

Introduction

Medaille College

Institutional Review Board

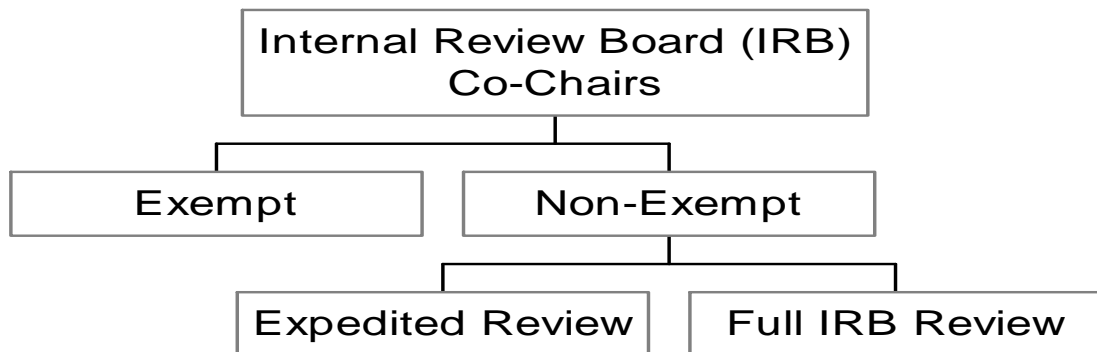
An Institutional Review Board (IRB) is a committee designated by an institution to review, to approve the initiation of, and to conduct periodic review of research involving human subjects. The primary purpose of such review is to assure the protection of the rights and welfare of the human subjects.

After the ethically questionable biomedical studies, such as the Tuskegee study in the 1930s, IRBs have been implemented around the world to prevent unethical treatment of human subjects. IRBs in the United States were established as an outcome of Senate hearings (1972) and legislation passed in 1974. Prior to this time, other committees existed as a requirement of the United States Public Health Service (USPHS) policy established in 1965. IRBs are currently regulated by the Food and Drug Administration and the National Institutes of Health's (NIH) Office for Protection from Research Risks (OPRR). The Department of Health and Human Services **requires** University Institutional Review Boards.

The purpose of the IRB is to inform and protect human subjects used in research. The IRB acts as an advocate for the research subject. This means that the IRB, during its review of a research project and the informed consent, has the right and responsibility to ensure that the research subject is fully informed of the procedures involved in the study as well as the risks and alternative treatments that are available if participation in the study is refused.

Categories of Review

The IRB has the responsibility for reviewing all proposals for human subject research. If the research is found to be non-exempt, the IRB Co-chairs then determine whether the protocol is eligible for an expedited review using 1 or 2 board members or whether a review by the full IRB is required. (See the diagram below.)



1. Exempt

The application is declared exempt by the IRB needing no further review beyond the IRB Co-Chairpersons. The approval forms will be forwarded to the person listed as the principal investigator. The categories of research that fall into categories exempt from further review by the full IRB as shown in Appendix A.

2. Expedited Review

Certain types of research are eligible for an expedited review. The IRB may use an expedited review procedure when the research involves no more than minimal risk to the subjects and where the only involvement of human subjects will be in one or more of the Expedited Review Categories (Appendix B). In an expedited review, the application is forwarded to one or two IRB members for review. The response(s) are returned to the IRB Co-Chairpersons for their review. The principal investigator often needs to revise the application to address specific concerns raised by the expedited review. When these changes are made, the IRB Co-Chairpersons can grant final approval. The IRB is kept informed of all protocols approved by expedited review.

3. Full Board Review

An application which involves more than minimal risk to human subjects is reviewed by the members of the IRB when necessary. After the full IRB review, the principal investigator may need to revise the application to address concerns raised by the IRB. These changes will then need to be reviewed again by the full board at one of its monthly meetings.

4. What is “Minimal Risk?”

The DHHS Office for Human Research Protection (OHRP) defines minimal risk as: “The probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.”

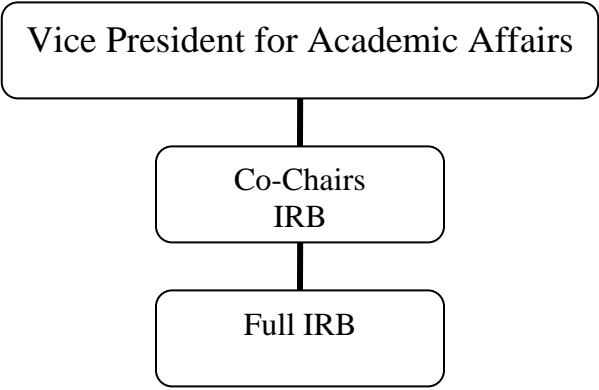
Special Protections for Vulnerable Populations

Medaille College will require appropriate additional safeguards in research that involves vulnerable populations by meeting all requirements of Title 45, Part 46, of the Code of Federal Regulations (45 CFR 46; See Appendix E). Specifically, research involving: (1) fetus, pregnant women, or human ova in vitro fertilization (see 45 CFR 46 Subpart B), (2) prisoners (see 45 CFR 46 Subpart C), (3) children (see 45 CFR 46 Subpart D), (4) the cognitively impaired, or (5) other potentially vulnerable groups.

Also, when research is reviewed involving a category of vulnerable subjects (such as children, prisoners, pregnant women, or handicapped or mentally disabled persons), the IRB will include in its reviewing body one or more individuals who are knowledgeable about and experienced in working with these subjects.

In addition to the Code of Federal Regulations (45 CFR 46) provided in Appendix E, we also recommend the University of Indiana tutorial (<http://www.iupui.edu/~resgrad/HumanSubjects/HumanSubjectsCourse.html>) for a summary of the major issues regarding vulnerable populations.

Responsibility for Human Subjects
in Research at Medaille College



Student Research Projects

Students at Medaille College who are conducting research that involves human subjects must go through the same process as faculty members or other Medaille College employees to secure IRB approval for their research.

However, the student cannot be the principal investigator. That role belongs to their faculty advisor or another faculty member. When filling out an application form for Initial Review of Research Using Human Subjects (available in MS Word or Appendix C), the student investigator is listed on the student investigator line; the student's advisor or other faculty member is listed on the Principal Investigator line.

When research projects involve no more than minimal risks, the student may, in some cases, be listed as a co-investigator if the project is wholly generated and carried out by the student with little input or oversight by a faculty advisor. If student wants to be listed as a co-investigator, he/she should provide a rationale for this role.

