

# **Appendixes**

# Code of Federal Regulations, Part 46, Subpart A: Basic Policy for Protection of Human Research Subjects, Department of Health and Human Services

---

Reprinted below is Subpart A of the Department of Health and Human Services' regulations concerning basic protection of human research subjects. Other subparts, which are not reprinted here, address research involving fetuses, pregnant women, human in vitro fertilization, prisoners, and children.

- 46.101 To what do these regulations apply?
- 46.102 Definitions
- 46.103 Assurances
- 46.104-46.106 Reserved
- 46.108 IRB functions and operations
- 46.109 IRB review of research
- 46.110 Expedited review procedures for certain research
- 46.111 Criteria for IRB approval of research
- 46.112 Review by institution
- 46.113 Suspension or termination of IRB approval of research
- 46.114 Cooperative research
- 46.115 IRB records
- 46.116 General requirements for informed consent
- 46.117 Documentation of informed consent
- 46.118 Applications and proposals lacking definite plans
- 46.119 Research undertaken without intention of involving humans
- 46.120 Evaluation and disposition of applications and proposals
- 46.121 Investigational new drug or device 30 day delay requirement
- 46.122 Use of Federal funds
- 46.123 Early termination of research funding
- 46.124 Conditions

**546.101 To what do these regulations apply?**

(a) Except as provided in paragraph (b) of this section, this subpart applies to all research involving human subjects conducted by the Department of Health and Human Services or funded in whole or in part by

a Department grant, contract, cooperative agreement or fellowship.

(1) This includes research conducted by Department employees, except each Principal Operating Component head may adopt such nonsubstantive, procedural modification as may be appropriate from an administrative standpoint.

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

(b) Research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from these regulations unless the research is covered by other subparts of this part:

(1) Research conducted in established or commonly accepted 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), if information taken from these sources is recorded in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(3) Research involving survey or interview procedures, except where all of the following conditions exist: (i) Responses are recorded in such a manner that the human subjects can be identified, directly or through identifiers linked to the subjects; (ii) the subject's responses, if they became known outside the research, could reasonably place the subject at risk of criminal or civil liability

or be damaging to the subject's financial standing or employability; and (iii) the research deals with sensitive aspects of the subject's own behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol. All research involving survey or interview procedures is exempt, with exception, when the respondents are elected or appointed public officials or candidates for public office.

(4) Research involving the observation (including observation by participants) of public behavior, except where all of the following conditions exist: (i) observations are recorded in such a manner that the human subjects can be identified, directly or through identifiers linked to the subjects; (ii) The observations recorded about the individual, if they became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability; and (iii) The research deals with sensitive aspects of the subject's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

(5) 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.

(6) Unless specifically required by statute (and except to the extent specified in paragraph (i)), research and demonstration projects which are conducted by or subject to the approval of the Department of Health and Human Services, and which are designed to study, evaluate, or otherwise examine: (i) Programs under the Social Security Act, or other 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.

(c) The Secretary has final authority to determine whether a particular activity is covered by these regulations.

(d) The Secretary may require that specific research activities conducted or funded by the Department, but not otherwise covered by these regulations, comply with some or all of these regulations.

(e) The Secretary may also waive applicability of these regulations to specific research activities or classes of research activities, otherwise covered by these regulations. Notices of these actions will be published in the *Federal Register* as they occur.

(f) **No** individual may receive Department funding for research covered by these regulations unless the individual is affiliated with or sponsored by an institution which assumes responsibility for the research under an assurance satisfying the requirements of this part, or the individual makes other arrangements with the Department.

(g) Compliance with these regulations will in no way render inapplicable pertinent Federal, state, or local laws or regulations.

(h) Each subpart of these regulations contains a separate section describing to what the subpart applies. Research which is covered by more than one subpart shall comply with all applicable subparts.

(i) If, following review of proposed research activities that are exempt from these regulations under paragraph (b)(6), the Secretary determines that a research or demonstration project presents a danger to the physical, mental, or emotional well-being of a participant or subject of the research or demonstration project, then Federal funds may not be expended for **such a project without the written, informed consent of each participant or subject.**

[46 FR 8386, Jan. 26, 1981; 46 FR 19195, Mar. 27, 1981, as amended at 48 FR 9269, Mar. 4, 1983]

#### 46.102 Definitions

(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) "Department" or "HHS" means the Department of Health and Human Services.

