SUPPLEMENTARY INFORMATION: Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501, has informed FDA of a change of sponsor for several NADA's from Wendt Laboratories, 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011. Wendt Laboratories also informed FDA of the sponsor change. The NADA's affected are:

Product	NADA
Oxytetracycline-50 injectable	48-287
Phenylbutazone injection	48-646
Phenylbutazone tablets	48-647
Procaine penicillin G mastitis tubes	65-383
Nitrofurazone ointment	118-506
Iron hydrogenated dextran injection	119-142
Nitrofurazone solution (injection)	119-974
Dexamethasone sodium phosphate injection	123-815
Oxytocin injection	124-241

This sponsor change does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel.

FDA is amending 21 CFR 520.1720a(b)(5), 522.540(e)(2), 522.1183(e)(1), 522.1662a(i)(2), 522.1680(b), 522.1720(b)(2), 524.1580d(b), and 540.874a(c) (3)(i) and (4)(i) to reflect the sponsor change.

FDA is also amending 21 CFR 510.600(c)(1) and (c)(2) to remove Wendt Laboratories because it is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

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

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 520, 522, 524, and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. In § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* in paragraph (c)(1) by removing the entry for "Wendt Laboratories" and in paragraph (c)(2) by removing the entry for "015579."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1720a [Amended]

4. In § 520.1720a *Phenylbutazone tablets and boluses* by removing paragraph (b)(5).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.540 [Amended]

6. In § 522.540 *Dexamethasone injection* in pargaph (e)(2) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1183 [Amended]

7. In § 522.183 *Iron hydrogenated dextran injection* in paragraph (e)(1) by removing "015579" and inserting in its place "053617."

§ 522.1662a [Amended]

8. In § 522.1662a *Oxytetracycline hydrochloride injection* in paragraph (i)(2) by removing "015579" and inserting in its place "053617."

§ 522.1680 [Amended]

9. In § 522.1680 *Oxytocin injection* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1720 [Amended]

10. In § 522.1720 *Phenylbutazone injection* in paragraph (b)(2) by removing "015579."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

11. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580d [Amended]

12. In § 524.1580d *Nitrofurazone solution* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617," and further in the paragraph by removing "and 053617."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

13. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.874a [Amended]

14. In § 540.874a *Procaine penicillin G in oil* in paragraph (c)(3)(i) and (4)(i) by removing "015579" and inserting in its place "053617."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-22119 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1971

[Docket No. S-506 B]

Servicing of Single Piece and Multi-Piece Rim Wheels at Marine Terminals

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its rules for the servicing of rim wheels at marine terminals to include safety measures to be taken for the servicing of both single piece and multi-piece rim wheels. Prior to this regulatory action, only multi-piece rim wheel servicing was addressed in OSHA's rules for marine terminals (29 CFR 1917.44(o)). With this notice, OSHA adopts by reference the General Industry Standards (29 CFR 1910.177) that are specific to the servicing of both single piece and multi-piece rim wheels, for application within the marine terminal environment.

EFFECTIVE DATE: This rule shall become effective October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3637, 200

Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1984, OSHA issued a final General Industry Standard on the servicing of single piece and multi-piece rim wheels (49 FR 4338). That action amended § 1910.177 by making minor revisions to the provisions for multi-piece rim wheels, and by adding provisions for the servicing of single piece rim wheels to the existing provisions for multi-piece rim wheels.

The Marine Terminals Standard, 29 CFR Part 1917, as published in 1983 (48 FR 30886), also included coverage for the servicing of multi-piece rim wheels (§ 1917.44(o)). However, since the 1984 revision of the General Industry Standard occurred subsequent to issuance of the final rule for marine terminals, single piece rim wheels coverage was not included within the framework of Part 1917. This final rule bridges that existing gap in coverage.

OSHA's intention to close that regulatory gap was buttressed by petitions from the National Maritime Safety Association (NMSA) and the International Longshoremen's and Warehousemen's Union (ILWU). The Agency subsequently issued its proposed rule on August 26, 1986 (51 FR 30230).

