

## Human Subject Regulations Decision Charts

The Office for Human Research Protections (OHRP) provides the following graphic aids as a guide for institutional review boards (IRBs), investigators, and others who decide if an activity is research involving human subjects that must be reviewed by an IRB under the requirements of the U.S. Department of Health and Human Services (HHS) regulations at [45 CFR part 46](#). The charts address decisions on the following:

- whether an activity **is research** that must be reviewed by an IRB, and
- whether the review may be performed by **exempt procedures**.

### Considerations

The charts are intended to assist IRBs, institutions, and investigators in their decision-making process and should not be used as substitutes for consulting the regulations. OHRP cautions that the full text of applicable regulatory provisions should be considered in making final decisions.

These charts are necessarily generalizations and may not be specific enough for particular situations. Other guidance documents are available related to specific topics, at [OHRP Policy Guidance by Topic](#). OHRP invites inquiries for additional information.

The charts do not address requirements that may be imposed by other organizations, such as the Food and Drug Administration, National Institutes of Health, other sponsors, or state or local governments.

Chart 1: Is an Activity Research Involving Human Subjects?

Chart 2: Is the Human Subjects Research Eligible for Exemption?

Chart 3: Does Exemption 45 CFR 46.101(b)(1) (for Educational Settings) Apply?

Chart 4: Does exemption 45 CFR 46.101(b)(2) or (b)(3) (for Tests, Surveys, Interviews, Public Behavior Observation) Apply?

Chart 5: Does Exemption 45 CFR 46.101(b)(4) (for Existing Data, Documents, Records and Specimens) Apply?

Chart 6: Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) Apply?

Chart 7: Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) Apply?

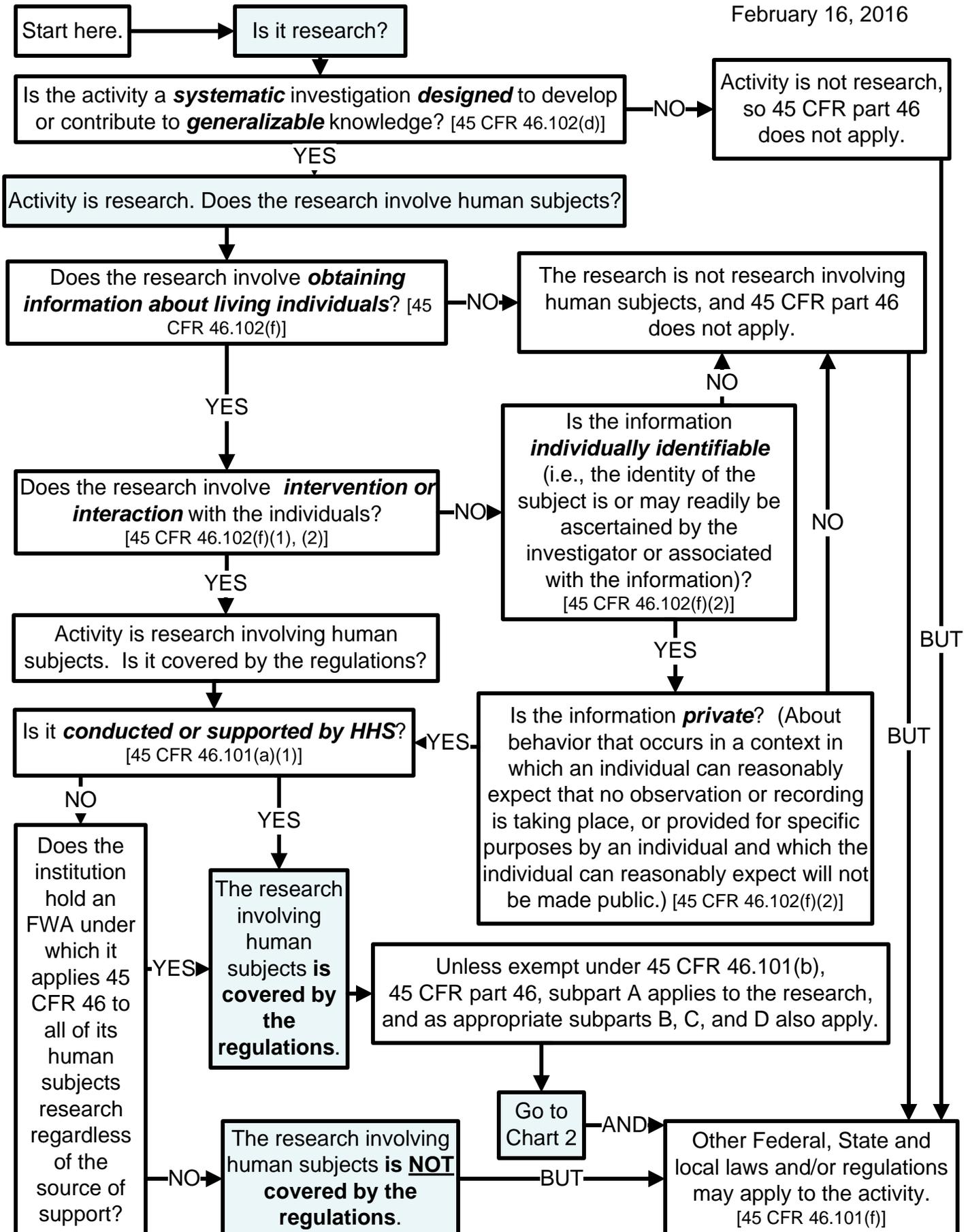
### Certain kinds of research with human subjects are not eligible for exempt determinations:

