Overview of the New Rules (with a Focus on Tribal Sovereignty)

Ivor A. Pritchard, Ph.D.

Senior Advisor to the Director of OHRP

April 4, 2017

OHRP
Office for Human Research Protections

Happy to be here

#10 Overall

#6 Income & Employment Dimension

#2 Lowest Suicide Rate Indicator

#5 Overall

#3 Community & Environment Dimension

#2 Adequate Sleep Indicator

OHRP
Office for Human Research Protections

Outline

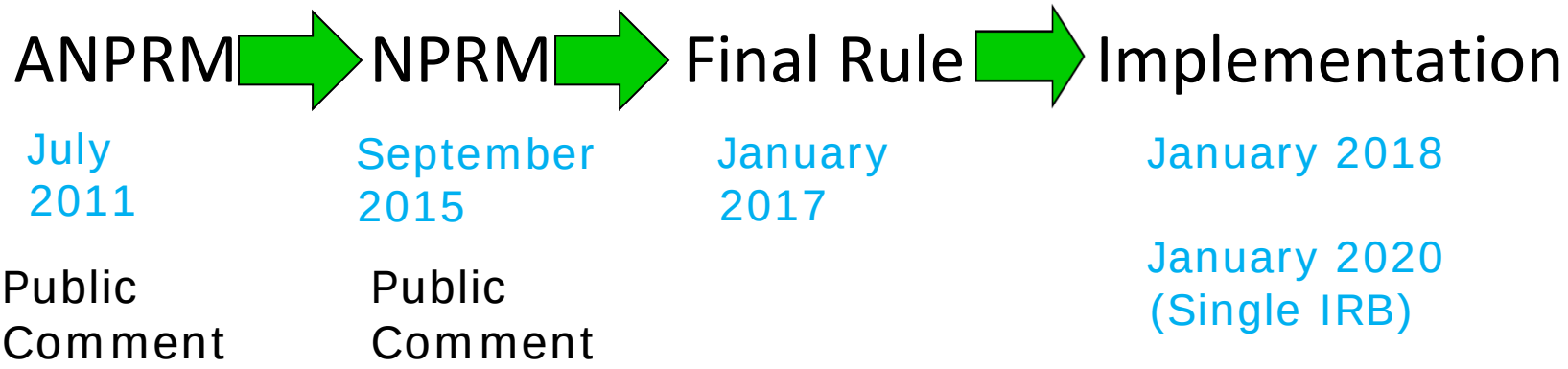
- Background on the revised Common Rule
- Implementation dates and transition provision
- American Indian/Alaska Native (AI/AN) Tribal public comments on the Notice of Proposed Rule Making (NPRM)
- AI/AN provisions included
- Summary of changes, with AI/AN provisions explained
- Consideration of historical cases: The Canadian Nutrition studies, the Barrow study, and the Havasupai controversy

Why Revise the Common Rule?

