EXHIBIT 25

If you could provide the data in the same table format as the previous set of data you provided, or something similar, that would be fine.

1. names in each of the databases
   Project 112,
   Mustard Gas,
   CBRNE,

2. names with SSN?
   Project 112,
   Mustard Gas,
   CBRNE,

3. names missing a SSN but have SN?
   Project 112,
   Mustard Gas,
   CBRNE,

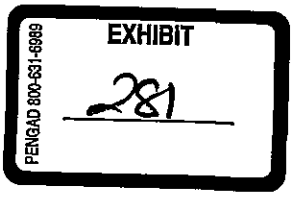
4. names have an identifier other than a SN or SSN, such as a control number?
   Project 112,
   Mustard Gas,
   CBRNE,

5. names have no identifier at all?
   Project 112,
   Mustard Gas,
   CBRNE,

6. What sources does the VA currently use to obtain contact information for the veterans listed in each of the databases (i.e., Choice Point, internal VA data systems, or the Internal Revenue Service)?
   Project 112,
   Mustard Gas,
   CBRNE,

7. How successful has each source been in obtaining accurate contact information?

8. How many notification letters have been sent
   Project 112,
   Mustard Gas,
   CBRNE,



(Please provide a copy of the notification letter templates.)

9. how many notification letters have been returned
   Project 112,
   Mustard Gas,
   CBRNE,

10. Is there a database that captures information and data on veterans that call the VA directly and self identify as being exposed to a chemical or biological agent during testing conducted by DOD? If so, how many veterans have called the VA that were not previously identified in the existing databases?

Data on both SHAD and mustard gas has been kept at the St. Louis "Hotline." However, there is not data collected on veterans that called but not previously identified in the existing database. However, VA has received a very few claims in which our inquiry to DoD resulted in their name being added to the SHAD database. While a specific record keeping of that number was not made, I believe that one vet (Army) helped DoD identify two or three others, who, in a Navy setting, had been missed.

11. For what type of exposures does the VA expect DOD to provide information to them (i.e. human subject testing, transportation, storage, etc.)? How has the VA communicated these expectations to DOD? (Please provide documentation)

12. How has the VA been affected by DOD not seeking the names of additional Project 112 individuals?

Not having Project 112 information years earlier meant that VA was not able to verify a veterans claim of exposure, and denial of such a claim would have resulted.

13. VHA DIRECTIVE 2002-0790 is set to expire at the end of the calendar year. Does VA plan on renewing it? If so, why? If not, why not? To what extent does DOD's actions to not pursue additional names affect this decision?

Please ask Mark Brown this question. (VA Central Office 202-273-8579, or mbrown1@va.gov)

14. What types and level of information does the VA need from DOD to identify individuals potentially exposed and to determine whether a reported ailment is associated with a particular chemical or biological substance?

The answer lies in what is needed to fairly adjudicate a veteran's claim. The rating activity needs verification of the exposure, knowledge of what the veteran was expose to, and how much exposure. In the case of mustard gas, verification of the exposure and whether the exposure was full body or not, because of the law regarding the presumption of service connection for certain diseases.

15. Date of last data received from DOD.

September 19, 2007; 825 additional names for the CBRNE database, pertaining to exposures at Ft. Benning, Ft. Bragg, and Ft. McClellan.

Brian Pegram
Senior Defense Analyst
U.S. Government Accountability Office
Defense Capabilities and Management Team
Phone: 202-512-4905
SIPRNet: pegramb@gao.sgov.gov

EXHIBIT 26

C O P Y

SECRETARY OF DEFENSE
Washington

26 Feb 1953

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Use of Human Volunteers in Experimental Research

1. Based upon a recommendation of the Armed Forces Medical Policy Council, that human subjects be employed, under recognized safeguards, as the only feasible means for realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents, the policy set forth below will govern the use of human volunteers by the Department of Defense in experimental research in the fields of atomic, biological and/or chemical warfare.

2. By reason of the basic medical responsibility in connection with the development of defense of all types against atomic, biological and/or chemical warfare agents, Armed Services personnel and/or civilians on duty at installations engaged in such research shall be permitted to actively participate in all phases of the program, such participation shall be subject to the following conditions:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by

TOP SECRET

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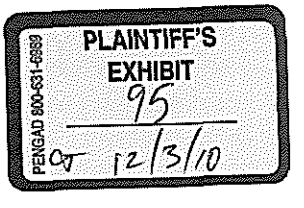
UNCLASSIFIED 22 Aug 75
per S. Clements
DDR&E OSD(PA)



C O P Y

which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The concept of the human subject shall be in writing, his signature shall be affixed to a written instument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b., above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

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UNCLASSIFIED 22 Aug 75

C O P Y

h. Proper preparation should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

l. The established policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The Secretaries of the Army, Navy and Air Force are authorized to conduct experiments in connection with the development of defenses of all types against atomic, biological and/or chemical warfare agents involving the use of human subjects within the limits prescribed above.

4. In each instance in which an experiment is proposed pursuant to this memorandum, the nature and purpose of the proposed experiment and the name of the person who will be in charge of such experiment shall be submitted for approval to the Secretary of the military department in which the proposed experiment is to be conducted. No such experiment shall be undertaken until such Secretary has approved in writing the experiment proposed, the person who will be in charge of conducting it, as well as informing the Secretary of Defense.

5. The addresses will be responsible for insuring compliance with the provisions of this memorandum within their respective Services.

/signed/
C.E. WILSON

Copies furnished:
Joint Chiefs of Staff
Research and Development Board

Downgraded to UNCLASSIFIED
22 Aug 75

EXHIBIT 27

UNCLASSIFIED

Regraded UNCLASSIFIED by authority of DRSS/HQ KENNETH R. DIKKS MG by Lieut. Hutton 26 Mar 76

DEPARTMENT OF THE ARMY
Office of the Chief of Staff
Washington 25, D. C.

REVIEWED BY: 11 Jun 73

CS: 385 (30 Jun 53)

30 June 1953

MEMORANDUM THRU: ASSISTANT CHIEF OF STAFF, G-4 [redacted] Signature [redacted] Date

TO: CHIEF CHEMICAL OFFICER
THE SURGEON GENERAL

[redacted]

SUBJECT: Use of Volunteers in Research

1. This directive prescribes policies and procedures governing the use of volunteers in research in defense against atomic, biological and chemical warfare. The purpose of this research is to permit a realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents.

2. Certain basic principles must be observed in order to satisfy moral, ethical and legal concepts. These basic principles are:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowlege and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The consent of the human subject shall be in writing, his signature shall be affixed to a written instrument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(a) In experiments where personnel from more than one Service are involved, the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such an instrument and coordinate it for use by all the Services having human volunteers involved in the experiment.

(3) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

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Regrading [redacted] determined. [redacted]

PLAINTIFF'S EXHIBIT 96 12/3/10

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b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b, above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

h. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgement required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

(1) The established policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The following opinions of the Judge Advocate General furnish specific guidance for all participants in research in atomic, biological and/or chemical warfare defense using volunteers.

a. Legality of accepting volunteers. The authority of the Secretary of the Army to conduct research and development activities is contained in section 104 of the act of 10 July 1950 (64 Stat. 322; 5 U.S.C. 235a) which provides:

SUBJECT: Use of Volunteers in Research

> "The Secretary of the Army is authorized to conduct, engage, and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs."

Section 101 of the Army Organization Act of 1950 (64 Stat. 264; 5 U.S.C. 181-4) provides in part as follows:

> "Except as otherwise prescribed by law, the Secretary of the Army may make such assignments and details of members of the Army and civilian personnel as he thinks proper, and may prescribe the duties of the members and civilian personnel so assigned; and such members and civilian personnel shall be responsible for, and shall have the authority necessary to perform, such duties as may be so prescribed for them."

b. Military Personnel and Department of the Army Civilian Employees. Compensation for the disability or death of a civilian employee resulting from personal injury or disease proximately caused by his employment is payable under the Federal Employees Compensation Act (39 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.), regardless of whether his employment was of a hazardous nature. The amount and type of disability compensation or other benefits payable by reason of the death or disability of a member of the Army resulting from injury or disease incident to service depends upon the individual status of each member, and is covered by various provisions of law. It may be stated generally that under present laws no additional rights against the Government will result from the death or disability of military and civilian personnel participating in experiments by reason of the hazardous nature of the operations, although it is possible that the Congress may confer benefits or grant relief by general or special legislation subsequently enacted. Even should the injury or disease result from a negligent or wrongful act, the recovery of any compensation or benefit under present law in addition to those noted above is doubtful.

c. Use of Appropriated Funds for the Purchase of Life Insurance. In effect, the payment of insurance premiums on the life of an officer or employee is a form of compensation (Commissioner of Internal Revenue v. Bonwit, 87 F. 2d 764 (2nd Cir., 1937), cert. den, 302 U.S. 694, 82 L. Ed. 536; Canaday v. Guitteau, 86 F. 2d 303 (6th Cir., 1936)). In this regard, section 1765 of the Revised Statutes (5 U.S.C. 70) provides as follows:

> "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefore explicitly states that it is for such additional pay, extra allowance, or compensation."

SUBJECT: Use of Volunteers in Research

There is no statutory authority for the payment of premiums for insuring the lives of military and civilian personnel, and current appropriations for military and civilian pay and allowances do not expressly provide therefor. It follows that the payment of such premiums from appropriated funds is prohibited by the quoted section. The statutory provision in question is applicable to all military and civilian personnel of the Army "whose salary, pay, or emoluments are fixed by law or regulations" (24 Comp. Gen. 648 (1945).

d. Private Citizen. Section 3679 of the Revised Statutes, as amended (31 U.S.C. 665(b)), provides:

> "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property."

It is the policy of the quoted statute to prohibit the acceptance of voluntary services which may provide a basis for future claims against the Government. The stated policy applies not only where legal claims for compensation may arise from performance of the services, but also where the circumstances surrounding the proffer support a reasonable possibility that the services may provide the basis for seeking remedial legislation from the Congress. The JAG is therefore of the opinion that the services in question should not be accepted by the Department of the Army. In view of this conclusion, it is unnecessary to consider the extent to which such persons could exert claims against the Government by reason of disability or death resulting from participation in the proposed experiments, or whether premiums on life insurance for the said participants may be paid from appropriated funds.

e. Contractors' Employees. The applicability of the foregoing considerations to contractors' employees is considered below:

(1) Legality of employment. The authority of the Secretary of the Army to contract for services necessary to effectuate research and development activities is contained in section 104 of the act of 10 July 1950 (64 Stat. 322; 5 U.S.C. 235a), quoted in subparagraph a, above. There appears to be no provision of law which would prevent a contractor from employing his personnel upon experiments of the nature contemplated. In the literal sense, no question of "acceptance" of the services in question by the Government is involved, as the private relation of such an employee is with the contractor rather than the Government. It devolves upon the contracting officer to ascertain whether the terms are sufficiently broad to permit the participation of contractor employees in the experiment. The terms of the contract must insure that the contractor will observe the conditions and safeguards set forth in this directive.

(2) Claims against the Government. Generally benefits to which a private employee may become entitled by reason of death or disability resulting from his employment are payable under State, rather than Federal, laws, with the exception of persons covered by the Survivor's insurance provisions of the Social Security Act (49 Stat. 623), as amended (42 U.S.C. 402). In some situations the employee may have remedies against his employer

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SUBJECT: Use of Volunteers in Research

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under State workmen's compensation or other laws. It is not possible to generalize upon the right of such an employer, where he is a Government contractor, to claim reimbursement from the Government for additional costs by reason of liability to his employees incurred in this regard, as this depends upon the terms of each individual contract. The question of whether any additional rights against the employer-contractor may result from the death or disability of employees participating in experiments, by reason of the hazardous nature of the experiments, is likewise not susceptible of any general statement, due to the numerous factors involved. Such persons would not be disqualified from prosecuting claims against the Government under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.). (See also AR 25-70, 2 March 1951.)

(3) Purchase of life insurance. In cost-reimbursable type contracts, the expense of maintaining group accident and life insurance plans may be an allowable item of cost under the contract (ASPR 15-204(p)). Group life insurance plans provided voluntarily to contractors' employees on a reimbursable basis are subject to review by heads of procuring activities to determine that greater benefits are not being extended under the cost-reimbursement type contract than those granted to employees under the contractor's regular commercial operations (APP 10-351). In special cases, life insurance for employees may be authorized by heads of procuring activities (ASPR 10-302) even in fixed-price contracts (APP 10-301). In order to be applicable, cost principles must be set forth or incorporated in a cost-reimbursable contract (ASPR 15-102). It will be seen from the above that, if a contractor obtains insurance on the lives of his employees while participating in the proposed experiments, he may be reimbursed for the expenses involved only where the contract is of a type allowing reimbursement and the terms thereof allow recovery as an item of cost.

f. Irregular and Fee-basis Employees. The stated category comprehends all persons paid from appropriated funds for intermittent services, as distinguished from regular, full-time employees. For example, the Secretary of the Army may procure the temporary or intermittent services of experts or consultants, including stenographic reporting services, without regard to civil service and classification laws at rates not to exceed $50 per diem (sec. 15, act of 2 Aug 1946 (60 Stat. 810; 5 U.S.C. 55a); sec. 601, Department of Defense Appropriation Act, 1953 (Pub. Law 488, 82d Cong.); see CPR A7.6, par. 6-3). The employment of experts and consultants either on a per diem basis or without compensation is also authorized by section 710, Defense Production Act of 1950 (64 Stat. 819; 50 U.S.C. App. 2160). (See CPR A7.6, par. 6-3.) The Secretary of the Army may

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SUBJECT: Use of Volunteers in Research

also employ architects, engineers, and other technical and professional personnel on a fee basis, without regard to classification laws (sec 2, act of 7 Aug 1939 (53 Stat. 1240, 5 U.S.C. 221).

In general, the employment status of such persons must be determined individually from the statutory authority under which they are employed and the terms and conditions of their employment agreements. In some cases it will be found that their status is not that of employees, but of contractors furnishing services to the Government at agreed contract prices. The following observations are made upon the applicability of the three questions considered in subparagraph e, above, to the category of persons under consideration:

(1) Legality of accepting volunteers. The terms of the statutory authority for the employment and the provisions of the employment agreement must be inspected in each case to determine whether the particular individual is an employee subject to detail or assignment upon the proposed experiments, or whether his employment is limited to other specific objects. If his employment upon the project is not so authorized, it would appear that acceptance of his services for this purpose on a voluntary basis would be prohibited by the considerations discussed in subparagraph d, above.

(2) Claims against the Government. The Federal Employees Compensation Act (39 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.), is applicable to "all civil officers and employees" of the Government and all "persons rendering personal services of a kind similar to those of civilian officers or employees of the United States *** without compensation or for nominal compensation, in any case in which acceptance or use of such services is authorized by an Act of Congress or in which provision is made by law for payment of the travel or other expenses of such person." The foregoing broad coverage of the act would appear to include most irregular and fee-basis employees. However, the administration of the benefits in question are within the province of the Bureau of Employees Compensation, Department of Labor, and only that agency may provide a definitive ruling with respect to coverage of the individuals in question. With the foregoing reservation, the views of this office set forth in subparagraph b, above, would appear equally applicable to irregular and fee-basis employees.

(3) Purchase of life insurance. The Comptroller General has approved the payment of surgical and hospitalization expenses of a field employee injured while engaged upon flood

[redacted] UNCLASSIFIED

SUBJECT: Use of Volunteers in Research

control work (3 Comp. Gen. 57 (1923)), on the ground that "the employee's compensation was not fixed by law but was subject to administrative discretion, since, otherwise, payment of the expense by the Government would constitute payment of additional compensation, which is prohibited by section 1765, Revised Statutes" (28 Comp. Gen. 175 (1948)). Subject to such restrictions and limitations as may appear in the statutory authority under which he is employed, it would appear from the foregoing that the Government may legally bear the expense of premiums upon the life of an irregular or fee-basis employee whose rate of compensation is not fixed by law or regulations. In this regard, it may be advisable for the Government to provide an additional allowance to the employee for financing such private insurance arrangements as he may wish to make rather than to undertake direct negotiations with insurance carriers for the desired coverage.

4. Subject to the above conditions, Armed Forces personnel and/or civilians on duty at installations engaged in research in subject fields shall be permitted to actively participate in all phases of the program. As a general rule, volunteer subjects should be males under 35 years of age, with no physical or mental diseases.

5. Agents used in research must have the following limiting characteristics:

a. Controllable lethality.

b. No serious chronicity anticipated.

c. Effective therapy available.

d. Adequate background of animal experimentation.

6. As added protection for volunteers, the following safeguards will be provided:

a. Direct responsibility for the planning and conduct of the investigations and for the medical care will rest with one adequately trained physician.

b. All apparatus and instruments necessary to deal with any emergency situations must be available, e.g., Drinker respirator, Mine Safety Pneophor, oxygen apparatus, etc.

c. Medical treatment and hospitalization will be provided for all casualties of the experimentation as required.

[redacted]

SUBJECT: Use of Volunteers in Research

d. The physician in charge will have available to him on short notice throughout the investigation competent consultants representing any of the specialties to be encountered.

7. Due to the specialized nature of biological agents, the following procedures in addition to the foregoing policies and procedures will be observed in regard to this phase of the program:

a. In selecting agents for investigation, priority should be given to those which possess a high probability of successful infection under operational conditions against U. S. forces.

b. The effectiveness of available defensive measures, either immunization or chemoprophylaxis, will determine the necessity for study of the agent considered.

c. Use enlarged (4X) Henderson or other suitable apparatus for exposure.

d. First experiments will be designed to determine level of susceptibility. The investigation should utilize the minimum number of volunteers which will yield statistically valid data at low levels of dosage.

e. Increase number of persons to that level which will give significance.

f. Then use immunized persons and persons on prophylactic chemotherapy.

g. Determine and apply details of immunologic study.

h. From the foregoing the final step will be to use volunteer subjects, or if there exists a good correlation with a particular animal for a particular micro-organism, then use that animal, on a proving ground, downwind far enough from the munition so that the concentration will be known to be approximately equal to the level required to induce infection. (This will rule out subjecting volunteers to "crash" concentrations.)

8. No research in atomic, biological and/or chemical agents using volunteers will be undertaken until the Secretary of the Army has stated his approval in writing. The Surgeon General of the Army will review and comment on all proposals for the use of volunteers. When appropriate, he will seek the advice of the Surgeon General of the Navy, Air Force and/or the

[redacted]

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SUBJECT: Use of Volunteers in Research

U. S. Public Health Service. The sponsoring Army agency will submit its proposal, together with the Surgeon General's review and comment thereon, to the Secretary of the Army through this office. As a minimum, the proposal will state the nature and purpose of the experiment and the name of the person who will be in charge.

BY DIRECTION OF THE CHIEF OF STAFF:

/s/
JOHN C. OAKES
Brigadier General, GS
Secretary of the General Staff

Copies furnished:
Asst. Chief of Staff, G-4 - 5
Chief Chemical Officer - 5
The Surgeon General - 5
The Judge Advocate General - 2
Chief of Research and Development, OCS - 5

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[redacted]

C O P Y

SECRETARY OF DEFENSE
Washington

RCC1.951024.052

26 Feb 1953

MEMORANDUM FOR THE SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Use of Human Volunteers in Experimental Research

1. Based upon a recommendation of the Armed Forces Medical Policy Council, that human subjects be employed, under recognized safeguards, as the only feasible means for realistic evaluation and/or development of effective preventive measures of defense against atomic, biological or chemical agents, the policy set forth below will govern the use of human volunteers by the Department of Defense in experimental research in the fields of atomic, biological and/or chemical warfare.

2. By reason of the basic medical responsibility in connection with the development of defense of all types against atomic, biological and/or chemical warfare agents, Armed Services personnel and/or civilians on duty at installations engaged in such research shall be permitted to actively participate in all phases of the program, such participation shall be subject to the following conditions:

a. The voluntary consent of the human subject is absolutely essential.

(1) This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by

[illegible]

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UNCLASSIFIED 22 Aug 7
per R. Clements
DDR&E USD(P)

which it is to be conducted all inconvenience and hazards reasonably to be expected, and the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The consent of the human subject shall be in writing. His signature shall be affixed to a written instrument setting forth substantially the aforementioned requirements and shall be signed in the presence of at least one witness who shall attest to such signature in writing.

(3) In experiments where personnel from more than one Service are involved the Secretary of the Service which is exercising primary responsibility for conducting the experiment is designated to prepare such arrangement and coordinate it for use by all the Services having human volunteers involved in the experiment.

(4) The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

b. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

c. The number of volunteers used shall be kept at a minimum consistent with item b., above.

d. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

e. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

f. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur.

g. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

[redacted]

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UNCLASSIFIED 22 Aug 73

h. Proper preparation should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

i. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

j. During the course of the experiment the human subjects should be at liberty to bring the experiment to an end if he has reached the physical or mental stage where continuation of the experiment seems to him to be impossible.

k. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

l. The established policy, which prohibits the use of prisoners of war in human experimentation, is continued and they will not be used under any circumstances.

3. The Secretaries of the Army, Navy, and Air Force are authorized to conduct experiments in connection with the development of defenses of all types against atomic, biological and/or chemical warfare agents involving the use of human subjects within the limits prescribed above.

4. In each instance in which an experiment is proposed pursuant to this memorandum, the nature and purpose of the proposed experiment and the name of the person who will be in charge of such experiment shall be submitted for approval to the Secretary of the military department in which the proposed experiment is to be conducted. No such experiment shall be undertaken until such Secretary has approved in writing the experiment proposed, the person who will be in charge of conducting it, as well as informing the Secretary of Defense.

5. The addressees will be responsible for insuring compliance with the provisions of this memorandum within their respective services.

/signed/
C.R. Wilson

Copies furnished:
Joint Chiefs of Staff
Research and Development Board

Downgraded to UNCLASSIFIED
22 Aug 75

EXHIBIT 28

S/S July 74

AR 70–25

RESEARCH AND DEVELOPMENT

USE OF VOLUNTEERS AS SUBJECTS OF RESEARCH

ARMY REGULATIONS
No. 70–25

HEADQUARTERS,
DEPARTMENT OF THE ARMY
WASHINGTON 25, D.C., *26 March 1962*

1. Purpose. These regulations prescribe policies and procedures governing the use of volunteers as subjects in Department of the Army research, including research in nuclear, biological, and chemical warfare, wherein human beings are deliberately exposed to unusual or potentially hazardous conditions. These regulations are applicable worldwide, wherever volunteers are used as subjects in Department of the Army research.

2. Definition. For the purpose of these regulations, unusual and potentially hazardous conditions are those which may be reasonably expected to involve the risk, beyond the normal call of duty, of privation, discomfort, distress, pain, damage to health, bodily harm, physical injury, or death.

