

**DEPARTMENT OF STATE****22 CFR Part 41**

RIN 1400-AB49

[Public Notice 5711]

**Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended****AGENCY:** State Department.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of State regulations related to students and exchange visitors to reflect changes introduced by Public Law 108-441, and numerous administrative and procedural changes that have occurred with respect to these paragraphs following the transfer of the exchange visitor INA 212(e) waiver authority in 1999 from the United States Information Agency (USIA) to the Bureau of Consular Affairs in the Department of State. A number of these changes are non-substantive (i.e., agency name changes [the Department of Homeland Security in place of the Immigration and Naturalization Service], updating of office designations, etc.). Other changes reflect statutory amendments regarding waivers for the exchange visitor physicians and the proposed reconstitution of the Exchange Visitor Waiver Review Board.

**DATES:** This rule is effective on March 7, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106, (202) 663-1202, e-mail ([robertsonce3@state.gov](mailto:robertsonce3@state.gov)).

**SUPPLEMENTARY INFORMATION:****Why is the Department promulgating this rule?**

On October 1, 1999, the United States Information Agency was consolidated into the United States Department of State. The reorganization was carried out in accordance with the Foreign Affairs Reform and Restructuring Act of 1998, which also called for the Arms Control and Disarmament Agency and some functions of the Agency for International Development to be integrated into the Department of State.

As a consequence of this extensive merger, the Department of State issued a final rule (64 FR 54538-54541) amending USIA's regulations. The final rule repealed, revised, re-designated, and otherwise amended USIA's authorities. Among other things, the USIA Waiver Review Branch of the Office of the General Counsel was

moved into the Department of State's Visa Office. The USIA Waiver Review Branch became the Waiver Review Division of the Office of Legislation, Regulations, and Advisory Assistance, Visa Services, Bureau of Consular Affairs, CA/VO/L/W. It maintains its previous responsibilities for reviewing applications by J-1 exchange visitors who are seeking waivers of the two-year foreign residence requirement set forth at Section 212(e) of the Immigration and Nationality Act (INA). The Division makes recommendations to the Department of Homeland Security concerning such waivers.

**Do these administrative changes really need changes in the authorities?**

The Department of State inherited a multitude of functions as a result of the October 1, 1999 consolidation of USIA into the Department of State. The pertinent regulations to the waiver function contain errors as well as out-of-date references, so this regulation corrects these items. Also, Public Law 108-441, signed into law on December 3, 2004, amended section 214(l) of the Immigration and Nationality Act, which makes certain changes regarding foreign medical graduates who obtain J-1 status in order to receive graduate medical education or training.

**What specific errors does this regulation address?**

Our regulation updates the required J-visa application form (Certificate of Eligibility for Exchange Visitor (J-1) Status), IAP-66, to reflect the current Department-approved designation, DS-2019. The term "Secretary of State" replaces the term "Director of USIA". The Department of Homeland Security replaces the Immigration and Naturalization Service. The medical schools have been clearly identified as "foreign" medical schools. The Waiver Review Board, which is occasionally and incorrectly referred to as the "division" rather than the "board", is also herein corrected. Finally, references to USIA's authorities previously located at 22 CFR part 514 have been corrected to reflect their relocation at 22 CFR 41.62 and 41.63. The regulation also simplifies language identifying the jurisdictional DHS office to which the waiver recommendation is sent. The language is flexible permitting DHS to designate different offices without the need for the Department to modify these regulations.

**Why is the Department making the review of persecution cases with the Bureau of Democracy, Human Rights and Labor (DRL) permissive rather than mandatory?**

Section 212 (e) of the Act grants the Department of Homeland Security (DHS), exclusive authority to determine the existence of prospective persecution in these cases. Thus, the Visa Office honors the holding of DHS in these cases and perceives no need to submit all cases for further review. We have found that the results are sufficiently consistent with DHS findings to render this action superfluous. Furthermore, the Waiver Review Division will only submit a case for an opinion if it believes that circumstances may have meaningfully changed since the DHS finding of persecution.

**Why is the Waiver Review Board being reconstituted?**

The Waiver Review Board provided USIA with an excellent means of deciding cases that have compelling competing interests. The Visa Office found the Board to be a useful tool for representing differing interests and for reaching a consensus on difficult cases. This regulation proposes to realign the representation of the Board by apportioning Board membership between policy formulators in the Bureau of Consular Affairs and principals administering the exchange visitor program interests in the Bureau of Education and Cultural Affairs. The rule proposes to designate the Principal Deputy Assistant Secretary for Consular Affairs as the chair.