- Improve research subject protections
- Reduce administrative burdens

OHRP
Office for Human Research Protections

Brief Overview of Rulemaking Process

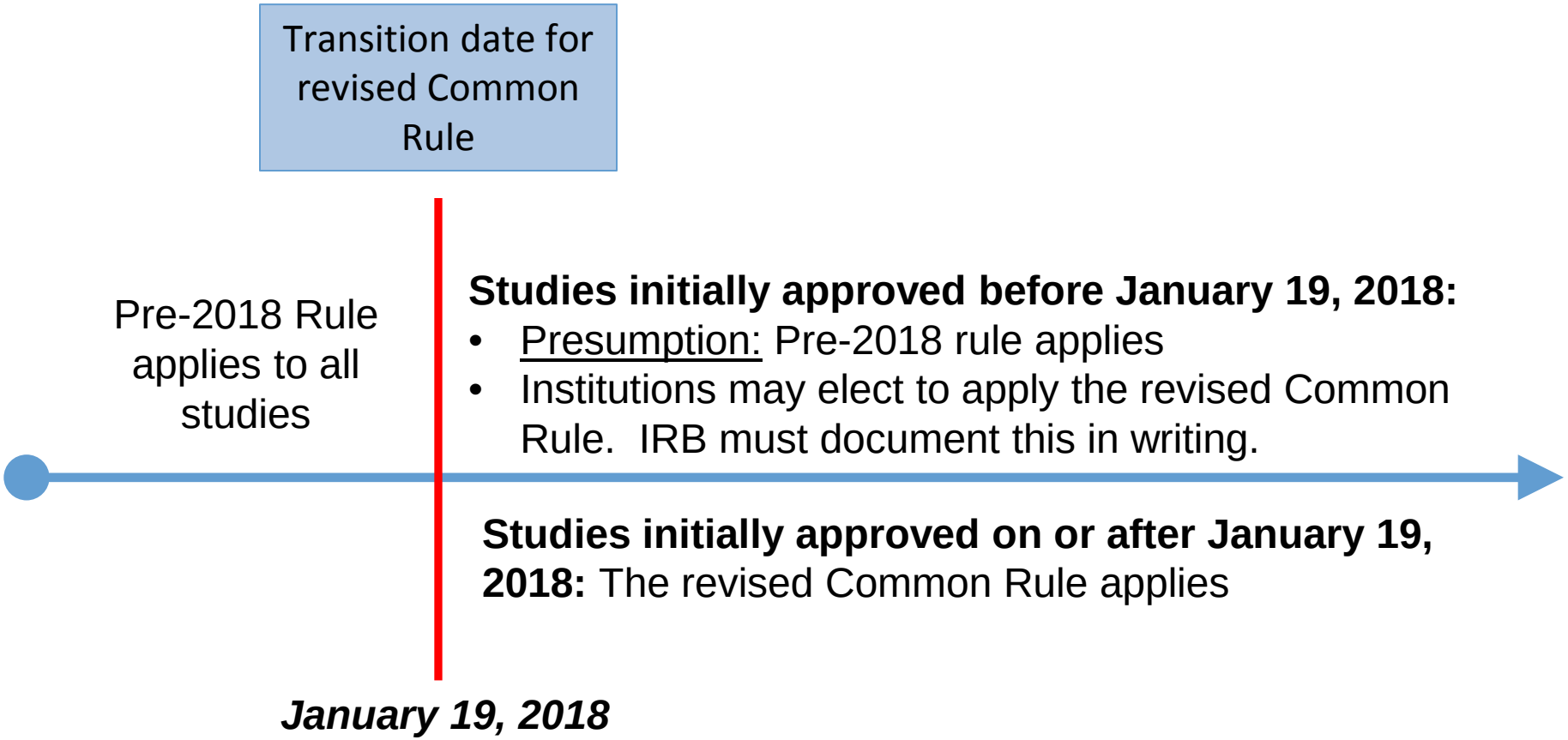


OHRP Office for Human Research Protections

Implementation Dates

- Before January 19, 2018, all activities must comply with the pre-2018 rule
  - Note that institutions can implement revised Common Rule provisions consistent with the pre-2018 rule
- All studies started on or after January 19, 2018 must comply with the revised Common Rule
- The single IRB review requirement in multi-institutional studies goes into effect January 20, 2020

General Implementation of the Transition Provision



OHRP Office for Human Research Protections

AI/AN Tribal Public Comments on the NPRM

- Recognize Tribal sovereignty explicitly
- Require Tribal consultation for research
- Obtain consent for biospecimen research
- Consider community/cultural benefit/harm/stigmatization
- Except Tribal participation from Single IRB requirement
- Oversee investigators

AI/AN Provisions Included

1. State and local laws providing additional protections (§_.101(f))
2. Public health authority (§_.102(k))
3. Single IRB for cooperative research (§_.114(b)(2))
4. Additional information disclosed in informed consent (§_.116(i))
5. Provision of emergency care (§_.102(j))

Changes

- Two stand-alone provisions referring to tribal authority
- Definition of “research”
- Informed consent and waiver provisions
- The benign behavioral intervention exemption
- Secondary research provisions and broad consent
- Expedited review
- Continuing review
- Single IRB review
- Changing the Approval Criterion for Equitable Selection of Subjects
- Other changes

Two Stand-alone Provisions Referring to Tribal Authority

- This policy does not affect any state or local laws or regulations (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe) that may otherwise be applicable and that provide additional protections for human subjects. (§_.101(f))
- Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable Federal, state, or local law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe).(§_.102(j))

Definition of "Research": Activities Deemed Not To Be Research

- Scholarly and journalistic activities focused on specific individuals
- Public health surveillance activities by a public health authority, which may be an Indian Tribe, that is responsible for public health matters as part of its official mandate.
- Collection of information for criminal justice purposes
- Operational activities for national security purposes

§_.102(l)

The Informed Consent Standard

The revised Common Rule explicitly establishes a standard: to provide the information that a reasonable person would want to have in order to make an informed decision about whether to participate

