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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****42 CFR Part 61**

RIN 0991-AA96

Service Fellowships

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is adopting without change the interim final rule amending the regulations governing service fellowships which was published in the **Federal Register** on February 27, 1998 (63 FR 9949). These amendments revised the authority citation, extended the time limitation on initial appointments from 2 years to 5 years, permitted extensions of appointments for up to 5 years rather than year-to-year, and deleted obsolete references to the Surgeon General.

DATES: *Effective Date:* November 10, 1999. The effective date for this final rule is not delayed because it adopts the interim final rule without change.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Boulevard, Suite 601, MSC 7669, Rockville, MD 20852; telephone 301-496-4607 (not a toll-free number); Fax 301-402-0169. For information with regard to service fellowships contact Edie Bishop, Office of Human Resource Management, National Institutes of Health, 31 Center Dr., MSC 0424, Bethesda, MD 20892-0424; telephone 301-402-9484 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) published in the **Federal Register** on February 27, 1998 (63 FR 9949) an interim final rule amending the regulations, codified at 42 CFR part 61, subpart B, governing service fellowships. Although the amendments were published as an interim final rule and were effective immediately, the Secretary requested comments on the regulations. The comment period expired on April 28, 1998. HHS received no comments on the amendments. Consequently, HHS is adopting the interim final rule without change as a final rule.

Section 207(g) of the Public Health Service Act, as amended, authorizes the

Secretary to designate individual scientists, other than Commissioned Officers of the Public Health Service (PHS), to receive fellowships; to be appointed for duty with the Service and compensated without regard to the civil service classification laws; to hold their fellowships under conditions prescribed therein; and to be assigned for studies or investigations either in the United States or foreign countries during the terms of their fellowships.

Consistent with the legislative intent of the PHS Act, § 61.32 of the implementing regulations codified at 42 CFR Part 61, states that service fellowships "may be provided to secure the services of talented scientists for a period of limited duration for health-related research, studies, and investigations where the nature of the work or the character of the individual's services render customary employing methods impracticable or less effective."

The interim final rule amended § 61.38 of the service fellowship regulations to make time limitations on initial appointments more flexible. Specifically, the interim final rule extended the current time limitation on initial appointments from 2 to 5 years, and revised the requirements with respect to extensions to permit extensions for up to 5 years rather than year-to-year. These changes are intended to provide HHS health agencies with greater flexibility to recruit and retain their scientists. It is anticipated that the increased flexibility will provide for simplified recruitment and classification. Employment will continue to be linked to scientific excellence as determined by agency peer review processes.

The interim final rule also amended the authority citation and the references to the Surgeon General to reflect that the authority for the service fellowships are vested in the Secretary. Section 61.30 was amended to remove the paragraph designations and the definition for the term "Surgeon General" and to add the definition for the term "Secretary," and § 61.34 was amended to remove clause (b) and redesignate clause (c) and (b) to reflect current policy.

The following statements are provided for public information.

Executive Order No. 12866

Executive Order No. 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If an action is

deemed to fall within the scope of the definition of the term "significant regulatory action" contained in § 3(f) of the Order, a pre-publication review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is necessary. This rule was reported to OIRA, and it was deemed not to be a significant regulatory action.

Regulatory Flexibility Act

Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant economic impact on a substantial number of small entities. The Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 is not required. This rule applies to individuals who apply for and may receive service fellowships. The rule does not apply or affect "small entities" as that term is defined in 5 U.S.C. 601.

Paperwork Reduction Act

This rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

List of Subjects in 42 CFR Part 61

Fellowships.

Approved: September 10, 1999.

Harold Varmus,*Director, National Institutes of Health.*

Dated: November 1, 1999.

Donna Shalala,*Secretary.***Subpart B—Service Fellowships**

Accordingly, the interim rule amending 42 CFR part 61, subpart B, which was published at 63 FR 9949 on February 27, 1998, is adopted as a final rule without change.

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