**Why is the Department not clearly identifying the number of cases that can be approved annually under the Conrad program?**

The old regulation indicates that 20 exchange visitor physicians could qualify for this program per state annually. But the law was amended to increase that number to 30. Further modifications to the numerical limitation on Conrad program beneficiaries are a distinct possibility; consequently, to avoid periodic amendment of the regulation, the language is being modified to refer non-specifically to the annual limitation.

**Regulatory Findings***Administrative Procedure Act*

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

*Regulatory Flexibility Act/Executive Order 13272*

Small Business. This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act, and, accordingly it does not require analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

*The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

*The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

*Executive Order 12866: Regulatory Review*

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States,

on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

*Executive Order 12988: Civil Justice Reform*

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 41**

Aliens, Foreign officials, Immigration, Nonimmigrants, Passports and Visas, Students.

■ For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 to read as follows:

**PART 41—[AMENDED]**

■ 1. The authority citation for part 41 continues to read:

**Authority:** 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801. Additional authority is derived from Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104-208, 110 Stat. 3546.

■ 2. Section 41.62 is amended by revising paragraphs (a)(1), (c)(1)(i), (c)(1)(ii), and (c)(3) to read as follows:

**§ 41.62 Exchange visitors.**

(a) \* \* \*  
(1) Has been accepted to participate, and intends to participate, in an exchange visitor program designated by the Bureau of Education and Cultural Affairs, Department of State, as evidenced by the presentation of a properly executed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status;

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

(i) The alien's participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's last legal permanent residence; or

(ii) At the time of the issuance of an exchange visitor visa and admission to the United States, or, if not required to

obtain a nonimmigrant visa, at the time of admission as an exchange visitor, or at the time of acquisition of such status after admission, the alien is a national and resident or, if not a national, a legal permanent resident (or has status equivalent thereto) of a country which the Secretary of State has designated, through publication by public notice in the **Federal Register**, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage during the exchange visitor program; or

\* \* \* \* \*

(3) The country in which 2 years' residence and physical presence will satisfy the requirements of INA 212(e) in the case of an alien determined to be subject to such requirements is the country of which the alien is a national and resident, or, if not a national, a legal permanent resident (or has status equivalent thereto).

\* \* \* \* \*

■ 3. Section 41.63 is amended by revising paragraphs (a)(1)(ii), (a)(2), (a)(3), (b)(1), (b)(2), (c)(1), (c)(3), (c)(4) introductory text, (c)(5), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3)(i), (e)(3)(ii), (e)(3)(iii), (e)(3)(iv), (e)(3)(v), (e)(3)(viii), (e)(4), (f) and (g) to read as follows:

**§ 41.63 Two-year home-country physical presence requirement.**

(a) \* \* \*  
(1) \* \* \*

\* \* \* \* \*

(ii) Who at the time of admission or acquisition of status under 101(a)(15)(I) was a national or legal permanent resident of a country which the Secretary of State, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged [See the most recent "Revised Exchange Visitor Skills List", at [http://exchanges.state.gov/education/jexchanges/participation/skills\\_list.pdf](http://exchanges.state.gov/education/jexchanges/participation/skills_list.pdf)]; or

\* \* \* \* \*

(2) Upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency (or in the case of an alien who is a graduate of a foreign medical school pursuing a program in graduate medical education or training, pursuant to the request of a State Department of Public Health, or its equivalent), or of the Secretary of Homeland Security after the latter has determined that departure from the United States would impose

exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a legal permanent resident alien), or that the alien cannot return to the country of his nationality or last legal permanent residence because he would be subject to persecution on account of race, religion, or political opinion, the Secretary of Homeland Security may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Secretary of Homeland Security to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, the waiver shall be subject to the requirements of section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184).

(3) Except in the case of an alien who is a graduate of a foreign medical school pursuing a program in graduate medical education or training, the Secretary of Homeland Security, upon the favorable recommendation of the Secretary of State, may also waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last legal permanent residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien. Notwithstanding the foregoing, an alien who is a graduate of a foreign medical school pursuing a program in graduate medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a) (2) and (e) of this section.

(b) \* \* \*

(1) An exchange visitor who seeks a waiver of the two-year home-country residence and physical presence requirement on the grounds that such requirement would impose exceptional hardship upon the exchange visitor's spouse or child (if such spouse or child is a citizen of the United States or a legal permanent resident alien), or on the grounds that such requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, shall submit the application for waiver (DHS Form I-612) to the jurisdictional office of the Department of Homeland Security.