Important Message for Students Completing Theses

- All requests for permission to use human subjects in research must be obtained before beginning the research
- Retroactive approval from IRB will not be granted

Requirements, Policies, and SOPs

Medaille College Policy on Human Subjects of Research

(Approved by the Vice President for Academic Affairs of Medaille College, July 1, 2004).

The policy of Medaille College is to respect and protect the rights and welfare of individuals. In the conduct of research, actions of Medaille College will be guided, to the extent that they are applicable, by principles as set forth in such nationally accepted documents as the report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, Ethical Principles and Guidelines for the Protection of Human Subjects of Research (April 18, 1979). Actions of Medaille College will also conform to applicable federal, state, and local laws and regulations.

In accordance with this policy, all Medaille College research activities which involve human subjects, regardless of the level of risk foreseen, require review and approval, prior to the initiation of the activity. An Institutional Review Board (IRB) shall have jurisdiction over all reviews and approvals. Those research activities in which human subjects may be exposed to more than minimal risk must be reviewed at a convened meeting of an IRB; other research activities may be reviewed in the manner determined by the IRB under its procedures. An individual is considered to be at more than minimal risk if exposed to the possibility of harm -- physical, psychological, social, legal, or other -- as a consequence of participation as a human subject in any research activity which departs from the performance of routine physical or psychological examinations and tests, or which departs from established and accepted procedures necessary to meet the individual's needs, or which increases the probability or magnitude of risks ordinarily encountered in daily life.

This policy applies to all research activities and to all development, training, and improvement or other related activities containing a research and development component. Furthermore, it applies to any such activity performed on the premises of Medaille College and to any such activity performed elsewhere by faculty, students, or employees under Medaille College auspices. The IRB will have the authority to approve, to require modification as a condition of approval, and to disapprove proposed activities that are covered by this policy. Furthermore, the IRB will have the authority to determine whether or not any activity is covered by the policy and whether it requires review by an IRB.

Informed Consent

The Informed Consent document contains the basic elements of informed consent as identified in and required by the United States regulations regarding the protection of human subjects (Code of Federal Regulations, Title 21 Part 50-

Protection of Human Subjects). As required by this regulation, the informed consent has been reviewed and approved by an Institutional Review Board. The application must state specifically what information will be provided to the subjects about the investigation. Is any of this information deceptive? State how the subjects' informed consent will be obtained. The sample consent form set on page 4 of the application (Appendix C) may be used as a guide. Include a final draft of the consent form which you propose to utilize.

Confidentiality

Adequate provisions must be made to protect the privacy of subjects and to maintain confidentiality of identifiable information. The protocol application must explain how your procedures accomplish this objective; such as means of data storage, data location and duration, description of persons with access to the data, and method of destroying the data when completed

Protocol Application Submission

All proposed research which would involve the use of human subjects requires review and approval by the Institutional Review Board (IRB) prior to the initiation of the research. Each proposal must address the six criteria listed on the **IRB Initial Application Form** (Appendix C). If this application has not been previously reviewed and approved by the IRB, then the submission is considered an initial application. If you wish to apply to the IRB for a renewal of a previously approved IRB application, you will be notified directly by the IRB when and how to apply (Appendix D).

Protocols

Forms

The research form is used for all research activities on campus. Modifications to protocols (addenda) can be made to an active protocol at any time. A letter should be written to the IRB detailing the specifics of the addenda. Information which should be included are: rationale for the changes, detailed description of the procedures, and justifications for the subjects and the subject numbers.

The application must contain the following:

1. Abstract - 200 words describing the purpose of the research and summarizing strategies used to protect human subjects.
2. Subject Selection - A description of the subjects and how they will be recruited.
3. Procedures - Explanation of what will be done to the subjects, methods and procedures in terms of what will be done to the subjects, and copies of the questionnaires or handouts used in the experiments.
4. Risks and Benefits - A list of the risks or benefits possible to the subjects.
5. Confidentiality - How the procedures will adequately provide to protect the privacy of subjects and to maintain confidentiality of identifiable information. An explanation of data storage, data location and duration, description of persons with access to the data, and method of destroying the data when completed.
6. Information and Consent Forms - Statement of what information will be provided to the subjects about the investigation.

Signatures

Only Medaille College faculty and staff can be listed as primary investigators. The department chair signature is for the department of the primary investigator.

Experimental Subject's

Bill of Rights

To be told what the study is trying to find out

To be told what will happen to you and whether any of the procedures, drugs, or devices is different from what would be used in standard practice

To be told about the frequent and/or important risks, side effects or discomforts of the things that will happen to you for research purposes

To be told if you can expect any benefit from participating and, if so, what the benefit might be

To be told the other choices you have and how they may be better or worse than being in the study

To be allowed to ask questions concerning the study, both before agreeing to be involved and during the course of the study

To be told what sort of medical treatment is available if any complications arise

To refuse to participate at all or to change your mind about participating after the study is started. This decision will not affect your right to receive the care you would receive if you were not in the study

To receive a copy of the consent form

To be free of pressure when considering whether you wish to agree to be in the study

Frequently Asked Questions

When do I need to submit a proposal to the IRB?

All proposed research which would involve the use of human subjects requires review and approval by the IRB *prior to the initiation* of the research.

What form(s) are needed to apply to do an experiment involving human subjects?

The **IRB Initial Application Form**, available as either a MS Word Document available from the IRB Co-chairs or in Appendix C.

Are certain experiments exempt from all review?

No! All human subjects research must be reviewed in one form or another. Federal law requires that federally funded experiments or experiments of more than minimal risk must be reviewed and approved by the IRB before research can be initiated. There is also a category of research called "Exempt" which means that the IRB Chairperson has reviewed the research protocol and determined that it falls into one of six categories of research that is exempt from IRB Board review (anonymous surveys generally fall into such an exemption category). But, it is only the IRB which can determine whether a particular research project is exempt from review.

What do I do when my experiments will not be federally funded?

They still need to be reviewed. If your experiments pose more than minimal risk to human subjects, the proposal must be submitted for review by the full IRB.

What is Minimal Risk?

The DHHS Office for Protection from Research Risks defines Minimal Risk as: "The probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests."

What is Informed Consent?

The informed consent document contains the basic elements of informed consent as identified in and required by the US regulations regarding the protection of human subjects (Code of Federal Regulations, Title 21 Part 50-Protection of Human Subjects). As required by this regulation, the informed consent must be reviewed and approved by an Institutional Review Board.

Who makes up the IRB?

