Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the State, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA certifies that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxi, Aircraft, Airmen, Aviation safety.

The Amendment

The Federal Aviation Administration proposes to amend 14 CFR parts 91, 121, and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. Add SFAR No. 71 to part 121.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

5. In parts 91, 121, and 135, SFAR NO. 71—Special Operating Rules For Air Tour Operators In The State of Hawaii, Section 8 is revised to read as follows:

SFAR NO. 71—Special Operating Rules for Air Tour Operators in the State of Hawaii

* * * * *

Section 8. *Termination date.* This SFAR NO. 71 shall remain in effect until further notice.

Issued in Washington, DC on August 4, 2003.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 03–20277 Filed 8–5–03; 4:47 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket No. 2003N–0324]

New Animal Drugs; Removal of Obsolete and Redundant Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing removal of regulations that exempted certain new animal drugs administered in feed from batch certification requirements. FDA is also proposing removal of regulations that required sponsors to submit data regarding the subtherapeutic use of certain antibiotic, nitrofuran, and sulfonamide drugs administered in animal feed. The intended effect of this proposed rule is to remove regulations that are obsolete or redundant. Some of the products and combination uses subject to the listings in these regulations are subject to a notice of findings of effectiveness and an opportunity for hearing published elsewhere in this issue of the **Federal Register**. One approved product subject to the regulations proposed for removal is being codified elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on the proposed rule by November 6, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–1), 7519 Standish Pl., Rockville, MD 20855, 301–827–2954, e-mail: *abeaulie@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, the agency is announcing the effective conditions of use for some of the products or use combinations subject to the listings in parts 510 and 558 (21 CFR part 510 and 558), specifically, §§ 510.515 and/or 558.15, and the agency is proposing to withdraw the new animal drug applications (NADAs) for those products or use combinations lacking substantial evidence of effectiveness following a 90-day opportunity to supplement the NADAs with labeling conforming to the relevant findings of effectiveness. One approved product subject to § 558.15 is being codified in part 558, subpart B in a final rule published elsewhere in this issue of the **Federal Register**. Concurrent with that announcement and final rule, the agency is proposing to remove these two sections of the Code of Federal Regulations (§§ 510.515 and 558.15) for the reasons described in sections II and III of this document.

II. Part 510, Subpart F Animal Use Exemptions From Certification and Labeling Requirements and § 510.515 Animal Feeds Bearing or Containing New Animal Drugs Subject to the Provisions of Section 512(n) of the Act

A. History of Part 510, Subpart F and § 510.515

In 1945, Congress added section 507 to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 357) requiring the agency to provide for the certification of batches of drugs composed wholly or partly of any kind of penicillin (Public Law 79–139, 59 Stat. 463). No distinction was made

between the use of the drugs in man or other animals. Section 507 of the act was subsequently amended several times to include streptomycin, chlortetracycline, bacitracin, chloramphenicol, and their derivatives. The law allowed the agency to issue regulations exempting drugs or classes of drugs from the batch certification requirements. Over the years, FDA issued exemption regulations for a number of antibiotics used in animal feeds, provided the involved products were in compliance with certain provisions. The exemptions are currently contained in § 510.515.

The Animal Drug Amendments of 1968 consolidated provisions of the act relating to new animal drugs (including antibiotics in section 507 of the act) into new section 512 (21 U.S.C. 360b). The agency established procedural regulations under parts 510 and 514 (21 CFR part 514) to implement this provision of the act.

Subsequent to the establishment of the exemption provisions in § 510.515, the agency came to the conclusion that batch-by-batch certification was no longer required under any circumstances to assure the safety of antibiotics. In the **Federal Register** of September 7, 1982 (47 FR 39155), the agency published regulations exempting all classes of human and animal use antibiotics from batch certification requirements based upon a finding of extremely low rejection rates for the certifiable antibiotics.

In 1988, Congress removed from the act all antibiotic certification provisions for animal drugs when it enacted the Generic Animal Drug and Patent Term Restoration Act (GADPTRA). Subsequently, the agency published a final rule on May 26, 1989 (54 FR 22741), which removed all of the certifiable antibiotic procedural regulations that then appeared in parts 510 and 514. That rule indicated that removal of the technical regulations concerning specific antibiotic drugs, such as § 510.515, which contained information about their conditions of use, would be the subject of future regulations.

Since that time, FDA has removed many drug uses and use combinations from § 510.515. The agency did this when it withdrew approval of products subject to the regulation, or when it published approval regulations for them, in part 558, subpart B, after completing their Drug Efficacy Study Implementation (DESI) finalization (*see, e.g.*, 61 FR 35949, July 9, 1996). Consequently, a regulation that at one time contained dozens of batch certification exemption provisions now lists only a few products and use combinations.

B. Removal of § 510.515

The purpose of § 510.515, which was to provide exemption from batch certification of certain drugs intended for use in animal feed, was rendered obsolete with the enactment of GADPTRA. Because the regulation is out dated relative to its intended purpose, the agency is proposing to remove it.

This action is not intended to have a substantive effect on any approved new animal drugs. As noted in section II.A of this document, some of the drug uses and use combinations currently listed in § 510.515 have approvals that are codified in part 558 subpart B. Therefore, these uses will not be substantively affected by removal of listings in this regulation. Other drug use combinations currently listed in § 510.515 are also listed in § 558.15, but their approvals, if any, have not been codified in part 558 subpart B. As discussed in section II.B of this document, and in the notice appearing elsewhere in this issue of the **Federal Register**, the use combinations that have been approved will be codified in part 558 subpart B. In regard to the only other listed drug (*para*-aminobenzoic acid), the agency is unaware of any company that currently holds approval for it, or markets it, and believes it is no longer used in the practice of veterinary medicine. If a person wishes to market a drug or drug combination being removed under this proposal and believes that it holds a valid approval for it that is not already codified in part 558 subpart B or subject to the final rule or notice published elsewhere in this issue of the **Federal Register**, the person should present evidence supporting approval to avoid facing potential regulatory action in the event of future marketing.

III. Section 558.15 Antibiotic, Nitrofuran, and Sulfonamide Drugs in the Feed of Animals

A. History of § 558.15

In the mid-1960s, FDA became concerned about the safety to man and animals of long-term antibiotic use in animals, and for several years the agency studied the effects of low-level feeding of antibiotics to animals. In April 1970, the Commissioner of Food and Drugs (Commissioner) established a task force of scientists from government, industry, and academia to comprehensively review the use of antibiotics in animal feed. In the **Federal Register** of February 1, 1972 (37 FR 2444), the agency published the conclusions of that task force and proposed to require sponsors to submit specific data for antibacterial drugs intended for subtherapeutic or growth promotion use. The task force identified areas in which data were needed and established criteria for studies intended to show whether use of antimicrobials in animal feed presents a hazard to human or animal health. The criteria reflected four basic issues with respect to which data were needed: (1) The potential to increase the frequency of bacteria carrying transferable drug resistance; (2) the potential to increase the antibiotic resistance of, or the shedding of, *Salmonella* spp.; (3) the potential to enhance bacterial pathogenicity; and (4) the potential for drug residues to cause an increase in pathogenic bacteria resistant to human antibiotics drugs or to cause human hypersensitivity reactions. The 1972 proposal also stated that all then-approved subtherapeutic and/or growth promoting uses in animal feeds of antibiotics and sulfonamides that are also used in humans would be revoked unless data identified by the task force were submitted to FDA.

In the **Federal Register** of April 20, 1973 (38 FR 9811), the agency published the final rule which established 21 CFR 135.109 *Antibiotic and sulfonamide drugs in the feed of animals* (redesignated as § 558.15 in 1974). The section was subsequently amended on September 5, 1973, to include the nitrofurans (38 FR 23942). In the **Federal Register** of February 25, 1976 (41 FR 8282), the agency withdrew approvals for those antimicrobial drugs not in compliance with the data submission requirements of § 558.15. The same document added paragraphs (g)(1) and (g)(2) to § 558.15. These paragraphs listed the medicated premixes and drug combinations, respectively, which had submitted the required data for agency review. These are known as the interim marketing provisions.

B. Approval Status of Products and Use Combinations Subject to the Listings in § 558.15

The preamble to the final rule that added the § 558.15 interim marketing provisions stated that all products and combination uses subject to the listings in the regulation were the subject of approved applications (41 FR 8282 and 8285, February 25, 1976). However, a number of years after this regulation was issued, it became apparent that the administrative record associated with 15 products was incomplete, calling into question their approval status.