(2)(i) If the Secretary of Homeland Security (Secretary of DHS) determines that compliance with the two-year home-country residence and physical presence requirement would impose exceptional hardship upon the spouse

or child of the exchange visitor, or would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Secretary of DHS shall transmit a copy of his determination together with a summary of the details of the expected hardship or persecution, to the Waiver Review Division, in the Department of State's Bureau of Consular Affairs.

(ii) With respect to those cases in which the Secretary of DHS has determined that compliance with the two-year home-country residence and physical presence requirement would impose exceptional hardship upon the spouse or child of the exchange visitor, the Waiver Review Division shall review the program, policy, and foreign relations aspects of the case, make a recommendation, and forward it to the appropriate office at DHS. If it deems it appropriate, the Waiver Review Division may request the views of each of the exchange visitors' sponsors concerning the waiver application. Except as set forth in paragraph (g)(4) of this section, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(iii) With respect to those cases in which the Secretary of DHS has determined that compliance with the two-year home-country residence and physical presence requirement would subject the exchange visitor to persecution on account of race, religion, or political opinion, the Waiver Review Division shall review the program, policy, and foreign relations aspects of the case, including consultation if deemed appropriate with the Bureau of Human Rights and Humanitarian Affairs of the United States Department of State, make a recommendation, and forward such recommendation to the Secretary of DHS. Except as set forth in paragraph (g)(4) of this section, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to DHS.

(c) \* \* \*

(1) A United States Government agency may request a waiver of the two-year home-country residence and physical presence requirement on behalf of an exchange visitor if such exchange visitor is actively and substantially involved in a program or activity sponsored by or of interest to such agency.

\* \* \* \* \*

(3) A request by a United States Government agency shall be signed by the head of the agency, or his or her

designee, and shall include copies of all IAP 66 or DS-2019 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

(4) A request by a United States Government agency, excepting the Department of Veterans Affairs, on behalf of an exchange visitor who is a foreign medical graduate who entered the United States to pursue graduate medical education or training, and who is willing to provide primary care or specialty medicine in a designated primary care Health Professional shortage Area, or a Medically Underserved Area, or psychiatric care in a Mental Health Professional Shortage Area, shall, in addition to the requirement set forth in paragraphs (c)(2) and (3) of this section, include:

\* \* \* \* \*

(5) Except as set forth in paragraph (g)(4) of this section, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State and such recommendation shall be forwarded to the Secretary of DHS.

(d) \* \* \*

(1) Applications for waiver of the two-year home-country residence and physical presence requirement may be supported by a statement of no objection by the exchange visitor's country of nationality or last legal permanent residence. The statement of no objection shall be directed to the Secretary of State through diplomatic channels; i.e., from the country's Foreign Office to the Department of State through the U.S. Mission in the foreign country concerned, or through the foreign country's head of mission or duly appointed designee in the United States to the Secretary of State in the form of a diplomatic note. This note shall include applicant's full name, date and place of birth, and present address. If deemed appropriate, the Department of State may request the views of each of the exchange visitor's sponsors concerning the waiver application.

(2) The Waiver Review Division shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Secretary of DHS. Except as set forth in § 41.63(g)(4), *infra*, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(3) An exchange visitor who is a graduate of a foreign medical school and who is pursuing a program in graduate medical education or training in the United States is prohibited under

section 212(e) of the Immigration and Nationality Act from applying for a waiver solely on the basis of no objection from his or her country of nationality or last legal permanent residence. However, an alien who is a graduate of a foreign medical school pursuing a program in graduate medical education or training may obtain a waiver of such two-year foreign residence requirements if said alien meets the requirements of section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184) and paragraphs (a)(2) and (e) of this section.

(e) \* \* \*

(1) Pursuant to Public Law 103-416, in the case of an alien who is a graduate of a medical school pursuing a program in graduate medical education or training, a request for a waiver of the two-year home-country residence and physical presence requirement may be made by a State department of Public Health, or its equivalent. Such waiver shall be subject to the requirements of section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1194(l)) and this § 41.63.

(2) With respect to such waiver under Public Law 104-416, if such alien is contractually obligated to return to his or her home country upon completion of the graduate medical education or training, the Secretary of State is to be furnished with a statement in writing that the country to which such alien is required to return has no objection to such waiver. The no objection statement shall be furnished to the Secretary of State in the manner and form set forth in paragraph (d) of this section and, additionally, shall bear a notation that it is being furnished pursuant to Public Law 103-416.

