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Policies and Procedures

Title: Protection of Human Subjects

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Stated are:

- Policy on protection of human subjects of research, 7 CFR Part 1c.
- Applicability of the DIRECTIVE to specific research attributes.
- Functions of Institutional Review Board.
- Functions of Human Studies Review Committee.

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1. ABBREVIATIONS

- AD - Area Director
- ADODR - Authorized Departmental Officer's Designated Representative
- CD - Center Director
- CFR - Code of Federal Regulations
- EPA - Environmental Protection Agency
- FDA - Food and Drug Administration
- FSIS - Food Safety and Inspection Service
- GRAS - Generally Recognized as Safe
- HHS - Department of Health and Human Services
- IRB - Institutional Review Board
- NPS - National Program Staff
- OPRR - Office of Protection from Research Risks

2. FORM

Optional Form 310 - Protection of Human Subjects (Common Federal Rule)
(Local reproduction)

3. DEFINITIONS

Approved Assurance is a document stating how the institution conducting research will meet the requirements of the regulations at 7 CFR Part 1c.103, effective August 19, 1991.

Certification is the notice by the institution to ARS that the IRB has approved the research to be conducted.

Human Subject means a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information.

Minimal Risk is the risk of harm anticipated in the proposed research that is not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination tests.

4. AUTHORITIES

- 7 CFR Part 1c (1-1-92 Edition or subsequent revisions)

- 45 CFR 46, Subpart B, Subpart C, Subpart D

5. POLICY

Safeguarding the rights and welfare of human subjects involved in research activities conducted "in house" is ARS' responsibility. When the research activities are conducted with support made available through ARS, either by grant, contract, or cooperative agreement, ARS requires the protection of human subjects be an accepted responsibility of the institution which receives or is accountable to ARS for the support. Such research, as well as "in house" research, must protect the rights and welfare of the subjects, must assure that risks do not outweigh potential benefits to the subject and the expected value of the knowledge sought, and must assure each person the right of adequate and appropriate informed consent among other protections. In addition, a safe and healthy environment must be provided to the human subjects if they are restricted during the study. In pursuing this policy, ARS will follow 7 CFR 1c effective August 19, 1991, or subsequent revisions, and regulations for the protection of human subjects of the HHS at 45 CFR 46 Subparts B, C, and D (EXHIBIT 1), in accordance with the Federal Policy for Protection of Human Research Subjects. In all research projects covered by this policy, selection of persons or groups for study shall be made without regard to sex, race, color, religion, or national origin, unless these characteristics are factors to be studied.

A formal statement that appropriate safeguards have been taken to protect the individual's rights to privacy is required. The AD retains final judgement as to whether a particular activity is covered by this policy.

6. APPLICABILITY

This policy applies to all research conducted "in house" by ARS or supported in whole or in part by grant, contract or cooperative agreement in which human subjects may be at risk, domestic or foreign.

Research activities in which the only involvement of human subjects will be in categories as stated in 7 CFR 1c.101(b) are exempt from this DIRECTIVE. These include research involving:

- Educational practices or educational tests.
- Surveys or interview procedures.
- Observation of public behavior.

- Collection of existing data, documents, and records.
- Public benefit or service programs
 - (1-5) unless information obtained is recorded in such a manner that individuals can be identified or disclosure of responses could result in risk or damage to the individual.
- Taste and food quality evaluation and consumer acceptance studies

if wholesome foods without additives are consumed, or

if a food is consumed that contains a food ingredient at or below the level found to be safe by the FDA, EPA, or FSIS.

The exempt policy does not apply to taste tests and quality evaluation studies if:

- A food additive is being tested and the test chemical is not:
 - On the FDA's GRAS list.
 - A permitted food additive as tested.
 - Normally found in food at concentrations being tested.
- Pesticide or other chemical residue is present and the acceptable level has not been established by FDA, EPA, or FSIS.

7. REVIEW AND APPROVAL

IRB. Except for categories of research specifically exempt, all research, development or related activities conducted or supported by ARS involving human subjects will be reviewed by an appropriate IRB constituted in accordance with an institution's approved assurance determined in accordance with 7 CFR 1c. This review shall determine that the rights and welfare of the subjects involved are adequately protected, that the risks to an individual are outweighed by the potential benefits to him/her and by the importance of the knowledge to be gained, and that informed consent is to be obtained by methods that are adequate and appropriate, embodying all the elements of informed consent contained in 7 CFR 1c.116-117.

