

§26.117

- (1) The research involves no more than minimal risk to the subjects;
 - (2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;
 - (3) The research could not practically be carried out without the waiver or alteration; and
 - (4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.
- (e) The informed consent requirements in this policy are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.
- (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.

(Approved by the Office of Management and Budget under Control Number 0990-0260.)
 [56 FR 28012, 28022, June 18, 1991, as amended at 70 FR 36328, June 23, 2005]

§26.117 Documentation of informed consent.

- (a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.
- (b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:
- (1) A written consent document that embodies the elements of informed consent required by §26.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or
 - (2) A short form written consent document stating that the elements of informed consent required by §26.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the

oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

- (1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or
- (2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

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 [56 FR 28012, 28022, June 18, 1991, as amended at 70 FR 36328, June 23, 2005]

§26.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon