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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA No. FAA–2006–26364; Airspace Docket No. 06–ANM–12]

Establishment of Class E Airspace; Beaver, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** August 10, 2007 (72 FR 44955), Airspace Docket No. 06–ANM–12, FAA Docket No. FAA–2006–26364. In that rule, an error was made in the legal description for Beaver, UT. Specifically, the longitude referencing V–293 stated ''* * * long. 133°00′00″ W.'' instead of ''* * * long.113°30′00″ W.'' This action corrects that error.

DATES: *Effective Date:* 0901 UTC, October 25, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

History

On August 10, 2007, a final rule for Airspace Docket No. 06–ANM–12, FAA Docket No. FAA–2006–26364 was published in the **Federal Register** (72 FR 44955), establishing Class E airspace in Beaver, UT. The longitude referencing V–293 was incorrect in that the longitude stated ''* * * long. 133°00′00″ W.'' instead of ''* * * long.113°30′00″ W.'' This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description as published in the **Federal Register** on August 10, 2007 (72 FR 44955), Airspace Docket No. 06–ANM–12, FAA Docket No. FAA–2006–26364, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Amended]

■ On page 44956, correct the legal description for Beaver, UT, to read as follows:

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Beaver, UT [Corrected]

Beaver Municipal Airport, UT (lat. 38°13′51″ N., long. 112°40′31″ W.)

Bryce Canyon VORTAC (lat. 37°41′21″ N., long. 112°18′14″ W.)

That airspace extending upward from 700 feet above the surface within a 5.0-mile radius of Beaver Municipal Airport and within 3 miles each side of the 261° bearing from the Airport extending from the 5.0-mile radius to 14.0 miles west of the Airport, and that airspace extending upward from 1,200 feet above the surface beginning at lat. 38°19′24″ N., long. 113°30′00″ W.; thence east on V–244 to lat. 38°22′22″ N., long. 112°37′47″ W.; thence south on V–257 to BRYCE CANYON VORTAC; thence west on V–293 to lat. 37°56′30″ N., long. 113°30′00″ W.; to point of beginning.

* * * * *

Issued in Seattle, Washington, on October 5, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–20389 Filed 10–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 2000N–1545] (formerly 00N–1545)

Applications for Food and Drug Administration Application Approval to Market a New Drug; Revision of Postmarketing Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations describing postmarketing reporting requirements to implement certain provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). The changes apply to drug products that are life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition and that were not originally derived from human tissue and replaced by a recombinant product. The final rule implements provisions of the Modernization Act by requiring an applicant who is the sole manufacturer of one of these products to notify FDA at least 6 months before discontinuing manufacture of the drug product.

DATES: This rule is effective December 17, 2007.

FOR FURTHER INFORMATION CONTACT:

S. Mitchell Weitzman, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5535, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 2000 (65 FR 66665), we (FDA) issued a proposed rule to revise our postmarketing reporting requirements to implement section 506C of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 356c). Section 506C of the act

requires manufacturers who are the sole manufacturers of certain drug products to notify us at least 6 months before discontinuing manufacture of the products. Section 506C(a) applies to sole manufacturers of products that meet the following three criteria:

(1) The products are life supporting, life sustaining, or intended for use in the prevention of a debilitating disease or condition;

(2) The products must have been approved under section 505(b) or (j) of the act (21 U.S.C. 355(b) or (j)); and

(3) The products are not originally derived from human tissue and replaced by a recombinant product.

Under section 506C of the act, we may reduce the 6-month notification period if good cause exists for the reduction, and we must provide information to the public about the product discontinuance.

II. Overview of the Final Rule Including Changes to the Proposed Rule

This final rule amends the postmarketing provisions of FDA regulations in § 314.81 (21 CFR 314.81) to require applicants who are sole manufacturers of certain drug products to notify us at least 6 months before discontinuing manufacture of the products. The 6-month notification period required by these regulations will give certain individuals who are currently taking affected medications that will be discontinued an opportunity to evaluate alternative therapeutic options, and will provide additional time for FDA to evaluate replacement products when available. Under § 314.91 (21 CFR 314.91), we may reduce the 6-month notification period when we find good cause exists for the reduction.