The IRB has members from diverse fields which can include medicine, psychology, education, criminal justice, and biology. Members are drawn from within and outside the Campus community.

On what basis are proposals reviewed?

The human subjects research review is broadly based on three factors. These are: (1) Informed Consent (information, comprehension, and voluntariness of the proposed experiments), (2) Assessment of Risks and Benefits, and (3) Selection of Subjects. All procedures must be fair at both the individual and social level.

Why does the review process sometimes take so long?

Generally, the three different categories of review take different amounts of time. Research falling into the exempt category can be approved by the IRB Chairperson. Some types of other research that are not more than minimal risk can be reviewed by expedited review involving a subset of the IRB. A full board review, however, involves the full board which meets only when necessary. Protocol changes suggested by the full board - unless they are very specific - usually must be brought back to a full board meeting for final approval.

Medaille College

NIH Education Requirement

“Beginning on October 1, 2000, the NIH will require education on the protection of human research participants for all investigators submitting NIH applications for grants or proposals for contracts or receiving new or non-competing awards for research involving human subjects.”

- The National Institutes of Health, 5 June 2000 (rev. 25 August 2000)

The NIH Policy

Recently, the National Institutes of Health (NIH) announced a new policy for all investigators submitting NIH applications for grants or proposals for contracts, or receiving new or non-competing awards for research involving human subjects.

The new policy requires that all “key personnel” in the proposed research be documented by their institution as having completed education on the protection of human research participants. (“Key personnel” is defined by NIH as “all individuals responsible for the design and conduct of the study.”) In addition, NIH announced that the documentation should be in the form of a letter containing (1) names of the key personnel who are responsible for the design and conduct of the study, and (2) title of the education program completed by each named personnel plus a one sentence description of the program. This letter must be signed by an institutional official. *In keeping with NIH's “just-in-time” procedures, NIH will request this letter before an award is issued.*

To comply with this policy, Medaille College faculty, staff, and students will be required to have successfully completed a web-based tutorial with exercises to demonstrate their knowledge of the protection of human subjects used in research.

Educational Resources

Although NIH has not prescribed specific courses or reading material, they have identified a number of available educational resources on human subjects research, and individuals may select the resources that best meet

their needs. However, these resources must be approved by the Medaille College IRB Co-chairs.

There are also a number of web-based tutorials available, including one developed by NIH (<http://cme.nci.nih.gov/>) for its medical researchers. This tutorial consists of five educational modules on the history and conduct of human subjects research, with exercises at the end of each module. Successful completion of all five modules will generate a web-based certificate which can then be printed and submitted to the IRB Co-Chairs as proof of the education requirement. (Note: currently, NIH makes the certificate of completion available only on the day you complete the tutorial. Please be sure to print out a copy for your records; otherwise you will have to register under another username and password combination, then go through the NIH tutorial again.) As Medaille College does not have a medical school, and hence performs little in the area of invasive research on human subjects, we recommend the University of Indiana tutorial (<http://www.iupui.edu/~resgrad/HumanSubjects/HumanSubjectsCourse.html>) for general education on the use of human subjects in research. However, either tutorial is acceptable.

Appendix A

Exemption Categories

(Revised to comply with Federal Common Rule, August 19, 1991)

Please remember that exempt is defined as being exempt from further review and approval beyond the two IRB Co-Chairpersons. It does not mean that your proposed research is exempt from being reviewed.

These exemption categories do not apply to research involving prisoners, fetuses, or pregnant women.

1. Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness or the comparison among instructional techniques, curricula, or classroom management methods.
2. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. This exemption category for research involving survey or interview procedures or observation of public behavior does not apply to research with children, except for research involving observations of public behavior when the investigator(s) does not participate in the activities being observed.
3. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (2) if: (a) the human subjects are elected or appointed public officials or candidates for public office; or (b) the research is conducted for the Department of Justice under Federal statute 42 U.S.C. 3789g, or for the National Center for Education Statistics under Federal statute 20 U.S.C. 12213-1, which provide certain legal protections and requirements for confidentiality.
4. Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.
5. Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible

changes in methods or levels of payment for benefits or services under those programs.

6. Taste and food quality evaluation and consumer acceptance studies, if (a) wholesome foods without additives are consumed or (b) a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the U.S. Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

Appendix B

Expedited Review Procedure Categories

The IRB may use an expedited review procedure in experiments which involve no more than minimal risk to the subjects and in which the only involvement of human subjects will be in one or more of the following categories:

- 1.** Collection of: hair and nail clippings, in a non-disfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction.
- 2.** Collection of excreta and external secretions including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor.
- 3.** Recording of data from subjects 18 years or age or older using non-invasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amount of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).
- 4.** Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects 18 years of age or older and who are in good health and not pregnant.
- 5.** Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.
- 6.** Voice recordings made for research purposes such as investigations of speech defects.
- 7.** Moderate exercise by healthy volunteers.
- 8.** The study of existing data, documents, records, pathological specimens, or diagnostic specimens.
- 9.** Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the research investigator does not manipulate subjects' behavior and the research will not involve stress to subjects.
- 10.** Research on drugs or devices for which an investigational new drug exemption is not required.
- 11.** Any other category specifically added to this list by DHHS and published in the Federal Register.

At Medaille College, all research that involves the use of human subjects requires review and approval by the Institutional Review Board (IRB) prior to the initiation of the research. Each proposal must address the seven (7) criteria listed on the **IRB Initial Application Form**, which is available as either a MS Word Document (contact an IRB Co-chair) or shown in Appendix C.

Normally, if you wish to apply to the IRB for a renewal of a previously approved IRB application, you will be notified directly by the IRB when and how to apply. At such time, you may use the IRB Renewal Application Form (available in either MS Word format or shown in Appendix D). If an application has not been previously reviewed and approved by the IRB, or (in the case of a renewal) has not been received by the renewal date, then the submission is considered an initial application.

After reviewing the exemption categories, if you determine your application meets one of the exempt categories, write the category number(s) on your cover sheet and explain why your proposal is exempt. The exempt category means that the application would not involve further review beyond the IRB Co-Chairpersons; it does NOT mean that the application is exempt from being reviewed and approved by the IRB co-chairs. Thus, your notation of this category is simply a helpful recommendation; the IRB must decide whether a protocol is exempt and by which category.

Please submit four (4) copies of the application. If it is determined by the IRB Co-Chairpersons that the application requires a full board review, you will be notified to forward additional copies to accommodate the number of board members. Please remember that one of the sets of the application must have a cover sheet with original signatures; all sets of the application must have copies of the completed cover sheet attached at the front. Please keep a copy of these documents for your records.