**Prisoners:** research involving prisoners as human subjects is not eligible for exemption. "Prisoners" are defined as "any individual involuntarily confined or detained in a penal institution." The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing. Detainees in administrative cases (such as immigration or deportation) are not considered detainees for this purpose, according to guidance obtained from DHHS.

**Children:** Research involving minors may not be exempted, with one exception. If the research consists solely of observation of public behavior where the investigator does not participate in the activities being observed, the research may be eligible for exemption. All other research involving minors is not eligible for exemption.

# Chart 1: Is an Activity Research Involving Human Subjects Covered by 45 CFR part 46?

February 16, 2016



# Chart 2: Is the Research Involving Human Subjects Eligible for Exemption Under 45 CFR 46.101(b)?

February 16, 2016

From Chart 1

Has HHS **prohibited** exemption of the human subjects research?  
(All research involving prisoners, some research involving children.) [Footnote 1 to 45 CFR 46.101(i), 45 CFR 46.401(b)]

NO

Will the **only**\*\* involvement of human subjects be in one or more of the following categories?

\*\* **“Only”** means that no non-exempt activities are involved. Research that includes exempt and non-exempt activities is **not** exempt.

Research conducted in **established or commonly accepted** educational settings, involving **normal education practices**?

YES

Exemption 45 CFR 46.101(b)(1) may apply.

Go to Chart 3

If not exempt under (b)(1)

Research involving the use of **educational tests, survey procedures, interview procedures, or observation of public behavior**?

YES

Exemption 45 CFR 46.101(b)(2) or (b)(3) may apply.

Go to Chart 4

If not exempt under (b)(2) or (b)(3)

Research involving collection or study of **existing** data, documents, records, or pathological or diagnostic specimens?

YES

Exemption 45 CFR 46.101(b)(4) may apply.

Go to Chart 5

If not exempt under (b)(4)

Research studying, evaluating, or examining **public benefit or service programs**?

YES

Exemption 45 CFR 46.101(b)(5) may apply.

Go to Chart 6

If not exempt under (b)(5)

Research involving **taste and food quality evaluation** or **consumer acceptance studies**?

YES

Exemption 45 CFR 46.101(b)(6) may apply.