3. Exemptions. The following categories of activities and investigative programs are exempt from the provisions of these regulations:

a. Research and nonresearch programs, tasks, and tests which may involve inherent occupational hazards to health or exposure of personnel to potentially hazardous situations encountered as part of training or other normal duties, e.g., flight training, jump training, marksmanship training, ranger training, fire drills, gas drills, and handling of explosives.

b. That portion of human factors research which involves normal training or other military duties as part of an experiment, wherein disclosure of experimental conditions to participating personnel would reveal the artificial nature of such conditions and defeat the purpose of the investigation.

c. Ethical medical and clinical investigations involving the basic disease process or new treatment procedures conducted by the Army Medical Service for the benefit of patients.

4. Basic principles. Certain basic principles must be observed to satisfy moral, ethical, and legal concepts. These are—

a. Voluntary consent is absolutely essential.

(1) The volunteer will have legal capacity to give consent, and must give consent freely without being subjected to any force or duress. He must have sufficient understanding of the implications of his participation to enable him to make an informed decision, so far as such knowledge does not compromise the experiment. He will be told as much of the nature, duration, and purpose of the experiment, the method and means by which it is to be conducted, and the inconveniences and hazards to be expected, as will not invalidate the results. He will be fully informed of the effects upon his health or person which may possibly come from his participation in the experiment.

(2) The consent of the volunteer will be in writing. A document setting forth substantially the above requirements will be signed by the volunteer in the presence of at least one witness not involved in the research study who will attest to such signature in writing.

(3) The responsibility for ascertaining the quality of the consent rests upon each person who initiates, directs, or conducts the experiment. It is a personal responsibility which may not be delegated.

b. The number of volunteers used will be kept at a minimum consistent with *c* below.

c. The experiment must be such as to contribute significantly to approved research and have reasonable prospects of yielding militarily important results essential to an Army research program which are not obtainable by other methods or means of study.

d. The experiment will be conducted so as to avoid all unnecessary physical and mental suffering and injury.

e. No experiment will be conducted if there is any reason inherent to the nature of the experiment to believe that death or disabling injury will occur.

f. The degree of risk to be taken will never exceed that determined to be required by the urgency or importance of the Army program for which the experiment is necessary.

g. Proper preparations will be made and adequate facilities provided to protect the volunteer against all foreseeable possibilities of injury, disability, or death.

h. The experiment will be conducted only by scientifically qualified persons. The highest degree of skill and care will be required during all stages of the experiment of persons who conduct or engage in the experiment.

i. The volunteer will be informed that at any time during the course of the experiment he will have the right to revoke his consent and withdraw from the experiment, without prejudice to himself.

j. Volunteers will have no physical or mental diseases which will make the proposed experiment more hazardous for them than for normal healthy persons. This determination will be made by the project leader with, if necessary, competent medical advice.

k. The scientist in charge will be prepared to terminate the experiment at any stage if he has probable cause to believe, in the exercise of the good faith, superior skill, and careful judgment required of him, that continuation is likely to result in injury, disability, or death to the volunteer.

l. Prisoners of war will not be used under any circumstances.

5. Additional safeguards. As added protection for volunteers, the following safeguards will be provided:

a. A physician approved by The Surgeon General will be responsible for the medical care of volunteers. The physician may or may not be the project leader but will have authority to terminate the experiment at any time that he believes death, injury, or bodily harm is likely to result.

b. All apparatus and instruments necessary to deal with likely emergency situations will be available.

c. Required medical treatment and hospitalization will be provided for all casualties.

d. The physician in charge will have consultants available to him on short notice throughout the experiment who are competent to advise or assist with complications which can be anticipated.

6. Approval to conduct experiment. It is the responsibility of the head of each major command and other agency to submit to The Surgeon General a written proposal for studies which come within the purview of this directive. The proposal will include for each study the name of the person to be in charge, name of the proposed attending physician, and the detailed plan of the experiment. The Surgeon General will review the proposal and forward it with his comments and recommendations on medical aspects to the Chief of Research and Development for approval. When a proposal pertains to research with nuclear, biological, or chemical agents, the Chief of Research and Development will submit the proposal, together with The Surgeon General's review, to the Secretary of the Army for approval. No research with nuclear, biological, or chemical agents using volunteers will be undertaken without the consent of the Secretary of the Army.

7. Civilian employees. When civilian employees of the Department of the Army volunteer under this program, the following instructions will be observed:

a. Any duty as a volunteer performed during the employee's regularly scheduled tour of duty will be considered as constructive duty for which straight time rates are payable. Time spent in connection with an experiment outside the employee's regularly scheduled tour will be consid-

ered as voluntary overtime for which no payment may be made nor compensatory time granted. The employee will be so informed before acceptance of his volunteer services.

b. Claims submitted to the Bureau of Employees' Compensation, U.S. Department of Labor, because of disability or death resulting from an employee's voluntary participation in experiments, will include a citation to title 10, United States Code, section 4503 as the Department of the Army authority for the use of such volunteer services.

c. All questions concerning hours of duty, pay, leave, compensation claims, or application of other civilian personnel regulations to volunteer employees will be presented through channels to the Deputy Chief of Staff for Personnel, ATTN: Office of Civilian Personnel.

8. **Implementing instructions.** Heads of major commands and other agencies will issue necessary implementing instructions to subordinate units. Copies of implementing instructions will be furnished to the Chief of Research and Development.

APPENDIX

LEGAL IMPLICATIONS

The following opinions of The Judge Advocate General furnish specific guidance for all participants in research using volunteers:

1. Authority. The Secretary of the Army is authorized to conduct research and development programs including the procurement of services that are needed for these programs (10 U.S.C. 4503). The Secretary has the authority to "assign detail and prescribe the duties" of both members of the Army and civilian personnel (10 U.S.C. 3012(e)).

2. Military personnel and Department of the Army civilian employees. Compensation for the disability or death of a civilian employee resulting from personal injury or disease proximately caused by his employment is payable under the Federal Employees Compensation Act (39 Stat. 742 et seq.), as amended (5 U.S.C. 751 et seq.), regardless of whether his employment was of a hazardous nature. The amount and type of disability compensation or other benefits payable by reason of the death or disability of a member of the Army resulting from injury or disease incident to service depends upon the individual status of each member, and is covered by various provisions of law. It may be stated generally that under present laws no additional rights against the Government will result from the death or disability of military and civilian personnel participating in experiments by reason of the hazardous nature of the operations.

3. Private citizens. It is the policy of the United States to prohibit the acceptance of voluntary services particularly when they may provide a basis for a future claim against the Government. (R.S. 3679, as amended; 31 U.S.C. 665(b)).

4. Use of appropriated funds for the purchase of life insurance. As the payment of insurance premiums on the life of an officer or employee of the United States is a form of compensation which is not currently authorized, payment of those premiums is prohibited (R.S. 1765; *Commissioner of Internal Revenue* v. *Bonwit*, 87 F 2d 764 (2d Cir. 1937); *Canaday* v. *Guitteau*, 86 F 2d 303 (6th Cir., 1936); 24 Comp Gen. 648 (1945)).

5. Contractor's employees. There appears to be no legal objection to the use of employees of contractors in research and development experiments. It is the responsibility of the contracting officer to determine whether the terms of the contract are sufficiently broad to permit the participation of these employees. Generally, benefits to which private employees may become entitled by reason of death or disability resulting from their employment are payable under State law except persons covered by the survivors insurance provisions of the Social Security Act (49 Stat. 623, as amended (42 U.S.C. 402)). Reimbursement of the employer for additional costs by reason of this liability of his employees will depend upon the terms of each contract. These employees are not disqualified from prosecuting claims against the Government under the Federal Torts Claims Act (28 U.S.C. 2671 et seq., see AR 25-70). In cost reimbursement type research contracts with commercial organizations the cost of maintaining group accident and life insurance may be reimbursed to the contractor (subject to certain exceptions) under ASPR 15-205.16 provided that the approval of the head of the Procuring Activity is obtained (APP 10-551).

6. Irregular or fee-basis employees. Intermittent services of such employees are authorized. (For experts and consultants see Sec. 15, Act of 2 Aug 1946 (60 Stat. 810; 5 U.S.C. 55a); Sec. 501, DoD Appropriation Act, 1961 (74 Stat. 349); note APP 30-204.1, CPR A7; Sec. 710 Defense Production Act of 1960 (64 Stat. 819; 50 U.S.C. App 2160); and for architects, engineers, and other technical and professional personnel on a fee basis, see 10 U.S.C. 4540.). Whether these employees can be detailed or assigned to the proposed experiments will depend upon the statutory authority for employment and the provisions of their employment agreement in each case. The Federal Employees Compensation Act, *supra*, in all probability applies with respect to these irregular and fee-basis employees for any injury or disease resulting from their employment, although a final determination in such cases will have to be made by the Bureau of Employees Compensation, Department of Labor. Subject to such restrictions and limitations as may appear in the statutory authority under which he is employed, it would appear that the Government may legally

bear the expense of premiums upon the life of an irregular or fee-basis employee whose rate of compensation is not fixed by law or regulations. In this regard, it may be advisable for the Government to provide an additional allowance to the employee for financing such private insurance arrangements as he may wish to make rather than to undertake direct negotiations with insurance carriers for the desired coverage.

7. **Conclusion.** Subject to the above conditions, Armed Forces personnel and/or civilians on duty at installations engaged in research in subject fields will be permitted to actively participate in all phases of the program.

[AG 385 (27 Feb 62) CRD]

BY ORDER OF THE SECRETARY OF THE ARMY:

G. H. DECKER,
General, United States Army,
Chief of Staff.

Official:

J. C. LAMBERT,
Major General, United States Army,
The Adjutant General.

Distribution:

Active Army: To be distributed in accordance with DA Form 12-9 requirements for DA Regulations—Research and Development—D.
NG: None.
USAR: None.

U.S. GOVERNMENT PRINTING OFFICE: 1962

EXHIBIT 29

Army Regulation 70–25

Research and Development

Use of Volunteers as Subjects of Research

Headquarters
Department of the Army
Washington, DC
25 January 1990

UNCLASSIFIED

SUMMARY of CHANGE

AR 70-25
Use of Volunteers as Subjects of Research

This change is published to correct a serious error that occurred during the final editing of the current revision. In attempting to respond to guidance from the Office of The Judge Advocate General that a subparagraph be moved from the text of the regulation to appendix F, the wrong sub-paragraph was moved.

Headquarters
Department of the Army
Washington, DC
25 January 1990

*Army Regulation 70–25

Effective 24 February 1990

Research and Development

Use of Volunteers as Subjects of Research

By Order of the Secretary of the Army:
CARL E. VUONO
General, United States Army
Chief of Staff
Official:

MILTON H. HAMILTON
Administrative Assistant to the Secretary of the Army

History. This publication was last revised on 8 August 1988. Since that time, permanent Change 1 has been issued. As of 25 January 1990, that change remains in effect. This UPDATE printing incorporates that change into the text. This UPDATE printing publishes a Change 2. The portions being revised by this change are highlighted.

Summary. This revision implements Department of Defense (DOD)Directive (DODD) 3216.2. It reflects the present legal requirements pertaining to the use of humans as research subjects funded by research, development, test, and evaluation appropriations. This revision provides guidance for establishing human use committees (HUCs). Excluding limited situations, authority to approve research using human subjects can be delegated within the military chain of command.

Applicability. This regulation applies to research, development, test, and evaluation (RDTE) programs conducted by the Active Army. It does not apply to the Army National Guard (ARNG) or the U.S. Army Reserve (USAR) unless there is involvement of Active Army personnel.

Army management control process. This regulation is subject to the requirements of AR 11–2. It contains internal control provisions but does not contain checklists for conducting internal control reviews. A checklist will be published at a later date.

Supplementation. Supplementation of this regulation is prohibited unless prior approval is obtained from HQDA (DASG–RDZ), 5109 Leesburg Pike, Falls Church, VA 22041–3258.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent of this regulation is the Office of The Surgeon General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12–09–E, block number 3724, intended for command level D for Active Army and None for the ARNG and USAR.

Contents (Listed by paragraph and page number)

*This regulation supersedes AR 70–25, 25 September 1989.

UNCLASSIFIED

RESERVED

Chapter 1
Introduction

1–1. Purpose
This regulation—

a. Prescribes Army policy on the conduct and management of human subjects in testing, including—

(1) Command responsibilities.

(2) Review process requirements.

(3) Approval authorities.

(4) Reporting requirements.

b. Allows a decentralized approval option for those elements that have established review committees and an internal review process.

1–2. References
Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Limitations
a. Nothing in this regulation is intended to supersede requirements for health hazard or other safety review required by Department of the Army(DA) regulations.

b. Nothing in this regulation limits the authority of a health care practitioner to provide emergency care under laws that apply in the jurisdiction in which care is provided.

c. Protocols for the use of drugs or Schedule I controlled substances for investigational purposes will be approved as per AR 40–7.

d. The guidance in this regulation pertains to the following, regardless of whether conducted by DA, a contractor, grantee, or other agency utilizing Army funds:

(1) Biomedical research and behavioral studies involving human subjects.

(2) RDTE involving new drugs, vaccines, biologicals, or investigational medical devices.

(3) Inclusion of human subjects, whether as the direct object of research or as the indirect object of research involving more than minimal risk in the development and testing of military weapon systems, vehicles, aircraft, and other materiel. The determination of whether a research protocol involves more than minimal risk will be made by review committees established in accordance with paragraph 3–2*b* of this regulation.

(4) Research involving deliberate exposure of human subjects to nuclear weapons effect, to chemical warfare agents, or to biological warfare agents.

(5) Activities funded by non-Army resources in which the human subjects are DA military or civilian personnel.

e. See appendix F for a listing of research exempt from the requirements of this regulation.

Chapter 2
Responsibilities

2–1. The Under Secretary of Defense for Aquisition (USD (A))
In accordance with DOD Directive 3216.2, the USD (A) or designee will be the approval authority for studies involving the actual exposure of human subjects to nuclear weapons effect, chemical warfare agents, or biological warfare agents.

2–2. Assistant Secretary of Defense (Health Affairs) (ASD (HA))
In accordance with DOD Directive 3216.2, the ASD (HA) serves as the DOD representative on matters relating to implementation of Food and Drug Administration (FDA) regulatory requirements.

2–3. Assistant Secretary of the Army (Research, Development, and Aquisition) (ASA (RDA))
The ASA (RDA) will manage all DA RDTE activities, including those in which human use is planned.

2–4. The Deputy Chief of Staff for Personnel (DCSPER)
The DCSPER will—

a. Supervise and review RDTE activities under the Army Personnel Performance and Training Program.

b. Within established areas of responsibility, monitor RDTE involving human subjects to ensure implementation of policies contained in this regulation.

c. Approve or disapprove those studies involving alcohol and drug abuse programs.

2–5. The Surgeon General
The Surgeon General (TSG) will—

a. Prepare policies and regulations on research using human subjects.

b. Establish and maintain the Human Subjects Research Review Board(HSRRB), chaired by the Assistant Surgeon General for Research and Development.

c. Establish and maintain the Human Use Review and Regulatory Affairs Office (HURRAO) attached to the U.S. Army Medical Research and Development Command (USAMRDC) and reporting to the Assistant Surgeon General for Research and Development.

d. Approve or disapprove research proposals from major Army Commands (MACOMs) that do not have a HUC or an internal review process.

e. Provide an evaluation of protocols as described in paragraphs 2–1 and 2–4, above, and 2–6, below, to the following heads of offices or command:

(1) The USD (A).

(2) The DCSPER.

(3) Upon request, the Commander, SSC–NCR.

f. Be the approval authority for studies and research protocols involving human subjects using Schedule I controlled drug substances.

g. Be the approval authority for research involving minors, or other vulnerable categories of human subjects, when subjects are wards of a State or other agency, institution, or entity.

h. Be the approval authority for MACOM or agency requests to establish a HUC and a human use review process.

i. Manage the Army's Health Hazard Assessment Program and assess health hazards of medical and nonmedical materiel.

j. Direct medical followup, when appropriate, on research subjects to ensure that any long-range problems are detected and treated.

k. Report on a frequent basis, findings associated with classified investigational drug and device studies to the USD (A), the ASD (HA), and the FDA.

l. Be the approval authority for all in-house and contract research(other than that noted in paras 2–1, 2–2, 2–4, and 2–6) involving human subjects for which the Army has been designated the executive agent. Except for those categories of research noted above for which TSG is specifically designated as the approval authority, the authority to approve such research may be delegated by TSG within the military chain of command to the lowest level operating a human-subjects review process approved pursuant to paragraph 3–2*b*.

2–6. Commander, Soldier Support Center—National Capital Region (SSC–NCR)
The Commander, SSC–NCR, will be the approval authority in accordance with AR 600–46 for attitude and opinion surveys or Army occupational surveys.

2–7. Major Army commanders

These commanders will—

a. Monitor RDTE involving personnel within their command to ensure effective implementation of the policies and procedures contained in this regulation.

b. Provide assistance to volunteer recruiting teams.

c. Ensure that only individuals who freely volunteer to participate are enrolled in research protocols or studies.

2–8. Commanders of RDTE organizations

These commanders will—

a. Ensure the effective implementation of the policies and procedures contained in this regulation.

b. Use the established review process through TSG's HSRRB for all protocols and test plans or establish a HUC and implement review process consistent with the policies and procedures contained in this regulation.

c. Ensure that research volunteers are adequately informed concerning the risks associated with their participation, and provide them with any newly acquired information that may affect their well-being when that information becomes available.

d. Comply with AR 40–10, AR 70–10, AR 385–16, AR 602–1, and AR 602–2 in planning and conducting development and/or operational testing.

2–9. Other responsibilities

a. Members of the HSRRB will—

(1) Evaluate methods by which DA involves human subjects in research.

(2) Recommend policy to TSG on the treatment of volunteers consistent with current moral, ethical, and legal standards. (See app G for legal implications.)

(3) Evaluate research protocols and test plans submitted to TSG for approval.

b. The Chief of the HURRAO will—

(1) Provide, for TSG, administrative support for the HSRRB.

(2) Conduct a compliance review of all protocols submitted to TSG for approval.

(3) Submit DA-sponsored Notices of Claimed Investigational Exemption for a New Drug (INDs) and Investigational Device Exemptions (IDEs) directly to the FDA.

(4) Submit DA-sponsored New Drug Applications (NDAs) directly to the FDA.

(5) Maintain DA record files for IND and NDA submissions to the FDA.

(6) Conduct post-marketing surveillance for NDAs sponsored by DA.

(7) Serve as the DA point of contact for policies and regulations on human use in RDTE programs.

(8) Advise and assist MACOMs and DA staff agencies that conduct research or sponsor research by contracts and grants that involve the use of human volunteers.

c. Investigators will—

(1) Prepare a protocol following the policies and procedures in this regulation.

(2) Prepare adequate records on—

(a) Receipt, storage, use, and disposition of all investigational drugs, devices, controlled drug substances, and ethyl alcohol.

(b) Case histories that record all observations and other data important to the study.

(c) Volunteer informed consent documents (see app E). The principal investigator will fill in the information in parts A and B of DA Form 5303–R and inform the subject of each entry on the form.

(3) Prepare progress reports, including annual reports, as determined by the approving authority and regulatory agencies.

(4) Promptly notify the approving authority, through the medical monitor, and the HUC of adverse effects caused by the research.

(5) Report serious and/or unexpected adverse experiences involving the use of an investigational device or drug to the sponsor and the FDA in accordance with AR 40–7.

(6) Ensure that the research has been approved by the proper review committee(s) before starting, changing, or extending the study.

(7) Ensure that all subjects, including those used as controls, or their representatives are fully informed of the nature of the research to include potential risks to the subject.

(8) Ensure that investigational drugs or devices are administered only to subjects under their personal supervision, or that of a previously approved associate investigator.

(9) Ensure that a new principal investigator (PI) is appointed if the previously appointed PI cannot complete the research (for example, permanent change of station (PCS), retirement, etc.).

(10) Apprise the HUC of any investigator's noncompliance with the research protocol.

(11) Seek HUC approval for other investigators to participate in the research.

(12) Ensure that research involving attitude or opinion surveys are approved in accordance with AR 600–46 (3–2*c*(5) below).

d. Volunteer recruiting teams. Members will—

(1) Establish volunteer requirements prior to recruitment.

(2) Coordinate recruiting activities with unit commanders.

(3) Undertake recruiting in a moral, ethical, and legal manner.

e. Medical monitor. The medical monitor is responsible for serving as advocate for the medical safety of volunteers. The monitor will have responsibilities as determined by the approving official and the authority to suspend or terminate the effort consistent with the policies and procedures contained in this regulation.

Chapter 3
Research

3–1. General guidance

a. Only persons who are fully informed and volunteer in advance to take part may be used as subjects in research;except, when the measures used are intended to be beneficial to the subject, and informed consent is obtained in advance from a legal representative on the subject's behalf.

b. Nothing in this regulation is intended to limit the authority of a health care practitioner to provide emergency medical care under applicable law of the jurisdiction in which care is provided.

c. Any human tissue or body fluid, obtained by autopsy, and used in research will be donated for such purpose. The donor will be the next of kin or legal representative of such person.Donation is made by written consent and relinquishes ownership and/or rights to the tissue or fluid. Consent to donate will not preclude payment for such donation. Organ donation intended for transplant will be accomplished in accordance with AR 40–3, chapter 18.

d. Any tissue or body fluid linked by identifiers to a particular person, obtained by surgical or diagnostic procedure and intended for use in research will be donated for such purpose.The donor will be the person from whom the tissue or fluid is removed or, in the event of death or legal disability of that person, the next of kin or legal representative of such person.Donation is made by written consent and relinquishes ownership and/or rights to the tissue or fluid. Consent to donate does not preclude payment for such donation.

e. The determination of level of risk in a research protocol will be made by a HUC established in accordance with this regulation.(See app G for a complete listing of legal implications.)

f. Moral, ethical, and legal concepts on the use of human subjects will be followed as outlined in this regulation. Voluntary consent of the human subject is essential. Military personnel are not subject to punishment under the Uniform Code of Military Justice for choosing not to take part as human subjects. Further, no administrative sanctions will be taken against military or civilian personnel for choosing not to participate as human subjects.

g. RDTE using human subjects is conducted in such a manner that risks to the subjects are minimized and reasonable in relation to anticipated benefits.

h. The proposed number of subjects is the minimum needed to ensure a statistically valid conclusion.

i. The research is conducted in such a manner as to avoid unnecessary physical and mental suffering. Preparations are made and adequate facilities provided to protect the subject and investigators against all foreseeable injuries, disabilities or death. Such research is not to be conducted if any reason exists to believe that death or injury will result.

j. Volunteers are given adequate time to review and understand all information before agreeing to take part in a study.

k. Volunteers are authorized all necessary medical care for injury or disease that is a proximate result of their participation in research.

(1) Medical care for civilian employees who volunteer and who perform duty as a volunteer during their regularly scheduled tour of duty will be provided in accordance with AR 40–3.