SPECIAL NOTE TO NON-MEDAILLE COLLEGE INVESTIGATORS

Investigators who are not part of the Medaille College community, but who wish to conduct research projects here that use subjects who are faculty, staff, or students on our campus, are required to submit an application to the Medaille College IRB. This includes persons seeking to conduct either written or electronic surveys, interviews, or focus groups, in addition to other types of research activities. We also ask that a faculty member or administrator formally affiliated with Medaille College be identified as an investigator on that application, in addition to the non-Medaille College researcher, and that both investigators sign the application.

Appendix E

[Code of Federal Regulations]
 [Title 45, Volume 1]
 [Revised as of October 1, 2001]
 From the U.S. Government Printing Office via GPO Access
 [CITE: **45CFR46**]

[Page 104-125]

TITLE 45--PUBLIC WELFARE

SUBTITLE A--DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 46--PROTECTION OF HUMAN SUBJECTS

Subpart A--Basic HHS Policy for Protection of Human Research Subjects

Sec.

- 46.101 To what does this policy apply?
- 46.102 Definitions.
- 46.103 Assuring compliance with this policy--research conducted or supported by any Federal Department or Agency.
- 46.104-46.106 [Reserved]
- 46.107 IRB membership.
- 46.108 IRB functions and operations.
- 46.109 IRB review of research.
- 46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
- 46.111 Criteria for IRB approval of research.
- 46.112 Review by institution.
- 46.113 Suspension or termination of IRB approval of research.
- 46.114 Cooperative research.
- 46.115 IRB records.
- 46.116 General requirements for informed consent.
- 46.117 Documentation of informed consent.
- 46.118 Applications and proposals lacking definite plans for involvement of human subjects.
- 46.119 Research undertaken without the intention of involving human subjects.
- 46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
- 46.121 [Reserved]
- 46.122 Use of Federal funds.
- 46.123 Early termination of research support: Evaluation of applications and proposals.
- 46.124 Conditions.

Subpart B--Additional Protections Pertaining to Research, Development, and Related Activities Involving Fetuses, Pregnant Women, and Human In Vitro Fertilization

- 46.201 Applicability.
- 46.202 Purpose.
- 46.203 Definitions.
- 46.204 Ethical Advisory Boards.
- 46.205 Additional duties of the Institutional Review Boards in connection with activities involving fetuses, pregnant women, or human in vitro fertilization.
- 46.206 General limitations.
- 46.207 Activities directed toward pregnant women as subjects.
- 46.208 Activities directed toward fetuses in utero as subjects.
- 46.209 Activities directed toward fetuses ex utero, including nonviable fetuses, as subjects.
- 46.210 Activities involving the dead fetus, fetal material, or the placenta.
- 46.211 Modification or waiver of specific requirements.

Subpart C--Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

- 46.301 Applicability.
- 46.302 Purpose.
- 46.303 Definitions.
- 46.304 Composition of Institutional Review Boards where prisoners are involved.
- 46.305 Additional duties of the Institutional Review Boards where prisoners are involved.
- 46.306 Permitted research involving prisoners.

Subpart D--Additional Protections for Children Involved as Subjects in Research

- 46.401 To what do these regulations apply?
- 46.402 Definitions.
- 46.403 IRB duties.

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- 46.404 Research not involving greater than minimal risk.
- 46.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
- 46.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.
- 46.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.
- 46.408 Requirements for permission by parents or guardians and for assent by children.
- 46.409 Wards.

Authority: 5 U.S.C. 301; 42 U.S.C. 289.

Effective Date Note: At 66 FR 3882, Jan. 17, 2001, the authority for part 46 was revised, effective Mar. 19, 2001. At 66 FR 15352, Mar. 19, 2001, the effective date was delayed until May 18, 2001, and at 66 FR

27599, May 18, 2001, the effective date was further delayed until Nov. 14, 2001. For the convenience of the user, the revised text is set forth as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289(a).

Editorial Note: The Department of Health and Human Services issued a notice of waiver regarding the requirements set forth in part 46, relating to protection of human subjects, as they pertain to demonstration projects, approved under section 1115 of the Social Security Act, which test the use of cost-sharing, such as deductibles, copayment and coinsurance, in the Medicaid program. For further information see 47 FR 9208, Mar. 4, 1982.

Subpart A--Basic HHS Policy for Protection of Human Research Subjects

Authority: 5 U.S.C. 301; 42 U.S.C. 289, 42 U.S.C. 300v-1(b).

Source: 56 FR 28012, 28022, June 18, 1991, unless otherwise noted.

Sec. 46.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in Sec. 46.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in Sec. 46.102(e) must be reviewed and approved, in compliance with Sec. 46.101, Sec. 46.102, and Sec. 46.107 through Sec. 46.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) Information obtained is recorded in such a manner that human

subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic,

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aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign

countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the Federal Register or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research

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Risks, Department of Health and Human Services (HHS), and shall also publish them in the Federal Register or in such other manner as provided in department or agency procedures.\1\

\1\ Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A-D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

[56 FR 28012, 28022, June 18, 1991; 56 FR 29756, June 28, 1991]

Sec. 46.102 Definitions.

(a) Department or agency head means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) Institution means any public or private entity or agency (including federal, state, and other agencies).

(c) Legally authorized representative means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

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

(e) Research subject to regulation, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains

- (1) Data through intervention or interaction with the individual, or
- (2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) IRB means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) IRB approval means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) Minimal risk means that the probability and magnitude of harm or discomfort anticipated in the research are

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not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) Certification means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

Sec. 46.103 Assuring compliance with this policy--research conducted or supported by any Federal Department or Agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. 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 Protection from Research Risks, HHS, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under Sec. 46.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with Sec. 46.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed

changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and

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approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under Sec. 46.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by Sec. 46.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by Sec. 46.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

(Approved by the Office of Management and Budget under control number 9999-0020)

[56 FR 28012, 28022, June 18, 1991; 56 FR 29756, June 28, 1991]

Secs. 46.104--46.106 [Reserved]

Sec. 46.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who

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are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

Sec. 46.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in Sec. 46.103(b)(4) and, to the extent required by, Sec. 46.103(b)(5).