In this rulemaking, the agency finalizes all of the substantive provisions in the proposed rule. In addition, we have made some revisions, none of which changed the substantive requirements. One revision reflects a relatively minor change in administrative process. In that instance, for administrative efficiency, we have revised proposed §§ 314.81(b)(3)(iii)(*b*) and 314.91(c)(3) to make the notification procedures for manufacturers planning to submit a notice of discontinuance (or a request for reduction in the discontinuance notification period) the same for drugs regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER). As revised, manufacturers are to send notifications of discontinuance or requests for reduction in notification periods for all drugs subject to this rule, whether regulated by CDER or CBER, to the following designated offices:

(1) The Drug Shortage Coordinator at the address of Director of CDER;

(2) The Drug Registration and Listing Team, Division of Compliance Risk Management in CDER; and

(3) The director in the review division in CDER or CBER that is responsible for reviewing the application.

The final rule eliminates the proposed requirement to notify the Director of CBER.

We have also revised the proposed rule to change the manner in which the agency publicly discloses a list of all drug products to be discontinued under § 314.81(b)(3)(iii)(*a*), as described in paragraph (b)(3)(iii)(*c*) of § 314.81. In the preamble to the proposed rule, we stated that we would provide discontinuance information both on the Internet and in notices in the **Federal Register**. Since the proposed rule was published in November 2000, access to the Internet has dramatically increased. As a result, we believe that posting on the Internet is an effective means to distribute the discontinuance information to appropriate physician and patient organizations, as required by section 506C(c) of the act, and to the public. Therefore, we no longer plan to publish the discontinuance information in the **Federal Register**. This information will be distributed through posting on the Internet (*www.fda.gov/cder/drug/shortages/default.htm*).

A. Notification Requirements

As described in section I of this document, we are amending our postmarketing reporting requirements in§ 314.81 to implement new statutory requirements under section 506C of the act. Section 314.81(b)(3)(iii) requires an applicant who is the sole manufacturer of an approved drug product to notify us in writing at least 6 months before discontinuing manufacture of the drug product if the drug product meets the following criteria:

(1) The product is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition; and

(2) The product was not originally derived from human tissue and replaced by a recombinant product.

A life supporting or life sustaining drug is a drug product that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life. The phrase ''debilitating disease or condition,'' as stated in section 506C(a) of the act, means serious disease or condition.

B. Reduction in the Discontinuance Notification Period

Under section 506C(b) of the act, we may reduce the 6-month notification period if the manufacturer certifies that good cause exists for the reduction. We are adding § 314.91 to implement section 506C(b) of the act. Section 314.91 allows for a reduction in the 6-month discontinuance notification period, as required under § 314.81(b)(3)(iii)(*a*), when we find good cause exists for the reduction. We may find good cause exists based on information certified by an applicant in a written request for a reduction of the discontinuance notification period. In limited circumstances, we may find good cause exists based on information already known to us (e.g., withdrawal of the drug from the market based upon formal regulatory action or resulting from consultations between the applicant and us).

To assist a manufacturer that is requesting a reduction in the notification period, § 314.91(c)(1) provides a template for certification that good cause exists. The following circumstances can establish good cause for a reduction in the discontinuance notification period:

- A public health problem may result from continuation of manufacturing for the 6-month period;
- A biomaterials shortage prevents the continuation of the manufacturing for the 6-month period;
- A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period;
- Continuation of manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer;
- The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (11 U.S.C. 701 *et seq.* and 1101 *et seq.*); or
- The manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months.
- Other good cause exists for the reduction.

C. Disclosure of Discontinuance Information to the Public

Section 506C(c) of the act states that, to the maximum extent practicable, we are to distribute information to appropriate physician and patient organizations about the discontinuation of products described in section 506C(a). To implement section 506C(c) of the act, we will, in accordance with § 314.81(b)(3)(iii)(*c*), publicly disclose a list of all drug products to be

discontinued under paragraph (b)(3)(iii)(*a*) of § 314.81. If the notification period is reduced under § 314.91, we will state the reason(s) for the reduction and the anticipated date that manufacturing will cease. As described in the preamble to the proposed rule (65 FR 66665 at 66667), the listing of discontinued products will include the following information:

- The brand and generic name, the manufacturer, and indication(s) of the drug product;
- Whether a reduction in the notification period was granted by the agency under § 314.91;
- The reason(s) for a notification period of less than 6 months, if applicable; and
- Any additional information the agency may have regarding anticipated product availability.