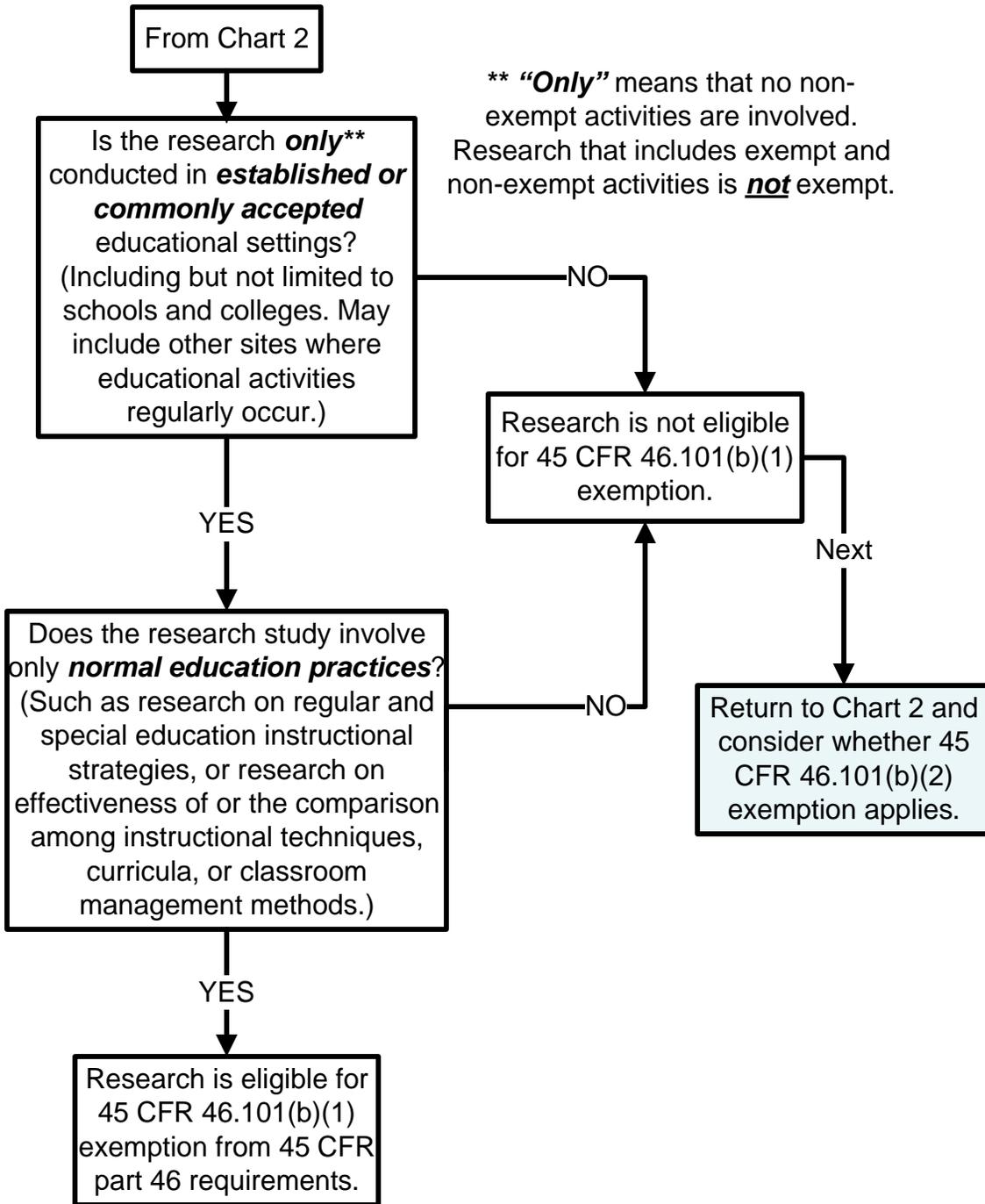
Go to Chart 7

If not exempt under (b)(6)