(3) \* \* \*

(i) A completed DS-3035. Copies of these forms may be obtained from the Visa Office or online at <http://www.travel.state.gov>.

(ii) A letter from the Director of the designated State Department of Public Health, or its equivalent, which identifies the foreign medical graduate by name, country of nationality or country of last legal permanent residence, and date of birth, and states that it is in the public interest that a waiver of the two-year home residence requirement be granted;

(iii) An employment contract between the foreign medical graduate and the health care facility named in the waiver application, to include the name and address of the health care facility, and the specific geographical area or areas in which the foreign medical graduate will practice medicine. The employment contract shall include a statement by the

foreign medical graduate that he or she agrees to meet the requirements set forth in section 214(l) of the Immigration and Nationality Act. The term of the employment contract shall be at least three years and the geographical areas of employment shall only be in areas, within the respective state, designated by the Secretary of Health and Human Services as having a shortage of health care professionals, unless the waiver request is for an alien who will practice medicine in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services without regard to whether such facility is located within such a designated geographic area. For the latter situation, which will be referred to as "non-designated requests", the contract should also state that the term of the employment contract shall be at least three years and employment shall only be in a facility that serves patients who reside in one or more geographic areas so designed by the Secretary of Health and Human Services as having a shortage of health care professionals.

(iv) Evidence establishing that the geographic area or areas in the state in which the foreign medical graduate will practice medicine or where patients who will be served by the foreign medical graduates reside, are areas which have been designated by the Secretary of Health and Human Services as having a shortage of health care professionals. For purposes of this paragraph, the geographic area or areas must be designated by the Department of Health and Human Services as a Health Professional Shortage Area ("HPSA") or as a Medically Underserved Area/Medically Underserved Population ("MUA/MUP").

(v) Copies of all forms IAP 66 or DS-2019 issued to the foreign medical graduate seeking the waiver;

\* \* \* \* \*

(viii) Because of the numerical limitations on the approval of waivers under Public Law 103-416, *i.e.*, no more than the maximum number of waivers for each State each fiscal year as mandated by law, each application from a State Department of Public Health, or its equivalent, shall be numbered sequentially, beginning on October 1 of each year. The "non-designated" requests will also be numbered sequentially with appropriate identifier.

(4) The Waiver Review Division shall review the program, policy, and foreign relations aspects of the case and forward its recommendation to the Secretary of DHS. Except as set forth in paragraph

(g)(4) of this section, the recommendation of the Waiver Review Division shall constitute the recommendation of the Department of State.

(f) *Changed Circumstances.* An applicant for a waiver on the grounds of exceptional hardship or probable persecution on account of race, religion, or political opinion, has a continuing obligation to inform the Department of Homeland Security of changed circumstances material to his or her pending application.

(g) *The Waiver Review Board.*

(1) The Waiver Review Board ("Board") shall consist of the following persons or their designees:

(i) The Principal Deputy Assistant Secretary of the Bureau of Consular Affairs;

(ii) The Director of Office of Public Affairs for the Bureau of Consular Affairs;

(iii) The Legislative Management Officer for Consular Affairs, Bureau of Legislative Affairs;

(iv) The Director of the Office of Exchange Coordination and Designation in the Bureau of Educational and Cultural Affairs; and

(v) The Director of the Office of Policy and Evaluation in the Bureau of Educational and Cultural Affairs.

(2) A person who has had substantial prior involvement in a particular case referred to the Board may not be appointed to, or serve on, the Board for that particular case unless the Bureau of Consular Affairs determines that the individual's inclusion on the Board is otherwise necessary or practicably unavoidable.

(3) The Principal Deputy Assistant Secretary of Consular Affairs, or his or her designee, shall serve as Board Chairman. No designee under this paragraph (g)(3) shall serve for more than 2 years.

(4) Cases will be referred to the Board at the discretion of the Chief, Waiver Review Division, of the Visa Office. The Chief, Waiver Review Division, or his or her designee may, at the Chairman's discretion, appear and present facts related to the case but shall not participate in Board deliberations.

(5) The Chairman of the Board shall be responsible for convening the Board and distributing all necessary information to its members. Upon being convened, the Board shall review the case file and weigh the request against the program, policy, and foreign relations aspects of the case.

