**GUIDE 629 – Research Involving Vulnerable Populations**

Additional safeguards shall be provided for subjects who may be considered vulnerable to coercion or undue influence because of their age, health, employment, financial status, or other circumstances.

**Research Involving Pregnant Women, Fetuses, Neonates**, each of the four following conditions has their own requirements and IRB determinations:

1. **Research Involving Pregnant Women or Fetuses.** No pregnant women may be involved as a research participant unless either of the following conditions are met[[1]](#footnote-1):
   1. 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;
   2. The risk to the fetus is caused solely by interventions or procedures that hold out the prospect of direct benefit to 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 to develop important biomedical knowledge which cannot be obtained by any other means;
   3. Any risk is the least possible for achieving the objectives of the research;
   4. The pregnant woman's consent is obtained in accordance with the informed consent provisions of subpart A of 45 C.F.R. part 46 if the research holds out:
      1. the prospect of direct benefit to the pregnant woman,
      2. the prospect of direct benefit to both the pregnant woman and the fetus, or
      3. no prospect of benefit to the woman nor the fetus when risk to the fetus is not greater than minimal and the purpose of the research is to develop important biomedical knowledge that cannot be obtained by any other means;
   5. If the research holds out the prospect of direct benefit solely to the fetus, the consent of the pregnant woman and the father is obtained in accordance with the informed consent provisions of subpart A of 45 C.F.R. part 46, 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;
   6. Each individual providing consent under paragraph (d) or (e) above is fully informed of the reasonably foreseeable impact of the research on the fetus or neonate; and
   7. For children who are pregnant, assent and permission are obtained in accordance with the provisions of subpart D of 45 C.F.R. part 46.
2. **Neonates of uncertain viability and nonviable neonates** may be involved in research provided that[[2]](#footnote-2)**:**
   * 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) below is fully informed of 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; and
     4. The requirements of paragraph (i) or (ii until ) below have been met as applicable.
        1. **Neonates of Uncertain Viability**. Until it has been ascertained whether a neonate is viable, a neonate may be involved in research provided that:
           1. 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
           2. The purpose of the research is to develop 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
           3. 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 LAR is obtained in accordance with subpart A of 45 C.F.R. part 46, except that the consent of the father or his LAR need not be obtained if the pregnancy resulted from rape or incest.

**(ii) Nonviable neonates**. After delivery, nonviable neonate may be involved in research provided that

* 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 to develop 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 accordance with subpart A of 45 C.F.R. part 46, 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, except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of an LAR of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph.

1. **Viable neonates**. A neonate, after delivery, that has been determined to be viable is considered a “child” and may be included in research only to the extent permitted by and in accordance with the requirements of subparts A and D of 45 C.F.R. part 46.

**Research Involving the Placenta, the Dead Fetus, or Fetal Material**

If research involves, after delivery, the placenta, the dead fetus, or fetal material, the research must meet the following requirements[[3]](#footnote-3):

* 1. Research involving, after delivery, the placenta; the dead fetus; macerated fetal material; or cells, tissue, or organs excised from a dead fetus, must be conducted only in accordance with any applicable federal, state,[[4]](#footnote-4) or local laws and regulations regarding those activities.
  2. If information associated with material described in paragraph (a) 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 45 C.F.R. part 46 are applicable.

**Notes:**

1. **Hawai’i law.** Hawai’i does not have specific laws on fetal research.
2. **Federal law on Research of Transplantation of Human Fetal Tissue.** Under section 498A of the Public Health Services Act, HHS may conduct or support research on the transplantation of human fetal tissue for therapeutic purposes, regardless of whether the tissue is obtained pursuant to a spontaneous or induced abortion, or a stillbirth. [[5]](#footnote-5) Again the research must comply with applicable state law. [[6]](#footnote-6)

**Research Not Otherwise Approvable but Presents Opportunity to Understand, Prevent, or Alleviate a Serious Problem Affecting Health or Welfare of Pregnant Women, Fetuses, or Neonates**

If the IRB does not believe that a study meets the requirements under 45 C.F.R. §§ 46.204 or 46.205 on research involving pregnant women, fetuses, or neonates, the HHS Secretary may fund the research only if:

* 1. 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
  2. The Secretary, after consultation with a panel of experts in pertinent disciplines (e.g., science, medicine, ethics, and law) and following an opportunity for public review and comment, including a public meeting announced in the Federal Register, has determined:
     + 1. That the research in fact satisfies the applicable conditions of § 46.204 for research involving pregnant women or fetuses; or
       2. The following:
     1. 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;
     2. The research will be conducted in accordance with sound ethical principles; and
     3. Informed consent will be obtained in accordance with the informed consent provisions of subpart A and other applicable subparts of 45 C.F.R. part 46.[[7]](#footnote-7)

**Research Involving Prisoners**

DHHS 45 CFR 46 Subpart C applies, but note:

All prisoner research must be reviewed and approved at a convened IRB meeting, including research which meets the criteria for exemption.

1. Epidemiological research is allowable, if the research:

Describes the prevalence or incidence of a disease by identifying all cases or studies potential risk factor associations for a disease;

Presents no more than minimal risk;

Presents no more than an inconvenience to the human subject;

Does not focus particularly on prisoners.

1. **Detainees and POWs:** Research involving prisoners of war (POW) and detainees is prohibited.
2. DoD Directive 3216.02, 7
3. ECNAVINST 3900.39D, para. 6a(3), para. 6a(6), para. 6a(8)
4. 10 USC 980

1. 45 C.F.R. § 46.204. [↑](#footnote-ref-1)
2. 45 C.F.R. § 46.205. [↑](#footnote-ref-2)
3. 45 C.F.R. § 46.206. [↑](#footnote-ref-3)
4. "State" here means the state where research is conducted, not necessarily the State of Hawaii. [↑](#footnote-ref-4)
5. 42 U.S.C. § 289g-1(a) (2010). [↑](#footnote-ref-5)
6. 42 U.S.C. § 289g-1(e); see supra note 129 for the note on "state." [↑](#footnote-ref-6)
7. 45 C.F.R. § 46.207. [↑](#footnote-ref-7)