We will post the discontinuance information on the Internet at *www.fda.gov/cder/drug/shortages/default.htm*.

III. Comments on the Proposed Rule

We received written comments from three pharmaceutical companies and a patient advocacy organization. The comments generally sought clarification of terms and procedures described in the proposed rule. Comments from the patient advocacy organization included suggestions for ensuring that patients affected by the withdrawal of a drug product covered by this rule had sufficient opportunity to prepare for alternative treatment options as needed. A summary of the comments received and our responses follow.

A. General Comments

(Comment 1) One comment urged companies to voluntarily give notice to the agency 1 year before discontinuing manufacture of a product, even though the act requires notification only 6 months before discontinuance.

Although we are retaining the 6-month notification period in the final rule, we agree that it would be beneficial if companies could, when possible, provide more than the 6-month notice required by statute. Section 506C of the act and § 314.81(b)(3)(iii) are clear that this is the minimum notification period, given that they require ''*at least* 6-months'' notification (emphasis added). Earlier notification is permitted, and FDA encourages companies to provide us with as much advance notification as possible.

(Comment 2) One comment asked FDA to urge companies that intend to discontinue the manufacture of products to license the products to other pharmaceutical firms.

We agree that it could be in the interest of public health for manufacturers of products covered by this final rule to find alternative means of making these products available to patients, including the possibility of transferring the new drug application (NDA) or abbreviated new drug application (ANDA) for these products to other manufacturers. However, the act does not require an applicant covered by this rule to transfer an NDA or ANDA, or use any other means to ensure product availability. The act merely requires applicants to meet the notice requirements implemented by this rule. Therefore, while we agree that it would be preferable for manufacturers to find alternative ways to make these products available to patients, this regulation will not require such measures.

B. Scope and Terminology

Proposed § 314.81(b)(3)(iii)(*a*) states that an applicant who is the sole manufacturer of an approved drug product must notify FDA in writing at least 6 months before discontinuing manufacture of the drug product if that drug product meets the following criteria: (1) The drug product is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition; and (2) the drug product was not originally derived from human tissue and replaced by a recombinant product.

(Comment 3) One comment expressed concern that while the ''Orange Book'' (FDA's publication on ''Approved Drug Products with Therapeutic Equivalence Evaluations'') lists all drug products with approved NDAs and ANDAs, it is not possible to determine whether the listed approved products are, in fact, being manufactured. The comment therefore requested that we define sole manufacturer as ''an applicant listed in the Orange Book who is the holder of the only listed approved application under section 505(b) or (j) of the act.''

We decline to adopt this definition of ''sole manufacturer'' for three reasons. First, agency experience indicates that sole manufacturers generally know that they are a sole manufacturer. Second, while the Orange Book is routinely updated, there may be, on occasion, delays in updating it because, for example, the agency may not always be notified about discontinuance of drug products in a timely fashion. Thus, the Orange Book would not be an appropriate singular source to determine which applicants are sole manufacturers. The comment's suggestion could also create potential confusion because some drugs are approved but not marketed, and are therefore placed in the ''discontinued'' section of the Orange Book. Finally, we note that there are other generally reliable sources for obtaining commercial manufacturing information that can adequately provide information on sole manufacturers, rendering the comment's suggestion unduly restrictive.

(Comment 4) One comment requested that we clarify the phrase ''discontinuing manufacture.'' The comment indicated that discontinuance and the 6-month notification period should apply when a manufacturer is ceasing production of a product with the intent of withdrawing the product from the market, not when there is a temporary cessation of manufacturing resulting, for example, from technical production difficulties.

We agree with the comment that the phrase ''discontinuing manufacture'' does not refer to temporary cessations of manufacturing. We intend to apply the provisions of final § 314.81(b)(3)(iii) to those instances where a manufacturer has made a decision to no longer market a drug product that is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition. The provisions of § 314.81(b)(3)(iii) would not apply to situations described in the comment, such as temporary or intermittent manufacturing cessations due to planned or unplanned circumstances. Manufacturers who schedule a planned temporary manufacturing cessation but do not intend to permanently discontinue product manufacture are not subject to the provisions of this regulation. Normally, the supply of drug product available to patients under these circumstances would not be affected during the period of the planned manufacturing cessation. Similarly, manufacturers who experience an unplanned temporary manufacturing interruption but intend to continue manufacturing over the long term are not subject to this rule. We request that manufacturers who experience such an unplanned temporary manufacturing cessation keep the agency informed about the status of the shutdown because the duration of an unplanned shutdown may be unpredictable and could affect the availability of needed therapy for patients.