In addition, the IRB must establish a basis for continuing review of the activity. Review must be conducted at least annually.

Human Studies Review Committee. No research project involving human subjects conducted by ARS employees will be carried out unless the proposal undergoes a second level of review by the Human Studies Review Committee appointed by the

Administrator, ARS, following review by a local IRB approved by ARS. The Chairperson of the Committee will be appointed by the Administrator of ARS and will be a physician (M.D.) This committee will:

- Assess the need for human subjects in a proposed study.
- Review proposed research to assure compliance with ARS policy and missions.
- Address ethical issues raised by the proposal.
- Approve/indicate modifications needed for approval, or disapprove proposed research.
- Establish a continuing project review mechanism at fixed intervals or at intervals set by the Committee commensurate with the project's risk.
- Receive and review a timely report on (1) any unanticipated problems that may arise involving risks to subjects or others arising from the study; (2) suspension or termination of local IRB approval; and (3) serious or continuing noncompliance. On the basis of this information, the Chairperson of the Committee will withdraw approval until the local IRB has re-approved and it is satisfied that the problem has been corrected (see Section 8).

Exemptions shall be determined by the AD with concurrence of the Human Studies Review Committee. As a minimum, the concurrence of the IRB Chairperson may be prudent. The IRB Chairperson can, at his/her discretion, get the IRB membership review and concurrence.

8. HUMAN STUDIES REVIEW COMMITTEE MEMBERSHIP

The Human Studies Review Committee shall have at least five members, with varying backgrounds to promote complete and adequate review of research conducted in ARS as stated in 7 CFR 1c.107. The members shall serve staggered terms of 2 years each and may be reappointed to serve up to a total of three terms.

The Committee shall be able to ascertain the acceptability of proposed research in terms of ARS' commitments and regulations, applicable law and standards of professional conduct and practice. The Committee shall include persons knowledgeable of these areas, including:

- Two Doctors of Medicine (at least one from outside ARS).
- A member whose primary concerns are in non-scientific areas, for example: lawyer, ethicist, clergy, etc.

NOTE: The Committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the Committee.

The final decision will be based on a unanimous vote of the full membership of the Committee.

Upon receipt of information regarding an unanticipated problem involving a risk to subject or others, or suspension or termination of local IRB approval, the Chairperson may administratively withdraw approval of the protocol on behalf of the ARS Human Studies Committee. The Chairperson will then convene a meeting of the Review Committee to modify or ratify the Chairperson's decision.

9. PROCEDURES - IN-HOUSE STUDIES

ARS Research Investigator:

- Determine that the proposed study is not exempt and that any collaborating institution has an ARS or HHS assurance that meets the requirements of 7 CFR 1c.103. If a collaborating institution does not have such an assurance, contact the NPS National Program Leader for Human Nutrition for assistance.

Prepare original and the required number of copies of proposed study. Include:

- Project title.
- Hypothesis or rationale for the study.
- Background, justification for the study.
- Probable date or period of the study and all sites where research will be conducted, foreign and domestic.

- Treatments or variables, and detailed plan.
 - Compounds to be tested, toxicity information, levels that give **no** biological effects, sources of information.
 - Known safety or health hazards.
 - Number and characteristics of subjects.
 - Precautions to be taken.
 - Medical supervision planned.
 - Statements to be used to inform the subjects of treatments to be tested, foreseeable risks, and any precaution they should take (informed consent statement).
 - Research investigator's name.
 - Supervisor's approval.
- Submit a copy of proposed study to CD (or AD if not in Center) for approval.

CD

- Inform investigator of approval, modification, or disapproval.
- If approved, send information copy to NPS and copy to AD for the official files.

Research Investigator

- Submit required number of copies of approved proposal for review to an appropriate IRB, constituted in accordance with an approved assurance, that covers the research to be conducted, on file with HHS or ARS.

IRB

- Review proposed study and submit to the investigator a certification of review and approval or disapproval, exemption, etc.