YES

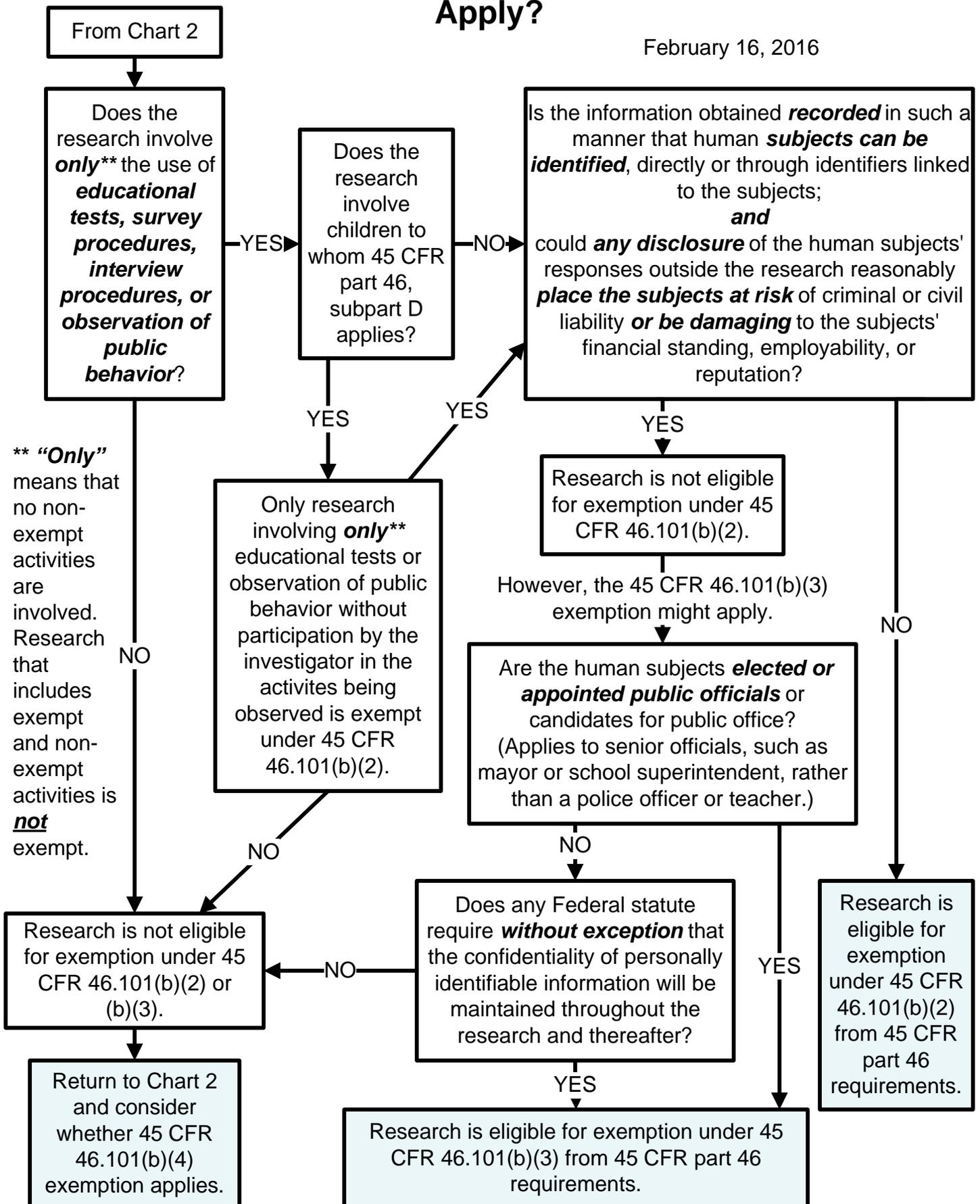
No exemptions to 45 CFR part 46 apply. Provisions of 45 CFR subpart A apply, and subparts B, C and D also apply if subjects are from covered vulnerable populations.