(2) Medical care costs for all other categories of personnel, who under the provisions of AR 40–3 are routinely authorized care in a military MTF will be waived for the volunteer while in the hospital, if the volunteer would not normally enter the hospital for treatment but is requested to do so to facilitate the research. This also applies to a volunteer's extension of time in a hospital for research when the volunteer is already in the hospital.

(3) Subsistence charges for all other categories of personnel, except for active duty and retired commissioned officers, may be waived in the circumstances noted in (2) above. The costs for subsistence charges for commissioned officers may be reimbursed to the officer by the research organization.

(4) Costs of medical insurance coverage or direct charges for medical care for volunteers participating in research performed by a contract or grant may be negotiated between the DA contracting officer and the contractor or grantee. (See app G.)

l. Information obtained during, or as a result of, an epidemiologic-assessment interview with a human immunodeficiency virus(HIV) serum positive member of the Armed Forces may not be used to support any adverse personnel action against the member. (See glossary for definition of the terms "epidemiologic-assessment interview," "serum positive member of the Armed Forces,"and "adverse personnel action.")

m. Research may be conducted outside the United States that involves non-U.S. citizens (for example, research on diseases of military interest, such as malaria, that are not endemic to the United States). However, in the conduct of such research, the laws, customs and practices of the country in which the research is conducted or those required by this regulation, whichever are more stringent, will take precedence. The research must meet the same standards of ethics and safety that apply to research conducted within the United States involving U.S. citizens, and will be conducted in accordance with applicable international agreements.

n. The use of prisoners of war and detainees as human research subjects is prohibited.

o. Minors may be enrolled as human research subjects when the following conditions are met:

(1) The research is intended to benefit the subject, and any risk involved is justified by the expected benefit to the minor.

(2) The expected benefits are at least as favorable to the minor as those presented by available alternatives.

(3) A legally authorized representative has been fully informed and voluntarily consents, in advance, for the minor to participate in the research.

(4) The minor, if capable, has assented in writing.In determining whether the minor is capable of assenting, the HUC will consider the minor's age, maturity, and psychological state. The HUC may waive assent for some or all minors involved in the study if it determines that the—

(a) Capability of some or all of the minors is so limited that they cannot be reasonably consulted, or

(b) Procedure involved in the research holds out a prospect for direct benefit that is important to the health or well-being of the minor, and is available only in the context of research.

p. The personnel responsible for the conduct of the research are the best qualified to recruit volunteers for a study and should be the primary recruiters whenever possible.

q. Only persons judged qualified by the appropriate approving official will conduct research involving human subjects.

r. A medical monitor is appointed by name if the HUC or approving official determines that the risk is more than minimal. A medical monitor may be appointed to minimal risk or less than minimal risk studies if so determined by the HUC or approving authority. The principal investigator may function as medical monitor only in situations where no other physician is reasonably available and approval for the principal investigator to function as medical monitor is granted by TSG. Requests for the principal investigator to function as the medical monitor will be sent to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012.

s. Safeguards or special conditions imposed on a protocol by a HUC may not be reduced or waived by the approving official upon approval of the protocol. The approving official may require additional safeguards, may disapprove the protocol, or may refer it to a higher review and approving authority.

t. User testing, as defined in AR 71–3, which involves the use of volunteers, is reviewed and approved by a HUC established in accordance with this regulation.

u. Research on medical devices is conducted in accordance with Part 812, Title 21, Code of Federal Regulations (21 CFR 812)

v. Emergency one-time use of an investigational drug or medical device is accomplished to the extent permitted under applicable law and in accordance with AR 40–7.

w. Public Affairs guidelines on the release of information are in AR 360–5.

3–2. Procedural guidance

a. Duties. MACOM commanders and organization heads conducting RDTE research involving human subjects will—

(1) Publish directives and regulations for—

(a) Protocol and/or test plan preparation (see app B).

(b) The use of volunteers as subjects of research conducted or sponsored by the organization.

(c) The procedures for reporting and responding to reports of improper use of volunteers as subjects of research conducted or sponsored by the organization.

(d) The procedures to assure that the organization can accomplish its "duty to warn" (see para 3–2*h* for a discussion of "duty to warn").

(2) Forward one copy of published regulations and directives(see (1) above) to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012, within 60 days of publication.

(3) Establish a HUC, if appropriate (see *b*below).

(4) Establish a system that permits the identification of volunteers who have participated in research conducted or sponsored by that command or organization. Such a system will be established in accordance with AR 340–21. (App H describes data elements which could comprise such a system.)

b. Establishing a HUC. As noted in paragraph 2–8*b*, commanders or heads of RDTE organizations will either use TSG's HSRRB or implement their own HUC.

(1) HUCs will be established for research conducted by DA in accordance with appendix C.

(2) Institutional review boards will be established by contractors or grantees in accordance with 45 CFR 46.

(3) RDTE organizations which establish an internal review process will forward the items listed below to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012.

(a) See *a*(2) above.

(b) A listing of the membership of the HUC and the curriculum vitae for each member.

(4) Newly established HUCs may not review research protocols until the items in *(a)* and *(b)* above are reviewed and approved by TSG.

c. Protocol and/or test plan review before submission to a HUC.

(1) A protocol or test plan will be prepared for all research requiring approval pursuant to this regulation. Certain studies may be exempt(see app F). The format in appendix B should be followed, but may be modified to meet local requirements. DA Pam 70–21 and DA Pam 71–3 provide guidance for preparation of test plans and equivalent documents. Protocols and test plans are exempt from management information requirements per AR 335–15, para 5–2*b*. An informed consent document will be prepared using DA Form 5303–R (Volunteer Agreement Affidavit), or functional equivalent, in accordance with appendix E (see *d*below). DA Form 5303–R will be reproduced locally on 8½- by 11-inch paper. A copy for reproduction is located at the back of this regulation.

(2) If a study calls for the use of tissue or fluids obtained from a human, and is not an exempt study as defined by appendix F, paragraph *e*, then a protocol is prepared.The following must be considered in determining whether informed consent is required.

(a) Fluid or tissue obtained at autopsy: informed consent is required.

(b) Fluid or tissue obtained at surgery or as the result of a diagnostic procedure and linked by identifiers directly or indirectly to a particular person intended for research: informed consent is required.

(c) Fluid or tissue obtained at surgery or as the result of a diagnostic procedure not intended for research and not linked by identifiers: no informed consent is required.

(d) Fluid or tissue obtained from a tissue or blood bank which is linked to a personal identifier and the research data is recorded in such a manner as to identify the donor: informed consent is required.

(e) Fluid or tissue obtained from a tissue or blood bank, which is linked to a personal identifier, but the research data is recorded in such a manner that the donor's identity is unknown: no informed consent is required.

(f) Fluid or tissue obtained from a tissue or blood bank which is not linked to a personal identifier: no informed consent is required.

Note. (The informed consent document used in these cases may be the DA Form 5303–R, an overprinted consent for surgery or autopsy, or other form approved by the HUC and the forms management office at the organization.)

(3) The protocol or test plan is submitted to a scientific review committee composed of individuals qualified by training and experience, and appointed by the commander of the unit to evaluate the validity of the protocol. The purpose of this peer review is to assure that the protocol design will yield scientifically useful data which meets the objective(s) of the study. The committee recommendations and actions taken by the investigator in response to the recommendations are submitted with the protocol to the HUC.

(4) When applicable, the protocol or test plan will be submitted to the radioisotope/radiation control committee, or equivalent, established in accordance with TB MED 525. The committee recommendations and actions taken by the investigator in response to those recommendations are submitted with the protocol to the HUC.

(5) When applicable, the protocol will be submitted to the SSC–NCR for research which calls for the use of an attitude or opinion survey, as defined by AR 600–46. If such studies are planned, the SSC–NCR must be contacted to determine whether the survey requires approval of that Center. This information should accompany the proposal when it is submitted for review.Surveys that cross command lines or are sent to other Services require approval. Inquiries should be directed to Commander, SSC–NCR, Attitude and Opinion Survey Division, ATTN: ATNC–MOA,200 Stovall Street, Alexandria, VA 22332–0400 (AUTOVON 221–9680).

d. Informed consent documentation. The subject's agreement to participate in the study will be documented using DA Form 5303–R, or functional equivalent, in accordance with appendix E. If additional pages are required, plain bond paper will be used and each page will be initialed by the volunteer and the witness. This form is not appropriate for research performed by contract. The volunteer agreement will be written in language that is easily understood by the subject. In research conducted outside the United States involving non-U.S. citizens, a locally produced form in the subject's native language may be used. An English translation of the form will be provided to the HUC.

e. Protocol and/or test plan review after submission to the local HUC.

(1) *HUC actions.*

(a) The HUC determines the level of risk associated with the protocol or test plan.

(b) The HUC may make the following recommendations to the approving authority: Approved, approved with modification, defer review to higher authority, disapproved, or exempt from further human use review.

(c) The HUC requires that the information given to subjects as a part of the informed consent is in accordance with the applicable portions of appendix E. The committee may require that information, in addition to that specifically mentioned in appendix E, be given to the subject when, in the HUC's judgement, the information would meaningfully add to the protection of the rights and welfare of the subject.

(d) The HUC reviews research involving minors. The committee will determine if assent is required and establish the method documenting such assent. The committee may waive the requirement for assent provided the HUC finds and documents that the research could not practicably be carried out without the waiver (see para 3–1*o*(4)).

(e) The HUC reviews research involving wards of a State agency, and other vulnerable categories of human subjects. The HUC determines if the use of such a category of subjects is warranted.If, in the opinion of the committee, the use of this category of subjects is appropriate, then the protocol is forwarded through command channels to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012, for approval.

(f) The HUC conducts a continuing review of the research approved by the HUC at intervals appropriate to the level of risk, but at least annually. The format for the review (for example, progress report from the investigator) will be determined by the HUC.

(g) A HUC reviews research involving medical devices.If, in the opinion of the HUC, the device does not pose a significant risk to the research subject, the organization will not be required to submit an IDE to the FDA.

(h) Certain categories of research may be reviewed by the HUC using the expedited review procedures in *g*below.

(i) Exempt categories of research are discussed in appendix F.

(2) *Approving official actions.* Approving officials—

(a) Will accept or reject the recommendations of the HUC. Safeguards or special restrictions imposed on a protocol by a HUC may not be reduced or waived by approving officials upon approval of the protocol or test plan.

(b) May require additional safeguards, may disapprove the protocol or test plan, or may refer it to a higher review committee and approving authority.

(c) Appoint a medical monitor (see glossary) for all studies that are greater than minimal risk.

(d) Obtain a health hazard assessment prior to approving a research protocol or test plan involving human subjects in the operation of military materiel.

(e) Notify the investigator of their decision to approve or disapprove the research proposal, or of modifications required to secure approval.

(f) Ensure the continued evaluation of research programs by the program or project manager or equivalent official to assure that the policies and procedures established by this regulation are being followed.

(g) Will, when higher approval authority is required, forward two

copies of the research protocol or test plan, informed consent documentation (DA Form 5303–R, or functional equivalent if applicable), all minutes of committees reviewing the protocol, and the commander's recommendations through command channels to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012.

f. Actions taken by an organization without a local HUC.

(1) The investigator accomplishes the actions noted in *c* above.

(2) The commander or organizational head accomplishes the actions noted in *e(2)(d)* above, and forwards the protocol with his or her recommendations, through the military chain of command, to the next level of command having an approved HUC.

g. Expedited review procedures. These procedures are as follows:

(1) Research activities involving no more than minimal risk and in which the only involvement of human subjects will be in one or more of the categories listed at appendix D may be reviewed by the HUC through the expedited review procedure.

(2) The HUC may also use the expedited review procedure to review minor changes in previously approved research during the period for which approval is authorized. Under an expedited review procedure, the HUC chairman or one or more HUC reviewers designated by the chairman may carry out the review. The reviewers may exercise all of the authorities of the HUC except that of disapproval. Research may be disapproved only after review according to the nonexpedited procedure in *e* above.

(3) Each HUC using an expedited review procedure adopts a method for keeping all members and the commander advised of approved proposals.

(4) The approving official may restrict, suspend, or end a HUC's use of the expedited review procedure when necessary to protect the rights or welfare of subjects.

h. Duty to warn. Commanders have an obligation to ensure that research volunteers are adequately informed concerning the risks involved with their participation in research, and to provide them with any newly acquired information that may affect their well-being when that information becomes available.The duty to warn exists even after the individual volunteer has completed his or her participation in research. To accomplish this, the MACOM or agency conducting or sponsoring research must establish a system which will permit the identification of volunteers who have participated in research conducted or sponsored by that command or agency, and take actions to notify volunteers of newly acquired information. (See *a* above.)

i. Determining responsibility for review of protocols when more than one DOD or DA component is involved. The commander will determine primary responsibility based upon consideration of whether the subjects are inpatients or outpatients of a DOD medical treatment facility (MTF); whether the study is conducted in-house or by contract; or whether the prospective subjects are members of a DOD component.

(1) When the research, regardless of in-house or contract status, involves use of patients in a DOD MTF, the component to which the MTF belongs organizationally will have primary responsibility;except as provided in (3) below.

(2) For research not involving the use of inpatients at a DOD MTF, primary responsibility rests as follows:

(a) If the research is done on grant or contract, primary responsibility rests with the component providing funds.

(b) If research is conducted in-house, primary responsibility rests with the component to which the principal investigator is assigned.

(c) If research is not funded by a DOD or DA component and there is no DOD or DA principal investigator, primary responsibility rests with the component to which the prospective human subject is assigned.

(3) Studies funded by the Uniformed Services University of the Health Sciences (USUHS) or the Defense Nuclear Agency are reviewed and approved in accordance with policies established by the funding activity, and DODD 3216.2.

j. Records. Organizations or agencies conducting research involving volunteers will maintain records in accordance with AR 25–400–2, which are pertinent to the research conducted.These records will include, at a minimum—

(1) Documentation of approval to conduct the study.

(2) A copy of the approved protocol or test plan.

(3) The volunteer's signed informed consent (for example, DA Form 5303–R).

(4) A summary of the results of the research, to include any untoward reactions or occurrences. (See app H for a discussion of the composition of the Volunteer Data Base.)

k. Contractors or grantees. Contractors or grantees holding an approved Department of Health and Human Services(DHHS) Form HHS 596 (Protection of Human Subjects Assurance/Certification/ Declaration) are considered in compliance with this regulation. (See fig 3–1 for sample DHHS Form HHS 596.) In the absence of such an assurance, a special assurance will be negotiated by the contracting officer with the contractor or grantee. Organizations can verify that a contractor has a valid DHHS Form HHS 596 by contacting the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S.Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012. Even though a contractor has a review process which is consistent with Federal law (that is, 45 CFR 46), it is incumbent upon the approving official to administratively review the protocol to assure that it complies with the policies established in this regulation.

l. Technical reports and publications.

(1) Technical reports will be prepared in accordance with AR 70–31 and follow the format established in MIL–STD 847B or its revisions.

(2) Publications regarding the results of DA conducted research will be released by the approving official in accordance with the provisions of AR 360–5 and will contain the following statement: "The investigators have adhered to the policies for protection of human subjects as prescribed in AR 70–25."

(3) Publications regarding the results of DA sponsored research conducted by contract or grant will note adherence with 45 CFR 46, as amended.

m. Requests for exceptions to policy. Requests for exceptions to policy are submitted to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012. Requests will then be submitted to TSG's HSRRB for evaluation and recommendation to TSG; and TSG's recommendation to the ASD (HA) or USD (A), as appropriate.

SAMPLE

OMB No. 0925-0037

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☒ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION (previously undesignated)

☐ GRANT ☒ CONTRACT ☐ FELLOW ☐ OTHER

☐ New ☐ Competing continuation ☐ Noncompeting continuation ☐ Supplemental

APPLICATION IDENTIFICATION NO. *(If known)*

POLICY: A research activity involving human subjects that is not exempt from HHS regulations may not be funded unless an Institutional Review Board (IRB) has reviewed and approved the activity in accordance with Section 474 of the Public Health Service Act as implemented by Title 45, Part 46 of the Code of Federal Regulations (45 CFR 46—as revised). The applicant institution must submit certification of IRB approval to HHS unless the applicant institution has designated a specific exemption under Section 46.101(b) which applies to the proposed research activity. Institutions with an assurance of compliance on file with HHS which covers the proposed activity should submit certification of IRB review and approval with each application. (In exceptional cases, certification may be accepted up to 60 days after the receipt date for which the application is submitted.) In the case of institutions which do not have an assurance of compliance on file with HHS covering the proposed activity, certification of IRB review and approval must be submitted within 30 days of the receipt of a written request from HHS for certification.

1. TITLE OF APPLICATION OR ACTIVITY

Evaluation of Mefloquine in the Treatment of P.falciparum malaria

2. PRINCIPAL INVESTIGATOR, PROGRAM DIRECTOR, OR FELLOW

John Boslego, MD

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION *(see reverse side)*

4. HHS ASSURANCE STATUS

☒ This institution has an approved assurance of compliance on file with HHS which covers this activity.

M1369 Assurance identification number _____ IRB identification number

☐ No assurance of compliance which applies to this activity has been established with HHS but the applicant institution will provide written assurance of compliance and certification of IRB review and approval in accordance with 45 CFR 46 upon request.

5. CERTIFICATION OF IRB REVIEW OR DECLARATION OF EXEMPTION

☒ This activity has been reviewed and approved by an IRB in accordance with the requirements of 45 CFR 46, including its relevant Subparts. This certification fulfills, when applicable, requirements for certifying FDA status for each investigational new drug or device *(see reverse side of this form)*.

Jul 31,1987 Date of IRB review and approval. *(If approval is pending, write "pending". Followup certification is required.)*
(month/day/year)

☒ Full Board Review ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by 45 CFR 46 will be reviewed and approved before they are initiated and that appropriate further certification *(form HHS 596)* will be submitted.

☐ Human subjects are involved but this activity qualifies for exemption under 46.101(b) in accordance with paragraph _____ *(insert paragraph number of exemption in 46.101(b), 1 through 5)*, but the institution did not designate that exemption on the application.

6. Each official signing below certifies that the information provided on this form is correct and that each institution assumes responsibility for assuring required future reviews, approvals, and submissions of certification.

APPLICANT INSTITUTION	COOPERATING INSTITUTION
NAME, ADDRESS, AND TELEPHONE NO. Wonderful University PO Box 7 Anywhere, State 65473	NAME, ADDRESS, AND TELEPHONE NO.
NAME AND TITLE OF OFFICIAL *(print or type)* William D. Clyde, Jr Chancellor for Health Affairs	NAME AND TITLE OF OFFICIAL *(print or type)*
SIGNATURE OF OFFICIAL LISTED ABOVE *(and date)* William D. Clyde Jr 7Aug87	SIGNATURE OF OFFICIAL LISTED ABOVE *(and date)*

HHS 596 (Rev. 1/82) *(If additional space is needed, please use reverse side under "Notes.")*

Figure 3-1. Sample DHHS Form HHS 596

SAMPLE

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION *(from front side)*

According to 45 CFR 46.121, if an application is made to HHS requiring certification and involving use of an investigational new drug or device, additional information is required. In addition, according to 21 CFR 312.1(a)(2), 30 days must elapse between date of receipt by FDA of Form FD-1571 and use of the drug, unless the 30 day delay period is waived by FDA.

3a. INVESTIGATIONAL NEW DRUG EXEMPTION *(If more than one is involved, list others below under NOTES):*

SPONSOR NAME

Hoffman LaRoche, Inc

DRUG NAME

Mefloquine, 250 mg tablet

DATE OF END OF 30-DAY EXPIRATION OR WAIVER	NUMBER ISSUED
1 Apr 85	IND 1423

3b. INVESTIGATIONAL DEVICE EXEMPTION:

SPONSOR NAME

DEVICE NAME

Unless notified otherwise by FDA, under 21 CFR 812.2(b) (ii) a sponsor is deemed to have an approved IDE if: (1) the IRB has agreed with the sponsor that the device is a nonsignificant risk device; and (2) the IRB has approved the study. *(Check applicable box.)*

☐ The IRB agrees with the sponsor that this device is a nonsignificant risk device.

OR

☐ The IDE application was submitted to FDA on *(date)* _____ . Number issued _____ .

NOTES:

HHS 596 (Rev. 1/82) BACK

Figure 3-1. Sample DHHS Form HHS 596—Continued

Appendix A
References

Section I
Required Publications

AR 25–400–2
The Modern Army Recordkeeping System (MARKS). (Cited in paras 3–2*j* and C–6*b*.)

AR 40–3
Medical, Dental, and Veterinary Care. (Cited in para 3–1*c*and *k*.)

AR 40–7
Use of Investigational Drugs in Humans and the Use of Schedule I Controlled Drug Substances. (Cited in paras 1–4*c*,2–9*c*(5), and 3–1*v*.)

AR 40–10
Health Hazard Assessment Program in Support of the Materiel Acquisition Decision Process. (Cited in para 2–8*d*.)

AR 70–10
Test and Evaluation During Development and Acquisition of Materiel.(Cited in para 2-8*d* and the glossary.)

AR 70–31
Standards for Technical Reporting. (Cited in para 3-2*l*(1).)

AR 71–3
User Testing. (Cited in para 3-1*t*.)

AR 335–15
Management Information Control System. (Cited in para 3-2*c*(1).)

AR 340–21
The Army Privacy Program. (Cited in paras 3-2*a*(4) and II-1.)

AR 360–5
Army Public Affairs, Public Information (Cited in paras 3-1*w* and 3-2*l*(2).)

AR 385–16
System Safety Engineering and Management.(Cited in para 2-8*d*.)

AR 600–46
Attitude and Opinion Survey Program. (Cited in paras 2-6, 2-9*c*(12), and 3-2*c*(5).)

AR 602–1
Human Factors Engineering Program. (Cited in para 2-8*d*.)

AR 602–2
Manpower and Personnel Integration (MANPRINT) in Materiel Acquisition Process. (Cited in para 2-8*d*.)

DA Pam 70–21
The Coordinated Test Program. (Cited in para 3-2*c*(1).)

DA Pam 71–3
Operational Testing and Evaluation Methodology and Procedures Guide.(Cited in para 3-2*c*(1).)

MIL–STD 847B
Format Requirements for Scientific and Technical Reports Prepared by or for the Department of Defense. (Cited in para 3-2*l*(1).) (This publication is available from the Naval Publications and Forms Center,5801 Tabor Avenue, Philadelphia, PA 19120-5099 using DD Form 1425(Specifications and Standards Requisition).)

TB MED 525
Occupational and Environmental Health Control of Hazards to Health from Ionizing Radiation Used by the Army Medical Department. (Cited in para 3-2*c*(4).)

