

§ 46.205 Research involving neonates.

(a) Neonates of uncertain viability and nonviable neonates may be involved in research if all of the following conditions are met:

- (1) Where scientifically appropriate, preclinical and clinical studies have been conducted and provide data for assessing potential risks to neonates.
- (2) Each individual providing consent under paragraph (b)(2) or (c)(5) of this section is fully informed regarding the reasonably foreseeable impact of the research on the neonate.
- (3) Individuals engaged in the research will have no part in determining the viability of a neonate.
- (4) The requirements of paragraph (b) or (c) of this section have been met as applicable.

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

(1) The IRB determines that:

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

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

(2) The legally effective informed consent of either parent of the neonate or, if neither parent is able to consent because of unavailability, incompetence, or temporary incapacity, the legally effective informed consent of either parent's legally authorized representative is obtained in accord with the pre-2018 Requirements or the 2018 Requirements, as applicable, except that the consent of the father or his legally authorized representative need not be obtained if the pregnancy resulted from rape or incest.

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

- (1) Vital functions of the neonate will not be artificially maintained;
- (2) The research will not terminate the heartbeat or respiration of the neonate;
- (3) There will be no added risk to the neonate resulting from the research;
- (4) The purpose of the research is the development of important biomedical knowledge that cannot be obtained by other means; and
- (5) The legally effective informed consent of both parents of the neonate is obtained in accord with the pre-2018 Requirements or the 2018 Requirements, as applicable, except that the waiver

and alteration provisions of § 46.116 of the pre-2018 Requirements or the 2018 Requirements do not apply. However, if either parent is unable to consent because of unavailability, incompetence, or temporary incapacity, the informed consent of one parent of a nonviable neonate will suffice to meet the requirements of this paragraph (c)(5), except that the consent of the father need not be obtained if the pregnancy resulted from rape or incest. The consent of a legally authorized representative of either or both of the parents of a nonviable neonate will not suffice to meet the requirements of this paragraph (c)(5).

(d) *Viable neonates*. A neonate, after delivery, that has been determined to be viable may be included in the research only to the extent permitted by and in accord with the requirements of the pre-2018 Requirements or the 2018 Requirements, as applicable, and subpart D of this part.

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