

impact on a substantial number of small entities, as defined in the RFA.

Paperwork Reduction Act

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,<sup>4</sup> OTS has determined that this extension will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

Executive Order 12866

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use "plain language" in all final rules published after January 1, 2000. OTS believes that the final rule containing the extension is presented in a clear and straightforward manner.

List of Subjects in 12 CFR Part 585

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

1. The authority citation for 12 CFR part 585 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

2. In § 585.100, revise paragraph (b)(2) introductory text to read as follows:

§ 585.100 Who is exempt from the prohibition under this part?

\* \* \* \* \*

(b) \* \* \*

(2) This exemption expires on March 31, 2009, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person

files such an application, the temporary exemption expires on:

\* \* \* \* \*

Dated: October 29, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E8-26181 Filed 10-31-08; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 772, and 774

[Docket No. 080215206-81243-01]

RIN 0694 AE29

Wassenaar Arrangement Plenary Agreements Implementation: December 2007 Categories 1, 2, 3, 5 Parts I and II, 6, 7, and 9 of the Commerce Control List, Definitions; December 2006 Solar Cells

Correction

In rule document E8-23278 beginning on page 60910 in the issue of October 14, 2008, make the following corrections:

1. On page 60911, in the second column, under the heading Revisions to the Commerce Control List, in the 13th and 14th lines, "1A006 and 1A007" should read "1A006, 1A007, and 3C006".

2. On the same page, in the same column, under the same heading, in the 18th line, "3C005, 3C006, 3D001" should read "3C005, 3D001".

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AM65

Disclosure of Information to Organ, Tissue and Eye Procurement Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts, with changes, a Department of Veterans Affairs (VA) interim final rule that implemented provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 concerning disclosure of information to organ, tissue and eye procurement

organizations. The regulation will provide authority for VA to provide individually-identifiable VA medical records of veterans or dependents of veterans who are deceased or whose death is imminent to representatives of organ procurement organizations, eye banks, and tissue banks to determine whether the patients are suitable potential donors. This document modifies the interim final rule to clarify the definition of "near death" and to correct a grammatical error in the definition of "procurement organization." This document also clarifies that eye bank and tissue bank registration with FDA must have an active status.

DATES: Effective Date: November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Stephania Putt, Veterans Health Administration (VHA) Privacy Officer, Office of Information (19F2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (704) 245-2492.

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Department of Veterans Affairs (VA) published an interim final rule in the Federal Register (72 FR 48239) to implement section 204 of Public Law 109-461. We provided a 60-day comment period which ended on October 22, 2007. We received comments from three organizations, the American Association of Tissue Banks (AATB), the Association of Organ Procurement Organizations (AOPO), and the Eye Bank Association of America (EBAA).

AATB and EBAA commented on their support of the provisions in the Interim Final Rule in general. The support of the AATB and EBAA is welcomed.

EBAA commented on the title of the Interim Final Rule and suggested a title of "Disclosure of Information to Organ, Tissue and Eye Procurement Organizations" to provide clarification. The title of the Interim Final Rule is just a title of the regulatory packet for tracking and publication purposes; it is not the title of the actual regulations. We are amending the title of the Final Rule to provide a clear understanding of the organizations discussed in this regulation.

AOPO commented that the definition of "near death" used in the regulations was vague and recommended the use of clinical triggers in clearly defining near or imminent death. We are amending the definition of "near death" to include the use of defined clinical triggers by the health care provider when

<sup>4</sup> 72 FR at 25954.

determining that death of a patient is imminent.

In its comments, AATB noted that the definition of "Procurement Organization" contained a grammatical error by using "tissue banks" instead of the singular form. We are amending the definition to reflect "tissue bank" and remove the plural form of the word.

AATB and EBAA both recommended that the definition of "Eye bank and tissue bank" include language regarding the accreditation of eye bank and/or tissue bank by the EBAA for eyes and AATB for tissues along with the addition of this accreditation requirement to Sections 1.485a(d) and 1.514b(d). The rationale proposed by AATB and EBAA of the additional requirement is the belief that it will provide additional protection of VHA facilities and their respective patient populations. However, no evidence or documentation was provided to support this belief. And though there should be no administrative burden for VHA facilities to verify whether an eye bank or tissue bank is accredited by EBAA or AATB, there is a potential impact on VA's overall donor program. The Food and Drug Administration (FDA) is responsible for reviewing the services provided by registered eye banks and tissue banks across the country. VA has several facilities in rural and remote areas where the number of FDA registered and accredited organ, tissue and eye procurement organizations may be limited. To impose another non-Federal accreditation requirement on these procurement organizations prior to VA's ability to work with the procurement organization may limit VA's capacity to honor a veteran's wish to be an organ donor. For the reasons stated above, VA does not accept the recommendation to require the accreditation of eye bank and/or tissue bank by the EBAA for eyes and AATB for tissue.

EBAA and AOPO made several comments suggesting changes to the preamble language for the published Interim Final Rule. The parameters and contents of rulemakings are dictated by 1 CFR 18.12, *Preamble requirements*. Specifically, paragraph (a) clarifies that a preamble, "\* \* \* will inform the reader, who is not an expert in the subject area, of the basis and purpose for the rule \* \* \*" The preamble does not get codified in the Code of Federal Regulations. Thus, when comments deal only with the language of Interim Final preamble sections that do not impact the basis and purpose explained therein, nor the substance of the regulation, it is beyond the scope of the final rule

preamble to comment on those comments.