One cause of this problem relates to the Animal Drug Amendments of 1968. Under Section 108 of this law, any product that had been approved before 1968 by a new drug application, food additive petition, certifiable antibiotic application, or master file would be considered to be the subject of an approved new animal drug application under the new section 512. Because § 558.15 dealt with antimicrobials used in animal feed, the products listed in § 558.15 were considered food additives before the 1968 animal drug amendments. In addition, a number of them contained certifiable antibiotics. The approval processes for these products before the 1968 amendments were complex, redundant, and involved the acceptance of secondary manufacturers/distributors, sometimes based on a demonstration of equivalence of their products to primary sponsor products and sometimes not. Unlike the current new animal drug application process under section 512 of the act, this was generally not an orderly process. As a result, the agency's and sponsors' ability to document the pre-1968 approvals has been hampered.

Because their administrative records were incomplete, in 1998 the agency undertook to determine whether any of the 15 products were unapproved and, therefore, erroneously listed in § 558.15. In this regard, the agency asked sponsors to identify the involved product, attach associated labeling, and certify its approval status. Certification was forthcoming for 10 of the 15 applications. The agency informed the involved parties by letter that their certifications would be used as part of the administrative record of approval and that it planned to codify these approvals as soon as possible, very likely in concert with the removal of § 558.15. Because the agency was unable to verify that the remaining five products were approved, the agency believes they were erroneously listed in § 558.15.

C. Reasons for Removal of § 558.15

The agency is proposing to remove § 558.15 because it long ago fulfilled its stated purpose of requiring sponsors to submit data regarding the subtherapeutic use of antibiotics on the market at the time of its publication. The safety studies required to be conducted on the products listed at the time the section was issued were completed long ago. In addition, as discussed in section III.D of this document, the agency has a new strategy and concept for assessing the safety of antimicrobial new animal drugs, including subtherapeutic use of antimicrobials in animal feed, with regard to their microbiological effects on bacteria of human health concern. Therefore, the removal of § 558.15 does not mean that studies will no longer be required to assess the consequences of the use of antimicrobials in food-producing animals.

D. The Antibiotic Resistance Issue After Publication of § 558.15

While, at the time of its publication, § 558.15 accurately reflected FDA's basis for assessing the safety of subtherapeutic uses of antibiotics in feed, based on new information and considerable experience, over time FDA developed a new strategy and concept to deal with the issue of antimicrobial resistance. Accordingly, it is useful to review the history of the antimicrobial resistance issue from the time § 558.15 was issued to the present relative to the significance of the removal of § 558.15 on FDA's ability to deal with the issue.

As discussed in section III.A of this document, under § 558.15, FDA received data addressing the subtherapeutic use of antibiotics in animal feed. To assist FDA in assessing the data, the Commissioner asked the agency's National Advisory Food and Drug Committee (NAFDC) to review the data and issues involved and to make recommendations to him on the future use of subtherapeutic antibiotics in animal feeds.

In 1977, the NAFDC made its findings known to FDA. The FDA carefully considered the recommendations made by the NAFDC. On August 30, 1977 (42 FR 43770), the Director of the Center for Veterinary Medicine (Director) proposed to revoke all regulations providing for the subtherapeutic use of penicillin alone and in combination with other drugs in animal feeds. Because the National Academy of Sciences National Research Council (NAS/NRC) DESI review concluded that no therapeutic uses of penicillin in animal feed were supported by adequate evidence of effectiveness, he also proposed to revoke all regulations providing for the therapeutic use of penicillin in animal feed. Also, in the **Federal Register** of August 30, 1977 (42 FR 43772), the Director issued a notice of opportunity for hearing (NOOH) on a proposal to withdraw approval of NADAs for all penicillin-containing premixes intended for use in animal feeds. The NOOH was issued, under section 512(e) of the act (21 U.S.C. 360b(e)), on the grounds that evidence showed that such products have not been shown to be safe, that the applicants failed to establish and maintain records and make reports as required, and that there was a lack of substantial evidence that such products were effective for certain uses.

Subsequently, in the **Federal Register** of October 21, 1977 (42 FR 56254), the Director proposed to revoke regulations providing for the subtherapeutic use of tetracyclines in animal feed except for those specific conditions of use for which there were no safe and effective substitutes at that time. Also in the **Federal Register** of October 21, 1977 (42 FR 56264), the Director issued an NOOH on a proposal to withdraw approval of NADAs for certain subtherapeutic uses of tetracyclines (chlortetracycline and oxytetracycline) in animal feeds.