(b) Except when an expedited review procedure is used (see Sec. 46.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

Sec. 46.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with Sec. 46.116. The IRB may require that information, in addition to that specifically mentioned in Sec. 46.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with Sec. 46.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

(Approved by the Office of Management and Budget under control number 9999-0020)

Sec. 46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the Federal Register, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the Federal Register. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

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(b) An IRB may use the expedited review procedure to review either or both of the following:

- (1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,
- (2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research

activity may be disapproved only after review in accordance with the non-expedited procedure set forth in Sec. 46.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

Sec. 46.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) 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 and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by Sec. 46.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by Sec. 46.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

Sec. 46.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

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Sec. 46.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

(Approved by the Office of Management and Budget under control number 9999-0020)

Sec. 46.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

Sec. 46.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in Sec. 46.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in Sec. 46.103(b)(4) and Sec. 46.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by Sec. 46.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a

reasonable manner.

(Approved by the Office of Management and Budget under control number 9999-0020)

Sec. 46.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a 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. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the

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purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(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 practicably 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

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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 9999-0020)

Sec. 46.117 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 Sec. 46.116. 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 Sec. 46.116 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.

(Approved by the Office of Management and Budget under control number 9999-0020)

Sec. 46.118 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 completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under Sec. 46.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has

been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

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Sec. 46.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.

Sec. 46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

Sec. 46.121 [Reserved]

Sec. 46.122 Use of Federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

Sec. 46.123 Early termination of research support: Evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially

failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

Sec. 46.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

Subpart B--Additional Protections Pertaining to Research, Development, and Related Activities Involving Fetuses, Pregnant Women, and Human In Vitro Fertilization

Source: 40 FR 33528, Aug. 8, 1975, unless otherwise noted.

Effective Date Note: At 66 FR 3882, Jan. 17, 2001, subpart B was revised, effective Mar. 19, 2001. At 66 FR 15352, Mar. 19, 2001, the effective date was delayed until May 18, 2001, and at 66 FR 27599, May 18, 2001, the effective date was further delayed until Nov. 14, 2001. For the convenience of the user, subpart B effective Nov. 14, 2001, follows the text of this subpart B.

Sec. 46.201 Applicability.

(a) The regulations in this subpart are applicable to all Department of Health and Human Services grants and contracts supporting research, development, and related activities involving:

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(1) The fetus, (2) pregnant women, and (3) human in vitro fertilization.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will in any way render inapplicable pertinent State or local laws bearing upon activities covered by this subpart.

(c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

Sec. 46.202 Purpose.

It is the purpose of this subpart to provide additional safeguards in reviewing activities to which this subpart is applicable to assure that they conform to appropriate ethical standards and relate to important societal needs.

Sec. 46.203 Definitions.

As used in this subpart:

(a) Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(b) Pregnancy encompasses the period of time from confirmation of implantation (through any of the presumptive signs of pregnancy, such as

missed menses, or by a medically acceptable pregnancy test), until expulsion or extraction of the fetus.

(c) Fetus means the product of conception from the time of implantation (as evidenced by any of the presumptive signs of pregnancy, such as missed menses, or a medically acceptable pregnancy test), until a determination is made, following expulsion or extraction of the fetus, that it is viable.

(d) Viable as it pertains to the fetus means being able, after either spontaneous or induced delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heart beat and respiration. The Secretary may from time to time, taking into account medical advances, publish in the Federal Register guidelines to assist in determining whether a fetus is viable for purposes of this subpart. If a fetus is viable after delivery, it is a premature infant.

(e) Nonviable fetus means a fetus ex utero which, although living, is not viable.

(f) Dead fetus means a fetus ex utero which exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord (if still attached).

(g) In vitro fertilization means any fertilization of human ova which occurs outside the body of a female, either through admixture of donor human sperm and ova or by any other means.

[40 FR 33528, Aug. 8, 1975, as amended at 43 FR 1759, Jan. 11, 1978]

Sec. 46.204 Ethical Advisory Boards.

(a) One or more Ethical Advisory Boards shall be established by the Secretary. Members of these board(s) shall be so selected that the board(s) will be competent to deal with medical, legal, social, ethical, and related issues and may include, for example, research scientists, physicians, psychologists, sociologists, educators, lawyers, and ethicists, as well as representatives of the general public. No board member may be a regular, full-time employee of the Department of Health and Human Services.

(b) At the request of the Secretary, the Ethical Advisory Board shall render advice consistent with the policies and requirements of this part as to ethical issues, involving activities covered by this subpart, raised by individual applications or proposals. In addition, upon request by the Secretary, the Board shall render advice as to classes of applications or proposals and general policies, guidelines, and procedures.

(c) A Board may establish, with the approval of the Secretary, classes of applications or proposals which: (1) Must be submitted to the Board, or (2) need not be submitted to the Board. Where the Board so establishes a class of applications or proposals which must be submitted, no application or proposal within the class may be funded by the Department or any component thereof until the application or proposal has been reviewed by the

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Board and the Board has rendered advice as to its acceptability from an ethical standpoint.

[40 FR 33528, Aug. 8, 1975, as amended at 43 FR 1759, Jan. 11, 1978; 59 FR 28276, June 1, 1994]

Sec. 46.205 Additional duties of the Institutional Review Boards in connection with activities involving fetuses, pregnant women, or human in vitro fertilization.

(a) In addition to the responsibilities prescribed for Institutional Review Boards under Subpart A of this part, the applicant's or offeror's Board shall, with respect to activities covered by this subpart, carry out the following additional duties:

(1) Determine that all aspects of the activity meet the requirements of this subpart;

(2) Determine that adequate consideration has been given to the manner in which potential subjects will be selected, and adequate provision has been made by the applicant or offeror for monitoring the actual informed consent process (e.g., through such mechanisms, when appropriate, as participation by the Institutional Review Board or subject advocates in: (i) Overseeing the actual process by which individual consents required by this subpart are secured either by approving induction of each individual into the activity or verifying, perhaps through sampling, that approved procedures for induction of individuals into the activity are being followed, and (ii) monitoring the progress of the activity and intervening as necessary through such steps as visits to the activity site and continuing evaluation to determine if any unanticipated risks have arisen);

(3) Carry out such other responsibilities as may be assigned by the Secretary.

(b) No award may be issued until the applicant or offeror has certified to the Secretary that the Institutional Review Board has made the determinations required under paragraph (a) of this section and the Secretary has approved these determinations, as provided in Sec. 46.120 of Subpart A of this part.

(c) Applicants or offerors seeking support for activities covered by this subpart must provide for the designation of an Institutional Review Board, subject to approval by the Secretary, where no such Board has been established under Subpart A of this part.