Section II
Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 11–2
Internal Control Systems

AR 40–38
Clinical Investigation Program

AR 40–66
Medical Record and Quality Assurance Administration

AR 70–14
Publication and Reprints of Articles in Professional Journals

AR 70–65
Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities

AR 600–50
Standards of Conduct for Department of the Army Personnel

AR 611–3
Army Occupational Survey Program (AOSP)

DODD 3216.2
Protection of Human Subjects in DOD-Supported Research. (To obtain this publication, see MIL-STD 847B, see I, above.)

DODD 6465.2
Organ Disposition After Autopsy. (To obtain this publication, see MIL-STD 847B sec I, above.)

FM 3–9/AFR 355–7
Military Chemistry and Chemical Compounds

DHHS Regulation, 45 CFR 46
Protection of Human Subjects. (This publication is available from Commander, USAMRDC, ATTN: SGRD-HR, Fort Detrick, Frederick, MD 21701-5012.)

FDA Regulation 21 CFR subchapters A, D, and H
Food and Drugs. (This publication is available for reference at the local installation staff judge advocate office.)

Memorandum of Understanding between the FDA and DOD
Investigational Use of Drugs by Department of Defense, May 21, 1987. (This publication is available from the Commander, USAMRDC, ATTN: SGRD-HR, Fort Detrick, Frederick, MD 21701-5012.)

10 USC 980
Limitation on the Use of Humans as Experimental Subjects.(This publication is available for reference at the local installation staff judge advocate office.)

10 USC 1102
Restriction on the Use of Information Obtained During Certain Epidemiologic-Assessment Interviews. (This publication is available for reference at the local installation staff judge advocate office.)

Unnumbered Publication
Convention on the Prohibition of the Development, Production, and Stockpile of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Article I. (This article is printed as a part of the publication entitled "Arms Control and Disarmament Agreements: Text and Histories of Negotiations", and is available from the U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451.)

Section III
Prescribed Forms

DA Form 5303–R
Volunteer Agreement Affidavit. (Prescribed in para 3-2*c*(1).)

Section IV
Referenced Forms

DD Form 1425
Specifications and Standards Requisition

DHHS Form HHS 596
Protection of Human Subjects Assurance/Certification/ Declaration.(Only the contractor or grantee will obtain and use this form. This form after approval, however, is shown to the contracting officer as proof of the contractor's or grantee's compliance with this regulation. See para 3-2*k*, fig 3-1, and the glossary.)

Appendix B
Guidelines for Preparation of Research Protocol and/or Test Plan

B–1. Project title
Enter complete project title. (If an amendment, the words "Amendment to. . . . . ." must precede the project title.)

B–2. Investigators
a. Principal investigator.
b. Associate investigators.

B–3. Location of study
List of facilities to be used.

B–4. Time required to complete
Give month and year of expected start and completion dates.

B–5. Introduction
a. Synopsis.
(1) One-page summary of proposed study similar to the abstract of a scientific paper.
(2) Major safety concerns for human subjects briefly highlighted.
b. Military relevancy. Explain briefly the medical importance and possible usefulness of the project.
c. Objectives. State briefly, but specifically, the objectives of the project. Include items below when applicable.
(1) Study design.
(2) Type of subject population observed.
d. Status. State what has been accomplished or published in the proposed area of study. Describe the way in which the project will relate to, or differ from, that which has been accomplished.
e. Bibliography. List all references used in preparing the protocol.

B–6. Plan
Outline expected accomplishments in enough detail to show a clear course of action. Include technological validity of procedures and chronological steps to be taken. The plan should include, as a minimum, the information shown below on the study subjects.
a. Number of subjects. Give the total number of subjects expected to complete the study.
b. Age range.
c. Sex.
d. Inclusion criteria. Specific and detailed reasons for inclusion should be presented.
e. Diagnostic criteria for entry.
f. Evaluations before entry. Entries should include x ray, physical examinations, medical history, hematology, chemistry, and urinalysis as deemed appropriate.
g. Exclusion criteria. Include a complete list detailing the subjects, diseases, and medications that are excluded from the study.
h. Source of subjects. Describe briefly where the subjects will be obtained.
i. Subject identification. Describe the code system used.
j. Analysis of risks and benefits to subjects; risks to those conducting research.
k. Precautions to be taken to minimize or eliminate risks to subjects and those conducting the research.
l. Corrective action necessary.
m. Special medical care or equipment needed for subjects admitted to the project.

B–7. Evaluations made during and following the project
An evaluation may also be represented by using a project schematic. It is very important to identify in the protocol the person who will perform the evaluations below.
a. Specimens to be collected.
(1) Amount and schedule of collections.
(2) Evaluations to be made on specimens.
(3) Storage. State where and if special conditions are required.
(4) Labeling and disposition.
(5) Laboratories performing evaluations.
(6) Special precautions for subject and investigators.
b. Clinical assessments. Include how adverse effects are to be recorded.
c. Vital signs. When desired and frequency.
d. Follow up procedures .
e. Disposition of data. State location and duration of storage.
f. Methods used for data collection. State critical measurements used as end points to characterize safety, efficacy, or equivalency.

B–8. Departure from protocol for individual patients
a. When allowed. Use flexible but definite criteria.
b. Who will be notified. (For example, patient, HUC, approving official.)

B–9. Incidents
a. Definition of incidents.
b. Immediate reporting.
c. Routine reporting.

B–10. Modification of protocol
Describe the procedure to be followed if the protocol is to be modified, terminated, or extended.

B–11. Examples of all forms to be used in the protocol

B–12. Use of information and publications arising from the study

B–13. Special or unusual funding implications

B–14. Name and telephone number of the medical monitor, when applicable

B–15. Human use committee
Brief explanation of which HUC will provide initial, continued, and annual review.

B–16. Signature of appropriate approving official and date

B–17. Documentation
a. Completed DA Form 5303–R.

b. Institutional review of scientific and human use issues.
c. HUC review with commander's approval.
d. Biographical sketch of principal and associate investigators.

Appendix C
Human Use Committees

C–1. Membership

a. Membership will include only full-time Federally employed persons.

b. Each HUC will have at least five members. Members will have diverse backgrounds to ensure thorough review of research studies involving human volunteers as research subjects. Members should be sufficiently qualified through experience and expertise. *The racial and cultural backgrounds of members and their sensitivity* to such issues as community attitudes should ensure respect for their advice and counsel in safeguarding the rights and welfare of human subjects.

c. Besides having the professional competency to review research studies, the HUC will be able to determine if the proposed research is acceptable.Acceptability will be in terms of Army Medical Department (AMEDD) commitments and regulations, applicable law, and standards of conduct and practice. A HUC may review research periodically that involves vulnerable categories of human subjects (for example, those individuals with acute or severe physical or mental illness; or those who are economically or educationally disadvantaged). Therefore, it will include one or more persons concerned primarily with the welfare of these subjects.

d. Normally, no HUC may consist entirely of men or women, or members of one profession. However, the approving official may waive this requirement in those cases in which compliance is impractical.

e. Each HUC will include at least one member whose primary concerns are nonscientific; for example, lawyers, ethicists, and members of the clergy.Should a given proposal include more than minimal risk, a physician will be included as an ad hoc member of the committee.

f. Each HUC will include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person affiliated with the institution. This requirement may be met by appointing a member of an institution or organizational unit not subject to the immediate authority of the approving official.

g. Except to provide information requested by the HUC, no HUC member may take part in a review of any project in which the member serves as the principal investigator or associate investigator.

h. A HUC may invite persons with special competence to assist in the review of complex issues that require expertise beyond that available on the HUC. These persons may not vote with the HUC.

i. The approving official may not be a member. The approving official may not approve research for which he or she is also a principal or associate investigator. A higher echelon of command must review and approve such research projects.

C–2. Functions and operations

Each HUC—

a. Will observe written procedures for the following:

(1) Conducting the initial and continuing review of the research.Included are reporting findings and actions to the investigator and the approving official.

(2) *Determining those projects that must be*—

(a) Reviewed more often than yearly.

(b) Verified from sources other than the investigators, that no material changes have occurred since the previous HUC review.

(3) Ensuring prompt reporting to the HUC of proposed changes in the research. Each HUC will ensure that changes in approved projects (during the period for which approval has already been given) are not initiated without HUC review except to eliminate immediate hazards to the subject.

(4) Ensuring prompt reporting to the HUC and approving official of unexpected problems involving risks to the subjects or others.

b. Will review proposed protocols at meetings attended by a majority of members except when an expedited review is used (see C–3 below). For the protocol to be approved, it will receive the approval of a majority of those members present.

c. Will report to the approving official any serious or continuing noncompliance with HUC requirements and determinations found by investigators.

d. Will conduct continuing review of research studies at intervals proper to the degree of risk, but not less than once per year.

e. Will have the authority to observe or have a third party observe the consent process and the investigation.

f. Will maintain a current list of HUC members. Members will be identified by name, earned degrees, representative capacity and, experience such as board certificates and licenses. The information will be complete enough to describe each member's chief expected contributions to HUC reviews.Any employment or other relationship between members and the institution will be noted.

g. May recommend safeguards or special conditions to a protocol.If the HUC does so, the approving official may take the following action:

(1) Not reduce the safeguards or conditions if he or she approves the protocol.

(2) Require additional safeguards.

(3) Disapprove the protocol.

(4) Refer the protocol to a higher echelon approving authority and review committee.

C–3. Expedited review procedures

a. See appendix D for a list of categories of investigations that the HUC may review in an expedited review procedure.

b. See paragraph 3–2*g* for the expedited review procedure that the HUC will follow.

C–4. Criteria for HUC approval of activities/investigations requiring volunteers

a. In evaluating risks and benefits for research investigations, the HUC should consider only those that may result from the investigation.

b. To approve investigations covered by this regulation, the HUC will determine that all of the requirements below are met.

(1) Risks to subjects are minimized by using procedures that are—

(a) Consistent with sound investigation design and do not unnecessarily expose subjects to risk.

(b) Already being used on the subjects for diagnosis or treatment, when appropriate.

(2) Risks to subjects are reasonable in relation to anticipated benefits to subjects.

(3) In making an assessment for the selection of subjects, the HUC should take into account the—

(a) Purpose of the investigation.

(b) Setting in which the research investigation will be conducted.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative.

(5) Informed consent will be properly documented.

(6) The plan makes adequate provision for monitoring the data collected to ensure the safety of subjects when appropriate.

(7) Adequate provisions exist to protect the privacy of subjects and to maintain the confidentiality of data when appropriate.

c. Some or all of the subjects may be vulnerable to coercion or undue influence such as persons with acute or severe physical or mental illness, or those who are economically or educationally disadvantaged. If so, proper additional safeguards will be included in the study to protect the rights and welfare of these subjects.

C–5. Suspension or termination of approved research investigation

a. A HUC will have the authority to suspend or end an approved investigation that—

(1) Is not being conducted according to the HUC's requirements.

(2) Has been associated with unexpected serious harm to subjects.

b. Suspensions or terminations of research will include a statement of the reasons for the HUC's action. They will be reported promptly to the principal investigator and approval official.

C–6. HUC records

a. A HUC will prepare and maintain adequate documents on HUC activities, including—

(1) Copies of all protocols reviewed, scientific evaluations that accompany the proposals, approved sample consent documents, progress reports submitted by investigators and reports of injuries and adverse reactions.

(2) Minutes of HUC meetings showing attendance; actions taken by the HUC; the vote on these actions, including the number of members voting for, against, and abstaining on a decision; the basis for requiring changes or disapproving the investigation; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the HUC and the investigators.

(5) A list of HUC members.

(6) Written procedures for the HUC.

(7) Statements of significant new findings.

b. The records required by this regulation will be retained permanently (see AR 25–400–2). Such records will be reasonably accessible for inspection and copying by authorized DA personnel and representatives of the FDA.

C–7. Conflict of interest

a. It is essential that the members of the HUC continue to be perceived and, in fact, are free from conflict of interest in their daily duties and especially in regards to the protocols they review.

b. The issue of conflict of interest has been addressed by public law, DOD directive, and Army regulation. The situations discussed below are merely examples of the types of activities and relationships which may result in conflict or the appearance of conflicts of interest. They are by no means the only ways that conflicts arise.

(1) *The potential for personal or financial gain.* A committee member who is deliberating a protocol which is to be performed by a contractor, in which the member or a member of his or her immediate family is a corporate officer, stockholder, consultant or employee, could be accused of conflict of interest if he or she voted on the protocol, regardless of his or her vote.

(2) *The potential for personal reward.* A committee member who is affiliated with a protocol in the capacity of principal, associate or co-investigator, could be accused of conflict of interest if he or she voted on the protocol, regardless of his or her vote.

(3) *Command influence.* The mission (for example, the purpose of the research) should not override or obscure its methods. It is imperative that the committee, through its members, continue to be recognized as a reasonable, deliberative body, whose bias is the safety and welfare of the research subject.It is incumbent upon each committee member to assure his or her concerns regarding the moral, ethical, and legal issues of each protocol are answered to his or her satisfaction before voting according to his or her conscience.

c. Commanders and organizational heads will establish a method to ensure that each committee member is familiar with the pertinent laws and regulatory guidance regarding conflict of interest.

C–8. Legal review

Prior to establishing a HUC, the commander or organizational head will obtain legal counsel from the staff judge advocate.

Appendix D
Expedited Review Categories

D–1. Hair, nails, teeth

Collection of—

a. Hair and nail clippings in a nondisfiguring way.

b. Deciduous teeth.

c. Permanent teeth if patient care indicates a need for extraction.

D–2. Excreta and secretions

Collection of—

a. Excreta and external secretions including sweat and uncannulated saliva.

b. Placenta at delivery.

c. Amniotic fluid at the time of rupture of the membrane before or during labor.

D–3. Physical data

Recording of data from subjects who are 18 years of age or older, using noninvasive procedures routinely employed in clinical practice. This category—

a. Includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy.

b. Includes such procedures as—

(1) Weighing.

(2) Electrocardiography.

(3) Electroencephalography.

(4) Thermography.

(5) Detection of naturally occurring radioactivity.

(6) Diagnostic echography.

(7) Electroretinography.

c. Does not include exposure to electromagnetic radiation outside the visible range (for example, x rays or microwaves).

D–4. Blood

Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an 8-week period and no more often than two times per week.Subjects will be 18 years of age or older, in good health, and not pregnant.

D–5. Dental plaque and calculus

Collection of both supragingival and subgingival dental plaque and calculus.The procedure must not be more invasive than routine prophylactic scaling of the teeth. The process must be accomplished according to accepted prophylactic techniques.

D–6. Voice records

Voice recordings made for research purposes such as investigations of speech defects.

D–7. Exercise

Moderate exercise by healthy volunteers.

D–8. Existing data

Study of existing data, documents, records, or pathological or diagnostic specimens.

D–9. Behavior

Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or

test development, where the investigator does not manipulate the subject's behavior and research will not involve stress to subjects.

Appendix E
Instructions for the Completion of the Volunteer Agreement Affidavit

E–1. Title and location
The title of the study and place where it is to be conducted.

E–2. Principal investigator
The name of the principal investigator conducting the study.

E–3. Description of the study
A statement that the study involves research. An explanation of the purpose of the study and the expected duration of the subject's participation. A description of the procedures to be followed. An identification of any experimental procedures. A statement giving information about prior, similar, or related studies that provide the rationale for this study.

E–4. Risks
A description of any reasonably foreseeable risks or discomforts to the subject.

E–5. Benefits
A description of the benefits, if any, to the subject or to others that may reasonably be expected from the study. If there is no benefit to the subject, it should be so stated.

E–6. Alternative treatment
When applicable, a disclosure of proper alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

E–7. Confidentiality
A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained. Also, in the case of an investigational drug or medical device protocol, a statement noting that the FDA may inspect the records. If the study is being performed by a contractor, a statement noting that representatives of the DOD may inspect the records.

E–8. Points of contact
An explanation of whom to contact for answers to pertinent questions about the study and the study subject's rights, and whom to contact in the event of a study-related injury to the subject. This should include a name or office and the commercial and AUTOVON telephone numbers.

E–9. Subject's rights
A statement that—

a. Participation is voluntary.

b. Refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled.

c. The subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

E–10. Compensation
For a study involving more than minimal risk, an explanation as to whether any compensation and medical treatment are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

E–11. Cautions
When appropriate, one or more of the elements of information below will also be given to each subject.

a. A statement that a certain treatment or procedure may involve risks to the subject (or to the embryo or fetus if the subject is or may become pregnant) that are currently unforeseeable. (Possible genetic effects to the offspring of males should be addressed when applicable.)

b. The anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

c. Any additional costs to the subject that may result from participation in the study.

d. The consequences of a subject's decision to withdraw from the study and procedures for the orderly end of the subject's participation.

e. A statement that new findings developed during the course of the study which could affect the subject's willingness to continue will be given to the subject.

f. The approximate number of subjects involved in the study.

g. The precautions to be observed by the subject before and after the study.

h. If photographs are to be taken, the degree to which actions will be taken to protect the identity of the subject.

i. A statement as to whether the results of the research will be made known to the subject.

E–12. Disposition of the informed consent
The principal investigator will retain the original signed informed consent.A copy will be provided to the volunteer. If the volunteer consents, the investigator will provide a copy of the signed DA Form 5303–R to the medical records custodian for inclusion in the volunteer's medical treatment record(AR 40–66, para 6–2*f*.)

Appendix F
Exemptions

F–1. Exempt activities
Activities in which human subjects are involved in one or more of the categories below are exempt from this regulation.

a. Routine epidemiological surveys that are of no more than minimal risk as set forth in the human protection regulations issued by the DHHS (45 CFR 46). (See the glossary for the definition of epidemiological survey.)

b. Research in educational settings which involves normal educational practices such as—

(1) Regular and special education strategies.

(2) The effectiveness of, or the comparison among, techniques of instruction, curricula, or classroom management methods.

c. Research that involves the use of educational tests when the data is recorded in such a way that subjects cannot be identified directly or indirectly.

d. Research that involves survey, interview procedures, or the observation of public behavior (including observation by participants) except where all the following exist:

(1) Responses or observations are recorded in such a way that subjects can be identified directly or indirectly.

(2) The subject's responses or recorded observations, if they become known outside the research, could reasonably place the subject at risk of criminal or civil liability, or would damage the subject's financial standing or employability.

(3) The research deals with sensitive aspects of the subject's behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol.

e. Research involving the collection or study of existing data, documents, records, or pathological or diagnostic specimens, if these sources are publicly available or if the information is recorded in such a way that subjects cannot be identified directly or indirectly.

f. Individual or group training of military personnel such as combat readiness, effectiveness, proficiency, or fitness exercise (for example, Army Training and Evaluation Program (ARTEP), Skill Qualification Test (SQT)). Evaluation of the training's effect on the individual participants may or may not be exempt depending on

how the evaluation is made (for example, drawing of blood is not exempt).

g. Job related tasks of military or civilian personnel who are qualified to test by duty assignments that call specifically for such qualifications.

h. Inclusion of human subjects as the indirect object of research involving minimal risk or less in the development and testing of military weapon systems, vehicles, aircraft, and other material are exempt from the requirement for obtaining informed consent from the participants. The determination of whether a proposal is minimal risk or less is made by a HUC established in accordance with paragraph 3–2*b* of this regulation.

i. Other research which is exempted by future changes to DHHS regulations, and which is consistent with this regulation and DOD Directive 3216.2.

F–2. Not used

Appendix G
Legal Implications

G–1. Authority

The Secretary of the Army is authorized to conduct research and development programs including the procurement of services that are needed for these programs (10 USC 4503). The Secretary has the authority to "assign, detail and prescribe the duties"of the members of the Army and civilian personnel (10 USC 3013).

G–2. Military personnel and Department of the Army civilian employees

Compensation for the disability or death of a civilian employee resulting from personal injury or disease proximately caused by employment is payable under the Federal Employees Compensation Act (5 USC 8100 et seq.), regardless of whether employment was of a hazardous nature. The amount and type of disability compensation or other benefits payable by reason of the death or disability of a member of the Army resulting from injury or disease incident to service depends upon the individual status of each member, and is covered by various provisions of law. It may be stated generally that under present laws no additional rights against the government will result from the death or disability of military and civilian personnel participating in experiments by reason of the hazardous nature of the operations.

G–3. Private citizens

It is the policy of the United States to prohibit the acceptance of voluntary services (31 USC 1342). Individuals may, however, enter into an independent contractual relationship and participate for compensation as authorized by applicable directives (for example, volume 45 Decision of the Comptroller General, 1966, p. 649 (45 DCG 649)). Accordingly, any such service should be accompanied by a statement to the effect that the individual will not receive or become entitled to any compensation other than that stated in the contract for these services.

G–4. Use of appropriated funds for the purchase of insurance

Since the payment of insurance premiums on the life of an officer or employee of the United States is a form of compensation which is not currently authorized, payment of those premiums is prohibited.

G–5. Contractor's employees

There appears to be no legal objection to the use of employees of contractors in research and development experiments. It is the responsibility of the contracting officer to determine whether the terms of the contract are sufficiently broad to permit the participation of these employees. Generally, benefits to which contract employees may become entitled by reason of death or disability resulting from their employment are payable under State Workmen's Compensation law, except persons covered by the survivor's insurance provisions of the Social Security Act (42 USC 402). Reimbursement of the employer for additional costs by reason of this liability for his or her employees will depend upon the terms of each contract. These employees are not disqualified from prosecuting claims against the government under the Federal Torts Claim Act (28 USC 2671 et seq.), if such a claim exists.

G–6. Irregular or fee-basis employees

Intermittent services of such employees are authorized. (Experts and consultants, 5 USC 3109(b) and Sec. 710 Defense Production Act of 1960 (64 Stat. 819, 50 USC App 2160); and for architects, engineers, and other technical and professional personnel on a fee-basis, 10 USC 4540.) Whether these employees can be detailed or assigned to the proposed experiments will depend upon the statutory authority for employment and the provisions of their employment agreement in each case. The Federal Employees Compensation Act, *supra*, in all probability applies with respect to these irregular and fee-basis employees for any injury or disease resulting from their employment, although a final determination in such cases will have to be made by the Federal agency responsible for deciding claims. Subject to such restrictions and limitations as may appear in the statutory authority under which he or she is employed, it would appear that the Government may legally bear the expense of premiums upon the life of an irregular or fee-basis employee whose rate of compensation is not fixed by law or regulations. In this regard, it may be advisable for the government to provide an additional allowance to the employee for financing such private insurance arrangements as he or she may wish to make rather than to undertake direct negotiations with insurance carriers for the desired coverage.

Appendix H
Volunteer Data Base

H–1. General

The intent of the data base is twofold: first, to readily answer questions concerning an individual's participation in research conducted or sponsored by the command; and second, to ensure that the command can exercise its "duty to warn." The data base must contain items of personal information, for example, name, social security number (SSN), etc., which subjects it to the provisions of The Privacy Act of 1974. AR 340–21 addresses the requirements for establishing such a system of records. For assistance in developing the systems notice for publication in the Federal Register, contact Commander, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012, AUTOVON 343–2165.