In 1978, after FDA proposed to withdraw approval of various uses of penicillin and tetracyclines in animal feeds, Congress directed FDA to conduct further studies related to the use of antibiotics in animal feed and to hold in abeyance implementation of its proposed withdrawal actions pending the outcome of the studies (*see* H.R. Rept. 95–1290 at p. 99 (June 13, 1978)). As directed, FDA spent $1.5 million of its appropriations for a study of the safety issues relating to the use of antibiotics in animal feeds. The study entitled "The Effects on Human Health of Subtherapeutic Use of Antimicrobials in Animal Feeds," conducted by the NAS/NRC, was published in 1980 (Ref. 1). It concluded that existing data could neither prove nor disprove the postulated hazards to human health from subtherapeutic antimicrobial use in animal feeds.

On November 20, 1984, the Natural Resources Defense Council, Inc. (NRDC), petitioned the Secretary of Health and Human Services (Secretary) to immediately suspend approval of the subtherapeutic use of penicillin and tetracyclines in animal feeds (Ref. 2). NRDC's petition requested that the Secretary invoke the imminent hazard provision of the act (21 U.S.C. 360b(e)(1)) which authorizes the Secretary to suspend approval of an application for the use of a new animal drug if an imminent hazard exists to the health of man or to the animals for which the drug is intended. Soon after the filing of the petition, there was a congressional hearing in December 1984 before the House of Representatives Committee on Science and Technology, Subcommittee on Investigations and Oversight, as well as an informal hearing before the Commissioner of FDA on January 25, 1985.

On November 13, 1985, the Secretary denied the NRDC petition on the basis that an "imminent hazard" had not been demonstrated (Ref. 3). This decision was based on an analysis of the evidence cited by the NRDC as well as scientific

evidence, information, and opinions coming out of the January 25, 1985, public hearing and other relevant data collected and analyzed by FDA.

Subsequently, the Commissioner directed the agency to contract with the NAS, Institute of Medicine (IOM), to conduct a risk assessment of the potential risk to human health associated with the practice of feeding subtherapeutic levels of penicillin and the tetracyclines to animals for growth promotion, feed efficiency, and disease prevention.

In 1988, the NAS/IOM reviewed the information concerning the antibiotic resistance issue available at the time. An expert committee was convened to determine the human health risks associated with the practice of feeding subtherapeutic levels of penicillin and tetracyclines to animals for growth promotion, feed efficiency, and disease prevention. In the report entitled "Human Health Risks with the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed" the committee developed a risk-analysis model, using data only on *Salmonella* infections that resulted in human death (Ref. 4). The committee found a considerable amount of indirect evidence implicating both subtherapeutic and therapeutic use of antimicrobials as a potential human health hazard. The committee did not find data demonstrating that use of subtherapeutic penicillin or tetracycline directly caused humans to die from salmonellosis. The committee noted that it was not possible to separate the public health effects of therapeutic and subtherapeutic uses and strongly recommended further study of the issue.

Based upon the report and other relevant information, the agency: (1) Concluded that the risks were neither proved nor disproved, (2) did not deny there was some degree of risk, and (3) did not conclude that the continued subtherapeutic use of penicillin and the tetracycylines in animal feed is safe. The notices of opportunity for hearing published in the **Federal Registers** of August 30 and October 21, 1977, remain pending.

The American Society of Microbiology issued a report in 1995 that cited grave concerns about both human and animal antibiotic use and the rise in antimicrobial resistance (Ref. 5). The report advocated: A significant increase in resistance monitoring in the United States, more education about the use and risks of antimicrobials, and more basic research designed to develop new antimicrobials and vaccines and disease prevention measures. The report criticized overuse of antibacterials in human medicine, but also pointed out the extensive use of antibacterials in food production, which was partly attributed to the consolidation of farms to facilities with large numbers of confined animals. The report made it clear that the antibiotic resistance problem is global and was a precursor to involvement by the United Nation's World Health Organization (WHO). The meetings of the WHO in 1997 and 1998 led to the development of a number of recommendations regarding the use of antimicrobial drugs in food-producing animals (Refs. 6 and 7).