§_.116(a)(4)

OHRP
Office for Human Research Protections

The Presentation of Information in Informed Consent

- Must begin with a concise and focused presentation of key information regarding why one might or might not want to participate, and be organized in a way that facilitates comprehension
- Must be presented in sufficient detail, and be organized and presented in a way that facilitates subject's understanding of reasons why one might or might not want to participate

§_.116(a)(5)(i-ii)

New Elements of Informed Consent

- Notice about possible future research use of information or biospecimens stripped of identifiers. (Basic element) (§_.116(b)(9))
- Notice about sharing/not sharing possible commercial profit (§_.116(c)(7)) (Additional element)
- Notice about possible return of clinically relevant research results (§_.116(c)(8) (Additional element)
- Notice about whether research might include whole genome sequencing (§_.116(c)(9)) (Additional element)

Disclosure of Additional Information

"The informed consent requirements in this policy are not intended to preempt any applicable Federal, state, or local laws (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe) that require additional information to be disclosed in order for informed consent to be legally effective." (§_.116(i))

Posting of Consent Forms for Clinical Trials

For clinical trials supported by federal funding, one IRB-approved consent form used to enroll participants must be posted on publicly available Federal website to be designated

§_.116(h)

Waiver of Consent

New waiver criterion for research with identifiable private information or identifiable biospecimens

- The IRB must determine that the research could not *practicably* be carried out without accessing or using identifiers

Non-identified information should be used whenever possible in order to respect subjects' autonomy

§_.116(f)(3)(iii)

The Benign Behavioral Intervention Exemption

New exemption for research involving benign behavioral interventions with adults who prospectively agree when information collection is limited to verbal or written responses (including data entry) or audiovisual recording, and:

- Information recorded cannot be readily linked back to subjects, or
- Any information disclosure would not place subjects at risk of harm, or
- Identifiable information recorded, and an IRB conducts a limited IRB review for privacy and confidentiality protection under §_.111(a)(7)

Authorized Deception is permissible.

§_.104(d)(3)

OHRP Office for Human Research Protections

What are "Benign Behavioral Interventions"?

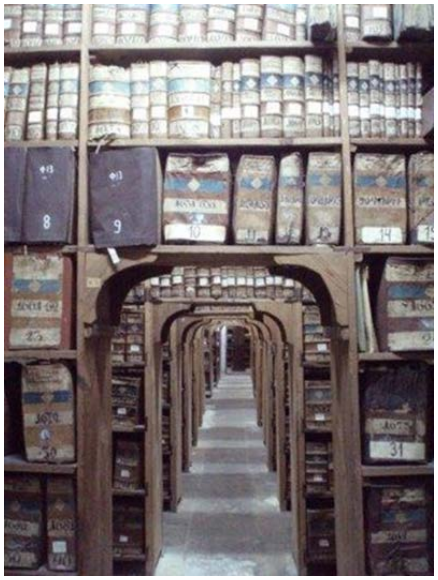
"…are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing"

§_.104(d)(3)

OHRP
Office for Human Research Protections

What is Secondary Research?

Research use of information or biospecimens collected for either research studies other than the proposed research, or for nonresearch purposes (e.g., clinical care, public health, education, criminal justice, business, government records)



OHRP
Office for Human Research Protections

Secondary Research Takes Various Forms, prompting different regulatory requirements…

- Research that does not satisfy the definition of a human subject
- Research that is exempt from some or all of the requirements of the revised Common Rule
- Research that complies with the full requirements of the revised Common Rule

Secondary Research that Does Not Satisfy the Definition of "Human Subject"

Human subject - a living individual about whom an investigator conducting research

(1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or

(2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens

§_.102(e)

OHRP
Office for Human Research Protections

Exempt Secondary Research

Secondary research using identifiable private information or identifiable biospecimens is exempt if …

- The identifiable private information or identifiable biospecimens are publicly available; or
- Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identify of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, and the investigator does not contact the subjects, and the investigator will not re-identify the subjects.

(§_.104(d)(4)(i-ii))

Exempt Secondary Research (continued)

Secondary research uses of identifiable private information or identifiable biospecimens, if …

- The research involves only information collection and analysis whose use by the investigator is regulated as part of "health care operations" or "research" under the Health Insurance Portability and Accountability Act (HIPAA)
- Federally conducted research using government-generated or government-collected information collected for nonresearch purposes and protected under one or more of three federal statutes.