H–2. Data elements

The elements listed below are representative of those items that could be found in such a data base. It is not meant to be all inclusive, and can be modified to meet individual command needs.

a. Records of the study. A copy of the—

(1) Approved test plan or protocol.

(2) Letter or other document approving the conduct of the test or protocol.

(3) Signed informed consent for each volunteer.

(4) Report generated by the results of the test or protocol.

b. Data elements—volunteer's personal information.

(1) Name.

(2) Rank (if applicable).

(3) SSN.

(4) Sex.

(5) Date of birth.

(6) MOS or AOC (if applicable).

(7) Local address and telephone number.

(8) Permanent address and telephone number.

(9) Unit (if applicable).

c. Data elements—test plan or protocol information.

(1) *Test or protocol title.*
(2) Principal investigator's name.
(3) Laboratory, unit, or facility conducting the test protocol.
(4) Location of the test.
(5) Test period.
(6) Challenge material data (if applicable).
(a) Name of the material used (both active and inert material).
(b) Manufacturer.
(c) Lot number.
(d) Expiration date.
(e) IND or IDE number.
(7) Date the volunteer completed or withdrew from the study.
(8) Reason for withdrawal (if applicable).
(9) Description of untoward reactions experienced by the volunteer (if none, so state).

H–3. Updating perishable data

Selected items of personal information are perishable; for example, local address and telephone number. A method should be established, which is consistent with the potential for long-term risks of the test or protocol, to update this information. For example, the risks associated with testing a new parachute will be readily apparent; whereas the risks associated with the testing of new, obscurant smoke may not be known for some time to come.

Glossary

Section I
Abbreviations

AIDS
Acquired immune deficiency syndrome

AMEDD
Army Medical Department

AOC
area of concentration

ARNG
Army National Guard

ARTEP
Army Training and Evaluation Program

ASA (RDA)
Assistant Secretary of the Army (Research, Development, and Acquisition)

ASD (HA)
Assistant Secretary of Defense (Health Affairs)

CFR
Code of Federal Regulations

DA
Department of the Army

DCSPER
Deputy Chief of Staff for Personnel

DHHS
Department of Health and Human Services

DOD
Department of Defense

DTF
dental treatment facility

FDA
Food and Drug Administration

HIV
human immunodeficiency virus

HSRRB
Human Subjects Research Review Board

HUC
human use committee

HURRAO
Human Use Review and Regulatory Affairs Office

IDE
Investigational Device Exemption

IND
Notice of Claimed Investigational Exemption for a New Drug

IRB
institutional review board

MACOM
major Army command

MOS
military occupation specialty

MTF
medical treatment facility

NDA
New Drug Application

OTSG
Office of the Surgeon General

PCS
permanent change of station

PI
principal investigator

RDTE
research, development, test, and evaluation

SI
skill identifier

SSC–NCR
Soldier Support Center—National Capital Region

SSN
social security number

SQT
skill qualification test

TSG
The Surgeon General

USAMRDC
U.S. Army Medical Research and Development Command

USAR
U.S. Army Reserve

USD (A)
Under Secretary of Defense for Acquisition

USUHS
Uniformed Services University of the Health Sciences

Section II
Terms

Adverse personnel action
For the purposes of paragraph 3–1*l*, this term includes—

a. A court martial.
b. Non-judicial punishment.
c. Involuntary separation (other than for medical reasons).
d. Administrative or punitive reduction in grade.
e. Denial of promotion.
f. An unfavorable entry in a personnel record.
g. A bar to reenlistment.
h. Any other action considered by the DA to be an adverse personnel action.

Approving official
A military commander or civilian director of an organizational element of a DA component who has been delegated authority to approve the use of human subjects in research.

Assent
A child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

Associate investigator
A person who may be involved in the execution of research, but does not have overall primary responsibility. The FDA refers to such an individual as a subinvestigator.

Certificate of Assurance
See Protection of Human Subjects Assurance/Certification/Declaration.

Chemical warfare agent (FM 3–9)
A chemical compound which, through its chemical properties, produces lethal or damaging effects on man. Excluded from consideration are riot control agents, anti-plant agents, and smoke and flame materials.

a. Chemical agents may be grouped according to use:

(1) *Toxic chemical agents.* Agents capable of producing incapacitation, serious injury, or death when used in field concentrations.

(2) *Incapacitating agents.* Agents that produce physiological or mental effects or both that may persist for hours or days after exposure, rendering individuals incapable of concerted efforts in the performance of their assigned duties. Complete recovery of incapacitating agent casualties is expected without medical treatment.

b. Nonchemical warfare agents may be grouped according to use as follows:

(1) Riot control agents. Compounds widely used by governments for domestic law purposes, and which produce transient effects on man that disappear minutes after removal from exposure.
(2) Training agents and compounds.
(3) Screening and signaling smokes.
(4) Anti-plant agents.

c. It should be noted that the Convention on the Prohibition of the Development, Production, and Stockpile of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Article I, dated 26 March 1975, stipulates that—

"Each State Party to this Convention undertakes never in any circumstance to develop, produce, stockpile, or otherwise acquire or retain:

(1) Microbial and other biological agents or toxins whatever their origin or method of production, of types or in quantities that have no justification for prophylactic, protective or other peaceful purposes;

(2) Weapons, equipment, or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict." Accordingly, chemical materials obtained from such sources or processes are considered biological, not chemical, weapons.

Clinical investigation
An organized inquiry into health problems for all conditions that are of concern in providing health care to beneficiaries of the military health care system, including active duty personnel, dependents, and retired personnel. The clinical investigation program is described in AR 40–38.

Consent
See informed consent.

Development
Systematic use of scientific knowledge, directed toward—

a. Significant improvements in or creation of useful products to meet specific performance requirements.

b. Development of components for incorporation in end items to meet specific performance requirements.

c. Construction of hardware for test purposes to determine feasibility of technical approaches.

d. Formulation and refinement of techniques and procedures which improve Army capabilities in nonmateriel areas.

Epidemiologic-assessment interview
For the purpose of paragraph 3–1*l*, this term means questioning of a serum positive member of the Armed Forces for the purposes of medical treatment or counseling, or for epidemiologic or statistical purposes.

Epidemiological surveys
For the purpose of this regulation, the term means studies of the distribution and determinants of disease frequency in humans, involving no more that minimal risk in which research data is not linked to personal identifiers.Epidemiological surveys focus on "ills" of a population rather than on persons.

Evaluation
The subjective determination of the military value of a hardware item or system, real or conceptual, to the user. There are three types of evaluation:Developer, technical, and operational. See 70–10 for more detail.

Expedited review procedures
Those procedures used in research involving no more than minimal risk and those used for minor changes in approved investigations (see app D).These procedures minimize time required for review.

Experimental subject
See Human subject.

Health care personnel
Military personnel, civilian employees, or contract personnel (including military and civilian staff members, assigned to, employed by, or appointed to the USUHS) who provide patient care or patient care support services in military MTFs and dental treatment facilities (DTFs).

Health care delivery study
Application of scientific methods to the study of availability, organization, administration, and management of health services. The efficiency and effectiveness with which such services are delivered are included.

Health and Human Services Certificate of Assurance
See Protection of Human Subjects Assurance/Certification/Declaration.

Human subject
a. A living individual about whom an investigator conducting research obtains data through interaction with the individual, including both physical procedures and manipulations of the subject or the subject's environment.The term does not include military or civilian personnel who are qualified to test by assignment to duties that call specifically for qualifications such as test pilots or test engineers.

b. Minor (child). A person who has not attained the legal age for consent to treatments or procedures involved in research, under the applicable laws and jurisdiction in which the research will be conducted.

c. Human subjects may be thought of as direct objects when the research is to determine the effects of a new system on humans (for example. the effects of a weapon's blast on hearing) as indirect objects when a test is conducted to determine how humans affect the ultimate performance of a system (doctrine concepts, training programs).

Human Subjects Research Review Board
The principal body of the Office of The Surgeon General (OTSG) for review of clinical investigation and research activities.

Human use committee
A body set up to provide initial and continuing review of research involving the use of human subjects. A HUC is fundamentally similar to an institutional review board (IRB) (45 CFR 46), but has somewhat different authority as compared to an IRB. Within DOD, authority to approve use of human subjects in research is vested in commanders. Commanders act on the recommendations of validly constituted HUCs. Outside DOD, IRBs tend to be vested with this authority. Appendix C describes the membership, functions, and operations of a HUC.

Informed consent
The legally effective agreement of the subject or subject's legally authorized representative for the subject to participate in research covered by this regulation. Informed consent includes, when appropriate, those elements listed in appendix E of this regulation.

a. Permission. The agreement of parent(s) or guardian to the participation of their child or ward in research.

b. Guardian. An individual who is authorized under applicable State or local law to consent on behalf of a minor (child) to general medical care.

c. Assent. A minor's(child's) affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

Institution
Any public or private entity or agency (including Federal, State, or other agencies).

Investigational drug
A drug may be considered investigational when the composition is such that—

a. Its proposed use is not recognized for the use under the conditions prescribed; or its proposed use is not recommended or suggested in its approved labeling. Experts qualified by scientific training and experience evaluate the safety and effectiveness of drugs to make this determination.

b. Its use has become recognized as investigational, as a result of studies to determine its safety and effectiveness for use under such conditions.

Investigational medical device
a. A device that is not generally used in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans, and recognized as safe and effective.

b. Research is usually, but not necessarily, initiated to determine if the device is safe or effective.

Legally authorized representative
A person or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's taking apart in the procedures involved in the research.

Medical monitor
This person is a military or DA civilian physician qualified by the training and/or experience required to provide care to research subjects for conditions that may arise during the conduct of the research, and who monitors *human subjects during the conduct of* research. For the purpose of this regulation, the principal investigator may function as the medical monitor only in situations in which no other physician is available and approval for the principal investigator to function as medical monitor is granted by TSG. Requests for the principal investigator to function as the medical monitor will be sent to the Assistant Surgeon General for Research and Development, c/o Headquarters, U.S. Army Medical Research and Development Command, ATTN: SGRD–HR, Fort Detrick, Frederick, MD 21701–5012. In contractor performed research, a military or DA civilian

physician may be the medical monitor; however, this is usually a contractor provided resource.

Minimal risk
The proposed risks are not considered greater than these encountered in the subject's daily life or during routine physical or psychological examinations.

Non-U.S. citizens
Foreign nationals, excluding personnel on active duty.

Personal identifier
A method or system which links data to the individual from whom or about whom it pertains.

Principal investigator
A person, regardless of title, who is primarily responsible for the actual execution of the research.

Prisoner
Any person, (adult or minor) involuntarily confined or detained in a penal or correctional institution (for example, jail, workhouse, house of detention, prison, military stockade, or brig). The term is intended to encompass individuals detained pending arraignment, trial, or sentencing;and prisoners of war including detained personnel). The term does not include individuals voluntarily confined nor those persons subject to civil commitment procedures that are not alternatives to criminal prosecution.

Protection of Human Subjects Assurance/ Certification/Declaration
A document issued by the Office for Protection from Research risk, DHHS, in which that office acknowledges that a research institution has established policies and procedures consistent with 45 CFR 46.

Protocol
The written, detailed plan by which research is to be conducted. (See app B for an example of research protocol.) The plan contains, as a minimum— *a.* The objectives of the project.

b. The information to be collected.

c. The means by which it will be collected and evaluated; an assessment of potential risk and benefits to subjects; safety measures, and other means to be used to reduce any risk to subjects.

Radioisotope/radiation control committee
A committee appointed by the commander to ensure that individual users of radioactive materiels within the medical facility and each radionuclide will be approved and controlled. The approval and control is in accordance with the requirements specified in the conditions of the Nuclear Regulatory Commission license and DA radioactive material authorization and appropriate Federal directives.

Research
A systematic investigation that is designed to develop or contribute to generalizable knowledge. The term does not include individual or group training of military personnel such as combat readiness, effectiveness, proficiency, or fitness exercises (DODD 3216.2)

Research, development, test, and evaluation
Includes those categories of research and development included in Program 6, Research and Development, and operational systems development contained in the Five-Year Defense Program.

Schedule I controlled drug substances
Any drug or substance by whatever official name, common or usual name, chemical name or brand name listed in 21 CFR 1308, for example, heroin.

Serum positive member of the Armed Forces
For the purposes of paragraph 3–1*l*, this term means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome (AIDS).

Subinvestigator
See associate investigator.

Test
A process by which data are accumulated to serve as a basis for assessing the degree to which an item or system meets, exceeds or fails to meet the technical or operational properties required. AR 70–10 has a more detailed discussion of the RDTE type test. There are no special terms.

RESERVED

VOLUNTEER AGREEMENT AFFIDAVIT

For use of this form, see AR 70-25 or AR 40-38; the proponent agency is OTSG

PRIVACY ACT OF 1974

Authority: 10 USC 3013, 44 USC 3101, and 10 USC 1071-1087.

Principle Purpose: To document voluntary participation in the Clinical Investigation and Research Program. SSN and home address will be used for identification and locating purposes.

Routine Uses: The SSN and home address will be used for identification and locating purposes. Information derived from the study will be used to document the study; implementation of medical programs; adjudication of claims; and for the mandatory reporting of medical conditions as required by law. Information may be furnished to Federal, State and local agencies.

Disclosure: The furnishing of your SSN and home address is mandatory and necessary to provide identification and to contact you if future information indicates that your health may be adversely affected. Failure to provide the information may preclude your voluntary participation in this investigational study.

PART A(1) - VOLUNTEER AFFIDAVIT

Volunteer Subjects in Approved Department of the Army Research Studies

Volunteers under the provisions of AR 40-38 and AR 70-25 are authorized all necessary medical care for injury or disease which is the proximate result of their participation in such studies.

I, _____, SSN _____,

having full capacity to consent and having attained my _____birthday, do hereby volunteer/give consent as legal

representative for _____, to participate in _____

_____

(Research study)

_____

under the direction of _____

conducted at _____.

(Name of Institution)

The implications of my voluntary participation/consent as legal representative; duration and purpose of the research study; the methods and means by which it is to be conducted; and the inconveniences and hazards that may reasonably be expected have been explained to me by

_____;

I have been given an opportunity to ask questions concerning this investigational study. Any such questions were answered to my full and complete satisfaction. Should any further questions arise concerning my rights/the rights of the person I represent on study-related injury, I may contact

_____

at _____

(Name, Address and Phone Number of Hospital (Include Area Code))

I understand that I may at any time during the course of this study revoke my consent and withdraw/have the person I represent withdrawn from the study without further penalty or loss of benefits; however, I/the person I represent may be required (military volunteer) or requested *(civilian volunteer)* to undergo certain examination if, in the opinion of the attending physician, such examinations are necessary for my/the person I represent's health and well-being. My/the person I represent's refusal to participate will involve no penalty or loss of benefits to which I am/the person I represent is otherwise entitled.

_____

PART A (2) - ASSENT VOLUNTEER AFFIDAVIT *(MINOR CHILD)*

I, _____, SSN _____ having full

capacity to consent and having attained my _____ birthday, do hereby volunteer for _____

_____ to participate in _____

_____

(Research Study)

_____

under the direction of _____

conducted at _____

(Name of Institution)

(Continue on Reverse)

PART A(2) - ASSENT VOLUNTEER AFFIDAVIT (*MINOR CHILD*) *(Cont'd.)*

The implications of my voluntary participation; the nature, duration and purpose of the research study; the methods and means by which it is to be conducted; and the inconveniences and hazards that may reasonably be expected have been explained to me by

_____

I have been given an opportunity to ask questions concerning this investigational study. Any such questions were answered to my full and complete satisfaction. Should any further questions arise concerning my rights I may contact

_____

at _____

(Name, Address, and Phone Number of Hospital (Include Area Code))

I understand that I may at any time during the course of this study revoke my assent and withdraw from the study without further penalty or loss of benefits; however, I may be requested to undergo certain examination if, in the opinion of the attending physician, such examinations are necessary for my health and well-being. My refusal to participate will involve no penalty or loss of benefits to which I am otherwise entitled.

_____

PART B - TO BE COMPLETED BY INVESTIGATOR

INSTRUCTIONS FOR ELEMENTS OF INFORMED CONSENT: *(Provide a detailed explanation in accordance with Appendix C, AR 40-38 or AR 70-25.)*

I do ☐ **do not** ☐ *(check one & initial)* consent to the inclusion of this form in my outpatient medical treatment record.

SIGNATURE OF VOLUNTEER	DATE	SIGNATURE OF LEGAL GUARDIAN *(If volunteer is a minor)*
PERMANENT ADDRESS OF VOLUNTEER	TYPED NAME OF WITNESS	
	SIGNATURE OF WITNESS	DATE

REVERSE OF DA FORM 5303-R, MAY 88

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EXHIBIT 30

Department of Defense
DIRECTIVE

NUMBER 3216.*02*
March 25, 2002
Certified Current as of April 24, 2007

USD(AT&L)

SUBJECT: Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research

References: (a) DoD Directive 3216.2, "Protection of Human Subjects in DoD-Supported Research," January 7, 1983 (hereby canceled)
(b) Section 980 of title 10, United States Code
(c) Title 32, Code of Federal Regulations, Part 219, "Protection of Human Subjects," current edition
(d) DoD Directive 6200.2, "Use of Investigational New Drugs for Force Health Protection," August 1, 2000
(e) through (m), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a) to update policies for protecting the rights and welfare of humans as subjects of study in Department of Defense (DoD)-supported research, development, test and evaluation, and other related activities hereafter referred to as "research."

1.2. Implements 10 U.S.C. 980 (reference (b)).

1.3. Supports implementation of 32 CFR Part 219 (reference (c)), referred to as the "Common Rule."

1.4. Establishes other DoD policies for the ethical conduct of research.

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

2.2. Applies to research involving human subjects, as defined herein, conducted by a DoD Component (i.e., intramural) and other research that is supported by a DoD Component (i.e., extramural) through a contract, grant, cooperative agreement, or other arrangement.

2.3. Does not apply to the use of investigational new drugs, biological products, or devices for purposes of Force Health Protection. Such use is not research and is governed by DoD Directive 6200.2 (reference (d)).

2.4. Does not apply to accepted medical practice, including the use of investigational products in such practice, undertaken for purposes of treatment, not research. Such medical practice is not research and is not subject to this Directive.

3. DEFINITIONS

Terms used in this Directive are as defined in enclosure 2.

4. POLICY

It is the policy of the Department of Defense that:

4.1. Protection of Human Subjects in Research. The rights and welfare of human subjects in research supported or conducted by the DoD Components shall be protected. This protection encompasses basic respect for persons, beneficence, and justice in the selection of subjects.

4.2. Informed Consent. In general, as required by reference (b), no DoD Component may conduct or use appropriated funds to support research involving a human being as an experimental subject without the prior informed consent of the subject.

4.2.1. In the case of research intended to be beneficial to the subject, if the subject lacks capacity, due to age, condition, or other reason, to make a decision regarding consent to participate in the research, prior consent may be provided by a legal representative of the

subject. In any such case, the determination that research is intended to be beneficial to the subject must be made by an Institutional Review Board (IRB) under reference (c).

4.2.2. Consistent with 10 U.S.C. 980(b) (reference (b)), the requirement for prior informed consent under paragraph 4.2. or subparagraph 4.2.1. may be waived by the Head of a DoD Component with respect to a specific research project to advance the development of a medical product necessary to the Armed Forces if the research project may directly benefit the subject and is carried out in accordance with all other applicable laws and regulations, including 21 CFR 50.24 (reference (j)).

4.3. Applicability of Federal Policy for Protection of Human Subjects in Research

4.3.1. The Department of Defense has joined with other Federal Agencies to adopt the "Common Rule" Federal policy for protection of human subjects in research. Reference (c) is the Department of Defense's implementation of the Common Rule. All DoD-supported and -conducted research shall comply with reference (c) and this Directive.

4.3.2. The IRBs of the DoD Components established under reference (c) shall consist of members who are either Federal employees, individuals covered under the Inter-governmental Personnel Act (IPA), or consultants consistent with the requirements established by 5 U.S.C. 3109 (reference (e)).

4.3.3. All human subject research supported or conducted by the Department of Defense shall be conducted under an assurance of compliance acceptable to the funding Agency. Research performed at DoD facilities and funded by the Department of Defense shall have a DoD assurance of compliance. The DoD Components conducting or supporting research must ensure that the investigators are familiar with the Nuremberg Code, the Belmont Report, 32 CFR Part 219 (reference (c)), this Directive, and any related requirements.

4.4. Additional Protections for Certain Categories of Research. In addition to the requirements of reference (c), the following requirements apply to research involving certain subjects or purposes.

4.4.1. Research supported or conducted by the Department of Defense that affects vulnerable classes of subjects shall meet the additional protections of 45 CFR Part 46, Subparts B, C, and D (reference (f)) (e.g., fetuses, pregnant women, human in vitro fertilization, prisoners, or children). For purposes of this paragraph, actions authorizing or requiring any action by an official of the Department of Health and Human Services (HHS) with respect to any requirements of reference (f) shall be under the authority of the Director, Defense Research and Engineering.

4.4.2. The involvement of prisoners of war as human subjects of research is prohibited.

4.4.3. For research involving more than minimal risk (as defined in 32 CFR 219.102(i), reference (c)) to subjects, an independent medical monitor shall be appointed by name. Medical monitors shall be physicians, dentists, psychologists, nurses, or other healthcare providers capable of overseeing the progress of research protocols, especially issues of individual subject/patient management and safety. Medical monitors shall be independent of the investigative team and shall possess sufficient educational and professional experience to serve as the subject/patient advocate.

4.4.3.1. Depending on the nature of the study, the medical monitor may be assigned to assess one or more of the following phases of a research project: subject recruitment, subject enrollment, data collection, or data storage and analysis.

4.4.3.2. At the discretion of the IRB, the medical monitor may be assigned to discuss research progress with the principal investigator, interview subjects, consult on individual cases, or evaluate adverse event reports. Medical monitors shall promptly report discrepancies or problems to the IRB. They shall have the authority to stop a research study in progress, remove individual subjects from a study, and take whatever steps are necessary to protect the safety and well-being of research subjects until the IRB can assess the medical monitor's report.

4.4.4. For research involving more than minimal risk and also involving military personnel, unit officers and noncommissioned officers (NCOs) shall not influence the decisions of their subordinates to participate or not to participate as research subjects. Unit officers and senior NCOs in the chain of command shall not be present at the time of research subject solicitation and consent during any research recruitment sessions in which members of units under their command are afforded the opportunity to participate as research subjects. When applicable, officers and NCOs so excluded shall be afforded the opportunity to participate as research subjects in a separate recruitment session. During recruitment briefings to a unit where a percentage of the unit is being recruited to participate as a group, an ombudsman not connected in any way with the proposed research or the unit shall be present to monitor that the voluntary nature of individual participants is adequately stressed and that the information provided about the research is adequate and accurate.