Finally, AATB and EBAA recommended VHA verify the organ, eye or tissue bank status with FDA as being active and not subject to any order to cease, suspend or limit operations. VA has accepted this recommendation and amended the regulatory language at § 1.485a(d) and § 1.514b(d) by adding the requirement for VA medical centers to verify annually with the FDA that an eye bank and tissue bank registration status is active before permitting an eye bank or tissue bank to receive protected health information.

#### **Administrative Procedure Act**

Pursuant to 5 U.S.C. 553(b)(3)(B), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule because any delay in promulgating the rule would be contrary to the public interest. In enacting section 204 of Public Law 109-461, Congress recognized the public's immediate need for VA's disclosure of organ donor information and specified that VA shall prescribe rules implementing the new law within 180 days. Also, as documented by information and data on <http://www.organdonor.gov>, the number of patients awaiting organ transplants far exceeds the number of available organs. Every day, 17 patients die waiting for an organ. VA's immediate collaboration with OPOs, eye banks, and tissue banks to facilitate organ, eye and tissue donation will result in individuals receiving lifesaving or life-enhancing transplants that otherwise would be unavailable. Accordingly, it would be contrary to the intent of Congress to delay an initiative that seeks to address a compelling public need, while VA engages in advance notice and opportunity to comment. Pursuant to 5 U.S.C. 553(d), and for the reasons stated above, we also find that there is good cause to dispense with the requirement that a substantive rule be published no less than 30 days before its effective date.

#### **Paperwork Reduction Act of 1995**

This rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule governs VA's disclosure of individuals'

medical records to certain Organ Procurement Organizations, eye banks, and tissue banks, some of which may be small entities. However, it will not affect a substantial number of small entities and will not have a significant economic impact on any such entity. Therefore, under 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

#### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in the Executive Order.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This rule will have no such

effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers and Titles**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

**List of Subjects in 38 CFR Part 1**

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: September 30, 2008.

**Gordon H. Mansfield,**  
*Deputy Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, the interim final rule amending 38 CFR part 1, which was published at 72 FR 48239 on August 23, 2007, is adopted as a final rule with the following changes:

**PART 1—GENERAL PROVISIONS**

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

**Authority:** 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. In § 1.460, revise the definitions for “Near death” and “Procurement organization” in alphabetical order to read as follows:

**§ 1.460 Definitions.**

\* \* \* \* \*

*Near death.* The term “near death” means that in the clinical judgment of the patient’s health care provider based on defined clinical triggers, the patient’s death is imminent.

\* \* \* \* \*

*Procurement organization.* The term “procurement organization” means an organ procurement organization, eye bank, and/or tissue bank as defined in this section.

\* \* \* \* \*

■ 3. Revise § 1.485a(d), to read as follows:

**§ 1.485a Eye, organ and tissue donation.**

\* \* \* \* \*

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the

applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with the Food and Drug Administration (FDA) that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

■ 4. Revise § 1.514b(d), to read as follows:

**§ 1.514b Disclosures to procurement organizations.**

\* \* \* \* \*

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with FDA that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR Part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

**RIN 2900–AM59**

**Elimination of Co-Payment for Weight Management Counseling**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Department of Veterans Affairs (VA) published a direct final rule amending our medical regulations to designate weight management counseling (individual and group sessions) as a service that is not subject to VA’s co-payment requirements. VA received no significant adverse comments concerning this rule or its companion substantially identical proposed rule published on the same date. This document confirms that the direct final rule became effective on June 16, 2008. In a companion document in this issue of the **Federal Register**, we are withdrawing as unnecessary that proposed rule.

**DATES:** *Effective date:* June 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Tony Guagliardo, Director, Business

Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In a direct final rule published in the **Federal Register** on April 16, 2008 (73 FR 20530), VA amended the medical regulations set forth at 38 CFR part 17 to eliminate co-payments for weight management counseling (individual and group sessions). VA published a companion substantially identical proposed rule (RIN 2900–AM81; 73 FR 20579) on the same date to serve as a proposal for the provisions in the direct final rule in case significant adverse comments were received. The direct final rule and proposed rule each provided a 30-day comment period that ended May 16, 2008. No adverse comments were received. Two public comments were received, both of which supported the proposed rule.

Under the direct final rule procedures that we described in those documents, because no significant adverse comment was received within the comment period, the regulation became effective on the date specified in the direct final rule, June 16, 2008. In a companion document in this issue of the **Federal Register**, VA is withdrawing the proposed rule (RIN 2900–AM81) published at 73 FR 20579 as unnecessary.

Approved: October 27, 2008.

**Gordon H. Mansfield,**  
*Deputy Secretary of Veterans Affairs.*

[FR Doc. E8–26177 Filed 10–31–08; 8:45 am]

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 21**

**RIN 2900–AM45**

**Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends regulations governing education programs the Department of Veterans Affairs (VA) administers. In accordance with statutory requirements and previously established formulas, it amends the regulations to show increases in the monthly rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty program, an increase in the percentage