(Comment 5) In the preamble to the proposed rule, we interpreted the phrase ''life supporting or life sustaining'' drug as one that is essential to, or that yields information that is

essential to, the restoration or continuation of a bodily function important to the continuation of human life (65 FR 66665 at 66666). One comment suggested that we incorporate this interpretation into § 314.81(b)(3)(iii).

We decline to incorporate this interpretative language into the codified language in § 314.81(b)(3)(iii). The codified language parallels the statutory provision of section 506C(a) of the act. As the comment notes, the preamble to the proposed rule defined the term ''life supporting or life sustaining drug'' as a ''drug product that is essential to, or that yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life'' and explained the definition's origins. Rather than incorporating that language into the codified language, we intend to rely on the interpretation described in the preamble to the proposed rule for guidance in applying that language.

(Comment 6) One comment contended that the scope of the language ''intended for use in the prevention of a serious disease or condition'' in proposed § 314.81(b)(3)(iii)(*a*)(*1*) is too broad and ambiguous. The comment expressed concern that the phrase ''intended for use in prevention'' could sweep into the rule's ambit drugs approved to treat less serious conditions where the less serious conditions are themselves a contributing factor or risk factor in the development of a serious disease or condition. The comment suggested that the phrase should be amended to apply only to products that are ''specifically indicated in approved labeling for prevention or prophylaxis of a disease or condition that is, or has the potential in its fullest manifestation to be, chronically debilitating.''

We disagree with the comment's assertion that the phrase ''intended for use in the prevention of a serious disease or condition'' is ambiguous or overly broad. In general, we do not expect that drug products used to treat relatively minor diseases or conditions will fall within the scope of this rule solely because there is a prophylactic connection to a more serious disease or illness—however tenuous. For instance, antihistamines that treat allergic rhinitis would not generally fall under this rule, even though allergic rhinitis may be a trigger for asthma, a more serious disease or condition. In contrast, products that are intended for use in treating or preventing asthma would potentially fall under the scope of this rule. Accordingly, we have not adopted the comment's suggestion.

C. Procedures

(Comment 7) One comment stated that a decision to discontinue manufacturing a product could occur ''long after'' the manufacturer produces the last lot. The comment requested that we clarify when the applicant should notify us in this situation. The comment does not provide any specific instances where a decision to discontinue manufacturing a product has occurred long after an applicant produced the last lot.

As we stated in response to comment 4, we intend to apply the provisions of § 314.81(b)(3)(iii) to those instances where a manufacturer has made a decision to no longer market a drug product that is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition. If the decision to discontinue manufacturing is not a temporary or intermittent manufacturing cessation, we would expect manufacturers covered by this rule to notify the agency as soon as the decision has been made. We would expect that manufacturers would ordinarily have notified the agency before they had produced the last lot and that they will file a request for a reduction of the 6-month notification period if good cause exists for the reduction.

Under the scenario posed by the comment, the rule would require notification as soon as a decision not to resume manufacturing the drug has been made (i.e., to convert a temporary shutdown to a permanent one). In addition, the agency would expect manufacturers in such circumstances to be able to demonstrate that the shutdown was originally believed to be only temporary and to explain the change in circumstances.

(Comment 8) One comment requested that we clarify whether the 6-month notification period for discontinuing the manufacture of a product covered by this regulation (under § 314.81(b)(3)(iii)(*a*)) would run consecutively with the 6 months of continued marketing under new § 314.91(d)(6). Under § 314.91(d)(6), an applicant can establish good cause for a reduction in the notification period by certifying that it can stop manufacturing, but continue to distribute the drug product to satisfy existing market need for 6 months. The comment asked whether, in this ''special instance,'' the manufacturer would be ''allowed 1 year of marketing after making the decision to withdraw the product.''