4.4.5. Research involving use of human subjects for testing of chemical or biological agents is generally prohibited by 50 U.S.C. 1520a (reference (g)), subject to possible exceptions for research for prophylactic, protective, or other peaceful purposes. Any such research shall comply with reference (g).

4.5. Education and Training on Protection of Human Subjects in Research. Awareness of human subjects protection requirements shall be established for all DoD personnel involved in the conduct, review, or approval of research covered by this Directive.

4.5.1. Awareness activities shall be commensurate with the duties and responsibilities of the participants in the process of protection of human subjects of research, and compatible with Office of Human Research Protections (OHRP) policies.

4.5.2. Research ethics training shall be incorporated into the continuing education program at all DoD Component activities that conduct research involving human subjects.

4.6. Inclusion of Women and Minorities in Clinical Research Projects. The selection of subjects reflecting gender and minority participation as appropriate shall comply with section 252 of Pub. L. 103-160 (reference (h)). The Head of the DoD Component concerned may exercise the waiver authority under this law.

4.7. Fetal Tissue Research. Fetal tissue research supported or conducted by the Department of Defense shall comply with 42 U.S.C. 289g - 289g-2 (reference (i)).

4.8. Research Misconduct. All DoD Components shall establish procedures to monitor and review the ethical conduct of research. The DoD Components that conduct or support research shall ensure that data and data collection are conducted in an ethical manner. In cases in which data are not collected in an appropriate manner, the DoD Component shall determine if the misconduct was intentional or reckless; was an isolated event or part of a pattern; had significant impact on the research record; or had significant impact on other researchers or institutions. The DoD Component shall initiate and carry through on any actions that are necessary to ensure resolution of misconduct findings. All findings of serious research misconduct under this section shall be reported to the Director, Defense Research and Engineering.

4.9. Relationship to Other Requirements. Some activities subject to this Directive may also be subject to regulations of other Federal Agencies, organizations, and non-U.S. entities. Examples include: Food and Drug Administration policies regarding investigational drugs, vaccines, biological products, or devices; multi-agency research; and international research. Activities subject to this Directive and one or more of these other requirements shall comply with all applicable requirements (e.g., references (c) (32 CFR 219.101(g) and (h)), (j), (k), and (l)).

4.10. Non-compliance. Issues related to non-compliance with this Directive by any DoD Component, subordinate, or supported activity shall be referred initially to the next higher management echelon to take deliberate action to resolve. All findings of serious non-compliance under this section shall be reported to the Director, Defense Research and Engineering.

5. RESPONSIBILITIES

5.1. The Director, Defense Research and Engineering, under the Under Secretary of Defense *for* Acquisition, Technology, and Logistics:

5.1.1. Shall be the single point of contact within the Department of Defense for all matters relating to the Department of Defense's compliance with the "Common Rule" and act as the principal DoD liaison with Agencies outside the Department of Defense on matters pertaining to protection of human subjects in research.

5.1.2. May initiate updates to reference (c) and issue any DoD Instructions or other guidance necessary to implement this Directive. With respect to matters affecting medical research, this shall be done in coordination with the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

5.1.3. Shall establish a committee to coordinate DoD Component activities in the protection of human subjects. The committee shall be composed of representatives from the DoD Components' human subject protection offices.

5.1.4. Shall exercise the authorities of the Secretary of Defense under reference (c), except for matters not delegable, reserved, or covered by another specific delegation.

5.1.5. Shall establish procedures and standards, consistent with the Federal Policy on Research Misconduct (reference (m)), for the prevention of research misconduct in the Department of Defense.

5.1.6. May grant exceptions to policy under this Directive if justified by special circumstances and consistent with law. Records shall be maintained on exceptions granted under this Directive.

5.2. The Assistant Secretary of Defense for Health Affairs, under the Under Secretary of Defense for Personnel and Readiness shall:

5.2.1. Advise the Director, Defense Research and Engineering on matters related to the involvement of human subjects in research, especially, regarding medical safety, ethics, and standards of professional care and conduct.

5.2.2. Serve as the DoD representative on matters relating to implementation of Food and Drug Administration regulatory requirements (references (j) and (k)).

5.3. The Heads of the DoD Components shall:

5.3.1. Develop, issue, and monitor implementing policies to ensure compliance with this Directive and with any implementing Instructions issued under the authority of this Directive. In research undertakings in which more than one DoD Component is involved, the Heads of the Components shall determine and jointly assign executive responsibility for compliance.

5.3.2. Maintain adequate documentation of DoD-supported or -conducted research involving human subjects and establish procedures for supporting DoD reporting requirements.

5.3.3. Delegate authorities and responsibilities under this Directive to levels of command or authority appropriate to ensure compliance. This shall include procedures for the investigation and resolution of allegations of non-compliance, and may include procedures for headquarters-level administrative review of research. A DoD Component may delegate

headquarters-level research review responsibility to another DoD Component for purposes of efficiency and consolidation of functional offices.

5.3.4. With respect to research for which primary involvement is from the Department of Defense, establish the required administrative procedures to protect human subjects from medical expenses (not otherwise provided or reimbursed) that are the direct result of participation in a research project involving more than minimal risk. For this purpose the determination of primary involvement shall be based on consideration of the DoD portion of the total involvement (i.e., funding, personnel, facilities, and all other resources) in the research.

6. EFFECTIVE DATE

This Directive is effective immediately.

Paul Wolfowitz
Deputy Secretary of Defense

Enclosures - 2
E1. References, continued
E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

(e) Section 3109 of title 5, United States Code, "Employment of Experts and Consultants, Temporary or Intermittent"
(f) Title 45, Code of Federal Regulations, Part 46, "Protection of Human Subjects," Subparts B, C, and D
(g) Section 1520a of title 50, Unites States Code, "War and National Defense"
(h) Section 2358 note of title 10, United States Code, "National Defense Authorization Act for Fiscal Year 1994," (Public Law 103-160, Sec. 252)
(i) Sections 289g - 289g-2 of title 42, United States Code, "Public Health and Welfare"
(j) Title 21, Code of Federal Regulations, Subchapters A, D, F, and H, "Food and Drug Administration"
(k) Memorandum of Understanding between the Food and Drug Administration and the Department of Defense, "Concerning Investigational Use of Drugs, Antibiotics, Biologicals, and Medical Devices by the Department of Defense," May 1, 1987
(l) DoD Directive 6000.8, "Funding and Administration of Clinical Investigation Program," November 3, 1999
(m) Federal Policy on Research Misconduct, Office of Science and Technology Policy, 65 Federal Register 76260-76264 (December 6, 2000)

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Common Rule. The regulation adopted by multiple Federal Agencies for the protection of human subjects in research. The Department of Defense's implementation of the Common Rule is at 32 CFR 219, "Protection of Human Subjects" (reference (c)).

E2.1.2. Research. Any systematic investigation, including research, development, testing, and evaluation (RDT&E), designed to develop or contribute to generalizable knowledge.

E2.1.3. Research Involving a Human Being as an Experimental Subject. An activity, for research purposes, where there is an intervention or interaction with a human being for the primary purpose of obtaining data regarding the effect of the intervention or interaction (32 CFR 219.102(f), reference (c)). Examples of interventions or interactions include, but are not limited to, a physical procedure, a drug, a manipulation of the subject or subject's environment, the withholding of an intervention that would have been undertaken if not for the research purpose. This does not include:

E2.1.3.1. Activities carried out for purposes of diagnosis, treatment, or prevention of injury and disease in members of the Armed Forces and other mission essential personnel under Force Health Protection programs of the Department of Defense.

E2.1.3.2. Authorized health and medical activities as part of the reasonable practice of medicine or other health professions.

E2.1.3.3. Monitoring for compliance of individuals and organizations with requirements applicable to military, civilian, or contractor personnel or to organizational units. This includes such activities as drug testing, occupational health and safety monitoring, and security clearance reviews.

E2.1.3.4. Activities exempt under 32 CFR Part 219 (reference (c)).

E2.1.4. Support. Unless otherwise clarified in a specific paragraph of this Directive, this term generally means the provision of funding, personnel, facilities, and all other resources.

EXHIBIT 31

Department of Defense

DIRECTIVE

NUMBER 6200.2

August 1, 2000

Certified Current as of November 24, 2003

ASD(HA)

SUBJECT: Use of Investigational New Drugs for Force Health Protection

References: (a) Section 1107 of title 10, United States Code
(b) Executive Order 13139, "Improving Health Protection of Military Personnel Participating in Particular Military Operations," September 30, 1999
(c) Title 21, Code of Federal Regulations, Parts 50, 56, 312, Subpart I of Part 314, Subpart G of Part 601, current edition
(d) House Report No. 105-736, Conference Report to Accompany Proposed Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, page 685
(e) through (f), see enclosure 1

1. PURPOSE

This Directive:

1.1. Establishes policy and assigns responsibility for compliance with references (a) through (c) for the use of investigational new drugs for force health protection.

1.2. Designates the Secretary of the Army as the DoD Executive Agent for the use of investigational new drugs for force health protection.

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

2.2. Applies to all uses of investigational new drugs by the Department of Defense for force health protection.

2.3. Does not apply to actions by DoD healthcare providers that are within standard medical practice in the United States and are not subject to FDA regulations at reference (c).

3. DEFINITIONS

3.1. Force Health Protection. An organized program of healthcare preventive or therapeutic treatment, or preparations for such treatment, designed to meet the actual, anticipated, or potential needs of a group of military personnel in relation to military missions.

3.2. Investigational New Drug (IND). A drug or biological product subject to the FDA regulations at 21 CFR Part 312 (reference (c)), including:

3.2.1. A drug not approved or a biological product not licensed by the FDA.

3.2.2. A drug unapproved for its applied use.

3.3. Drug Unapproved for Its Applied Use. A drug or biological product administered for a use not described in the labeling of the drug or biological product approved by the FDA (referred to in subsection (g)(2) of reference (a)), and for which FDA requirements of use authorization and prior informed consent (referred to in subsections (d)(4) and (f)(1) of reference (a)) are applicable, but not including uses to which those requirements are inapplicable based on standard medical practice in the United States (referred to in reference (d)).

3.4. Particular Military Operations. A military operation or specific military mission or function, which involves any chemical, biological, or radiological warfare or endemic disease threats.

4. POLICY

It is DoD policy that:

4.1. Force Health Protection. Personnel carrying out military operations shall be provided the best possible force health protection, including safe and effective medical countermeasures to chemical, biological or radiological warfare and endemic disease threats.

4.1.1. The DoD Components shall make preferential use of products approved by the FDA for general commercial marketing, when available, to provide the needed medical countermeasure.

4.1.2. When no FDA-approved product is available to meet a foreseeable threat, the Secretary of the Army, as Executive Agent, shall carry out appropriate research and development program activities directed toward obtaining general commercial marketing approval by the FDA of safe and effective medical countermeasures. Such activities shall include use of special FDA rules at 21 CFR subpart I of part 312 and subpart G of part 601 (reference (c)) for the approval of new drugs and biological products for use against lethal or permanently disabling toxic substances when efficacy studies in humans cannot be conducted ethically.

4.1.3. When, at the time of the need for a force health protection countermeasure against a particular threat, no safe and effective FDA-approved drug or biological product is available, the DoD Components may request approval of the Secretary of Defense to use an IND. Such requests must be justified based on the available evidence of the safety and efficacy of the drug and the nature and degree of the threat to personnel.

4.1.4. When using INDs for force health protection, the DoD Components shall comply with 10 U.S.C. 1107, E.O. 13139, and applicable FDA regulations (references (a) through (c)).

4.2. Approval by the Secretary of Defense to Use INDs. Use of an IND for force health protection requires approval of the Secretary of Defense.

4.2.1. A Commander of a Combatant Command shall submit a request through the Chairman of the Joint Chiefs of Staff, coordinated with the ASD(HA), the USD(Policy), Secretary of the Army as Executive Agent, and the DoD General Counsel. Such a request must document a confirmed, high threat for which the use of an IND is needed, consideration of the risks and benefits of use of the IND, and compliance with the requirements of this Directive.

4.2.2. The Secretary of the Army, as Executive Agent, in concert with the Commander of the Combatant Command involved and the ASD(HA), shall develop a specific treatment protocol for use of the IND. The protocol shall comply with 21 CFR Part 312 (reference (c)). The protocol shall be approved by the Army Surgeon General's Human Subjects Research Review Board (HSRRB), a duly constituted Institutional Review Board under 21 CFR Part 56 (reference (c)), prior to submission to the FDA for review under 21 CFR Part 312 (reference (c)). Unless the Secretary requests a waiver by the President, the protocol will provide for, consistent with 21 CFR Part 50 (reference (c)), the prior informed consent of members receiving the IND. If the request for use of the IND also includes a request for waiver of informed consent, the requirements of paragraphs 4.3. through 4.8., below, shall also apply.

4.3. Requests By the Secretary of Defense to the President for a Waiver of Informed Consent. Under 10 U.S.C. 1107 (reference (a)), only the President may grant a waiver of informed consent to use an IND for force health protection in connection with members' participation in particular military operations and only the Secretary of Defense may request that the President grant such a waiver.

4.3.1. Grounds for Request. The Secretary shall request a waiver only upon a determination that obtaining informed consent:

4.3.1.1. Is not feasible.

4.3.1.2. Is contrary to the best interests of the member.

4.3.1.3. Is not in the interests of national security.

4.4. Standards and Criteria for Requesting a Waiver of Informed Consent. In making a determination referred to in subparagraph 4.3.1.1. or 4.3.1.2., above, the Secretary shall apply, and in making a determination referred to in subparagraph 4.3.1.3., above, the Secretary will consider, the standards and criteria set forth in 21 CFR 50.23(d) (reference (c)). Those standards and criteria are:

4.4.1. The extent and strength of evidence of the safety and effectiveness of the IND in relation to the medical risk that could be encountered during the military operation supports the drug's administration under an IND.

4.4.2. The military operation presents a substantial risk that military personnel may be subject to a chemical, biological, nuclear, or other exposure likely to produce death or serious or life-threatening injury or illness.

4.4.3. There is no available satisfactory alternative therapeutic or preventive treatment in relation to the intended use of the investigational new drug.

4.4.4. Conditioning use of the IND on the voluntary participation of each member could significantly risk the safety and health of any individual member who would decline its use, the safety of other military personnel, and the accomplishment of the military mission.

4.4.5. A duly constituted institutional review board (IRB) established and operated in accordance with the equirements of paragraph 4.5., below, has reviewed and approved the IND protocol and the administration of the IND without informed consent.

4.4.6. The risks and benefits of using the IND are evaluated with consideration of:

4.4.6.1. The context in which the IND will be administered, e.g., the setting or whether it will be self-administered or it will be administered by a health professional.

4.4.6.2. The nature of the disease or condition for which the preventive or therapeutic treatment is intended.

4.4.6.3. Conditions that could alter the intended effects of the IND, to the extent any such data are available.

4.4.7. Applicable logistical record keeping systems are capable of tracking and will be used to track movement of the IND from supplier to the individual recipient.

4.4.8. Each member involved in the military operation will be given, prior to the administration of the investigational new drug, a specific written information sheet (including information required by subparagraph 4.8.1.) concerning the IND, the risks and benefits of its use, potential side effects, and other pertinent information about the appropriate use of the product.

4.4.9. Medical records of members involved in the military operation will accurately document the receipt by members of the notification required by subparagraph 4.4.8., above.

4.4.10. Medical records of members involved in the military operation will accurately document the receipt by members of any IND in accordance with FDA regulations, including 21 CFR part 312 (reference (c)).

4.4.11. The protocol provides for adequate follow-up to assess whether there are beneficial or adverse health consequences that result from the use of the investigational product.

4.4.12. The Secretary of the Army, as Executive Agent, is pursuing drug development, including a timeline, and marketing approval, in accordance with FDA regulations, with due diligence.

4.4.13. The IND protocol may proceed subject to review by the FDA under reference (c) and a decision by the President on the informed consent waiver request.

4.4.14. Applicable DoD Components will provide training to the appropriate medical personnel and potential recipients on the specific IND to be administered prior to its use.

4.4.15. The Commander of the Combatant Command concerned has stated and justified the time period for which the waiver is needed, not to exceed one year, unless separately renewed under these standards and criteria.

4.4.16. The DoD Components will report to the FDA and to the President any changed circumstances relating to these standards and criteria (including the time period referred to in subparagraph 4.4.15., above) that otherwise might affect the determination to use an IND without informed consent.

4.4.17. The Secretary of the Army, as Executive Agent, shall provide the public notice referred to in subparagraph 4.7.3., below.

4.4.18. Use of the IND without informed consent otherwise conforms with applicable law and DoD policy.

4.5. Institutional Review Board Approval. An Institutional Review Board (IRB), compliant with 21 CFR Part 56 (reference (c)), shall approve every protocol for the use of an IND for force health protection. The Army Human Subjects Research Review Board (HSRRB), under the Surgeon General of the Army, is designated as the IRB responsible for purposes of IRB activities under this Directive.

4.5.1. In any case in which a protocol proposes to include a waiver of informed consent, the following additional requirements shall be applicable to the HSRRB review and approval of the protocol.

4.5.1.1. The HSRRB must include at least three non-affiliated members who shall not be employees or officers of the Federal Government (other than for purposes of membership on the HSRRB) and shall be required to obtain any necessary security clearances. The HSRRB shall review the proposed IND protocol at a convened meeting at which a majority of the members are present including at least one member whose primary concerns are in nonscientific areas and, if feasible, including a majority of the non-affiliated members.

4.5.1.2. Minutes of the HSRRB meeting(s) at which the proposed protocol was discussed shall be provided to the Secretary of Defense and the FDA. The minutes shall be in sufficient detail to show attendance, actions taken, the votes taken (including number of members voting for, against, or abstaining), the reasons for requiring changes in or disapproving any portion of the protocol, and a written summary of the discussion of controversial issues and their resolution.

4.5.2. The HSRRB must review and approve:

4.5.3.1. The information sheet required by subparagraphs 4.4.8., above, and 4.8.1., below.

4.5.3.2. The adequacy of the plan to disseminate information, including distribution of the information sheet to potential recipients, on the investigational product (e.g., in forms other than written).

4.5.3.3. The adequacy of the information and plans for its dissemination to healthcare providers, including potential side effects, contraindications, potential interactions, and other pertinent considerations.

4.5.3.4. An informed consent form as required by FDA regulations at 21 CFR part 50 (reference (c)) in those circumstances in which the protocol includes informed consent by some or all personnel involved.

4.6. Content of Request by the Secretary of Defense to the President. A request by the Secretary to the President for a waiver of informed consent shall be developed in consultation with the FDA. Upon submission by the Secretary of the waiver request to the President, a copy of the request shall be provided to the Commissioner of FDA. The content of the request shall at a minimum include:

4.6.1. A full description of the threat, including the potential for exposure. If the threat is a chemical, biological, or radiological weapon, the waiver request shall contain an analysis of the probability that the weapon will be used, the method or methods of delivery, and the likely magnitude of its affect on the exposed individuals.

4.6.2. Documentation of compliance with the requirements of the FDA regulations at 21 CFR 50.23(d) (reference (c)). If the request is based on the grounds identified in subparagraphs 4.1.1. or 4.1.2., the documentation will include a statement that certifies and a written justification that documents that each of the criteria and standards set forth in 21 CFR 50.23(d) (reference (c)) (which also appear at paragraph 4.4., above) have been met. If the Secretary finds it highly impracticable to certify that all such criteria and standards have been fully met because doing so would significantly impair the Department of Defense's ability to carry out the particular military mission, the Secretary will provide to the President a written justification that documents which criteria and standards have or have not been met, explains the reasons for not meeting those which have not been met, and provides additional justification why a waiver should be granted solely on the grounds identified in subparagraph 4.1.3., above.

4.6.3. Any additional information pertinent to the Secretary's determination, including the minutes of the HSRRB meetings at which the IND use was considered.

4.7. Action Required After Waiver of Informed Consent. Following a waiver of informed consent by the President, the DoD Components shall ensure proper implementation.

4.7.1. Monitoring

4.7.1.1. The DoD Components responsible for implementation shall conduct an ongoing review and monitoring to assess adherence to the standards and criteria under 21 CFR 50.23(d) (reference (c)) and adhere to any periodic reporting requirements specified by the President at the time of the waiver approval. The Secretary shall provide to the President any required reports, with a copy to the FDA Commissioner.

4.7.1.2. The DoD Inspector General shall conduct an ongoing review and monitoring to assess adherence to the standards and criteria under 21 CFR 50.23(d) (reference (c)).

4.7.2. Congressional Notification. The Secretary shall, as soon as practicable, make the Congressional notifications required by 10 U.S.C. 1107(f)(3)(B) (reference (a)).

4.7.3. Public Notification. The Secretary shall, as soon as practicable and consistent with classification requirements, issue a public notice in the Federal Register describing each waiver of informed consent determination and a summary of the most current scientific information on the products used, as well as other information the President determines is appropriate.

4.7.4. Changed Circumstances. The Secretary shall notify the President and the FDA Commissioner if the threat countered by the IND changes significantly or if significant new information on the IND is received.

4.7.5. Termination of Waiver. A waiver expires at the end of one year (or an alternative time not to exceed one year specified by the President) or upon notification by the Secretary to the President that the particular military operation creating the need for the use of the IND has ended, whichever is earlier.

4.7.6. Request for Renewal. A request by the Secretary for a renewal by the President of a waiver must meet the same criteria as the original request and shall include any new information available relevant to the standards and criteria under 21 CFR 50.23(d) (reference (c)).

4.8. Training and Risk Communication

4.8.1. Notice Requirement for IND Use. When using an IND for force health protection, the DoD Components shall provide prior notice to personnel receiving the drug or biological product of the following:

4.8.1.1. That it is an IND (including specific information on whether it is approved by FDA and/or whether it is unapproved for its applied use).

4.8.1.2. The reasons the IND is being used.

4.8.1.3. Information regarding the possible side effects of the IND, including any known side effects possible as a result of interaction of the IND with other drugs or treatments being administered to such personnel.

4.8.1.4. Other information as required to be disclosed by the FDA.

4.8.2. Information to Poviders for IND Use. The DoD Components shall ensure that healthcare providers who administer the IND or who are likely to treat members who receive the IND receive the information identified in subparagraphs 4.8.1.3. and 4.8.1.4., above.

4.8.3. Record Keeping on Use of IND and Notice Requirement. The DoD Components shall ensure that medical records of personnel who receive an IND accurately document the receipt of the IND and the notice required by subparagraph 4.8.1., above.

4.8.4. Ongoing Training and Health Risk Communication. The DoD Components shall provide ongoing training and health risk communication on the requirements of using an IND in support of a military operation to all military personnel, including those in leadership positions, during chemical and biological warfare defense training and other training, as appropriate. This ongoing training and health risk communication shall include general information about 10 U.S.C. 1107, E.O. 13139, and 21 CFR 50.23(d) (references (a) through (c)).