(6) The Bureau of Consular Affairs shall appoint, on a case-by-case basis, from among the attorneys in the State Department's Office of Legal Advisor

one attorney to serve as legal advisor to the Board.

(7) At the conclusion of its review of the case, the Board shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Board shall constitute the recommendation of the Board. Such recommendation shall be promptly transmitted by the Chairman to the Chief, Waiver Review Division.

(8) At the conclusion of its review of the case, the Board shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Board shall constitute the recommendation of the Board. Such recommendation shall be promptly transmitted by the Chairman to the Chief, Waiver Review Division.

Dated: February 23, 2007.

**Maura Harty,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

[FR Doc. E7-3871 Filed 3-6-07; 8:45 am]

**BILLING CODE 4710-06-P**

## DEPARTMENT OF JUSTICE

### 28 CFR Parts 0, 5, 12, 17, 65, and 73

[Docket No. NSD 100; AG Order No. 2865-2007]

#### Office of the Attorney General; National Security Division

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends part 0 of title 28 of the Code of Federal Regulations to reflect the establishment of the National Security Division at the Department of Justice. The National Security Division was created by section 506 of the USA PATRIOT Improvement and Reauthorization Act of 2005 ("the Act"). This rule, which sets forth the Division's organization, mission and functions, amends the Code of Federal Regulations in order to conform the Department's regulations to the Act and to reflect accurately the Department's internal management structure.

This rule also amends the Department's regulations in title 28 other than in part 0 to make nomenclature and organizational changes reflecting the establishment of the National Security Division.

**DATES:** *Effective Date:* March 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jessie Liu, National Security Division, U.S. Department of Justice, Washington, DC 20530; Telephone (202) 514-1057.

**SUPPLEMENTARY INFORMATION:** On March 9, 2006, the President signed the USA PATRIOT Improvement and Reauthorization Act of 2005 ("the Act"), Public Law 109-277 (120 Stat. 192). Section 506 of the Act created a new National Security Division (NSD) in the Department of Justice. This rule conforms the Department's regulations to the Act and sets forth the new Division's organization, mission, and functions.

This rule reflects the establishment of the NSD, reporting to the Deputy Attorney General, by consolidating the resources of the Office of Intelligence Policy and Review (OIPR) and the Criminal Division's Counterterrorism and Counterespionage Sections. These organizational changes will strengthen the Department's efforts to combat terrorism and other threats to national security.

Consolidating OIPR and the Criminal Division's Counterterrorism and Counterespionage Sections under the NSD will ensure greater coordination and unity of purpose among the Department's primary organizational units that handle core national security matters. These changes will allow the Department to maximize the effectiveness of prosecutors handling cases in the core national security fields of counterterrorism and counterespionage, who will continue to carry out the same critical functions they handle today. The NSD will be positioned to coordinate all related Department resources and ensure that critical information is shared as appropriate across the Department and the Executive Branch.

The mission of the NSD is to coordinate the Department's efforts in carrying out its core mission of combating terrorism and protecting national security. Among the major functions the NSD will perform are the following:

- Develop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs, except those specifically assigned to other Divisions;
- Prosecute and coordinate a wide range of criminal prosecutions and investigations targeting individuals and organizations involving terrorist acts at home or against U.S. persons or interests abroad or that assist in the financing of or providing support to those acts;
- Administer the Foreign Intelligence Surveillance Act;
- Supervise sensitive areas of law enforcement related to the activities of

the National Security Division, except tasks assigned to other Divisions;

- Advise, assist, coordinate with, and train those in the law enforcement community, including federal, state, and local prosecutors, investigative agencies and foreign criminal justice entities (provided that any training of foreign criminal justice entities should be conducted in coordination with the Criminal Division), in matters related to the Division's activities;

- Advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security activities of the United States; and

- Through the Assistant Attorney General for National Security, serve as the Department of Justice's primary liaison to the Director of National Intelligence.

This rule also makes further amendments to the Department's regulations in title 28 other than in part 0 in order to make nomenclature and organizational changes reflecting the establishment of the NSD. Generally, the changes involve either adding the NSD to the list of the Department's components or substituting the NSD in place of either the Criminal Division or the Office of Intelligence Policy and Review. In some instances, the Assistant Attorney General for National Security is substituted for the Assistant Attorney General, Criminal Division or for the Counsel for Intelligence Policy, as appropriate.

This rule only makes changes to the Department's internal organization and structure and does not affect the rights or obligations of the general public.

#### Administrative Procedure Act—5 U.S.C. 553

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(3)(A).

#### Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to