### Chart 3: Does Exemption 45 CFR 46.101(b)(1) (for Educational Settings) Apply?

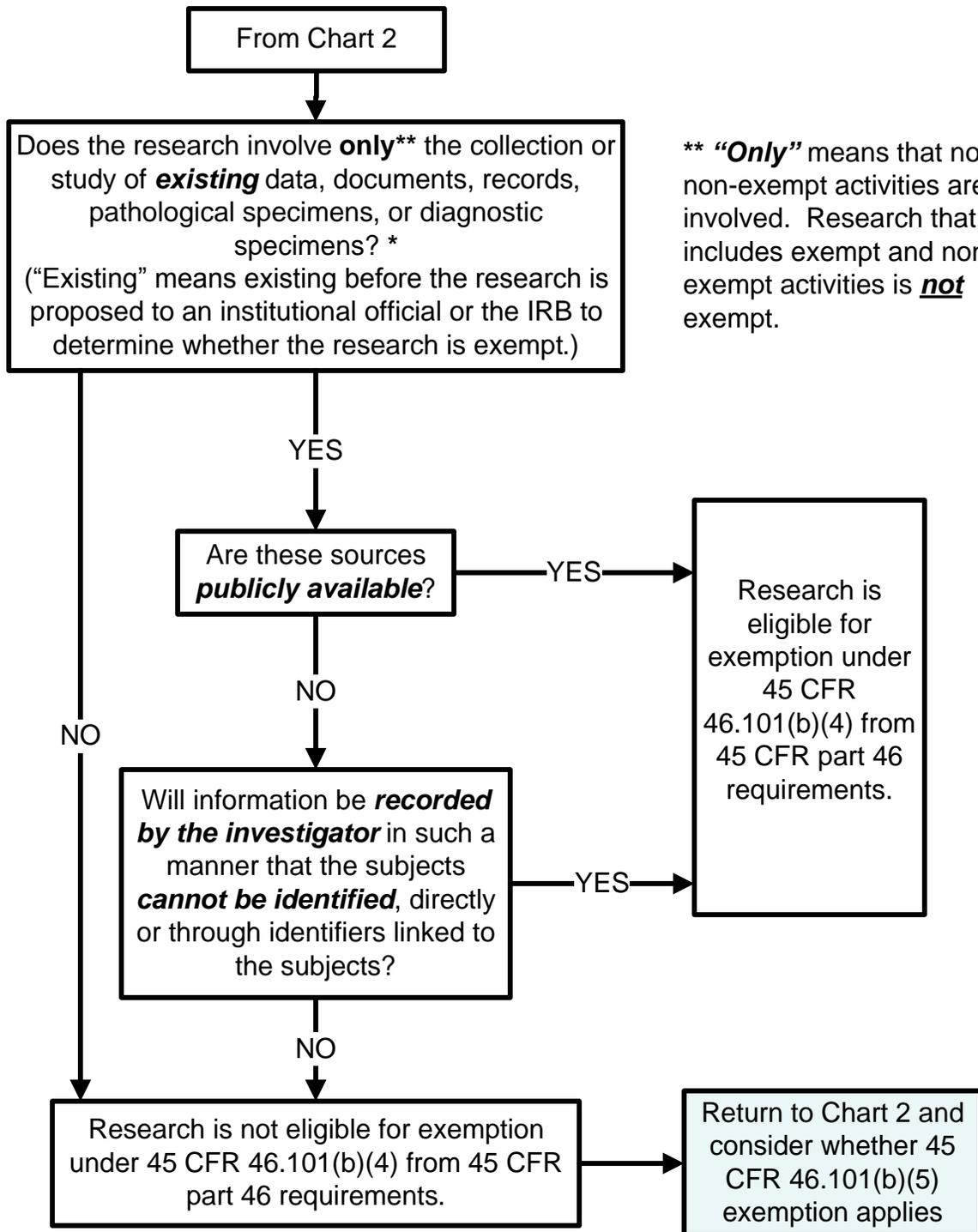


# Chart 4: Does Exemption 45 CFR 46.101(b)(2) or (b)(3) (for Tests, Surveys, Interviews, Public Behavior Observation) Apply?