[40 FR 33528, Aug. 8, 1975, as amended at 46 FR 8386, Jan. 26, 1981]

Sec. 46.206 General limitations.

(a) No activity to which this subpart is applicable may be undertaken unless:

(1) Appropriate studies on animals and nonpregnant individuals have been completed;

(2) Except where the purpose of the activity is to meet the health needs of the mother or the particular fetus, the risk to the fetus is minimal and, in all cases, is the least possible risk for achieving the objectives of the activity.

(3) Individuals engaged in the activity will have no part in: (i) Any decisions as to the timing, method, and procedures used to terminate the pregnancy, and (ii) determining the viability of the fetus at the termination of the pregnancy; and

(4) No procedural changes which may cause greater than minimal risk

to the fetus or the pregnant woman will be introduced into the procedure for terminating the pregnancy solely in the interest of the activity.

(b) No inducements, monetary or otherwise, may be offered to terminate pregnancy for purposes of the activity.

[40 FR 33528, Aug. 8, 1975, as amended at 40 FR 51638, Nov. 6, 1975]

Sec. 46.207 Activities directed toward pregnant women as subjects.

(a) No pregnant woman may be involved as a subject in an activity covered by this subpart unless: (1) The purpose of the activity is to meet the health needs of the mother and the fetus will be placed at risk only to the minimum extent necessary to meet such needs, or (2) the risk to the fetus is minimal.

(b) An activity permitted under paragraph (a) of this section may be conducted only if the mother and father are legally competent and have given their informed consent after having been fully informed regarding possible

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impact on the fetus, except that the father's informed consent need not be secured if: (1) The purpose of the activity is to meet the health needs of the mother; (2) his identity or whereabouts cannot reasonably be ascertained; (3) he is not reasonably available; or (4) the pregnancy resulted from rape.

Sec. 46.208 Activities directed toward fetuses in utero as subjects.

(a) No fetus in utero may be involved as a subject in any activity covered by this subpart unless: (1) The purpose of the activity is to meet the health needs of the particular fetus and the fetus will be placed at risk only to the minimum extent necessary to meet such needs, or (2) the risk to the fetus imposed by the research is minimal and the purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means.

(b) An activity permitted under paragraph (a) of this section may be conducted only if the mother and father are legally competent and have given their informed consent, except that the father's consent need not be secured if: (1) His identity or whereabouts cannot reasonably be ascertained, (2) he is not reasonably available, or (3) the pregnancy resulted from rape.

Sec. 46.209 Activities directed toward fetuses ex utero, including nonviable fetuses, as subjects.

(a) Until it has been ascertained whether or not a fetus ex utero is viable, a fetus ex utero may not be involved as a subject in an activity covered by this subpart unless:

(1) There will be no added risk to the fetus resulting from the activity, and the purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means, or

(2) The purpose of the activity is to enhance the possibility of survival of the particular fetus to the point of viability.

(b) No nonviable fetus may be involved as a subject in an activity

covered by this subpart unless:

- (1) Vital functions of the fetus will not be artificially maintained,
 - (2) Experimental activities which of themselves would terminate the heartbeat or respiration of the fetus will not be employed, and
 - (3) The purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means.
- (c) In the event the fetus ex utero is found to be viable, it may be included as a subject in the activity only to the extent permitted by and in accordance with the requirements of other subparts of this part.
- (d) An activity permitted under paragraph (a) or (b) of this section may be conducted only if the mother and father are legally competent and have given their informed consent, except that the father's informed consent need not be secured if: (1) His identity or whereabouts cannot reasonably be ascertained, (2) he is not reasonably available, or (3) the pregnancy resulted from rape.

[40 FR 33528, Aug. 8, 1975, as amended at 43 FR 1759, Jan. 11, 1978]

Sec. 46.210 Activities involving the dead fetus, fetal material, or the placenta.

Activities involving the dead fetus, mascerated fetal material, or cells, tissue, or organs excised from a dead fetus shall be conducted only in accordance with any applicable State or local laws regarding such activities.

Sec. 46.211 Modification or waiver of specific requirements.

Upon the request of an applicant or offeror (with the approval of its Institutional Review Board), the Secretary may modify or waive specific requirements of this subpart, with the approval of the Ethical Advisory Board after such opportunity for public comment as the Ethical Advisory Board considers appropriate in the particular instance. In making such decisions, the Secretary will consider whether the risks to the subject are so outweighed by the sum of the benefit to the subject and the importance of the knowledge to be gained as to warrant such modification or waiver and that such benefits cannot be gained except through a

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modification or waiver. Any such modifications or waivers will be published as notices in the Federal Register.

Effective Date Note: At 66 FR 3882, Jan. 17, 2001, subpart B was revised, effective Mar. 19, 2001. At 66 FR 15352, Mar. 19, 2001, the effective date was delayed until May 18, 2001, and at 66 FR 27599, May 18, 2001, the effective date was further delayed until Nov. 14, 2001. For the convenience of the user, the revised text is set forth as follows:

Subpart B--Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization

Sec. 46.201 To what do these regulations apply?

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving pregnant women or human fetuses, and to all research involving the in vitro fertilization of human ova, conducted or supported by the Department of Health and Human Services (DHHS). This includes all research conducted in DHHS facilities by any person and all research conducted in any facility by DHHS employees.

(b) The exemptions at Sec. 46.101(b)(1) through (6) are applicable to this subpart.

(c) The provisions of Sec. 46.101(c) through (i) are applicable to this subpart. Reference to State or local laws in this subpart and in Sec. 46.101(f) is intended to include the laws of federally recognized American Indian and Alaska Native Tribal Governments.

(d) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

Sec. 46.202 Definitions.

The definitions in Sec. 46.102 shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) Dead fetus means a fetus after delivery that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord. Delivery means complete separation of the fetus from the woman by expulsion or extraction or any other means.

(b) Fetus means the product of conception from implantation until a determination is made after delivery that it is viable.

(c) In vitro fertilization means any fertilization of human ova which occurs outside the body of a female, either through admixture of donor human sperm and ova or by any other means.

(d) Nonviable fetus means a fetus after delivery that, although living, is not viable.

(e) Pregnancy encompasses the period of time from implantation until delivery. A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as missed menses, until the results of a pregnancy test are negative or until delivery.

(f) Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(g) Viable as it pertains to the fetus means being able, after delivery, to survive (given the benefit of available medical therapy) to the point of independently maintaining heartbeat and respiration. The Secretary may from time to time, taking into account medical advances, publish in the Federal Register guidelines to assist in determining whether a fetus is viable for purposes of this subpart. If a fetus after delivery is viable then it is a child as defined by Sec. 46.402(a), and subpart D of this part is applicable.