(c) "Institution" means any public or private entity or agency (including Federal, state, and other agencies).

(d) "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 participation in the procedures) involved in the research.

(e) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute "research" for purposes of these regulations, whether or not they are supported or funded under a program which is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

(f) "Human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. "Intervention" includes both physical procedures by which data are

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

(g) "Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or test.

(h) "Certification" means the official notification by the institution to the Department in accordance with the requirements of this part that a research project or activity involving human subjects has been reviewed and approved by the Institutional Review Board (IRB) in accordance with the approved assurance on file at HHS. (Certification is required when the research is funded by the Department and not otherwise exempt in accordance with §46.101 (b)).

[46 FR 8386, Jan. 26, 1981; 46 FR 19195, Mar. 27, 1981]

#### 46.103 Assurances

(a) Each institution engaged in research covered by these regulations shall provide written assurance satisfactory to the Secretary that it will comply with the requirements set forth in these regulations.

(b) The Department will conduct or fund research covered by these regulations only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the Secretary 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. This assurance shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of source of funding. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This re-

quirement does not preempt provisions of these regulations applicable to Department-funded research and is not applicable to any research in an exempt category listed in §46.101.

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

(3) A list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the Secretary.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; (iii) for insuring prompt reporting to the IRB of proposed changes in a research activity, and for insuring that 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 where necessary to eliminate apparent immediate hazards to the subject; and (iv) for insuring prompt reporting to the IRB and to the Secretary of unanticipated problems involving risks to subjects or others.

(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 these regulations, and shall be filed in such form and manner as the Secretary may prescribe.

(d) The Secretary will evaluate all assurances submitted in accordance with these regulations through such officers and employees of the Department and such experts or consultants engaged for this purpose as the Secretary determines to be appropriate. The Secretary'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 Secretary may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The Secretary may limit the period during which any particular approved assurance shall remain effective or otherwise condition or restrict approval.

(f) Within 60 days after the date of submission to HHS of an application or proposal, an institution with an approved assurance covering the proposed research shall certify that the application or proposal has been approved by the IRB within 30 days after receipt of a request for such a certification from the Department. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

#### **46.104-46.106 [Reserved]**

(b) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members' backgrounds including consideration of the racial and cultural backgrounds of members 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, including but not limited to subjects covered by other subparts of this part, the IRB shall include one or more individuals who are primarily concerned with the welfare of these subjects.

(b) No IRB may consist entirely of men or entirely of women, or entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in nonscientific areas; for example: lawyers, ethicists, members of the clergy.

(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 participating 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 complex issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

#### **46.108 IRB functions and operations**

In order to fulfill the requirements of these regulations each IRB shall:

(a) Follow written procedures as provided in 46.103(b)(4).

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

(c) Be responsible for reporting to the appropriate institutional officials and the Secretary any serious or continuing noncompliance by investigators with the requirements and determinations of the IRB.

[46 FR 8386, Jan. 26, 1981; 46 FR 19195, Mar. 27, 1981]

#### **§46.109 IRB review of research**

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

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

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

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

(e) An IRB shall conduct continuing review of research covered by these regulations 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.

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

(a) The Secretary has established, and published 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, through periodic republication in the *Federal Register*.

(b) An IRB may review some or all of the research appearing on the list through an expedited review procedure, if the research involves no more than minimal risk. The IRB may also use the expedited review procedure to review minor changes in previously approved research during the period 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 §46.108(b).

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

(d) The Secretary may restrict, suspend, or terminate an institution's or IRBs use of the expedited review procedure when necessary to protect the rights or welfare of subjects.

**546.111 Criteria for IRB approval of research**

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

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

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

of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted.

(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 46.116.

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

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

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

(b) Where some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as persons with acute or severe physical or mental illness, or persons who are economically or educationally disadvantaged, appropriate additional safeguards have been included in the study to protect the rights and welfare of these subjects.

**46.112 Review by institution**

Research covered by these regulations 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.