We believe the comment has misconstrued the nature of the statutory and regulatory scheme. These provisions do not operate to limit the period of continued marketing of the product. They simply require notification to FDA at least 6 months before cessation of manufacturing. Manufacturers may elect to give FDA notice of discontinuance more than 6 months before manufacturing ceases. Moreover, the length of time that a product remains on the market may vary with the amount of product in the supply chain at the time manufacturing is discontinued. The statute and § 314.91(d)(6) provide that demonstration of a manufacturer's ability to continue distribution of a drug product to satisfy existing market need for 6 months can be good cause for a reduction in the 6-month notification period. Section 314.91(d)(6) may shorten the minimum notification period, but only in situations where the applicant can continue distribution of the drug product to satisfy existing market need for at least 6 months. In this circumstance, the product would likely continue to be marketed for less than 12 months, i.e., the 6 months of continued marketing plus some reduced portion of the 6-month discontinuance notification period.

(Comment 9) One comment urged FDA to put the onus on manufacturers to prove that reduction of the 6-month notification period will not cause substantial physical and emotional harm to the patients who rely on the drug. The same comment stated the agency should create the highest hurdles for reducing the discontinuance notification period if the health and welfare of patients are at stake.

As reflected in the good cause provisions in § 314.91(d)(7), the statute provides several specific circumstances that may be considered good cause for reduction of the notification period, such as a public health problem that may result from continuation of manufacturing for the 6-month period; a biomaterials shortage; a liability problem; economic hardship; bankruptcy; or a manufacturer being able to continue distribution for 6 months. We agree that there should be a public health focus to establish good cause when requesting a reduction in the discontinuance notification period. Accordingly, we intend to apply the provisions in § 314.91(d)(7), a broad provision permitting reduction in the notification period for ''other good cause,'' consistent with the public health concerns expressed in the comment. Manufacturers seeking to establish good cause for reasons other than those specifically enumerated under § 314.91(d)(1) through (d)(6) will

be expected to demonstrate that reducing the discontinuance notification period will not result in increased risk of harm to the health of patients who use the drug.

(Comment 10) One comment asked about the relationship between notification of discontinuance of manufacturing under this rule and removing a withdrawn product from the list of drugs submitted for purposes of drug registration and listing. Under current § 314.81(b)(3)(iii) (redesignated as § 314.81(b)(3)(iv) by this rulemaking), an applicant must submit Form FDA 2657 (Drug Product Listing) to the Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance (formerly the Drug Listing Branch[1]), in CDER within 15 working days of the withdrawal from sale of a drug product.[2] The submission of this form notifies us that the drug product is no longer being marketed. The comment requested that we clarify whether sending the notice of discontinuation of manufacturing to the Drug Listing Branch will result in the delisting of the product, or whether additional correspondence with the Drug Listing Branch will be required.

The delisting process is separate from the notification of discontinuance process described in this rule. The notification of discontinuance is submitted under this rule at least 6 months before cessation of manufacturing. The notice of discontinuance does not take the place of a listing update submitted on a Form FDA 2657. In most cases where manufacturing is discontinued, the drug will continue to be marketed for at least 6 months or more and should remain listed during that time. The Form 2657 would need to be submitted later, within 15 days of withdrawal from the market of the drug, under current § 314.81(b)(3)(iii) (redesignated as § 314.81(b)(3)(iv) in this rule). In addition, while all drugs are subject to the listing requirements, the discontinuance provision applies only to those instances where the manufacturing of a single-source drug product that is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition, will be discontinued.

(Comment 11) One comment asked why, under §§ 314.81(b)(3)(iii)(*b*) and 314.91(c)(3) of the proposed rule, manufacturers of drugs regulated by CBER are not required to send the notification of discontinuance to the Drug Listing Branch, as are manufacturers of drugs regulated by CDER.

We agree that the requirement should be the same for drugs regulated by CBER and CDER. For administrative efficiency, we have revised §§ 314.81(b)(3)(iii)(*b*) and 314.91(c)(3) to make the procedures for manufacturers to submit a notice of discontinuance (or a request for reduction in the discontinuance notification period) the same for drugs, whether they are regulated by CDER or CBER. As revised, for all drugs subject to this rule, manufacturers must send notifications of discontinuance or requests for reduction in notification periods, to the following designated CDER and CBER offices: (1) The CDER Drug Shortage Coordinator, at the address of the Director of CDER; (2) the CDER Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance; and (3) either the director of the review division in CDER that is responsible for reviewing the application or the director of the office in CBER that is responsible for reviewing the application. This final rule eliminates the proposed requirement to notify the Director of CBER for drug products regulated by CBER.

We encourage manufacturers who have questions about these processes to contact the Drug Shortage Coordinator at CDER.