4.8.5. Special Additional Training and Health Risk Communication When Informed Consent Is Waived

4.8.5.1. If the President grants a waiver of informed consent, the DoD Components shall provide training to all military personnel conducting the waiver protocol and health risk communication to all military personnel receiving the specific investigational drug to be administered prior to its use.

4.8.5.2. The Secretary shall submit the training and health risk communication plans as part of the IND protocol submission to the FDA and the reviewing IRB. Training and health risk communication shall include at a minimum:

4.8.5.2.1. The basis for any determination by the President that informed consent is not or may not be feasible.

4.8.5.2.2. The means for tracking use and adverse effects of the investigational drug.

4.8.5.2.3. The benefits and risks of using the investigational drug.

4.8.5.2.4. A statement that the investigational drug is not approved (or not approved for the intended use).

4.8.5.3. The DoD Components shall keep operational commanders informed of the overall requirements of successful protocol execution and their role, with the support of medical personnel, in ensuring successful execution of the protocol.

4.9. INDs for Non-military Personnel. In any case in which an IND is used for force health protection for military personnel and subject to the same health risk are Emergency-Essential civilian employees (reference (e)) and contractor personnel performing essential contractor services (reference (f)) in conjunction with the military mission, the IND shall be available for protection of these non-military personnel under the same terms and conditions, except that the authority to waive informed consent under references (a) through (c) is inapplicable to these personnel.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Health Affairs), under the Under Secretary of Defense (Personnel and Readiness), shall have primary responsibility for policy under this Directive, is authorized to issue Instructions for implementation of, and grant exceptions otherwise authorized by law to, this Directive, and shall monitor implementation of this Directive and any implementing Instructions.

5.2. The Secretary of the Army shall serve as Executive Agent for the execution of policy under this Directive and any implementing Instructions.

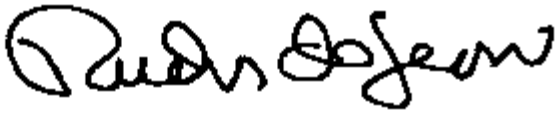
5.3. The Secretaries of the Military Departments shall implement requirements of this Directive, any implementing Instructions issued by the ASD(HA), and requirements established by the Secretary of the Army, as Executive Agent. In implementing an IND protocol, the Secretaries of the Military Departments shall strictly comply with requirements of the protocol.

5.4. The Chairman of the Joint Chiefs of Staff shall coordinate and direct activities of the Commanders of the Combatant Commands in the implementation of this Directive.

5.5. The Commanders of the Combatant Commands shall validate confirmed, high threats for which an IND is needed for force health protection, develop in coordination with the Executive Agent IND protocols, which will comply with requirements of this Directive, any implementing Instructions issued by the ASD(HA), and requirements established by the Executive Agent, execute IND protocols in strict compliance with their requirements, and implement other requirements of this Directive, any implementing Instructions, and requirements established by the Executive Agent.

6. EFFECTIVE DATE

This Directive is effective immediately.



Rudy de Leon
Deputy Secretary of Defense

Enclosures - 1
E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

(e) DoD Directive 1404.10, "Emergency-Essential (E-E) DoD U.S. Citizen Civilian Employees," April 10, 1992

(f) DoD Instruction 3020.37, "Continuation of Essential DoD Contractor Services During Crises," November 6, 1990

EXHIBIT 32

IMPLEMENTATION PLAN FOR U.S. CHEMICAL AND BIOLOGICAL (CB) TESTS REPOSITORY PROGRAM

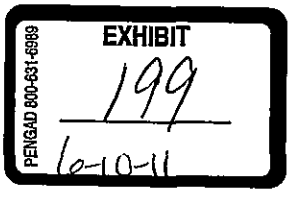
References:
"Chemical and Biological Defense: Department of Defense (DoD) Needs to Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel," Government Accounting Office Report GAO-04-410.

Task Organization. Office of the Special Assistant for Chemical and Biological Defense and Chemical Demilitarization Programs (OSA (CBD & CDP)), Office of the Assistant Secretary of Defense for Health Affairs for Force Health Protection & Readiness (OASD (HA) FHP&R), and Battelle Memorial Institute (contractor support).

1. **Situation.** In 2000, the DoD started to identify Service members and civilian personnel potentially exposed to chemical and biological warfare agents as part of a classified test program - Project 112. This information was transferred to the Department of Veterans Affairs (VA) in case the individuals developed health issues related to the potential exposures. In the National Defense Authorization Act for Fiscal Year 2003, Congress required the DoD to identify personnel potentially exposed during Project 112 tests in the 1963-69 period. Those Service members were identified by the end of 2003. The law also established a requirement to identify potentially exposed Service members and civilians during chemical and biological warfare tests conducted outside Project 112 from 1942 to present.

2. **Mission.** The US Chemical and Biological (CB) Tests Repository Program's mission is to identify personnel potentially exposed to chemical and biological warfare agents during testing outside Project 112 from 1942 to present. This program develops a concept of operations for a complete, integrated, end-to-end process for collecting, processing, and delivering, chemical and biological exposure data to the OSA (CBD & CDP) and OASD (HA) FHP&R.

4. **Execution.** The Chemical, Biological, Radiological, and Nuclear Defense Information Analysis Center (CBRNIAC), operated by Battelle Memorial Institute, was contracted in late 2004 to develop the US CB Tests Repository Program. The objective of this program is to capture, analyze, extract, and compile additional information resulting from testing, transporting, or storing chemical and/or biological weapons agents (names of volunteers, test personnel, accidents, etc.) and to aggregate existing electronic records and all relevant reports with the Project 112 findings to identify all Service members and civilian personnel that might have been exposed from 1942 to present by augmenting information previously collected from key repositories pertaining to the use of volunteers and/or CB agent test events. The second objective is to provide OSA (CBD & CDP) and FHP&R with the names of volunteers or participants as they are found.



a. Concept of Operations. The Concept of Operations plan (Annex A) describes a systematic approach that details the staffing, criteria, and procedures that will be used to complete all US CB Tests Repository site data collection and analysis work on a two-year timeline. The plan describes in detail the criteria used for review site identification/selection and prioritization as well as for document relevance determination. The approach for executing the plan includes identifying the appropriate staff and proven procedures to be utilized along with leveraging the critical lessons-learned from major chemical and biological defense programs. The plan also provides the detailed quality assurance/quality control procedures necessary to execute the various steps with a high degree of accuracy. The execution of this plan will fulfill the following requirement: expand the timeframe to capture additional information resulting from testing, transporting, or storing chemical weapons agents (names of volunteers, test personnel, accidents, etc.) and to integrate all relevant reports and databases with Project 112 findings to identify all personnel potentially exposed from 1942 to present.

b. Tasks.

1. OSA (CBD & CDP):

   - Manage and fund US Test Repository Program; and
   - Review monthly reports and data submissions; and
   - Conduct quarterly program reviews.

2. OASD (HA) FHP&R:

   - Maintain database on human exposures; and
   - Review data submissions; and
   - Coordinate and transfer data to VA; and
   - Serve as the DoD Point of Contact and spokesperson for the US CB Tests Repository Program.

3. Battelle (contractor):

   - Execute the US CB Tests Repository Program in accordance with Concept of Operations (Annex A); and
   - Generate monthly reports on program status; and

- Submit monthly data; and

- Conduct quarterly Program Reviews.

4. **Program Management.** OSA (CBD & CDP) is the lead for the US CB Tests Repository Program. Mr. Anthony Lee (703) 697-5561, *Anthony.Lee@osd.mil* is the Program Manager.

Approval:

Jean D. Reed
Special Assistant Chemical and Biological Defense and
Chemical Demilitarization Programs

Concurrence:

Ellen P. Embrey
Deputy Assistant Secretary of Defense
Force Health Protection & Readiness

Annexe:
A. U.S. Chemical and Biological Tests Repository Concept of Operations Plan, June 2007

EXHIBIT 33

DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 11 2011

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Release from "Secrecy Oaths" Under Chemical and Biological Weapons Human Subject Research Programs

In the 1990s, several reviews of military human subject research programs from the World War II and Cold War eras noted the common practice of research volunteers signing "secrecy oaths" to preclude disclosure of research information. Such oaths or other non-disclosure requirements have reportedly inhibited veterans from discussing health concerns with their doctors or seeking compensation from the Department of Veterans Affairs for potential service-related disabilities.

Pursuant to section 709 of the Bob Stump National Defense Authorization Act for FY 2003 (Public Law 107-314), the Department of Defense continues to work with the Department of Veterans Affairs to identify veterans who may have been exposed to chemical and biological agents in connection with research projects and to provide information potentially relevant to current health concerns.

To assist veterans seeking care for health concerns related to their military service, chemical or biological agent research volunteers are hereby released from non-disclosure restrictions, including secrecy oaths, which may have been placed on them. This release pertains to addressing health concerns and to seeking benefits from the Department of Veterans Affairs. Veterans may discuss their involvement in chemical and biological agent research programs for these purposes. This release does not affect the sharing of any technical reports or operational information concerning research results, which should appropriately remain classified.

The Under Secretary of Defense for Acquisition, Technology and Logistics shall support implementation of this memorandum in the ongoing review of records of chemical and

biological research programs. The Under Secretary of Defense for Personnel and Readiness shall continue to facilitate coordination with the Department of Veterans Affairs on behalf of veterans who were research volunteers in these programs.

This memorandum, which is effective immediately, does not affect classification or control of information, consistent with applicable authority, relating to other requirements pertaining to chemical or biological weapons.

EXHIBIT 34

DEPARTMENT OF DEFENSE'S CHEMICAL AND BIOLOGICAL (CB) TEST RELEASE PROJECT MEETING OF March 30, 2006

PARTICIPANTS

The meeting included the following participants:

- **DoD's Deployment Health Support Directorate (DHSD):** Dee Morris (lead) and Roy Finno.
- **VA's Office of Policy, Planning, and Preparedness (008):** Mike McClendon and Joe Salvatore
- **C&P Service:** Glen Wallick and David Abbot.

On March 30, 2006, the Department of Veterans Affairs' (VA's) Compensation and Pension (C&P) Service participated in the Department of Defense's (DoD's) meeting regarding CB exposures at Edgewood Arsenal.

Information to Date:

On January 31, 2006, DoD passed a database of 1,012 participants to VBA listing 144 different agents. Due to the nature of the agents, which includes LSD, VX gas, other poisonous gases, and deliriants, questions were raised on how to change the notification letter.

1. What are layman's terms for the agents?
2. Should we include the name of the agent in the notification letters?
3. What will DoD share with VA about the basis, reason for the tests.
4. Who will explain to callers about the agents?
5. Do we continue to include a paragraph about what a participant can discuss?
6. Will VA continue to grant a one-time hospital exam to participants, as with SHAD veterans?

C&P Service has been identifying SSNs of participants so that when a letter has concurrence, a mail merge would be processed easily. The initial database from DoD only contained 210 SSNs out of the 1,012 name listing (20%).

Information Shared at Meeting

Background of CBRNE tests: Dee Morris shared that based on our request, they have codes (text) for all but 5 of the agents listed in the database. [Note that the list was e-mailed later in the day. I found the list of no value because it still did not contain layman's language for agents.] The coded compounds will be added to the

database, but such changes will not effect additions to personal data, such as address or date of death data, which we may have made.

Dee Morris passed out a draft document, currently being reviewed by Risk Communications, entitled Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975. She pointed out the use of the terms nerve agents, antidotes, and hallucinogenic drugs, indicating some broader terms which might be used. She also noted that a Senate Sub-Committee concluded that the voluntary consent form used for the tests was inadequate.

Dee shared that of the 7000 CBRNE participants, VA should anticipate receiving from 3,500 to 5000 names by the end of May 2006, and all the names by the end of August 2006.

Mike McClendon shared that he wanted to be able to send a preemptive response to HVAC in June.

DATABASE

a. Verification of Participation

DHSD, supported by CBIAC research, maintains sole authority in verifying participation in all CB tests.

Given secret test recordkeeping practices, Dee Morris explained that DHSD would liberally verify participation. Morris emphasized that judgment calls would be exercised with collateral association, especially using buddy letters and rosters. This practice was widely utilized for DHSD's Project 112/SHAD efforts.

To the extent possible, DHSD will attempt to separate the unwilling test participant population from those individuals who were compensated by DoD for their participation.

PROJECT DOCUMENTS

b. Timeline

KEY POINTS

- A
- A
- DHSD

POINTS OF AGREEMENT (VA – DoD)

- VBA notification letters will not contain the name of the agents
- DoD will handle caller questions about the agents

Additional Points

-

RECOMMENDATIONS

-
-
-

MEETING AFTER THE MEETING

In the van, driving back from DoD, Mike, Joe, Glen, and Dave discussed the notification letter and related issues.

- VBA notification letters will not contain the name of the agents
- DoD will handle caller questions about the agents
- VA has requested that for all instances where DoD forwards exposure information about service members, those member should be granted a one-time physical examination at a VA hospital. Verification of approval is pending.

JS: jsalvatore x6948 02/05/05 212B___ 212____ 21O_____ 21_____
h/cap-21/212/ChemBio/DOD Mtg Summary 01_14_05.doc

Paragraph for USB Weekly Report

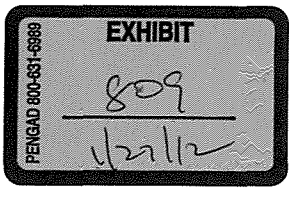
On March 30, 2006, Mike McClendon, and Joe Salvatore of VA's Office of Policy, Planning, and Preparedness, Glen Wallick and David Abbot from C&P Service, met with staff members of DoD's Deployment Health Support Directorate (DHSD) to discuss the Chem-Bio, Radiological, Nuclear, Explosive database. DoD handed out draft copies of Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975. This document explains basic information needed to write a notification letter to those service members exposed to various agents at Edgewood Arsenal. DHSD said that they anticipate adding between 3500 and 5000 names to the current database of 1012 test participants by the end of May 2006.

EXHIBIT 35

From: Lionel West [Lionel.West.CTR@deploymenthealth.osd.mil]
Sent: Thursday, June 02, 2005 10:37:34 AM
To: joe.salvatore@vba.va.gov; blackbua@BATTELLE.ORG
CC: Dee Morris; Roy S. Finno
Subject: RE: Today's Meeting

Attachments: June 1st meeting notes.ppt

Lionel West
Chemical Biological Investigative Analyst
Deployment Health Support Directorate
703 575-2682



Meeting Agreements

- We use SHAD coordination,database and communication model
- Battelle passes information to DHSD on CD
- Battelle liaison maintains information pipeline between DHSD & ATL
- DoD provides VA with list of test excluded from being counted and standard denial criteria
- DoD and VA will setup regular IPR (in progress reviews)
- DoD will give a timeline to VA for next data push
- DHSD will consolidate documentation on verification and record information related to denials.

Simple Process Map

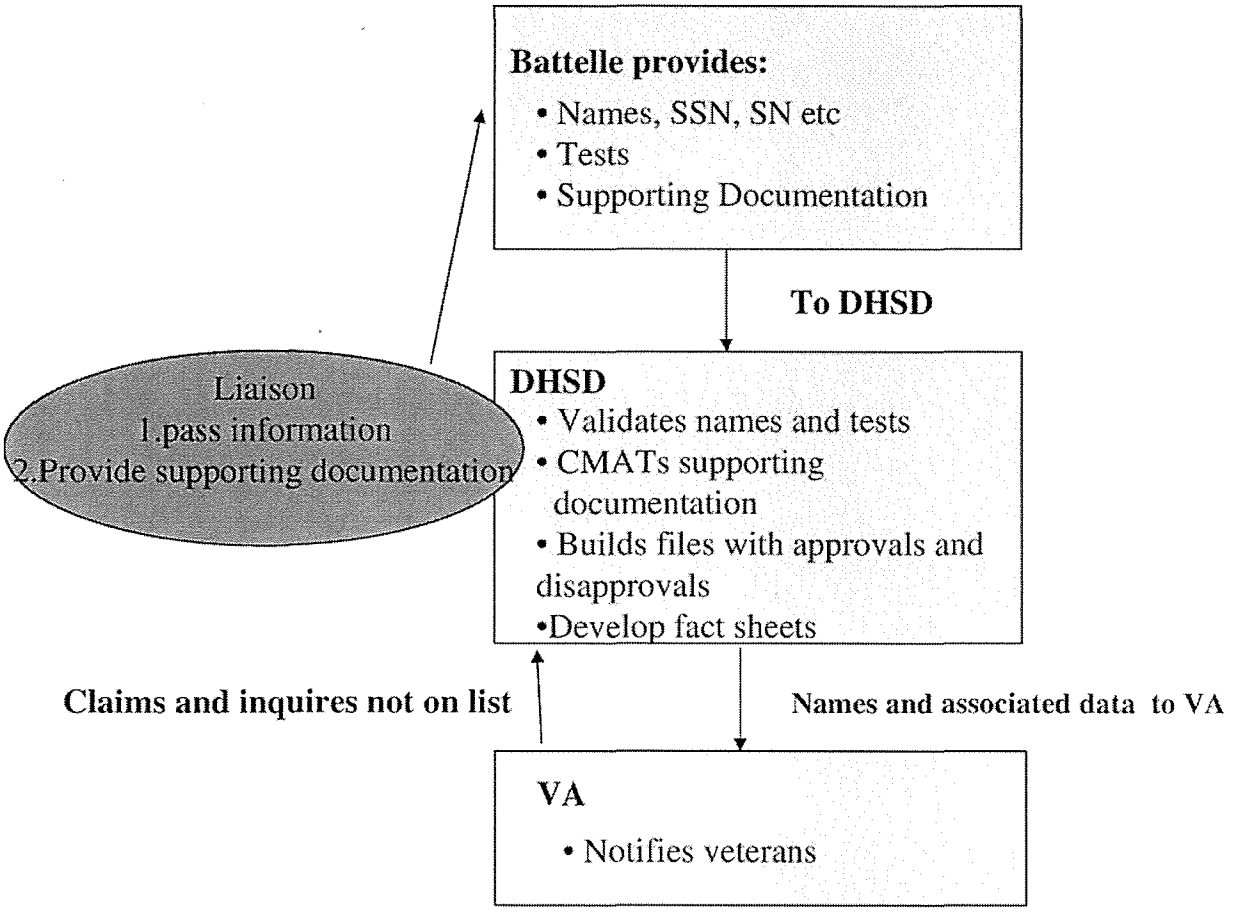


EXHIBIT 36

DECLASSIFICATION OF CHEMICAL AND BIOLOGICAL TESTS JUNE 3, 2005

On June 1, 2005, the Department of Defense (DoD) briefed the Department of Veterans Affairs' (VA's) Compensation and Pension (C&P) Service and Office of Policy, Programs, and Preparedness (008) on its project to release information on chemical and biological tests.

This meeting, the third on this issue between both agencies, was the result of Government Accountability Office (GAO) report 04-410, *Chemical and Biological Defense: DoD Needs to Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel*. The May 2004 report recommended that DoD completely declassify and disclose its chemical and biological testing records involving service members.

PARTICIPANTS

The meeting included the following participants:

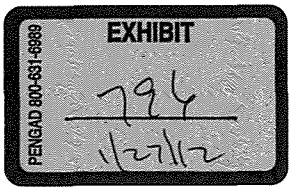
- **DoD's Deployment Health Support Directorate (DHSD):** Dee Morris (lead), Roxana Baylor, Roy Finno, and Lionel West.
- **Department of the Army's Office of Acquisitions, Technology and Logistics (AT&L):** Colonel Debra Thedford, Director of Chemical and Biological Defense Programs.
- **Battelle Corporation's Chemical and Biological Defense Information Analysis Center (CBIAC):** Andrew Blackburn, and an assistant
- **C&P Service:** Joe Salvatore and David Abbott
- **008:** Mike McLendon and Dat Tran

PRESENTATION OVERVIEW

The primary presenters were Mr. Blackburn of Battelle and Lionel West of DHSD.

On a high-level, Mr. Blackburn discussed project objectives, progress updates, primary research needs, prototype layout designs, and future activities. Mr. West outlined procedural needs and data exchanges between AT&L/Battelle, DHSD, and VA.

Please reference the left-hand side of the folder for each presenter's handout.



PROJECT MANAGEMENT

Upon Mr. McLendon's direct questioning, DHSD, Battelle, and AT&L were unable to provide actual or anticipated project timelines and research data (e.g. number of tests and participants). Mr. McLendon requested that Ms. Morris provide a systematic plan for research, repository searches, data pushes and deliverables.

RESEARCH SOURCES

a. Electronic Databases

Mr. Blackburn and staff intend to data-mine government and corporate chemical and biological test release databases for veteran data from 1942 to present. Additionally, data gathered from Battelle's past research will be incorporated into the current effort.

b. Repositories

The primary focus of their upcoming physical searches would be limited to Aberdeen Proving Ground -Edgewood Arsenal, Fort Detrick, Dahlgren Naval Surface Warfare Center, and Dugway Proving Ground. However, Mr. Blackburn mentioned that these "low-hanging fruit" sites are a sub-set of a master list, which contains 15 locations.

c. Literature

Mr. Blackburn informed VA that Battelle has completed a review of bibliographic databases such as the Edgewood Chemical Biological Center Technical Library.

d. National Archives

Mr. Blackburn stated that Battelle has not completed research efforts with the National Archives Records Administration.

e. CD-ROMs

Edgewood Arsenal provided Battelle with CD-ROM copies of records entitled, "Edgewood Arsenal Medical Volunteers 1955-1975," and "Edgewood Toxic Exposure Aid Station Cases."

Mr. Salvatore and Mr. McLendon noted that VA recently received such documents from Edgewood Arsenal. Additionally, Mr. McLendon informed DHSD of VA's possession of Fort Detrick databases.

DATA ISSUES

a. Certification

DoD has sole authority to verify participation in chemical and biological tests. DHSD must physically retain the source document for every veteran record. This process is called certification. Therefore, VA cannot utilize any of its Edgewood Arsenal or Fort Detrick records until the data is certified by DHSD.

Ms. Morris informed VA to submit any received electronic and textual records to DHSD. Mr. McLendon tasked Mr. Salvatore to e-mail the Fort Detrick records to DHSD.

b. Non-Recognized Tests

Mr. West and Ms. Morris informed VA that the following types of chemical and biological exposure tests do not count as exposures. Ms. Morris explained that these "confidence tests" were utilized in basic training as late as 1975.