**546.113 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 IRBs 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 IRBs action and shall be reported promptly to the investigator, appropriate institutional officials, and the Secretary. [46 FR 8386, Jan. 26, 1981; 46 FR 19195, Mar. 27, 1981]

**46.114 Cooperative research**

Cooperative research projects are those projects, normally supported through grants, contracts, or similar arrangements, which involve institutions in addition to the grantee or prime contractor (such as a contractor with the grantee, or a subcontractor with the prime contractor). In such instances, the grantee or prime contractor remains responsible to the Depart-

ment for safeguarding the rights and welfare of human subjects. Also, when cooperating institutions conduct some or all of the research involving some or all of these subjects, each cooperating institution shall comply with these regulations as though it received funds for its participation in the project directly from the Department, except that in complying with these regulations institutions may use joint review, reliance upon the review of another qualified IRB, or similar arrangements aimed at avoidance of duplication of effort.

#### 46.115 IRB records

(a) An institution, or where 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 of 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 as required by §46.103(b)(3).

(6) Written procedures for the IRB as required by §46.103(b)(4).

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

(b) The records required by this regulation shall be retained for at least 3 years after completion of the research, and the records shall be accessible for inspection and copying by authorized representatives of the Department at reasonable times and in a reasonable manner.

[46 FR 8386 Jan. 26, 1981; 46 FR 19195, Mar. 27, 1981]

#### 546.115 General requirements for informed consent

Except as provided elsewhere in this or other subparts, no investigator may involve a human being as a subject in research covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject 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) Programs under the Social Security Act, or other 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; 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 above, or waive the requirements to obtain informed consent provided the IRB finds 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 these regulations 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 these regulations is intended to limit the authority of a physician to provide emergency med-

ical care, to the extent the physician is permitted to do so under applicable Federal, state, or local law. [46 FR 8386, Jan. 26, 1981; 46 FR 29883, June 3, 1981, as amended at 48 FR 9270, Mar. 4, 1983]

#### 546.117 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 46.116. This form may be read to the subject or the subject legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A "short form" written consent document stating that the elements of informed consent required by 46.116 have been presented orally to the subject or the subject 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 where the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.**

**546. I 18 Applications and proposals lacking definite plans for involvement of human subjects**

Certain types of applications for grants, cooperative agreements, or contracts are submitted to the Department with the knowledge that subjects may be involved within the period of funding, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants (including bloc grants) where selection of specific projects is the institution's responsibility; research training grants where 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 described in 46.101(b), 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 these regulations, and certification submitted to the Department.

**§46.119 Research undertaken without the intention of involving human subjects**

In the event research (conducted or funded by the Department) is undertaken without the intention of involving human subjects, but it is later proposed to use human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in these regulations, a certification submitted to the Department, and final approval given to the proposed change by the Department.

**§46.120 Evaluation and disposition of applications and proposals**

(a) The Secretary will evaluate all applications and proposals involving human subjects submitted to the Department through such officers and employees of the Department and such experts and consultants as the Secretary 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 proposed research to the subjects and others, and the importance of the knowledge to be gained.

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

**§46.121 Investigational new drug or device 30-day delay requirement**

When an institution is required to prepare or to submit a certification with an application or proposal under these regulations, and the application or proposal involves an investigational new drug (within the meaning of 21 U.S.C. 355(i) or 357(d)) or a significant risk

device (as defined in 21 CFR 812.3(m)), the institution shall identify the drug or device in the certification. The institution shall also state whether the 30-day interval required for investigational new drugs by 21 CFR 312.1(a) and for significant risk devices by 21 CFR 812.30 has elapsed, or whether the Food and Drug Administration has requested that the sponsor continue to withhold or restrict the use of the drug or device in human subjects. If the 30 day interval has not expired, and a waiver has not been received, the institution shall send a statement to the Department upon expiration of the interval. The Department will not consider a certification acceptable until the institution has submitted a statement that the 30 day interval has elapsed, and the Food and Drug Administration has not requested it to limit the use of the drug or device, or that the Food and Drug Administration has waived the 30-day interval.

**46.122 Use of Federal funds**

Federal funds administered by the Department may not be expended for research involving human subjects unless the requirements of these regulations, including all subparts of these regulations, have been satisfied.

**46.123 Early termination of research funding: evaluation of subsequent applications and proposals**

(a) The Secretary may require that Department funding for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the Secretary finds an institution has materially failed to comply with the terms of these regulations.

(b) In making decisions about funding applications or proposals covered by these regulations, the Secretary 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 who would direct the scientific and technical aspects of an activity has in the judgment of the Secretary materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not Department funds were involved).

**§46.124 Conditions**

With respect to any research project or any class of research projects the Secretary may impose additional conditions prior to or at the time of funding when in the Secretary's judgment additional conditions are necessary for the protection of human subjects.