IV. Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule will result in minimal additional costs in about one instance per year to one manufacturer, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The final rule requires that manufacturers of certain drug products notify the agency at least 6 months before discontinuing their manufacture. As explained in section V of this document, the regulatory conditions that trigger this requirement occur only infrequently. Based on agency experience, we estimate that such circumstances occur no more than once per year. Moreover, the notification requirement will impose a significant burden only when market conditions deteriorate so quickly that firms could not foresee the desired action 6 months in advance. Most pharmaceutical firms rely on established long-term marketing plans.

Under certain specified circumstances, the rule permits us to reduce the notification period for good cause. Manufacturers can request a reduced notification period by submitting a written certification, based on considerations such as public health, legal liability, biomaterial shortage, or substantial economic hardship. A certification of substantial economic hardship will need to be supported by evidence demonstrating that the reduced notification period is necessary to avoid substantial economic hardship to the manufacturer.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the

[1] The former Drug Listing Branch has been reorganized as the Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance, in CDER's Office of Compliance.

[2] In the **Federal Register** of August 29, 2006 (71 FR 51276), we published a proposed rule that would amend § 314.81(b)(3)(iii) to provide 30-days for submission of Form FDA 2657.

time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. OMB and FDA received no comments concerning the information collection provisions of the proposed rule.

Title: Applications for FDA Approval to Market a New Drug; Revision of Postmarketing Reporting Requirements

Description: The final rule implements section 506C of the act and requires applicants who are the sole manufacturers of certain drug or biologic products to notify us at least 6 months before discontinuing the manufacture of the product. For the rule to apply, a product needs to meet the following three criteria:

(1) The product must be life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition;

(2) The product must have been approved by FDA under section 505(b) or 505(j) of the act; and

(3) The product must not have been originally derived from human tissue and replaced by a recombinant product.

The rule allows us to reduce the 6-month notification period if we find good cause for the reduction. An applicant may request that we reduce the notification period by certifying that good cause for the reduction exists. Under the rule, we will also publicly disclose information about the drugs that are discontinued under the rule. Existing regulations, which appear in part 314, establish postmarketing reporting requirements for approved drugs. Current § 314.81(b)(3)(iii) (OMB control no. 0910–0001), which is redesignated as § 314.81(b)(3)(iv) in this rule, requires an applicant to notify us within 15 working days of withdrawing a drug product from sale. This rule adds two new reporting requirements.

A. Notification of Discontinuance

Under this rule, at least 6 months before an applicant intends to discontinue manufacture of a product, the applicant must send us written notification of the discontinuance. For drugs regulated by CDER or CBER, manufacturers must send notifications of discontinuance to the following designated offices: (1) The CDER Drug Shortage Coordinator at the address of the Director of CDER; (2) the CDER Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance in CDER; and (3) the director of either the CDER division or the CBER office that is responsible for reviewing the application. We require that the notification be sent to these offices to ensure that our efforts regarding the discontinuation of the product are commenced in a timely manner. We will work with members of the industry and with the applicant during the 6-month notification period to ease patient transition from the drug that will be discontinued to alternate therapy.

B. Certification of Good Cause

We may reduce the 6-month notification period if we find good cause for the reduction. As described in section 506C(b) of the act and new § 314.91, an applicant can request a reduction in the notification period for good cause by submitting written certification to the following designated offices: (1) The CDER Drug Shortage Coordinator at the address of the Director of CDER; (2) the CDER Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance in CDER; and (3) the director of either the CDER division or the CBER office that is responsible for reviewing the application, that good cause exists as follows:

- A public health problem may result from continuation of manufacturing for the 6-month period (§ 314.91(d)(1));
- A biomaterials shortage prevents the continuation of manufacturing for the 6-month period (§ 314.91(d)(2));
- A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period (§ 314.91(d)(3));
- Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer (§ 314.91(d)(4));
- The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (§ 314.91(d)(5));
- The manufacturer can stop making the product but still distribute it to satisfy existing market need for 6 months (§ 314.91(d)(6)); or
- Other good cause exists for a reduction in the notification period (§ 314.91(d)(7)).

With each certification described previously, the applicant must describe in detail the basis for the applicant's conclusion that such circumstances exist. We require that the written certification that good cause exists be submitted to the offices identified previously to ensure that our efforts regarding the discontinuation take place in a timely manner.