- Gas mask or chamber exercises involving chlorine
- Sniff tests
- Three-drop test on forearms

c. Procedures

Using a flowchart, Mr. West outlined the transfer of data from Battelle to VA.

d. Operating Procedures

Mr. McLendon requested that Ms. Morris create standard operating procedures for VA's review.

e. System of Records

Both agencies stated that their system of records were sufficient to address the new chemical and biological exposure records.

f. Data Pushes

Mr. McLendon requested that Ms. Morris provide a schedule of anticipated data pushes within one week's time.

g. Declassifications

Mr. McLendon asked whether DoD's declassification schedule would be impacted by DHSD's chemical and biological exposure test release project. Ms. Morris mentioned that both efforts are separate.

h. Hallucinogenic Tests

VA informed Mr. Blackburn that records involving any hallucinogenic tests should be researched.

i. Photographs

Battelle and DHSD will present VA with photographs and movies that clearly identify individual veterans by name and service number. Photographs and movies containing non-identifiable records will be catalogued

PRIMARY RECORDS SEARCHES

Mr. Blackburn outlined the primary information being retrieved from records searches at repositories. Privately, Mr. Salvatore informed Ms. Morris that VA retains a different list based upon a VA/Battelle/DHSD exercise in November 2004.

c. Data Pass

Mr. Abbot provided Ms. Baylor with a copy of VA's Project 112/SHAD database for record upkeep and maintenance.

MUSTARD AGENTS AND LEWISITE

a. DHSD Research

Currently, DHSD is reviewing all electronic and printed records, including 13 boxes of program records, retrieved from the Defense Manpower Data Center (DMDC) in Arlington, VA. Until recently, DMDC retained jurisdiction over DoD's mustard gas records.

b. DMDC Database

Ms. Morris informed VA that veteran records identified in DMDC's electronic mustard gas database are questionable. Upon VA's request for an explanation, Ms. Morris explained that DHSD cannot locate source documents, which support every veteran's verification of participation. Without these records, DHSD stated that DMDC's mustard gas database cannot be certified.

Mr. Salvatore informed the group that VA erred on the side of caution when issuing the initial batch of mustard gas letters on March 9, 2005. In order for letter to be released, Mr. Salvatore stated the veteran's database record must have shown the following:

- Issuance of DoD's chemical exposure commendation certificate
- Identification of exposed agent (e.g. Lewisite, sulfur mustard, nitrogen mustard)
- Record of type of exposure (e.g. full-body or partial-body)
- Current address

Ms. Morris concurred that Mr. Salvatore's approach was correct. Mr. Salvatore requested that DoD notify VA if there was a change to any record selection requirements.

c. Data Pass

Mr. Salvatore provided Ms. Baylor with a copy of VA's Mustard Gas database for DHSD research purposes. Additionally, Mr. Salvatore noted that VA had organized the DMDC database for DHSD.

BATTELLE'S LIASION AT DHSD

In the coming months, Battelle will have a physical presence at DHSD. This liaison will assist DHSD in research efforts.

MEETINGS

Mr. McLendon requested that VA-DHSD meetings be held on a regular basis. Additionally, Mr. McLendon informed Ms. Morris that she would be invited to present before VA's "Project 112/SHAD, Mustard Gas, and Other Chemical and Biological Exposure Test" Task Force.

POINTS OF AGREEMENT

- VA is the ultimate customer
- Battelle/AT&L finds information, images and catalogues documents, creates a database, and sends it to DHSD
- DHSD declassifies data if possible
- DHSD imports the database, creates fact sheets on chunks of tests, and updates its website as appropriate
- DHSD replicates Project 112/SHAD process for new tests
- DHSD provides VA with timeline of next data push

RECOMMENDATIONS

- Ensure that DHSD provides a comprehensive veteran database with specific test information for claims processing purposes
- Brief VA leadership on DoD's project, VA's role, and expected deliverables
- Document all DoD/VA interactions to address internal and external stakeholder reviews
- Consider creating or contracting a specialized office to handle all chemical and biological test activities

Joe Salvatore (212)

ATTACHMENT A
SECONDARY LIST OF VARIABLES

Upon a thorough DoD search for all primary data needs, VA would also appreciate the following variables:

- Type of exposure:

  a. Disposal/destruction of substance
  b. Manufacturing of substance
  c. Production: Manufacturing and handling of substance
  d. Research and development of substance (includes volunteer participants)
  e. Testing (CONUS, Alaska and Hawaii (pre and post-statehood)
  f. Testing (foreign soil)
  g. Training exercises
  h. Transportation of substance (i.e. air, rail, ship, truck)
  i. Warfare I (battlefield conditions)
  j. Warfare II (Bari, Italy)

- Type of test activity

  a. Atmospheric (e.g., aerial drop, aerial spray)
  b. Body part exposure [e.g., body location (arm) with type of test (patch, drops, or injection)]
  c. Inhalation, non-sealed chamber (e.g., open room)
  d. Ingestion
  e. Full body exposure (e.g., sealed gas chamber)
  f. Surface-level (e.g., disposal, destruction, wind tunnel)
  g. Oceanographic (e.g., above or below water)
  h. Space
  i. Underground

- Autopsy reports
- Death certificates

JS: jsalvatore x6948 06/03/05 212B___ 212____210_____ 21_____
h/cap-21/212/ChemBio/DOD Mtg Summary 06_03_05.doc

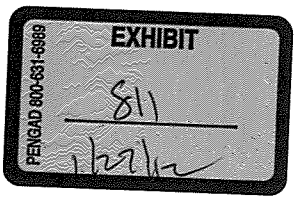
EXHIBIT 37

From: Lionel West [Lionel.West.CTR@deploymenthealth.osd.mil]
Sent: Friday, May 27, 2005 11:36:21 AM
To: joe.salvatore@vba.va.gov; blackbua@BATTELLE.ORG; Dee Morris; Roy S. Finno; Roxana Baylor
Subject: Sample issues going to be discussed for meeting

Attachments: June 1st meeting.ppt

ALCON,
Here are the agenda slides with rough sketch process diagrams.

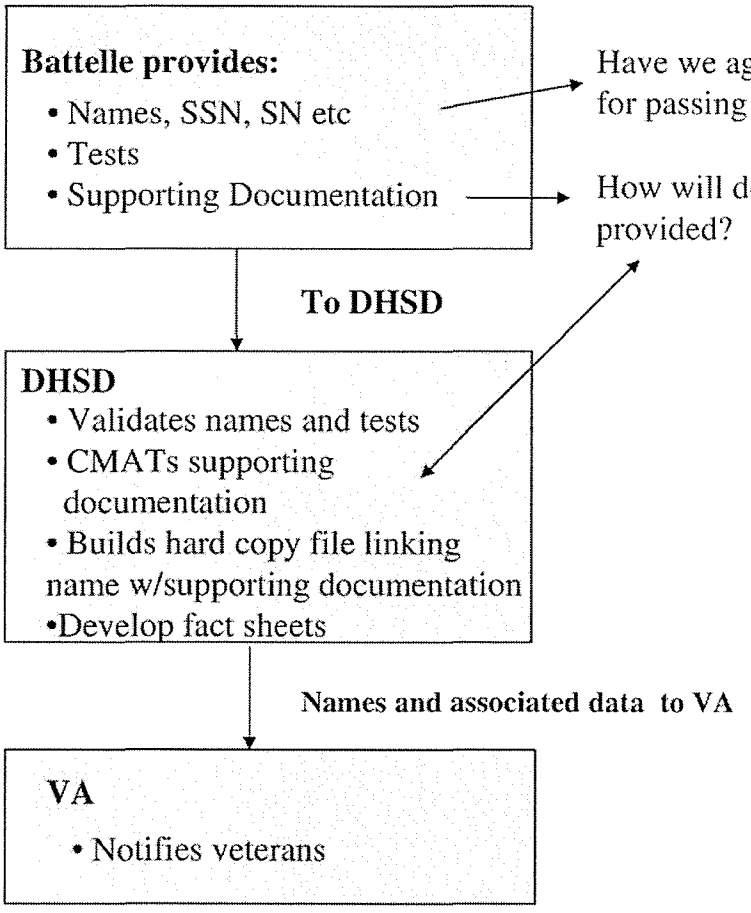
Lionel West
Chemical Biological Investigative Analyst
Deployment Health Support Directorate
703 575-2682



Objective

- To work out process and procedure associated with CB Test Repository Effort
- Resolve any outstanding issues
- Provide critical input
- Define liaison role

Data Pushes



DHSD needs to;
1. uniquely identify name with Push
2. merge pushes
3. document denials

Out of Cycle Inputs

- Calls/letters to DHSD
  - Investigate claims – Battelle, DHSD
  - Adjudicate - DHSD
  - Document
  - Include approvals in next Data Push to VA

- VA inputs
  - Investigate claims – Battelle, DHSD
  - Adjudicate - DHSD
  - Document
  - Notify VA of results - DHSD
  - Include approvals in next Data Push to VA

Outstanding Issues/Problems

- Procedures for moving documents from Battelle to DHSD for CMATing. SIPRNET; CD etc?
- Out of cycle inputs
  - Procedures for handling
  - Tracking
- What information will be passed to VA
  - Essential - Name, SSN, SN, location, test name, date, agent
  - Nice to have – DOB, POB, address
  - IT requirements for data
- SHAD/112 procedures

Outstanding Issues/Problems – con't

- Liaison person
  - Procedures/SOP
- What we are not including
  - CS chamber exercises
  - Three drop tests
  - Anything else?

EXHIBIT 38

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, et al.,

Plaintiffs,

vs.

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants.

Civil Action Number CV 09-0037-CW

Videotaped Deposition of PAUL BLACK, taken at Friday, 2000 Pennsylvania Avenue NW, 7th Floor, Washington, DC, November 4, 2011, at 8:54 a.m., before CARMEN SMITH, a Notary Public within and for the District of Columbia.

PAGES 1 - 297

to one of your answers also, to another question.

You said approximately 2800 Social Security numbers were the universe of identifiable test participants that you used to generate the statistics in Exhibit 546? 10:54:49

A That's correct.

Q Do you know how many letters you've sent to chem-bio test participants?

A It's probably somewhere in that ballpark, but I don't know that number right off. 10:55:09

MS. SPRENKEL: Let's take a quick look. Bear with me.

This is a new one, so 580 we said?

MS. FAREL: Sure.

(Exhibit 580 identified.) 10:55:49

BY MS. SPRENKEL:

Q Are you familiar with this document?

A I probably have seen this or something like it before.

Q Do you know what it is? 10:56:03

A It says "Letters Mailed Letters Returned." It looks like it's a listing of letters that were mailed and the dates they were mailed.

Q And the sheet on the first -- on the first page here, the total -- total to date of 3291, is 10:56:18

that consistent with your understanding of how many letters have been sent?

A Yeah, I would -- that number seems okay to me. I would just have to get somebody that knows more about this than I do to answer that, if you need a specific -- 10:56:42

Q Yeah, I would like to know how many letters you sent.

A Okay.

Q Because I think this might predate your August efforts, this number. 10:56:52

A Yeah, I think there was another 2- or 300 sent in August.

Q What I was wondering is why, if you are able to identify approximately 3300 people in order to send letters, you were only able to run approximately 2800 through the database to generate these statistics in Exhibit 546. 10:57:09

A Because we use Social Security numbers when we generated those statistics. 10:57:27

Q Okay. So there are veterans who you've been able to send notification letters to that -- for whom you don't have a Social Security number in the database?

A That's what it seems to me. I mean, if we 10:57:40

A And you asked for the number of letters. I didn't get an exact number, but they said that the estimate was about 3500 letters.

Q 3500.

A Yeah. That had been sent. And that included the ones from August, the latest that we sent. 13:19:28

And you asked what the diagnostic code 6100 was for and I told you hearing, but I wasn't sure. It is for hearing loss. It's at 38 CFR 4.85. 13:19:46 It's in -- it is in this new one, but it's just -- the only place that it's listed is in the table, because hearing loss has a table that you go into, and based on the discrimination and that, that's how they evaluate it. That's where the 6100 is listed. 13:20:03 It wasn't listed in the appendix where I was looking.

Q Okay.

A And then you asked if we keep the rating decisions from the training letter that's supposed to be mailed into that mailbox. 13:20:14

Q Uh-huh.

A And from prior to February of '08, those were printed and kept. And after February of '08, they're kept electronically. But yes, we do keep 13:20:27

I declare under penalty of perjury under the laws that the foregoing is true and correct.

Executed on _____ , 20___, at _____, _____.

_____

PAUL BLACK

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

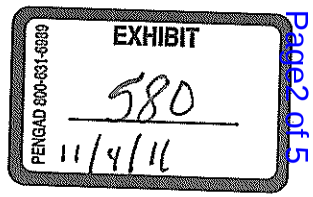
Notary Public in and for the
District of Columbia

Commission Expires: MARCH 14, 2013

EXHIBIT 39

	Date	Letters Mailed	Letters Returned
	06/30/2006 (Georgia only)	58	
1818	9/14/2006	1,818	221
758	3/17/2007	758	
338	9/18/2007	338	2
	Individual ltrs		
1	10/3/2006	1	
2	10/6/2006	2	
1	10/17/2006	1	
	1/8/2007	2	
	1/9/2007	1	
	2/15/2007	1	
	3/21/2007	1	
	3/27/3007	1	
	4/6/2007	1	
	4/12/2007	1	
	5/17/2007	1	
	7/6/2007	1	
	7/10/2007	1	
304	3/12/2009	304	
3222	Total to date	3291	223

73 Missing (58 GA+15 individual letters)



ACCT 4	Date	# Ltrs Mailed	
622	5/21/2002	622	
772	8/15/2002	777	
1738	12/9/2002	1738	3rd SHAD mailing (includes 242 bad High Low participants)
326	2/11/2003	326	
549	2/18/2003	549	
155	4/23/2003	148	
	11/24/2003	10	
8	12/24/2003	6	
	1/14/2004	4	
130	2/4/2004	130	
	2/5/2005		
1	2/17/2004	1	
2	3/2/2004	2	
	4/5/2004	3	
0	4/7/2004	0	
4	4/19/2004	4	
1	5/13/2004	1	
	5/26/2004	6	
	5/27/2004	1	
	6/22/2004	3	
80	6/29/2004	80	
	7/6/2004	1	
	7/20/2004	1	
	1/6/2005	2	
	3/24/2005	1	
	5/20/2005	1	
	6/1/2005	1	
	7/21/2005	3	
	10/12/2005	1	
	2/28/2006	1	
	2/28/2006	2	
	3/7/2006	1	
	3/24/2006	1	
	4/26/2006	1	
	6/29/2006	1	

	9/29/2006	1	
	11/9/2006	1	
	12/12/2006	1	
	1/31/2007	1	
	2/15/2007	1	
	3/20/2007	1	
	3/22/2007	1	
3	9/18/2007	2	
4391		4438	
		-242	(High Low apology)
		4196	

47 Missing

Letter Type	Date	# Ltrs	
VET-Full Body Exposure	3/9/2005	166	166
	9/20/2005	1	1
	10/26/2005	12	12
	11/25/2005	25	25
Vet-Partial Body Exposure	3/9/2005	25	25
	9/20/2005	1	1
	10/26/2005	7	7
	9/18/2007	3	2
Subtotal		240	
Surviving Spouce	3/9/2005	79	78
Total Letter		319	317

2 Missing

EXHIBIT 40

Outreach Efforts of Project 112/SHAD, Mustard Gas and Chemical Biological Programs as of January 31, 2010

Prepared by
Procedures Staff
Compensation and Pension Service
February 5, 2010

Background: Project 112/SHAD was part of the joint service chemical and biological warfare test program conducted during the 1960s and early 1970s. Project SHAD encompassed tests designed to identify U.S. warships' vulnerabilities to attacks with chemical or biological warfare agents and to develop procedures to respond to such attacks while maintaining a war-fighting capability.

On June 30, 2003, the Department of Defense (DoD) completed its investigation of the Project 112/SHAD operational tests. DoD planned 134 tests but conducted only 50. As of July 2008, DoD has provided VA with the names of 6,442 Veterans who participated in Project 112/SHAD tests.

Most Recent Updates: In June 2008, it was noted that VBA had received 752 claims initially identified as Project 112/SHAD claims. We adjusted this number by 111 claims found not to be Project 112/SHAD claims. The number of actual Project 112/SHAD claims received from Veterans claiming disabilities related to exposure to chemical/biological agents/substances used in testing, since the adjustment is 641.

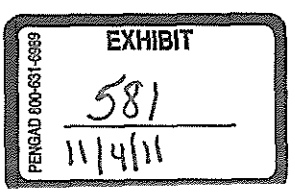
The table below shows the number of claims pending and the number VBA has decided as of January 31, 2010. The total number of Project 112/SHAD cases granted is 39 out of 753 cases that have been decided.

Monthly	Pending	Decided	Total
January 2010	16	753	769

There are three requirements to service connect a disability: (1) evidence of a disease, injury, or event that occurred during active duty service, (2) evidence of a current disability, and (3) medical evidence establishing a nexus or link between the in-service disease, injury, or event, and the current disability. VA affords the Veteran reasonable doubt in any decision where the evidence weighs equally in favor of grant or denial of the claim. VA assists the Veteran in obtaining the required evidence.

Project 112/SHAD calls to the Helpline are below.

Number of Interviews	Period
969	FY 2003
475	FY 2004



180	FY 2005
324	FY 2006
407	FY 2007
145	FY 2008
411	FY 2009
29	FYTD 2010 (January 2010)

Mustard Agents and Lewisite (Mustard Gas)

Since January 2006, there have been no additions to the 4,495 Veterans who had been exposed to Mustard Gas or Lewisite. From matches against BIRLS, VHA, and NCA, we found that 2,120 test participants were deceased. Of the remaining presumed living Veterans, only 371 addresses were found. The following is a breakdown of identified master records by exposure and status:

Exposure	Unique Veterans	Living Veterans	Deceased Veterans
Full-Body	330	167	163
Partial-Body	41	25	16
Total	**371**	**192**	**179**

Of the 179 deceased Veteran records:

- 68 surviving spouses are receiving DIC
- 50 surviving spouses are receiving non-service connected death pension
- 55 known spouses with Social Security numbers are not in receipt of DIC nor death pension
- 6 records did not have a spouse identified on the award

The RMC in St. Louis reviewed a list of 168 retired folders in May 2006 and found only 15 social security numbers, which were forwarded to C&P Service in June 2006; however, addresses for these Veterans were not found.

To date, VBA has received 1,578 claims from Veterans alleging disabilities related to exposure to Mustard Gas. The table below shows the number of these claims currently pending and the number VBA has decided.

Mustard Gas Claims/ FYTD 2010			
Month	**Pending**	**Decided**	**Total**
January 2010	100	1478	1578

Mustard Gas calls to the Helpline are below.

Number of Interviews	Period
311	FY 2005

118	FY 2006
270	FY 2007
61	FY 2008
94	FY 2009
03	FYTD 2010 (January 2010)

Chem – Bio Exposures

In December 2005, Veterans Benefits Administration (VBA) received a list of names of 1,012 participants used in tests conducted at Edgewood Arsenal. The tests consisted of 140 known agents at the time. This was the beginning of the Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) database. The Department of Defense (DoD) met with VBA staff in February 2006, to share a draft copy of a DoD fact sheet entitled "Edgewood Arsenal Chemical Agent Exposure Studies: 1955-1975." In April 2006, VBA's Compensation and Pension Service (C&P) staff received an updated CBRNE database with an additional 3,434 names for a total of 4,446 names.

In an effort to obtain addresses for the test participants, C&P Service contacted Office of Performance Analysis & Integrity (OPA&I) in May 2006, for them to conduct a data match between the CBRNE database with BIRLS and the C&P master record. This match provided social security numbers for a limited number of test participants, 1,818 were a match. For those participants where an address was not found, C&P Service contacted Choice Point, an agency used to obtain current mailing addresses.

In June 2006, C&P Service began mailing notification letters to Veterans from the CBRNE database. In early July 2006, C&P Service sent a list of names of CBRNE test participants to Veterans Health Administration's (VHA) Eligibility Center, in order to help them determine which Veterans were eligible for medical treatment. By the end of July 2006, C&P Service mailed out 1,818 notification letters to test participants.

In early September 2006, C&P Service received an additional 2,261 names from DoD to add to the CBRNE database. This updated information brought the amount of names in the CBRNE database to 6,707. Additional notification letters were mailed to 758 test participants in March 2007 and 338 were mailed in mid September 2007. C&P Service has sent out another 15 individual notification letters since mid September 2007.

In June 2008, C&P Service received 3,821 new names to be added to the CBRNE database, bringing the total to 10,528 names. C&P Service was able to identify and obtain current addresses for 304 of the 3,821 newly referred test participants. In March 2009, C&P Service sent out 304 notification letters with DoD's updated fact sheet to those Veterans. *In August 2009, DoD brought 2,239 new names in the CBRNE database to VA (bringing total in database to 12,767). VA requested a data*

match from PA&I against the list, which returned incomplete information needed to accurately contact Veterans involved in this database. DoD was notified in September 2009 at a joint meeting for VA and DoD of the incomplete data that was furnished to VA. DoD also sent a list of all chemical agents and non-agents that were used for CBRNE testing for a total of 427 agents.

During September 2006, VBA provided the field with Training Letter 06-04, Department of Defense (DoD) Identifies Additional Service Members Who Participated in the Testing of Chemical and Biological Warfare Agents During Service, with special procedures for processing and controlling claims related to these tests.

VBA has received 87 claims from Veterans alleging disabilities related to exposure to chemical/biological agents/substances. The table below shows the number of these claims pending and the number VBA has decided.

Chem-Bio Claims for FYTD 2010			
Month	**Pending**	**Decided**	**Total**
January 2010	1	86	87

To date, two of the 86 decisions listed above include a grant of service connection.

Notification Efforts (SHAD, MG, and CBRNE): As of March 31, 2009, VBA has mailed a total of 8,053 outreach letters to Veterans who were participants in Project 112/Shipboard Hazard and Defense (SHAD), Mustard Gas (MG), and Chemical Biological Radiological Nuclear Explosives (CBRNE) tests. VBA enclosed a DoD Fact Sheet with each notification letter depending on the tests in which the Veteran participated. VBA has completed outreach efforts to Project 112/SHAD and MG participants. Outreach efforts will continue to Chem-Bio test participants because of the additional listing of names anticipated from DoD.

Data Base	Returned Mail	New SSNs	Previously Mailed	Total Letters Mailed
SHAD	459	0	4,439	4,441
Mustard Gas	22	164	318	321
CBRNE	313	775	2,649	3,291
Totals	794	939	7,406	8,053

VA Outreach Efforts Made Since October 1, 2009

DoD informed VA that Project 112/SHAD and Mustard Gas programs have been officially closed as of June 2008. Chemical Biological (also known as Edgewood Arsenal) remains open at this time, as DoD continues to identify Veterans who were "test participants" in the program. There have been no outreach letters mailed since March 31, 2009. VA is currently locating accurate addresses of Veterans whose notification letters were returned from the last outreach effort in March 2009.

Prepared by: Procedures Staff/ Compensation and Pension Service
February 5, 2010

H:\CAP-21\216\ChemBio\CBNRE\Outreach