

# Rules and Regulations

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 5 CFR Part 5502

RIN 3209-AA15

### Supplemental Financial Disclosure Requirements for Employees of the Department of Health and Human Services

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule extends the due date for NIH employees to file a report of prohibited financial interests held on or acquired after February 3, 2005. The reports are now due no earlier than October 3, 2005.

**DATES:** This interim final rule is effective June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Edgar M. Swindell, Associate General Counsel, Office of the General Counsel, Ethics Division, Department of Health and Human Services, telephone (202) 690-7258, fax (202) 205-9752.

**SUPPLEMENTARY INFORMATION:** The Executive Branch Financial Disclosure Regulation, 5 CFR part 2634, prescribes rules governing the public and confidential financial disclosure systems established under the Ethics in Government Act. With the approval of the Office of Government Ethics, an agency may supplement those regulations pursuant to 5 CFR 2634.103. In an interim final rule published at 70 FR 5543 on February 3, 2005, HHS added a new part 5502 to title 5. Among other provisions, NIH employees on duty as of the effective date of the interim final rule were required by § 5502.106(c)(3) to report in writing within 60 days after the effective date any financial interest prohibited by 5 CFR 5501.110 that was held on the effective date.

The specified report was due initially on April 4, 2005. The Designated Agency Ethics Official extended the deadline to July 5, 2005, the maximum 90 day period provided under § 5502.105. In response to comments submitted following the publication of the interim final rule, the Department is considering issuing revisions to the HHS supplemental ethics regulations, including part 5502. To allow time for any revisions to be fairly considered, the current reporting date must be deferred. Accordingly, § 5502.106(c)(3) is amended to specify a new due date, October 3, 2005.

For those new entrant or reassigned employees who enter on duty at the NIH after February 3, 2005, and before September 4, 2005, or for incumbent employees who acquire a prohibited financial interest during this period, the due date for the report is also changed to October 3, 2005.

Pursuant to 5 CFR 5501.110(g), the due date for the report determines the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under 5 CFR 5501.110(c) and (d). As a consequence, the new deadline for any required divestitures will be January 2, 2006.

Section 5502.105 is amended to allow the Designated Agency Ethics Official, for good cause, to extend reporting deadlines for reports required under part 5502 during the initial implementation phase for any reporting requirement, without regard to the 90 day maximum specified in the interim final rule.

### Administrative Procedure Act

Because this interim final rule involves only a procedural matter and extends a financial disclosure reporting deadline applicable to agency personnel, it is exempt under 5 U.S.C. 553(a)(2) and 553(b) from the requirement for notice and comment rulemaking. The deferral of the reporting requirement relieves restrictions under current law and thus is effective upon publication pursuant to 5 U.S.C. 553(d)(1).

### Regulatory Flexibility Act

This interim final rule will not have a significant economic impact on a substantial number of small entities because the rule amends a personnel provision affecting only HHS employees.

### Paperwork Reduction Act

This interim final rule does not prescribe information collection requirements that are subject to approval by the Office of Management and Budget.

### Congressional Review Act

As a provision related to agency personnel, this rulemaking is not a rule as defined in 5 U.S.C. 804, and does not require review by Congress.

### Executive Orders 12866 and 12988

Because this rule relates to HHS personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

### List of Subjects 5 CFR Part 5502

Conflict of interests, Ethics, Government employees, Reporting and recordkeeping requirements.

Dated: June 10, 2005.

**Edgar M. Swindell,**

*Designated Agency Ethics Official,  
Department of Health and Human Services.*

Dated: June 22, 2005.

**Michael O. Leavitt,**

*Secretary, Department of Health and Human Services.*

Approved: June 22, 2005.

**Marilyn L. Glynn,**

*Acting Director, Office of Government Ethics.*

■ For the reasons discussed in the preamble, the Department of Health and Human Services, with the concurrence of the Office of Government Ethics, amends 5 CFR part 5502 as follows:

### Title 5—[Amended]

### Chapter XLV—Department of Health and Human Services

### PART 5502—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. The authority citation for part 5502 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

■ 2. Revise § 5502.105 to read as follows:

**§ 5502.105 Agency procedures.**

(a) The designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) of this chapter may prescribe procedures for the submission and review of each report filed under this part. These procedures may provide for filing extensions, for good cause shown, totaling not more than 90 days.

(b) For good cause, the designated agency ethics official may extend the reporting deadlines for reports required under this part during the initial implementation phase for any reporting requirement, without regard to the 90 day maximum specified in paragraph (a) of this section.