Description of Respondents: An applicant who is the sole manufacturer and who intends to discontinue marketing of a drug product that meets the following criteria: (1) Is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition; (2) was approved by FDA under section 505(b) or (j) of the act; and (3) was not originally derived from human tissue and replaced by recombinant product.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for notification of product discontinuance and certification of good cause under this rule.

Notification of Discontinuance: Based on data collected from the CDER drug shortage coordinator, CDER review divisions, and CBER review offices during 2003 through 2006, one applicant during each year discontinued the manufacture of one product meeting the criteria of section 506C of the act. Each applicant meeting the criteria is required under final § 314.81(b)(3)(iii) to notify the agency of the discontinuance at least 6 months before manufacturing ceased. Although the procedures for notifying the agency that are set forth in the final rule were not in place during 2003 through 2006, we estimate that the number of manufacturers who would be required to notify us of discontinuance would remain the same. Therefore, the number of respondents is estimated to be one. The total annual responses are the total number of notifications of discontinuance that are expected to be submitted to CDER or CBER in a year. During 2003 through 2006, an applicant would have been required to notify us annually of one product discontinuance under the procedures. We estimate that the total annual responses will remain the same, averaging one response per respondent. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a notification of product discontinuance, including the time it takes to gather and copy the statement. Based on experience in working with applicants regarding similar collections of information, we estimate that approximately 2 hours on average are needed per response. Therefore, we estimate that 2 hours will be spent per year by respondents notifying us of a product discontinuance under these regulations.

Certification of Good Cause: Based on data collected from the CDER drug shortage coordinator, CDER review divisions, and CBER review offices during 2003 through 2006, one applicant discontinued during each year the manufacture of one product meeting the criteria of section 506C of the act. Each applicant has the opportunity under § 314.91 to request a reduction in the 6-month notification period by certifying to us that good cause exists

for the reduction. We do not expect that each eligible applicant will certify that good cause exists for a reduction. Furthermore, the number of applicants who are in a position to request a reduction is quite small. Therefore, the number of respondents is estimated to be one. The total annual responses are the total number of notifications of discontinuance that are expected to be submitted to us in a year. We estimate that the total annual responses will remain small, averaging one response per respondent. The hours per response is the estimated number of hours that a respondent spends preparing the detailed information certifying that good cause exists for a reduction in the notification period, including the time it takes to gather and copy the documents. Based on experience in working with applicants regarding similar collections of information, we estimate that approximately 16 hours on average are needed per response. Therefore, we estimate that 16 hours will be spent per year by respondents certifying that good cause exists for a reduction in the 6-month notification period under § 314.91.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Notification of Discontinuance (§ 314.81(b)(3)(iii))	1	1	1	2	2
Certification of Good Cause (§ 314.91)	10	1	1	16	16
Total					18

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection provisions of this final rule have been submitted to OMB for review.

Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions of this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order, and, consequently, a federalism summary impact statement is not required.

VII. Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 2. Section 314.81 is amended as follows:

■ a. Redesignate paragraph (b)(3)(iii) as (b)(3)(iv);

■ b. Remove from newly redesignated paragraph (b)(3)(iv)(*c*) the phrase ''(b)(3)(iii)'' and add in its place the phrase ''(b)(3)(iv)''; and

■ c. Add new paragraph (b)(3)(iii) to read as follows:

The addition reads as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(iii) *Notification of discontinuance.* (*a*) An applicant who is the sole manufacturer of an approved drug product must notify FDA in writing at least 6 months prior to discontinuing manufacture of the drug product if:

(*1*) The drug product is life supporting, life sustaining, or intended for use in the prevention of a serious disease or condition; and

(*2*) The drug product was not originally derived from human tissue and replaced by a recombinant product.

(*b*) For drugs regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER), one copy of the notification required by paragraph (b)(3)(iii)(*a*) of this section must be sent to the CDER Drug Shortage Coordinator, at the address of the Director of CDER; one copy to the CDER Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance; and one copy to either the director of the review division in CDER that is responsible for reviewing the application, or the director of the office in CBER that is responsible for reviewing the application.

(*c*) FDA will publicly disclose a list of all drug products to be discontinued under paragraph (b)(3)(iii)(*a*) of this section. If the notification period is reduced under § 314.91, the list will state the reason(s) for such reduction and the anticipated date that manufacturing will cease.