Sec. 46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and human in vitro fertilization.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart and the other subparts of this part.

Sec. 46.204 Research involving pregnant women or fetuses prior to delivery.

Pregnant women or fetuses prior to delivery may be involved in research if all of the following conditions are met:

(a) Where scientifically appropriate, preclinical studies, including studies on pregnant animals, and clinical studies, including studies on nonpregnant women, have been conducted and provide data for assessing potential risks to pregnant women and fetuses;

(b) The risk to the fetus is not greater than minimal, or any risk to the fetus which is greater than minimal is caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus;

(c) Any risk is the least possible for achieving the objectives of the research;

(d) The woman's consent or the consent of her legally authorized representative is obtained in accord with the informed consent provisions of subpart A of this part, unless altered or waived in accord with Sec. 46.101(i) or Sec. 46.116(c) or (d);

(e) The woman or her legally authorized representative, as appropriate, is fully informed regarding the reasonably foreseeable impact of the research on the fetus or resultant child;

(f) For children as defined in 45 CFR 46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions of subpart D of this part;

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(g) No inducements, monetary or otherwise, will be offered to terminate a pregnancy;

(h) Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy; and

(i) Individuals engaged in the research will have no part in determining the viability of a fetus.

Sec. 46.205 Research involving fetuses after delivery.

(a) After delivery, fetuses may be involved in research if all of the following conditions are met:

(1) Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to fetuses.

(2) The individual(s) providing consent under paragraph (b)(2) or (c)(5) of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or resultant child.

(3) No inducements, monetary or otherwise, will be offered to terminate a pregnancy.

(4) Individuals engaged in the research will have no part in any decisions as to the timing, method, or procedures used to terminate a pregnancy.

(5) Individuals engaged in the research will have no part in determining the viability of a fetus.

(6) The requirements of paragraph (b) or (c) of this section have been met as applicable.

(b) Fetuses of uncertain viability. After delivery, and until it has been ascertained whether or not a fetus is viable, a fetus may not be involved in research covered by this subpart unless the following additional conditions are met:

(1) The IRB determines that:

(i) The research holds out the prospect of enhancing the probability of survival of the particular fetus to the point of viability, and any risk is the least possible for achieving the objectives of the research, or

(ii) The purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means and there will be no risk to the fetus resulting from the research; and

(2) The legally effective informed consent of either parent of the fetus or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's legally authorized representative is obtained in accord with subpart A of this part, unless altered or waived in accord with Sec. 46.101(i) or Sec. 46.116(c) or (d).

(c) Nonviable fetuses. After delivery, a nonviable fetus may not be involved in research covered by this subpart unless all of the following additional conditions are met:

(1) Vital functions of the fetus will not be artificially maintained;

(2) The research will not terminate the heartbeat or respiration of the fetus;

(3) There will be no risk to the fetus resulting from the research;

(4) The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means; and

(5) The legally effective informed consent of both parents of the fetus is obtained in accord with subpart A of this part, except that the waiver and alteration provisions of Sec. 46.116(c) and (d) do not apply. However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable fetus will suffice to meet the requirements of this paragraph. The consent of a legally authorized representative of either or both of the parents of a nonviable fetus will not suffice to meet the requirements of this paragraph.

(d) Viable fetuses. A fetus, after delivery, that has been determined to be viable is a child as defined by Sec. 46.402(a) and may be included in research only to the extent permitted by and in accord with the requirements of subparts A and D of this part.

Sec. 46.206 Research involving, after delivery, the placenta, the dead fetus, or fetal material.

(a) Research involving, after delivery, the placenta; the dead fetus; macerated fetal material; or cells, tissue, or organs excised from a dead fetus, shall be conducted only in accord with any applicable Federal, State, or local laws and regulations regarding such activities.

(b) If information associated with material described in paragraph (a) of this section is recorded for research purposes in a manner that living individuals can be identified, directly or through identifiers linked to those individuals, those individuals are research subjects and all pertinent subparts of this part are applicable.

Sec. 46.207 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of pregnant women or fetuses.

The Secretary will conduct or fund research that the IRB does not believe meets the requirements of Sec. 46.204 only if:

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women or fetuses; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, ethics, law) and following opportunity for public review

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and comment, including a public meeting announced in the Federal Register, has determined either:

(1) That the research in fact satisfies the conditions of Sec. 46.204, as applicable, or

(2) The following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of pregnant women or fetuses;

(ii) The research will be conducted in accord with sound ethical principles; and

(iii) Informed consent will be obtained in accord with the informed consent provisions of subpart A and other applicable subparts of this part, unless altered or waived in accord with Sec. 46.101(i) or Sec. 46.116(c) or (d).

Subpart C--Additional Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects

Source: 43 FR 53655, Nov. 16, 1978, unless otherwise noted.

Sec. 46.301 Applicability.

(a) The regulations in this subpart are applicable to all biomedical and behavioral research conducted or supported by the Department of Health and Human Services involving prisoners as subjects.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will authorize research involving prisoners as subjects, to the extent such research is limited or barred by applicable State or local law.

(c) The requirements of this subpart are in addition to those imposed under the other subparts of this part.

Sec. 46.302 Purpose.

Inasmuch as prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, it is the purpose of this subpart to provide additional safeguards for the protection of prisoners involved in activities to

which this subpart is applicable.

Sec. 46.303 Definitions.

As used in this subpart:

(a) Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom authority has been delegated.

(b) DHHS means the Department of Health and Human Services.

(c) Prisoner means 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.

(d) Minimal risk is the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical, dental, or psychological examination of healthy persons.

Sec. 46.304 Composition of Institutional Review Boards where prisoners are involved.

In addition to satisfying the requirements in Sec. 46.107 of this part, an Institutional Review Board, carrying out responsibilities under this part with respect to research covered by this subpart, shall also meet the following specific requirements:

(a) A majority of the Board (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the Board.

(b) At least one member of the Board shall be a prisoner, or a prisoner representative with appropriate background and experience to serve in that capacity, except that where a particular research project is reviewed by more than one Board only one Board need satisfy this requirement.