■ 3. Amend § 5502.106 by revising paragraph (c) to read as follows:

**§ 5502.106 Supplemental disclosure of prohibited financial interests applicable to employees of the Food and Drug Administration and the National Institutes of Health.**

\* \* \* \* \*

(c) *Report of prohibited financial interests.*—(1) *New entrant employees.* A new FDA employee, other than a public filer or a confidential filer, shall report in writing within 30 days after entering on duty with the FDA any prohibited financial interest held upon commencement of employment with the agency. A new NIH employee, other than a public filer or a confidential filer, who enters on duty at the NIH after February 3, 2005, and before September 4, 2005, shall report in writing on or before October 3, 2005, any prohibited financial interest held upon commencement of employment with the agency. A new NIH employee, other than a public filer or a confidential filer, who enters on duty at the NIH on or after September 4, 2005, shall report in writing within 30 days after entering on duty with the NIH any prohibited financial interest held upon commencement of employment with the agency.

(2) *Reassigned employees.* An employee of a separate agency component other than the FDA or of the remainder of HHS who is reassigned to a position at the FDA shall report in writing within 30 days of entering on duty with the FDA any prohibited financial interest held on the effective date of the reassignment to the agency. An employee of a separate agency component other than the NIH or of the remainder of HHS who is reassigned to a position at the NIH after February 3, 2005, and before September 4, 2005, shall report in writing on or before

October 3, 2005, any prohibited financial interest held on the effective date of the reassignment to the agency. An employee of a separate agency component other than the NIH or of the remainder of HHS who is reassigned to a position at the NIH on or after September 4, 2005, shall report in writing within 30 days of entering on duty with the NIH any prohibited financial interest held on the effective date of the reassignment to the agency.

(3) *Incumbent employees.* An incumbent employee of the FDA who acquires any prohibited financial interest shall report such interest in writing within 30 days after acquiring the financial interest. An incumbent employee of the NIH who acquires any prohibited financial interest after February 3, 2005, and before September 4, 2005, shall report such interest in writing on or before October 3, 2005. An incumbent employee of the NIH who acquires any prohibited financial interest on or after September 4, 2005, shall report such interest in writing within 30 days after acquiring the financial interest. An incumbent employee on duty at the NIH on February 3, 2005, shall report in writing on or before October 3, 2005, any prohibited financial interest held on February 3, 2005.

[FR Doc. 05-12733 Filed 6-23-05; 5 pm]

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## DEPARTMENT OF ENERGY

### 10 CFR Parts 600 and 733

### 48 CFR Parts 935, 952 and 970

RIN 1901-AA89

### Policy on Research Misconduct

**AGENCY:** Department of Energy.

**ACTION:** Notice of interim final rulemaking and opportunity for comment.

**SUMMARY:** The Department of Energy (DOE) is publishing an interim final general statement of policy and interim final financial assistance and procurement requirements to implement the government-wide Federal Policy on Research Misconduct. These interim final rules are designed to protect the integrity of research and development funded by DOE.

**DATES:** The effective date is July 28, 2005. Written comments must be received on or before the close of business August 29, 2005.

**ADDRESSES:** Comments (5 copies) should be addressed to: Christine Chalk, SC-5,

U.S. Department of Energy, Office of Science, Room 3H-051, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Christine Chalk at 202-586-7203 (*Christine.Chalk@science.doe.gov*).

### SUPPLEMENTARY INFORMATION:

I. Background.

II. Discussion of the General Statement of Policy and Standard Requirements.

III. Public Comment Procedures.

IV. Procedural Review Requirements.

A. Review Under Executive Order 12866.

B. Review Under Executive Order 12988.

C. Review Under the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act.

F. Review Under Executive Order 13132.

G. Review Under The Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999.

I. Review Under the Treasury And General Government Appropriations Act, 2001.

J. Review Under the Small Business Regulatory Enforcement Fairness Act.

### I. Background

In 1996, the White House Office of Science and Technology Policy (OSTP) began the process of formulating a uniform government-wide Federal policy on research misconduct. OSTP published a proposed policy on research misconduct in the **Federal Register** at 64 FR 55722, October 14, 1999, and published the final policy at 65 FR 76260, December 6, 2000 (Federal Policy). The Federal Policy is available on the Office of Science Web site at <http://www.sc.doe.gov/misconduct/finalpolicy.pdf>.

The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged. This rule implements the Federal Policy for DOE including the National Nuclear Security Administration. In keeping with these objectives, these DOE regulations incorporate key aspects of the Federal Policy. In particular, research misconduct is being defined as including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but not as including honest error or differences of opinion. In addition, a finding of research