

Department of Health and Human Services

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“information acquired in the course of performing official duties or because of the person’s official capacity,” within the meaning of § 2.1(a).

[52 FR 37146, Oct. 5, 1987, as amended at 55 FR 4611, Feb. 9, 1990; 68 FR 25838, May 14, 2003]

§ 2.2 Definitions.

Agency head refers to the head of the relevant operating division or other major component of the DHHS, or his or her delegatee. *Agency head* for the purposes of this part means the following officials for the components indicated:

- (1) Office of the Secretary—Assistant Secretary for Administration and Management;
- (2) Administration on Aging—Assistant Secretary for Aging;
- (3) Administration for Children and Families—Assistant Secretary for Children and Families;
- (4) Agency for Healthcare Research and Quality—Administrator;
- (5) Agency for Toxic Substances and Disease Registry—Administrator;
- (6) Centers for Disease Control and Prevention—Director;
- (7) Centers for Medicare and Medicaid Services—Administrator;
- (8) Health Resources and Services Administration—Administrator;
- (9) Indian Health Service—Director;
- (10) National Institutes of Health—Director;
- (11) Substance Abuse and Mental Health Services Administration—Administrator;
- (12) Office of Inspector General—Inspector General.

Employee includes:

- (1) Commissioned officers in the Public Health Service Commissioned Corps, as well as regular and special DHHS employees (except employees of the Food and Drug Administration), when they are performing the duties of their regular positions, as well as when they are performing duties in a temporary assignment at DHHS or another organization.
- (2) Any employees of health insurance intermediaries and carriers performing functions under agreements entered into pursuant to sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u; *and*

(3) Current and former employees and contractors of entities covered under the Federally Supported Health Centers Assistance Act of 1992, as amended, 42 U.S.C § 233 (FSHCAA), provided that the requested testimony or information relates to the performance of medical, surgical, dental or related functions which were performed at a time when the DHHS deemed the entity to be covered by the FSHCAA.

Certify means to authenticate under seal, pursuant to 42 U.S.C 3505, official documents of the Department.

Testify and testimony includes both in-person, oral statements before a court, legislative or administrative body and statements made pursuant to depositions, interrogatories, declarations, affidavits, or other formal participation.

[68 FR 25839, May 14, 2003]

§ 2.3 Policy on Presentation of testimony and production of documents.

No employee or former employee of the DHHS may provide testimony or produce documents in any proceedings to which this part applies concerning information acquired in the course of performing official duties or because of the person’s official relationship with the Department unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with the request would promote the objectives of the Department.

[68 FR 25839, May 14, 2003]

§ 2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.

(a) All requests for testimony by an employee or former employee of the DHHS in his or her official capacity and not subject to the exceptions set forth in § 2.1(d) of this part must be addressed to the Agency head in writing and must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interest of the DHHS or the federal government.

(b) If the Agency head denies approval to comply with a subpoena for testimony, or if the Agency head has

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not acted by the return date, the employee will be directed to appear at the stated time and place, unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate (in such circumstances as, for example, an instance where the subpoena was not validly issued or served, where the subpoena has been withdrawn, or where discovery has been stayed), produce a copy of these regulations, and respectfully decline to testify or produce any documents on the basis of these regulations.

[68 FR 25840, May 14, 2003]

§ 2.5 Subpoenas duces tecum.

(a) Whenever a subpoena duces tecum has been served upon a DHHS employee or former employee commanding the production of any record, such person shall refer the subpoena to the Office of the General Counsel (including regional chief counsels) for a determination of the legal sufficiency of the subpoena, whether the subpoena was properly served, and whether the issuing court or other tribunal has jurisdiction over the Department.) If the General Counsel or his designee determines that the subpoena is legally sufficient, the subpoena was properly served, and the tribunal has jurisdiction, the terms of the subpoena shall be complied with unless affirmative action is taken by the Department to modify or quash the subpoena in accordance with Fed. R. Civ. P. 45 (c).

(b) If a subpoena duces tecum served upon a DHHS employee or former employee commanding the production of any record is determined by the Office of the General Counsel to be legally insufficient, improperly served, or from a tribunal not having jurisdiction, such subpoena shall be deemed a request for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure established in 45 CFR part 5.

[68 FR 25840, May 14, 2003]

§ 2.6 Certification and authentication of records.

Upon request, DHHS agencies will certify, pursuant to 42 U.S.C. 3505, the authenticity of copies of records that

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are to be disclosed. Fees for copying and certification are set forth in 45 CFR 5.43.

[68 FR 25840, May 14, 2003]

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

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AUTHORITY: 40 U.S.C. 318–318d. 486; Delegation of Authority, 33 FR 604.

SOURCE: 55 FR 2068, Jan. 22, 1990, unless otherwise noted.

Subpart A—General

§ 3.1 Definitions.

Director means the Director or Acting Director of the National Institutes of Health (NIH), or other officer or employee of NIH to whom the authority involved has been delegated.

Enclave means, unless the context requires a different meaning, the area, containing about 318 acres, acquired by the United States in several parcels in the years 1935 through 1983, and any further future acquisitions, comprising