Research Investigator

- Send six copies of proposed study and IRB approved certification (Form 310) to Chairperson of Human Studies Review Committee.

Human Studies Review Committee

- proposed study and Chairperson sends IRB approved certification and the written copy of Human Subjects Review Committee's decision to investigator with copy to CD and AD for files.

10. PROCEDURES - NON-ARS

Process for research conducted with support made available by ARS but not conducted by ARS scientists (extramural) substitute as follows:

Non-ARS

- Determine that the proposed study is not exempt Research and that any collaborating institution has an ARS Investigator or HHS assurance that meets the requirements of 7 CFR 1c.103. If a collaborating institution does not have such an assurance, contact the NPS National Program Leader for Human Nutrition for assistance.

Submit three copies of proposed study as described in 9 to ADODR for approval.

ADODR

- Submit a copy of proposed study to CD (or AD, if not in Center) for approval.

CD

- Inform ADODR of approval, modification, or disapproval.

ADODR

- Inform investigator of approval, modification, or disapproval.
- If approved, send information copy to NPS and copy to AD for the official files.

Research Investigator

- Submit required number of copies of approved proposal for review to an appropriate IRB, constituted in accordance with an approved assurance, that covers the research to be conducted, on file with HHS or ARS.

IRB

- Review proposed study and submit to the investigator a certification of review and approval or disapproval, exemption, etc. The certification must be received before research with human subjects may proceed.

Research Investigator

- Send copy of IRB certification of review to CD Investigator and ADODR.

ADODR

- Send copy of IRB certification of review to AD and NPS for the files.

E. E. FINNEY, JR.
Acting Administrator

Exhibits

- 1 7 CFR 1c, and 45 CFR 46 Subparts B, C, D
- 2 Optional Form 310, Protection of Human Subjects
(Common Federal Rule) (Local reproduction)

Exhibit 1

7 CFR 1c
Revised January 1, 1992
and
45 CFR 46, Subparts B and D
Revised June 18, 1991

Protection of Subjects

Reprinted From the Federal Register and the
Code of Federal Regulations

- 1c.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
- 1c.121 [Reserved]
- 1c.122 Use of Federal funds.
- 1c.123 Early termination Of research sup- port: Evaluation Of applications and proposals.
- 1c.124 Conditions.

PART 1c- PROTECTION OF HUMAN SUBJECTS

Sec

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- 1c.114 Cooperative research.
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7 CFR Subtitle A (1-1-92 Edition)

AUTHORITY: 5 U.S.C. 301: 42 U.S.C. 300v 1(b).

SOURCE: 56 FR 28012, 28018, June 18,1991 unless otherwise noted.

§ 1c.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 subject 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 1c.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 §1c.102(e) must be reviewed and approved, in compliance with §1c.101, 1c.102, and 1c.107 through

1c.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, 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 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

¹Institutions 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

[56 FR 28012, 28018, June 18, 1991; 56 FR 29756, June 28, 1991]

§ 1c.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

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 investigation(s) do not participate in the activities being observed.

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 nonresearch 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. Intention 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.

(l) Minimal risk means that 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.

(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.

§ 1c.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 federal wide 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 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 subject 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 statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-sup-ported or regulated research and need not be applicable to any research exempted or waived under 1c.101 (b) or (l).

(2) Designation of one or more IRB 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, license 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 §1c.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 (l) 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 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 (l) 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 need 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 §1c.101 (b) or (l). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by §1c.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 §1c.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, 28018, June 18, 1991: 56 FR 29756, June 28, 1991]

§§ 1c.104–4c.106 [Reserved]

§ 1c.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote compete 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 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.

§ 1c.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 §1c.103(b)(4) and, to the extent required by, §1c.103(b)(5).

(b) Except when an expedited review procedure is used (see §1c.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.

§ 1c.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 §1c.116. The IRB may require that information, in addition to that specifically mentioned in §1c.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 §1c.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 99990020)

§1c.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.

(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 §1c.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.

§ 1c.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 subject 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 §1c.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by §1c.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.

S 1c.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.

§1c.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.

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§1 c.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.

§1 c.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 §1 c.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in §1 c.103(b)(4) and §1 c.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by §1 c.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.

