

## **Supplement to Vulnerable Populations Training, March 10, 2017**

### **Subpart B - Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research**

#### **§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, human fetuses, neonates of uncertain viability, or nonviable neonates 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 §46.101(b)(1) through (6) are applicable to this subpart.

(c) The provisions of §46.101(c) through (i) are applicable to this subpart. Reference to State or local laws in this subpart and in §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.

#### **§46.202 Definitions.**

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

(a) Dead fetus means a fetus that exhibits neither heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles, nor pulsation of the umbilical cord.

(b) Delivery means complete separation of the fetus from the woman by expulsion or extraction or any other means.

(c) Fetus means the product of conception from implantation until delivery.

(d) Neonate means a newborn.

(e) Nonviable neonate means a neonate after delivery that, although living, is not viable.

(f) 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.

(g) 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.

(h) Viable, as it pertains to the neonate, 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 neonate is viable for purposes of this subpart. If a neonate is viable then it may be included in research only to the extent permitted and in accordance with the requirements of subparts A and D of this part.

**§46.203 Duties of IRBs in connection with research involving pregnant women, fetuses, and neonates.**

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.

**§46.204 Research involving pregnant women or fetuses.**

Pregnant women or fetuses 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 caused solely by interventions or procedures that hold out the prospect of direct benefit for the woman or the fetus; or, if there is no such prospect of benefit, the risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge which cannot be obtained by any other means;
- (c) Any risk is the least possible for achieving the objectives of the research;
- (d) If the research holds out the prospect of direct benefit to the pregnant woman, the prospect of a direct benefit both to the pregnant woman and the fetus, or no prospect of benefit for the woman nor the fetus when risk to the fetus is not greater than minimal and the purpose of the research is the development of important biomedical knowledge that cannot be obtained by any other means, her consent is obtained in accord with the informed consent provisions of subpart A of this part;
- (e) If the research holds out the prospect of direct benefit solely to the fetus then the consent of the pregnant woman and the father is obtained in accord with the informed consent provisions of subpart A of this part, except that the father's consent need not be obtained if he is unable to consent because of unavailability, incompetence, or temporary incapacity or the pregnancy resulted from rape or incest.
- (f) Each individual providing consent under paragraph (d) or (e) of this section is fully informed regarding the reasonably foreseeable impact of the research on the fetus or neonate;
- (g) For children as defined in §46.402(a) who are pregnant, assent and permission are obtained in accord with the provisions of subpart D of this part;
- (h) No inducements, monetary or otherwise, will be offered to terminate a pregnancy;
- (i) 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
- (j) Individuals engaged in the research will have no part in determining the viability of a neonate.

**§46.205 Research involving neonates.**

**(a) Neonates of uncertain viability and nonviable neonates 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 neonates.
- (2) Each individual 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 neonate.
- (3) Individuals engaged in the research will have no part in determining the viability of a neonate.
- (4) The requirements of paragraph (b) or (c) of this section have been met as applicable.

**(b) Neonates of uncertain viability. Until it has been ascertained whether or not a neonate is viable, a neonate may not be involved in research covered by this subpart unless the following additional conditions have been met:**

- (1) The IRB determines that:
  - (i) The research holds out the prospect of enhancing the probability of survival of the neonate to the point of viability, and any risk is the least possible for achieving that objective, 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 added risk to the neonate resulting from the research; and
- (2) The legally effective informed consent of either parent of the neonate 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, except that the consent of the father or his legally authorized representative need not be obtained if the pregnancy resulted from rape or incest.

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

- (1) Vital functions of the neonate will not be artificially maintained;
- (2) The research will not terminate the heartbeat or respiration of the neonate;
- (3) There will be no added risk to the neonate 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 neonate is obtained in accord with subpart A of this part, except that the waiver and alteration provisions of §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 neonate will suffice to meet the requirements of this paragraph (c)(5), except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of a legally authorized representative of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph (c)(5).

**(d) Viable neonates. A neonate, after delivery, that has been determined to be viable 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.**

§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.

**§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, fetuses, or neonates.**

The Secretary will conduct or fund research that the IRB does not believe meets the requirements of §46.204 or §46.205 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, fetuses or neonates; 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 and comment, including a public meeting announced in the FEDERAL REGISTER, has determined either:

(1) That the research in fact satisfies the conditions of §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, fetuses or neonates;

(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.

### Conditions for Approval of Research Involving Neonates

Neonates of Uncertain Viability	Nonviable Neonates	Viable Neonates
<ul style="list-style-type: none"><li>• Where scientifically appropriate, prior animal studies and clinical studies conducted and provide data for assessing potential risks to neonates</li><li>• Investigators will have not part in ending the pregnancy or determining the viability of a neonate</li><li>• Until it has been ascertained whether or not a neonate is viable, a neonate may not be involved in research unless the following additional conditions have been met:<ul style="list-style-type: none"><li>• The research holds out prospect of enhancing the probability of survival of the neonate to the point of viability and,</li><li>• Any risk is the least possible for achieving that objective</li><li>• The purpose of the research is the development of important biomedical knowledge which cannot be obtained by other means and</li><li>• There will be no added risk to the</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Vital functions of the neonate will not be artificially maintained;</li><li>• The research will not terminate the heartbeat or respiration of the neonate;</li><li>• There will be no added risk to the neonate resulting from the research</li><li>• The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means.</li></ul>	<ul style="list-style-type: none"><li>• A neonate, after delivery, that has been determined to be viable may be included in research following the requirements for the inclusion of children and minors in research.</li></ul>

neonate resulting from  
the research

## Consent Requirements for Research Involving Neonates

Neonates of Uncertain Viability	Nonviable Neonates	Viable Neonates
<ul style="list-style-type: none"> <li>• The consent form clearly explains the reasonably foreseeable impact of the research on the neonate</li> <li>• Informed consent is obtained from:               <ul style="list-style-type: none"> <li>• Either parent of the neonate or,</li> <li>• If neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, consent is obtained from either parent's legally authorized representative</li> <li>• If the pregnancy resulted from rape or incest, the father's consent or his LAR need not be obtained.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The informed consent of both parents of the neonate will be obtained.</li> <li>• However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent will suffice</li> <li>• If the pregnancy resulted from rape or incest the consent of the father is not needed</li> <li>• The consent of a legal authorized representative of either or both of the parents of a nonviable neonate will not suffice</li> </ul>	<ul style="list-style-type: none"> <li>• The same considerations apply as for research involving minors.</li> </ul>

## **References:**

45 CFR 46 Subparts A: Basic HHS Policy for Protection of Human Research Subjects

45 CFR 46 Subpart B, Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research

45 CFR 46 Subpart D, Additional Protections for Children Involved as Subjects in Research.

NIH Guidance on Informed Consent for Gene Transfer Research: Reproductive Considerations