§_.104(d)(4)(iii-iv)

OHRP
Office for Human Research Protections

Broad Consent

- Broad Consent can be used as a means of enabling subjects to agree to a range of possible secondary research studies in the future using the subjects' identifiable information or biospecimens.
- Broad Consent may be used for secondary research studies meeting the full range of requirements under the rule, or to qualify certain secondary research activities for an exemption.
- If Broad Consent is used, all of the information described in §_.116(d) must be included.

Distinct Elements of Broad Consent

- A general description of the types of research that may be done, with sufficient information that a reasonable person would expect the consent would allow
- The identifiable materials that might be used, whether there might be sharing, and with what types of institutions or researchers
- The period of time the materials may be stored, maintained, or used
- Who to contact about subject rights, storage and use of materials, and research-related harm

§_.116(d)(2-4),(7)

Additional Elements of Broad Consent When Appropriate

- A statement that the subject will not be informed of specific studies, and that the subject might not have chosen to consent to some of those studies (§_.116(d)(5))
- A statement that clinical results will not be returned to the subject (§_.116(d)(6))
- "The informed consent requirements in this policy are not intended to preempt any applicable Federal, state, or local laws (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe) that require additional information to be disclosed in order for informed consent to be legally effective." (§_.116(i))

Implications of Broad Consent

- Broad Consent allows subjects a means to exercise their autonomy in deciding whether or not to allow secondary research use.
- The use of Broad Consent will involve some mechanism for tracking the affected information or biospecimens.
- If an individual was asked to provide broad consent and refused to consent, an IRB cannot waive consent to a secondary research study.

§_.116(e)&(f)

Exemption for Storage and Maintenance of Identifiable Information or Identifiable Biospecimens for Secondary Research with Broad Consent

- Broad Consent as provided in §_.116(d)
- Limited IRB review of the broad consent process and form
- Limited IRB review of privacy and confidentiality considerations if there are changes to the storage and maintenance.

§_.104(d)(7)

OHRP
Office for Human Research Protections

Exemption for Secondary Research Use of Identifiable Information or Biospecimens with Broad Consent

- Limited IRB review of whether the research falls under the broad consent
- Limited IRB review of the privacy and confidentiality safeguards
- The investigator does not include returning individual research results to subjects as part of the study plan except when required by law
- Documentation or waiver of documentation of consent provisions occurred

§_.104(d)(8)

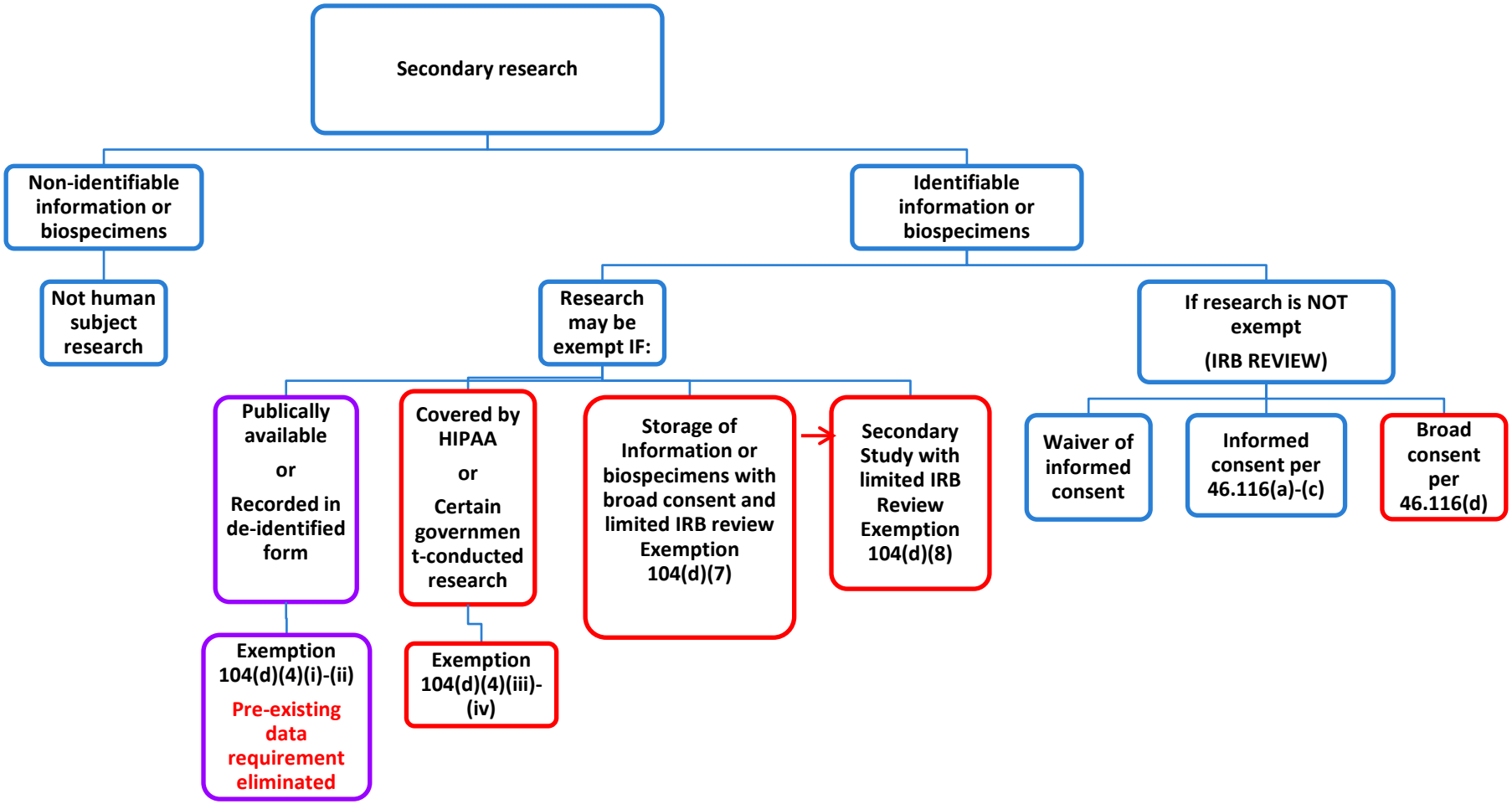
OHRP
Office for Human Research Protections