* * * * *

■ 3. Section 314.91 is added to subpart B to read as follows:

§ 314.91 Obtaining a reduction in the discontinuance notification period.

(a) *What is the discontinuance notification period?* The discontinuance notification period is the 6-month period required under § 314.81(b)(3)(iii)(*a*). The discontinuance notification period begins when an applicant who is the

sole manufacturer of certain products notifies FDA that it will discontinue manufacturing the product. The discontinuance notification period ends when manufacturing ceases.

(b) *When can FDA reduce the discontinuance notification period?* FDA can reduce the 6-month discontinuance notification period when it finds good cause exists for the reduction. FDA may find good cause exists based on information certified by an applicant in a request for a reduction of the discontinuance notification period. In limited circumstances, FDA may find good cause exists based on information already known to the agency. These circumstances can include the withdrawal of the drug from the market based upon formal FDA regulatory action (e.g., under the procedures described in § 314.150 for the publication of a notice of opportunity for a hearing describing the basis for the proposed withdrawal of a drug from the market) or resulting from the applicant's consultations with the agency.

(c) *How can an applicant request a reduction in the discontinuance notification period?* (1) The applicant must certify in a written request that, in its opinion and to the best of its knowledge, good cause exists for the reduction. The applicant must submit the following certification:

The undersigned certifies that good cause exists for a reduction in the 6-month notification period required in § 314.81(b)(3)(iii)(*a*) for discontinuing the manufacture of (*name of the drug product*). The following circumstances establish good cause (*one or more of the circumstances in paragraph (d) of this section*).

(2) The certification must be signed by the applicant or the applicant's attorney, agent (representative), or other authorized official. If the person signing the certification does not reside or have a place of business within the United States, the certification must contain the name and address of, and must also be signed by, an attorney, agent, or other authorized official who resides or maintains a place of business within the United States.

(3) For drugs regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER), one copy of the certification must be submitted to the Drug Shortage Coordinator at the address of the Director of CDER, one copy to the CDER Drug Registration and Listing Team, Division of Compliance Risk Management and Surveillance in CDER, and one copy to either the director of the review division in CDER responsible for reviewing the application, or the director of the office in CBER responsible for reviewing the application.

(d) *What circumstances and information can establish good cause for a reduction in the discontinuance notification period?* (1) A public health problem may result from continuation of manufacturing for the 6-month period. This certification must include a detailed description of the potential threat to the public health.

(2) A biomaterials shortage prevents the continuation of the manufacturing for the 6-month period. This certification must include a detailed description of the steps taken by the applicant in an attempt to secure an adequate supply of biomaterials to enable manufacturing to continue for the 6-month period and an explanation of why the biomaterials could not be secured.

(3) A liability problem may exist for the manufacturer if the manufacturing is continued for the 6-month period. This certification must include a detailed description of the potential liability problem.

(4) Continuation of the manufacturing for the 6-month period may cause substantial economic hardship for the manufacturer. This certification must include a detailed description of the financial impact of continuing to manufacture the drug product over the 6-month period.

(5) The manufacturer has filed for bankruptcy under chapter 7 or 11 of title 11, United States Code (11 U.S.C. 701 *et seq.* and 1101 *et seq.*). This certification must be accompanied by documentation of the filing or proof that the filing occurred.

(6) The manufacturer can continue distribution of the drug product to satisfy existing market need for 6 months. This certification must include a detailed description of the manufacturer's processes to ensure such distribution for the 6-month period.

(7) Other good cause exists for the reduction. This certification must include a detailed description of the need for a reduction.

Dated: October 5, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–20510 Filed 10–17–07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 2007N–0284]

Revision of the Requirements for Live Vaccine Processing

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by providing options to the existing requirement for the processing of live vaccines. FDA is amending the regulations due to advances in technology that will allow processing of live vaccines to be performed in multiproduct manufacturing areas. We are publishing this rule because the existing requirement regarding facilities and equipment for live vaccine processing is too prescriptive and is no longer necessary. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under our usual procedures for notice and comment in the event that we receive any significant adverse comments on the direct final rule. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: This rule is effective March 18, 2008. Submit written or electronic comments by January 2, 2008. If we receive no significant adverse comments during the specified comment period, we intend to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on March 18, 2008. If we receive any significant adverse comments during the comment period, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register**.

ADDRESSES: You may submit comments, identified by Docket No. 2007N–0284, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways: