placed into an Order to Hold Separate and Maintain Assets.

Paragraph VIII of the Proposed Order requires the Respondents to divest all of Conoco's assets related to the gathering, compression, transportation or sale of natural gas within Schleicher County, Texas, within nine months from the date Respondents execute the Agreement Containing Consent Orders. This includes all gathering pipelines and any related contracts or agreements. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be placed into an Order to Hold Separate and Maintain Assets. In addition, Respondents must enter into a processing agreement with the buyer of the divested assets. The processing agreement must allow the buyer to process at least the same volume of natural gas that is currently gathered on the system at Conoco's cost. This cost includes all direct costs, including raw materials, labor, utilities and third-party contract services actually used to provide services to the acquirer of the gathering assets. In addition, cost may include the *pro rata* share of the cost of the capital employed in the processing plant and indirect costs related to operating the processing plant, including taxes, depreciation, overhead and third-party contracts.

G. Fractionation

Paragraph IX of the Proposed Order contains four ensuring that Respondents cannot transfer competitively sensitive information among fractionators or exercise voting rights to thwart expansion. First, beginning at the date of execution of the Agreement Containing Consent Orders, the Proposed Order prohibits Respondents from sharing competitively sensitive fractionation information with DEFS, Duke (owner of approximately 70 percent of DEFS), or any DEFS Board Member. Second, Respondents may not receive from Duke, DEFS, or any DEFS Board Member any competitively sensitive fractionation information of DEFS. Third, ConocoPhillips DEFS Board Members may not participate in any discussions with DEFS or Duke relating to the three fracitonators in which Respondents and DEFS own an interest. Fourth, ConocoPhillips DEFS Board Members may not participate in any vote of the DEFS board, unless such a vote is necessary and, if such a vote is necessary, then the ConocoPhillips DEFS Board Members must vote is the same way as the majority of the Duke DEFS Board Members.

H. Other Terms

Paragraph X sets the guidelines for the appointment and powers of a Divestiture Trustee should the Respondents fail to complete one or more of the divestitures discussed above. Paragraph XI requires the Respondents to provide the Commission with a report of compliance with the Proposed Order every sixty days until the divestitures are completed. Paragraph XII provides for notification to the Commission in the even of any changes in the Respondents. Paragraph XIII requires the Respondents to provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Paragraph XIV provides, among other things, that if a State fails to approve any of the divestitures contemplated in the Proposed Order, then the period of time required under the Proposed Order for such divestiture will be extended for ninety days. Finally, Paragraph XV provides that the Proposed Order will terminate ten years after the date the Order becomes final.

V. Gasoline Retail and Marketing Assets

In this instance, the Commission is not seeking gasoline marketing relief outside the bulk supply areas discussed above (Eastern Colorado and Northern Utah). After a thorough investigation, the Commission concluded that the proposed merger of Phillips and Conoco is not likely to have any anticompetitive effect on gasoline marketing the Mid-continent, Southeastern, or Southwestern United States. The Commission considered several factors in reaching its decision not to seek relief in those areas. First, Phillips and Conoco own and/or operate few retail outlets. With the exception of a small number of cities, Phillips and Conoco gasoline distribution relies significantly on independent gasoline marketers. Further, Conoco and Phillips, unlike the other major refiners, have not imposed significant costs of switching brands or de-branding on the predominant share of their marketers. Neither Phillips nor Conoco engage in redlining or zone pricing in areas investigated in this merger. Thus, the degree of vertical control over jobbers by Conoco and Phillips in these regions is significantly less than that exercised by other refiners in other parts of the country. Further, the Commission has found significant growth of low-priced gasoline retailing by supermarkets, club stores and mass merchandisers. The entry of these gasoline distribution competitors likely will prevent the merging firm from raising prices in the Mid-continent, Southeast and Southwest. In addition, entry by these low-priced competitors has induced jobbers to switch branch and de-brand. Entry and growth by low-priced formats are likely to continue in these areas, in part, because of a plentiful supply of gasoline and diesel fuel. Areas under investigation in this merger have common carrier pipelines and terminals delivering and storing gasoline to both branded and unbranded jobbers. For these and other reasons, the Commission does not have reason to believe that the merger of Conoco and Phillips would lessen competition substantially in the Mid-continent, Southeast and Southwest.

VI. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make it final. By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the Proposed Order final. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–22795 Filed 9–6–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Zhenhai Yao, M.D., Ph.D., The University of North Carolina at Chapel

Hill: On August 20, 2002, the U.S. Public Health Service (PHS) entered into a Voluntary Exclusion Agreement with The University of North Carolina at Chapel Hill (UNC) and Zhenhai Yao, M.D., Ph.D., an Associate Professor of Anesthesiology, School of Medicine at UNC. Based on the UNC Report, the respondent's admissions, and additional analysis conducted by ORI in its oversight review, PHS found that Dr. Yao engaged in scientific misconduct in research funded by the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

Specifically, PHS and UNC found that Dr. Yao:

(1) Falsified two flourescent micrographs for figures presented in three NIH grant applications:

A. Figure 5, p. 28, in a funded grant application in 1 R01 HL067416–01, ''Mechanism of Preconditioning and Cardiac Apoptosis,'' submitted to NIH on May 31, 2000;

B. Figure 6, p. 33, in a funded grant application in 1 R01 HL68250–01, ''Free Radicals, PKCδ Signal Acetylcholine Preconditioning,'' submitted to NIH on September 9, 2000; and

C. Figure 7, p. 25, in an unfunded grant application in 1 R01 HL66230–01A1, ''Nitric Oxide and Opioid Preconditioning,'' Submitted to NIH on July 2, 2001.

Dr. Yao falsely claimed that two fluorescent micrographs in the figure represented neonatal rat cells transfected with an adenovirus-derived vector, when the cells actually were chick cells transfected with a cytomegalovirus-based vector, which he had taken from another scientist at the University of Chicago.

(2) Falsified the same two fluorescence micrographs of CMV-transfected chick cells described in Issue 1, above, by misrepresenting their description as embryonic chick cells transfected with pcDNA, with and without green fluorescent protein, for Figure 13 on p. 30 in an unfunded NIH grant application, 1 R01 HL66230–01, ''Molecular Mechanisms of Opioids in Myocardial Ischemia,'' submitted January 21, 2000.

(3) Falsified a flow cytometry histogram in Figure 1B on p. 22 of NIH application R01 HL66230–01A1, by claiming the histogram represented results with rat myocardiocyte cultures treated with an opiate antagonist (staurosporine).

However, this histogram had been published by Liu, H., McPherson, B.C., & Yao, Z. ''Preconditioning Attentuates Apoptosis and Necrosis: Role of Protein Kinase Cε and -δ Isoforms.'' *Am. J. Physiology Heart Circ Physiol.* 281:H404–H410, 2001, as Figure 1f showing the result from embryonic chick cells treated for 12 hours with deoxy-glucose in the absence of oxygen (simulated ischemia).

(4) Falsified claims about research results in NIH grant application R01 HL66230–01A1, by claiming that data in Figure 3 on p. 23 represented experiments on cultures of neonatal rat cardiomyocytes as an *in vitro* model of hypoxia-reoxygenation, shown as data from four separate experiments measuring apoptosis by different means.

The data in the four separate experiments portrayed in Figure 3 are identical to Figure 1, p. 2009, in the publication by Liu, H., Zhang, H.Y., McPherson, B.C., Baman, T., Roth, S., Shao, Z., Zhu, X., & Yao, Z. ''Role of Opioid δ_1 Receptors, Mitochondrial K_{ATP} Channels, and Protein Kinase C during Cardiocyte Apoptosis. *J. Mol. Cell. Cardio.* 33:2001–2014, 2001, which were reported as the results from experiments on cultures of embryonic chick cardiocytes.

(5) Falsified the micrographs in panels a and d, Figure 1, p. 2009, in the publication by Liu, H. *et al., J. Mol. Cell. Cardiol.* 33:2001–2014, 2001, by claiming they represented TUNEL data showing normal media and opioid antagonist (BTNX)-treated cultures of chick cardiocytes, respectively.

The same micrographs had been reported by Liu, H. *et al., Am. J. Physiology Heart Circ Physiol.* 281:H404–H410, 2001, in Figure 1 (panels a and e) and in Figure 2 (panels a and b), as representing cardiocyte cultures exposed for 24 hours to deoxy-glucose and no oxygen (simulated ischemia).

(6) Falsified the physiological effects of gene transduction into hearts, by copying and re-using the same pressure tracing for untreated rats as he did for rats purportedly treated by intracardial injection with adenovirus (AdEGFP) in:

A. Figure 11, p. 26, in unfunded NIH grant application R01 HL66230–01A1;

B. Figure 9, p. 30, in funded NIH grant application R01 HL67416–01;

C. Figure 9, p. 34, in funded NIH grant application R01 HL68250–01; and

D. Figure 8, p. 30, in funded NIH grant application 1 K08 HL03881–01.

(7) Falsified data in panels c and d in Figure 13, p. 26, in NIH grant application R01 HL66230–01A1. Dr. Yao claimed that panel c represented a TUNEL assay on histological sections of myocardium from a rat transfected with Ad.βgal and subjected to ischemia-reperfusion and that panel d represented a tissue section from a rat transfected with Ad.PKCδ–FL.

Panel c is a horizontally compressed copy of panel b, purported to be a non-transfected rat subjected to ischemia-reperfusion, and panel d is a horizontally expanded version of panel a, purported to be a sham-operated, non-transfected control.

(8) Falsified the claims about the micrograph of ischemic data (''panel b'' in issue 7, above) reported as:

A. Figure 11, p. 31, in R01 HL67416–01 (submitted May 31, 2000); and

B. Figure 12, p. 35, in R01 HL68250–01 (submitted September 29, 2000).

In both examples, the figures, which are identical, consist of two panels purported to be TUNEL data showing sham operated controls (panel a) and the effect of transient ischemia for 30 minutes (panel b). However, these data are identical to Figure 10, p. 32, in NIH application K08 HL03881–01, reported a control and the effect of nontransient ischemia, *i.e.*, 20 hours of ischemia followed by 24 hours of reperfusion.

(9) Falsified data in Figure 14 on p. 27 in NIH grant application R01 HL66230–01A1, as representing a gel electrophoresis data from an *in vivo* experiment on rat myocardial ischemia.

However, the same data was represented as Figure 3, p. 23, of the application (and also as in Figure 1, *J. Cell. Mol. Cardiol.* 33:2007–2014, 2001), as results from a study of embryonic chick heart cell cultures for the effect of preconditioning on opioid receptors. Furthermore, Dr. Yao falsified the stated size of the fragments in the DNA marker ladder by altering the position of the molecular weight markers in Figure 14.

(10) Falsified Figure 3, p. 27, in 1 R01 HL67416–01, a DNA-laddering gel electrophoresis experiment, showing that apoptosis in cardiocyte cultures is significantly increased by staurosporin and by 12 hours of simulated ischemia.

The same data was shown in Figure 1, p. 26, in application HL03881–07 showing that apoptosis is significantly increased by 10 μM NE and by 15 nM TNF-α.

The research misconduct was significant because Dr. Yao's research involved the fundamental mechanisms for cardiac cell injury and pathogenesis after a heart attack. The falsified data were significant to reviewers' opinions on funding because they were advanced as preliminary results showing successful new experiments extending his experimental model to adult rat hearts.

Dr. Yao has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government

and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations) for a period of five (5) years, beginning on August 20, 2002;

(2) to exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of five (5) years, beginning on August 20, 2002; and

(3) to submit a letter to the *Journal of Molecular and Cellular Cardiology* requesting retraction of Figure 1 in the article by Hui Liu, *et al., J. Mol. Cell. Cardiol.* 33:2001–2014, 2001, within 30 days of notification of this action. This requirement will be noted on the ALERT System until Dr. Yao sends a copy of the retraction letter to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–22794 Filed 9–6–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–70]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer Review Organization Information and Supporting Regulations in 42 CFR, Sections 476.104, 476.105, 417.116, and 476.134.; *Form No.:* CMS–R–70 (OMB# 0938–0426); *Use:* The Peer Review Improvement Act of 1982 authorizes PROs to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the PRO to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties.; *Frequency:* Reporting on occasion; *Affected Public:* Business or other for-profit, Individuals or households, Not-for-profit institutions.; *Number of Respondents:* 362; *Total Annual Responses:* 3729; *Total Annual Hours:* 60,919

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 28, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–22765 Filed 9–6–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0215]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Export of FDA Regulated Products—Export Certificates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 9, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export Certificates for FDA Regulated Products Under Sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act—New Collection

FDA is requesting approval from OMB for the collection of information from the public associated with the export of FDA regulated products as indicated in sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e) and 382), as amended.

In April 1996, a new law entitled ''The FDA Export Reform and Enhancement Act of 1996'' was enacted. It was designed to ease restrictions on exportation of unapproved products regulated by FDA and to facilitate such exportation by provide foreign governments certificates verifying that the products may be legally exported. Specifically, section 801(e)(4) of the act provides that persons exporting certain