Secondary Research that Complies with the Full Set of Requirements of the Revised Common Rule

Secondary Research may be carried out with IRB review and approval and Informed Consent

Secondary Research may be carried out with IRB review and approval and waiver or alteration of Informed Consent

What are the Secondary Research Options in the Revised Common Rule?



OHRP
Office for Human Research Protections

Updating and Simplifying Expedited Review

- The Expedited List will be reviewed every 8 years and updated if necessary
- The presumption is that the activities listed are minimal risk, unless the expedited reviewer determines otherwise, which would make the study not expeditable and requires documentation
- Expedited Review is allowed for Limited IRB review

§_.110, §_.109(f) and §_.115(a)(8)

OHRP
Office for Human Research Protections

Eliminating Some Continuing IRB Reviews

In general, no continuing review is required for:

- Research approved by expedited review
- Exempt research requiring limited IRB review
- Research that has completed interventions and only involves:
  - Analyzing data, including analyzing identifiable private information or identifiable biospecimens
  - Accessing follow-up clinical data from clinical care procedures

An IRB can override this default and require continuing review, but this must be documented

§_.109(f) and §_.115(a)(3)

OHRP
Office for Human Research Protections

Requirement for Single IRB Review

- U.S. institutions engaged in cooperative research for the portion of the research conducted in the U.S.
- This requirement does not apply to:
  - Cooperative research for which more than single IRB review is required by law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe);
  - Whenever any Federal department or agency supporting or conducting the research determines and documents that the use of a single IRB is not appropriate for the particular context.

Changing the Approval Criterion for Equitable Selection of Subjects

"Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted. The IRB should be particularly cognizant of the special problems of research that involves a category of subjects who are vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons." §_.111(a)(3)

Other Changes

- Eliminating IRB roster reporting to OHRP
- Eliminating grant application review
- Eliminating the option on the Federalwide Assurance to “check the box”

Consideration of Historical Cases: The Nutrition Studies in Residential Schools, the Barrow Study, and the Havasupai Controversy

The Canadian Nutrition Studies in Residential Schools (1940's)

- Is it ethical to study substandard interventions in disadvantaged settings where implementing standard interventions is unrealistic?
- Is it ethical to study interventions in disadvantaged settings using an unaltered control group?

The Barrow Study of Alcoholism

Does community-based participatory action research always avert controversy?

The Havasupai Study of Biospecimens

What is the appropriate oversight for secondary research involving biospecimens?

Questions About the Revisions?

- OHRP will be developing resources to explain the revised Common Rule. Check out www.hhs.gov/ohrp

- Submit your questions to OHRP@hhs.gov

OHRP
Office for Human Research Protections