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§1 c.116 General requirements for informed consent.

Except as provided elsew here 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 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 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 99990020)

§1c.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 §1c.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 alerted; or

(2) A short form written consent document stating that the elements of informed consent required by 1c.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 99990020)

§ 1c.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 1c.101 (b) or (1), 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.

§ 1c.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.

§ 1c.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.

§1c.121 [Reserved]

§ 1c.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.

§ 1c.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 has 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).

§ 1c.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 DHHS Protections Pertaining to Research, Development, and Related Activities Involving Fetuses, Pregnant Women, and Human In Vitro Fertilization

Source: 40 FR 33528, Aug. 8, 1975, 43 FR 1758, January 11, 1978; 43 FR 51559, November 3, 1978.

§ 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: (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.

§ 40.202 Purpose.

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

§ 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 (DHHS) 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 published 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 an 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.

§ 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 Board and the Board has rendered advice as to its

acceptability from an ethical standpoint.

(d) No application or proposal involving human in vitro fertilization may be funded by the Department or any component thereof until the application or proposal has been reviewed by the Ethical Advisory Board and the Board has rendered advice as to its acceptability from an ethical standpoint.

§ 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 §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.

§ 46206 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.

Source: 40 FR 33528, Aug. 8, 1975 as amended at 40 FR 51638, Nov. 6,

1975.

§ 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 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.

§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.

§ 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.

§ 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.

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

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

Source: 43 FR 53655, Nov. 16, 1978.

§ 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

§ 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 un-coerced 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

§ 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.

§ 46304 Composition of Institutional Review Boards where prisoners are involved

In addition to satisfying the requirements in 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

§ 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 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 .

(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

§ 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 § 46.305 of this subpart; and

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

(A) 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;

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

(C) 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

(D) 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 published notice, in the Federal Register, of the 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 DHHS Protections for Children Involved as Subjects In Research.

Source: 48 FR 9818, March 8, 1983 56 FR 28032, June 18, 1991.

§ 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 §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 §46.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption at §46.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at 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 (l) of §46.101 of Subpart A are applicable to this subpart.

§ 46.402 Definitions.

The definitions in §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.

§ 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

§ 46.404 Research not involving greater than minimal risk.

DHHS 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 §46.408.

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

DHHS 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 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 §46.408.

§ 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.

DHHS 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 §46.408.

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

DHHS will conduct or fund research that the IRB does not believe meets the requirements of §46.404, §46.405 or §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 §46.404, §46.405, or §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 §46.408.

§ 44.408 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 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 §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 §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 §46.404 or §46.405. Where research is covered by §46.406 and for §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.

(e) In addition to the provisions for waiver contained in §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 §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.

§ 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 §46.406 or §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.

Exhibit 2

OMB No. 9999-0020
Approved for use through 7/31/94

**Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)**

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(b) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule.

Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency, or the Department of Health and Human Services (HHS) should submit certification of IRB review and approval with each application or proposal unless otherwise advised by the Department or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type <input type="checkbox"/> ORIGINAL <input type="checkbox"/> FOLLOWUP <input type="checkbox"/> EXEMPTION	2. Type of Mechanism <input type="checkbox"/> GRANT <input type="checkbox"/> CONTRACT <input type="checkbox"/> FELLOWSHIP <input type="checkbox"/> COOPERATIVE AGREEMENT <input type="checkbox"/> OTHER: _____	3. Application or Proposal Identification No. (if known)
4. Title of Application or Activity 		5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project (Respond to one of the following)

This Assurance, on file with the Department of Health and Human Services, covers this activity:
 Assurance identification no. M- IRB identification no. _____

This Assurance, on file with (agency/dept) _____, covers this activity.
 Assurance identification no. _____ IRB identification no. _____ (if applicable)

No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

Exemption Status: Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph _____.

7. Certification of IRB Review (Respond to one of the following IF you have an Assurance on file)

This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations or subparts on (date) _____ by: Full IRB Review or Expedited Review.

This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.		10. Name and Address of Institution 	
11. Phone No. (with area code)	12. Fax No. (with area code)		
13. Name of Official		14. Title	
15. Signature		16. Date	