[43 FR 53655, Nov. 16, 1978, as amended at 46 FR 8386, Jan. 26, 1981]

Sec. 46.305 Additional duties of the Institutional Review Boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this part, the

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Board shall review research covered by this subpart and approve such research only if it finds that:

(1) The research under review represents one of the categories of research permissible under Sec. 46.306(a)(2);

(2) Any possible advantages accruing to the prisoner through his or her participation in the research, when compared to the general living conditions, medical care, quality of food, amenities and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to weigh the risks of the research against the value of such

advantages in the limited choice environment of the prison is impaired;

(3) The risks involved in the research are commensurate with risks that would be accepted by nonprisoner volunteers;

(4) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners. Unless the principal investigator provides to the Board justification in writing for following some other procedures, control subjects must be selected randomly from the group of available prisoners who meet the characteristics needed for that particular research project;

(5) The information is presented in language which is understandable to the subject population;

(6) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the research in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the research will have no effect on his or her parole; and

(7) Where the Board finds there may be a need for follow-up examination or care of participants after the end of their participation, adequate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The Board shall carry out such other duties as may be assigned by the Secretary.

(c) The institution shall certify to the Secretary, in such form and manner as the Secretary may require, that the duties of the Board under this section have been fulfilled.

Sec. 46.306 Permitted research involving prisoners.

(a) Biomedical or behavioral research conducted or supported by DHHS may involve prisoners as subjects only if:

(1) The institution responsible for the conduct of the research has certified to the Secretary that the Institutional Review Board has approved the research under Sec. 46.305 of this subpart; and

(2) In the judgment of the Secretary the proposed research involves solely the following:

(i) Study of the possible causes, effects, and processes of incarceration, and of criminal behavior, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(ii) Study of prisons as institutional structures or of prisoners as incarcerated persons, provided that the study presents no more than minimal risk and no more than inconvenience to the subjects;

(iii) Research on conditions particularly affecting prisoners as a class (for example, vaccine trials and other research on hepatitis which is much more prevalent in prisons than elsewhere; and research on social and psychological problems such as alcoholism, drug addiction and sexual assaults) provided that the study may proceed only after the Secretary has consulted with appropriate experts including experts in penology medicine and ethics, and published notice, in the Federal Register, of his intent to approve such research; or

(iv) Research on practices, both innovative and accepted, which have the intent and reasonable probability of improving the health or well-being of the subject. In cases in which those studies require the assignment of prisoners in a manner consistent with protocols approved

by the IRB to control groups which may not benefit from the research, the study may proceed only after the Secretary has consulted with appropriate experts, including experts in penology medicine and ethics, and

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published notice, in the Federal Register, of his intent to approve such research.

(b) Except as provided in paragraph (a) of this section, biomedical or behavioral research conducted or supported by DHHS shall not involve prisoners as subjects.

Subpart D--Additional Protections for Children Involved as Subjects in Research

Source: 48 FR 9818, Mar. 8, 1983, unless otherwise noted.

Sec. 46.401 To what do these regulations apply?

(a) This subpart applies to all research involving children as subjects, conducted or supported by the Department of Health and Human Services.

(1) This includes research conducted by Department employees, except that each head of an Operating Division of the Department may adopt such nonsubstantive, procedural modifications as may be appropriate from an administrative standpoint.

(2) It also includes research conducted or supported by the Department of Health and Human Services outside the United States, but in appropriate circumstances, the Secretary may, under paragraph (e) of Sec. 46.101 of Subpart A, waive the applicability of some or all of the requirements of these regulations for research of this type.

(b) Exemptions at Sec. 46.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption at Sec. 46.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at Sec. 46.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

(c) The exceptions, additions, and provisions for waiver as they appear in paragraphs (c) through (i) of Sec. 46.101 of Subpart A are applicable to this subpart.

[48 FR 9818, Mar. 8, 1983; 56 FR 28032, June 18, 1991; 56 FR 29757, June 28, 1991]

Sec. 46.402 Definitions.

The definitions in Sec. 46.102 of Subpart A shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) Children are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

(b) Assent means a child's affirmative agreement to participate in

research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

(c) Permission means the agreement of parent(s) or guardian to the participation of their child or ward in research.

(d) Parent means a child's biological or adoptive parent.

(e) Guardian means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

Sec. 46.403 IRB duties.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart.

Sec. 46.404 Research not involving greater than minimal risk.

HHS will conduct or fund research in which the IRB finds that no greater than minimal risk to children is presented, only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth in Sec. 46.408.

Sec. 46.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit

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for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds that:

(a) The risk is justified by the anticipated benefit to the subjects;

(b) The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

(c) Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in Sec. 46.408.

Sec. 46.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.

HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well-being of the subject, only if the IRB finds that:

(a) The risk represents a minor increase over minimal risk;

(b) The intervention or procedure presents experiences to subjects

that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;

(c) The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition which is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and

(d) Adequate provisions are made for soliciting assent of the children and permission of their parents or guardians, as set forth in Sec. 46.408.

Sec. 46.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

HHS will conduct or fund research that the IRB does not believe meets the requirements of Sec. 46.404, Sec. 46.405, or Sec. 46.406 only if:

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either:

(1) That the research in fact satisfies the conditions of Sec. 46.404, Sec. 46.405, or Sec. 46.406, as applicable, or

(2) The following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;

(ii) The research will be conducted in accordance with sound ethical principles;

(iii) Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in Sec. 46.408.

Sec. 46.408 Requirements for permission by parents or guardians and for assent by children.

(a) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine that adequate provisions are made for soliciting the assent of the children, when in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even

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where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with Sec. 46.116 of Subpart A.

(b) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by Sec. 46.116 of Subpart A, that adequate provisions are made for soliciting the permission of each child's parents or guardian. Where parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under Sec. 46.404 or Sec. 46.405. Where research is covered by Secs. 46.406 and 46.407 and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has legal responsibility for the care and custody of the child.

(c) In addition to the provisions for waiver contained in Sec. 46.116 of Subpart A, if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in Subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with Federal, state or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

(d) Permission by parents or guardians shall be documented in accordance with and to the extent required by Sec. 46.117 of Subpart A.

(e) When the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

Sec. 46.409 Wards.

(a) Children who are wards of the state or any other agency, institution, or entity can be included in research approved under Sec. 46.406 or Sec. 46.407 only if such research is:

- (1) Related to their status as wards; or
- (2) Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

(b) If the research is approved under paragraph (a) of this section, the IRB shall require appointment of an advocate for each child who is a ward, in addition to any other individual acting on behalf of the child as guardian or in loco parentis. One individual may serve as advocate for more than one child. The advocate shall be an individual who has the background and experience to act in, and agrees to act in, the best interests of the child for the duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian organization.

