90,000
Total			$26,409,600

13. Capital Costs (Maintenance of Capital Costs)
There are no direct capital costs to respondents.

14. Cost to the Federal Government
Estimated annual Federal cost of reviewing assurances and certifications is $1,992,000.

15. Program or Burden Changes
Burden estimates have increased due to adjustment in Agency estimate.

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
No exception is requested.

B. Justification of Information Employing Statistical Methods
Not applicable.

LIST OF ATTACHMENTS

Attachment 1 - Legal Authorities
a. 42 U.S.C. Section 289
b. 56 F.R. 28003 (Common Rule)
c. 45 CFR part 46