In 1999, FDA issued "Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (#78) (64 FR 70715, Dec. 17, 1999). In this guidance, FDA reaffirmed its statutory authority to evaluate the safety of new animal drugs with respect to their microbiological effects on bacteria of human health concern. FDA asserted that this consideration applies to all antimicrobial new animal drugs intended for use in food-producing animals including both therapeutic use and use at subtherapeutic levels for production purposes. Subsequently, the agency released a concept paper, which has come to be known as the Framework Document, which described a possible approach that the FDA could take in regulating antimicrobial new animal drugs intended for use in food-producing animals (Ref. 8).

Since the publication of the Framework Document, FDA has held a number of public meetings as well as two meetings of its Veterinary Medical Advisory Committee to obtain input on the concepts outlined in the Framework Document. Based on this input, FDA drafted a guidance for industry (GFI) to implement several of the key strategies and concepts discussed in the Framework Document. The draft guidance for industry entitled "Draft Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern" (#152) (67 FR 58058, Sept. 13, 2002) outlines a risk analysis process for evaluating the safety of antimicrobial new animal drugs. This guidance, subject to public comment, represents the Center for Veterinary Medicine's current best thinking on how to assure the safety of antimicrobial new animal drugs intended for use in food-producing animals.

E. Effect of the Removal of § 558.15

Based on the previous discussion, the removal of § 558.15 will have no effect on FDA's ability to address the issue of antimicrobial resistance. Additionally, the removal of § 558.15 is not intended to have a substantive effect on the products subject to the section's interim marketing provisions. Most of the products or use combinations subject to the listings have approvals that are already codified in part 558 subpart B. The agency's actions on the products and use combinations whose approval is not already codified in part 558 subpart B are described elsewhere in this issue of the **Federal Register**. One action consists of publishing the agency's findings of effectiveness for these products and use combinations, under DESI, and, where relevant, proposing to withdraw approval of applications for indications lacking substantial evidence of effectiveness and providing a notice of opportunity for hearing. The other action is the codifying of one approval in part 558 subpart B. This action is a final rule since the product is not subject to DESI. As noted in section III.B of this document, the agency believes that five products subject to the listings in § 558.15 were erroneously listed there. Because the regulation could only permit the interim marketing of approved products, the removal of § 558.15 will not have a substantive effect on the five unapproved products. Further, the agency is unaware of any company that currently markets any of these five products. If a company wishes to market one of these drug products and believes that it holds a valid approval for it that is not already subject to an approval reflected in part 558 subpart B, the company should present evidence supporting approval to avoid facing potential regulatory action in the event of future marketing.

IV. Environmental Impact

The agency has 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.

V. Analysis of Economic Impacts

FDA has examined the impacts of the proposed 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). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

FDA is proposing to revoke §§ 510.515 and 558.15 because they are obsolete. The purpose of § 510.515 was to provide exemption from certification and labeling requirements of certain drugs used in animal feeds. FDA has discontinued the practice of certifying antibiotic animal drugs, thereby rendering the regulation obsolete relative to its intended purpose. The original purpose of § 558.15, requiring the submission of the results of studies on the effects of long-term administration of then-marketed antimicrobial drugs in animal feed on the occurrence of multiple drug-resistant bacteria associated with these animals, is also obsolete as FDA has a new strategy and concept for assessing the safety of antimicrobial new animal drugs, including subtherapeutic use of antimicrobials in animal feed, with regard to their microbiological effects on bacteria of human health concern.

Almost all of the drug product listings contained in §§ 510.515 and/or 558.15 are already reflected in approval regulations published elsewhere in part 558 subpart B. In two documents published in this issue of the **Federal Register**, the agency is addressing the drug product listings whose approvals are not currently reflected in the approval regulations in part 558 subpart B.

A. Benefits

This proposal is expected to provide clarity and equity in the regulations for new animal drugs for use in animal feeds by deleting the obsolete provisions at §§ 510.515 and 558.15. We do not expect this proposed rule to result in a direct human or animal health benefit. Rather, this proposal would remove unnecessary regulations that both provided exemptions for certifications that no longer occur, or required the submission of safety data for approved subtherapeutic uses of antibiotics, nitrofurans and sulfonamides in the 1970s.