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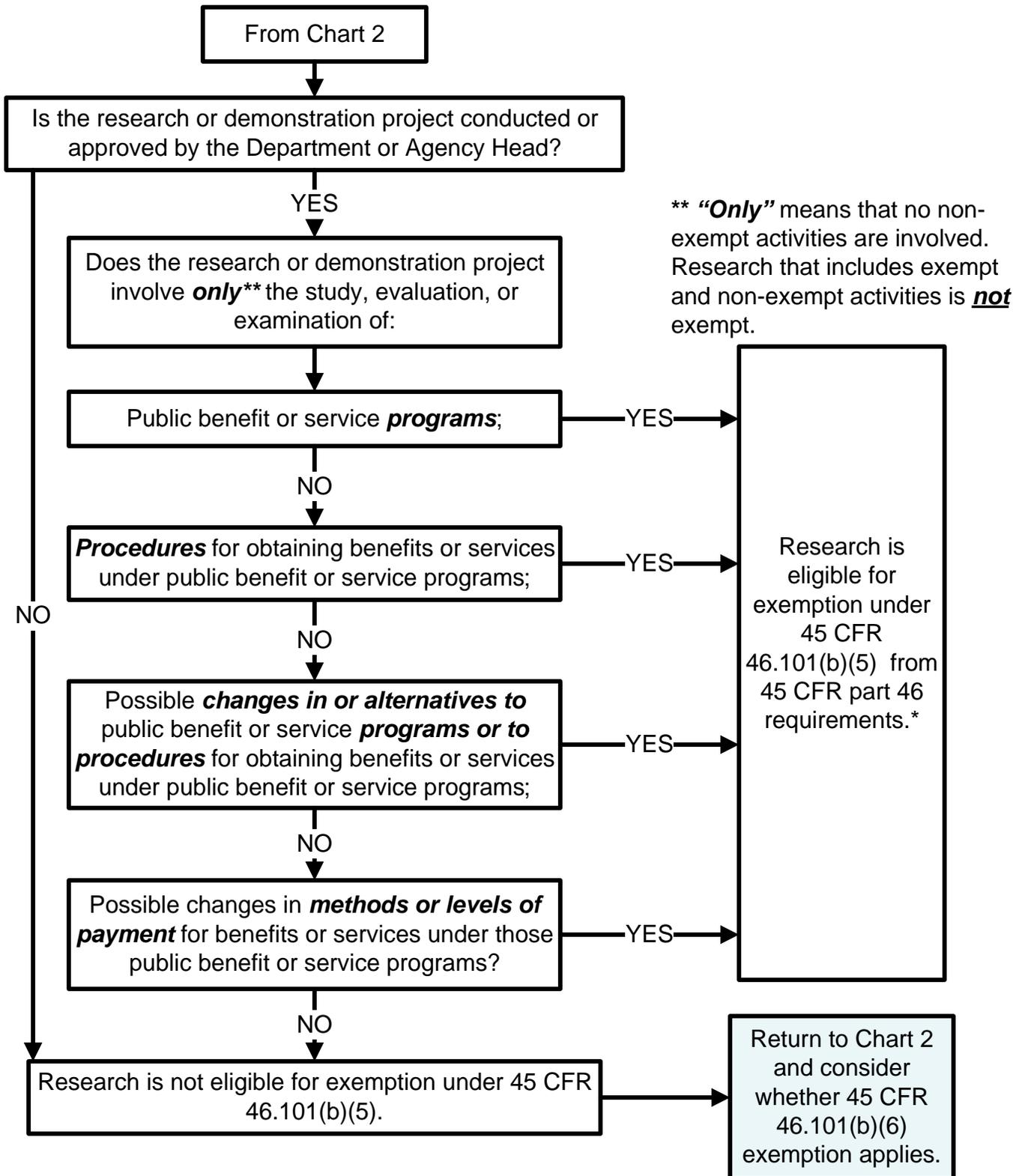
## Chart 5: Does Exemption 45 CFR 46.101(b)(4) (for Existing Data Documents and Specimens) Apply?



\* Note: See **OHRP** guidance on research use of stored data or tissues and on stem cells at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/guidance-on-research-involving-stem-cells/index.html>, and on coded data or specimens at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/research-involving-coded-private-information/index.html> for further information on those topics.

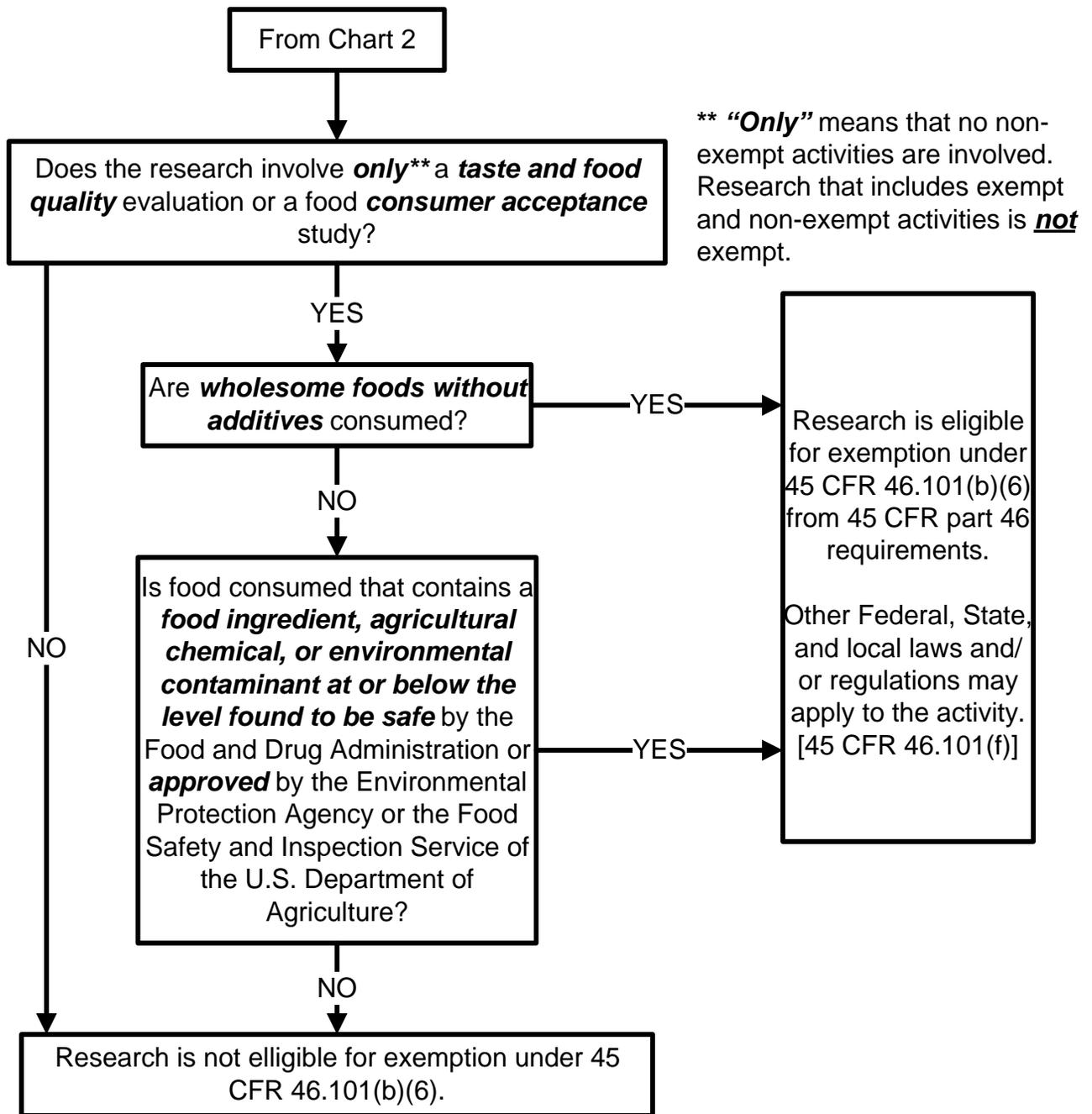
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## Chart 6: Does Exemption 45 CFR 46.101(b)(5) (for Public Benefit or Service Programs) Apply?



\* Note: See **OHRP** guidance on exemptions at <http://www.hhs.gov/ohrp/regulations-and-policy/guidance/exemptions-for-public-benefit-and-service-programs/index.html> for further description of requirements for this exemption.

# Chart 7: Does Exemption 45 CFR 46.101(b)(6) (for Food Taste and Acceptance Studies) Apply?



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