B. Compliance Costs

FDA expects this proposal to result in the loss of marketing ability for five combination uses listed in § 558.15 as described in III.B of this document. In an attempt to certify the approval status, FDA contacted, or attempted to contact, the three sponsors of these five drug combinations. Attempts with one sponsor indicated that they did not wish to certify the transitional approvals, and no response was received from the other sponsors concerning these transitional approvals. Accordingly, we believe that these products were erroneously listed in § 558.15 and that these sponsors no longer market these combination uses as provided for under § 558.15. The revocation of § 558.15 is not expected to have a substantive effect on any approved new animal drugs, or to cause any approved new animal drug to lose its marketing ability. Therefore, we do not expect any loss of sales to result from this provision. We request public comment on the loss of sales or other effects to any products or drug combinations that will lose marketing ability due to this proposed rule.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. FDA has determined in section V.B of this document that this proposed rule would not impose compliance costs on the sponsors of any products that are currently marketed. Further, it is not expected to cause any drugs that are currently marketed to lose their marketing ability. We therefore certify that the proposed rule would not have a significant economic effect on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (as amended).

D. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Academy of Sciences/National Research Council, "The Effects on Human Health of Subtherapeutic Use of Antimicrobials in Animal Feeds," 1980.

2. Petition of the Natural Resources Defense Council, Inc., to Secretary of Health and Human Services, New York, NY, November 20, 1984.

3. Decision of the Secretary Denying Petition, Docket No. 84P–0399, November 13, 1985.

4. National Academy of Sciences/Institute of Medicine, "Human Health Risks With the Subtherapeutic Use of Penicillin or Tetracyclines in Animal Feed," 1989.

5. Report of the American Society for Microbiology Task Force on Antibiotic Resistance; the American Society for Microbiology, Public and Scientific Affairs Board; Washington, DC, March 16, 1995.

6. World Health Organization (WHO), "The Medical Impact of the Use of Antimicrobials in Food Animals," Report of a WHO meeting, WHO/EMC/ZOO/97.4, Berlin, Germany, October 13 to 17, 1997.

7. WHO, "Use of Quinolones in Food Animals and Potential Impact on Human Health," Report of a WHO meeting, WHO/EMC/ZDI/98.12, Geneva, Switzerland, June 2 to 5, 1998.

8. Discussion paper: "A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals," Center for Veterinary Medicine, Food and Drug Administration, 1999; Docket 98D–1146 (*http://www.fda.gov/cvm/antimicrobial/ar_framework.htm*).

VIII. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division

of Dockets Management between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 510 and 558 be amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

Subpart F [Removed and Reserved]

2. Subpart F, consisting of § 510.515, is removed and reserved.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

4. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (c) by removing "and in §§ 510.515 and 558.15 of this chapter".

§ 558.15 [Removed]

5. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is removed.

Dated: August 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–20244 Filed 8–5–03; 4:09 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–127]

RIN 1625–AA11

Regulated Navigation Areas; Charleston Harbor, Cooper River, South Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to create regulated navigation areas for waters in the Charleston Harbor under the Highway 17 bridges and in the Cooper River under the Don Holt I–526 bridge. These regulated navigation areas are needed for national security reasons to help ensure public safety and prevent sabotage or terrorist acts aimed at these bridges that cross the main shipping channel and link the city and port of Charleston with the mainland. Vessels would be prohibited from anchoring, mooring, or loitering within these areas, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before October 7, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Charleston, 196 Tradd Street, Charleston, South Carolina 29401. Coast Guard Marine Safety Office Charleston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kevin D. Floyd, Coast Guard Marine Safety Office Charleston, at (843) 720–3272.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–127], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the Coast Guard Marine Safety Office Charleston at the address under **ADDRESSES** explaining why a meeting would be beneficial. If we determine that a public meeting will aid this rulemaking, a meeting will be held at a time and place announced by separate notice in the **Federal Register**.

Background and Purpose

Based on the continuing threat of terrorism against the United States, and in light of the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that terrorist action that would adversely affect the Port of Charleston could be initiated against bridges over the regulated navigation areas by persons on vessels or otherwise in close proximity to these bridges. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local economy and negatively impacting national security. These regulated navigation areas would help to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at the bridges crossing the main shipping channels in the Port of Charleston, South Carolina, and ensure continued unrestricted access to the sea from the Port.

Discussion of Proposed Rule

The proposed rule would establish regulated navigation areas for the waters in the Charleston Harbor under the Highway 17 bridges and in the Cooper River under the Don Holt I–526 bridge. These regulated navigation areas are needed for national security reasons to promote public safety and help to prevent sabotage or terrorist acts against bridges in these ports. Vessels would be prohibited from anchoring, mooring, or loitering within these areas, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the