II. Comments Received on the Proposal

In all, five organizations submitted responses to OSHA's proposal. All five were substantially in accord with the **Federal Register** notice. The first commenter (Ex. 143-1) was R.F. Harold & Associates, a firm with substantial experience as consultants to many rim wheel and tire manufacturers concerning design, production and testing of products as well as failure analysis. They stated:

> Because the single piece and multi-piece rims in marine environments are identical to those used in commercial and industrial trucking, improper servicing can present the same potential for personal injury as in the areas now covered by OSHA regulation. Thus, we support this position and favor the inclusion of all marine facilities into the rim wheel standard.

The next commenter (Ex. 143-2) was Eagle Pacific Insurane Co., an insurer of marine terminal operators. Citing a variety of reasons why OSHA should move to cover single-piece rim wheel servicing at marine terminals, including personal experience with a number of injuries associated with such servicing, Eagle Pacific concluded by saying:

> Eagle Pacific supports the proposed changes and we believe they would have a beneficial effect on Marine Terminal injuries caused by tire changing incidents.

The next commenter (Ex. 143-3) was the American Trucking Association. Addressing the need for uniformity of regulation, they stated:

> ATA participated in the development of OSHA's General Industry Standards for servicing tires on single and multipiece rims found on 29 CFR 1910.177. We support these rules and request that they be referenced without change in 29 CFR 1917 where they will apply to work done in marine terminals. It is imperative that no changes be made to the General Industry Standards when referenced in the Marine Terminal standards, so as to maintain the integrity and quality and to avoid confusion on the part of workers transferring to or from the Marine Terminal environment.

The fourth commenter (Ex. 143-4) was the State of California's Occupational Safety and Health Administration, whose comments merely indicated that Federal OSHA's proposal would present no programmatic difficulty to its own operation.

The last commenter (Ex. 143-5) was the International Longshoremen's and Warehousemen's Union (ILWU), one of the two petitioners encouraging OSHA to take this initiative. The ILWU supported OSHA's regulatory approach saying:

> The International Longshoremen's and Warehousemen's Union fully supports the proposed revision of the Marine Terminals Standard, 29 CFR Part 1917, to include rules addressing the servicing of single piece rim wheels. This proposal is necessary due to the hazards of servicing single piece rim wheels and the recent, and projected, increased use of such wheels at marine terminals.

Additionally, the ILWU requested that these same rules be extended to apply to operations aboard vessels as well as to those on shore. However, they provided no data to support such an extension, nor is there evidence in the record as to whether similar hazards exist aboard vessels. OSHA has little information on rim wheel servicing aboard vessels. Further, while it is true that under special circumstances rim wheel servicing could possibly occur aboard some vessels, it is also true that such operations are categorized as longshoring and, as such, are under the scope of 29 CFR Part 1918. OSHA is currently developing proposed revisions of its safety and health regulations for longshoring in Part 1918. OSHA will consider the ILWU's recommendation within the context of that separate rulemaking.

III. Effect of the Final Rule

This rule amends Part 1917 by deleting the current multi-piece rim wheel servicing requirements in § 1917.44(o). In its place, OSHA is placing a reference to the General Industry Standard for the servicing of multi-piece and single piece rim wheels, § 1910.177. As a result of that reference, § 1910.177 is made applicable at marine terminals, and marine terminal employers will be required to comply with the provisions of that section in the same manner as any other Part 1917 standard.

As part of this final rule, a reference to § 1910.177 is also inserted into § 1917.1 and § 1910.16. Each of these sections contains a list of those Part 1910 provisions having application at marine terminals. Additionally, this final rule amends paragraph (a)(2) of § 1910.177, which previously indicated that the General Industry Standard did not apply to any maritime employments covered by Parts 1915-1919, to reflect that marine terminals covered by Part 1917 are now covered by § 1910.177.

IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis for Servicing Single Piece Rim Wheels at Marine Terminals

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981), OSHA has assessed the potential economic impact of this standard. Based on the Executive Order criteria, OSHA has determined that this final rule is not a "major" action. Therefore, it does not require a regulatory impact assessment.

OSHA's determination that the amendment will not have a major impact is based primarily upon four studies. The first study was a June 1978 report by Centaur Management Consultants, Inc., for OSHA entitled, "Economic Impact Statement/Assessment for Multi/Piece Rim Assemblies" [Docket S-005, Ex. 2-33]. The second study was a March 1981 report by Dr. Roger L. McCarthy and Mr. James R. Finnegan of Failure Analysis Associates for the National Wheel and Rim Association [NWRA] entitled, "Large Vehicle Wheel Servicing: Reduction of Risk Through Implementation of an OSHA Standard Governing Multi/Piece and Single/Piece Rims" [Docket S-010, Ex. 31]. The third study was a March 1981 report prepared for NWRA by Dr. Thomas Gale Moore of the Hoover Institute, entitled "An Economic Evaluation for Proposed OSHA Single Piece Rim Standard" [Docket S-010, Ex. 4]. The fourth study was the August 1983 report by OSHA's Office of Regulatory Analysis entitled, "Regulatory Impact and Regulatory Flexibility Assessment of the Final Standard on Servicing Single/Piece Rim Wheels" [Docket S-010, Ex. 11]. These four studies demonstrate that the single piece wheel servicing standard is technologically feasible in general industry. This amendment to the Marine Terminals Standard covers the exact same activity that is covered by the general industry single piece rim wheel servicing standard. As there do not appear to be any significant differences in the circumstances under which single piece rim wheels are serviced at marine terminals as compared to general industry, OSHA has concluded that this amendment would also be technologically feasible in marine terminals.

Currently, most, if not all, marine terminals servicing single piece rim wheels also service multi-piece rim wheels. As a result, OSHA has concluded that the promulgation of a single piece rim wheel servicing standard will result in no additional capital costs because the equipment currently required to meet the multi-piece rim wheel servicing provisions will also meet the equipment requirements for single piece rim wheel servicing.

Based on the NWRA Reports, OSHA has determined that the number of large vehicle rim wheels serviced within marine terminals will remain constant over the next 10 years. However, the percentage of single piece rim wheels of all large vehicle rim wheels is expected to increase from about 35 percent in 1987 to about one-half by 1990. This increase is due largely to greater fuel efficiency of tubeless tires which require, for the most part, the use of single piece rim wheels. Thus, OSHA expects that the number of single piece rim wheels serviced will increase while the number of multi-piece rim wheels serviced will decrease. Since equipment currently used to service multi-piece rim wheels can be shifted to servicing single piece rim wheels, no additional equipment will need to be purchased in order to comply with the single piece rim wheels servicing provisions.

Nevertheless, OSHA does expect that there will be some initial and continuing costs of compliance due to the provision requiring employee safety training and to the provision requiring tires on single piece wheels to be inflated at a safe distance from the employee. In the preamble to the general industry rule on servicing single piece rim wheels (40 FR 4338 [Ex. 6]), OSHA had estimated that the present value in 1981 dollars of the costs of compliance to be incurred by general industry during 1981–1990 would be $16.47 million. The average yearly cost for each of the approximately 102,000 workplaces was about $16. The same $16 average annual cost is projected for each of the approximately 400 affected marine terminals, for a total cost estimate of $6,400 for the whole industry.

In response to its request in the **Federal Register** Notice of Proposed Rulemaking, OSHA received no direct statistical or anecdotal information from interested commenters concerning fatalities or injuries that have occurred to marine terminal employees servicing of single piece rim wheels. Nevertheless, the physical hazards associated with servicing single piece rim wheels are the same in both general industry and in marine terminals. Consequently, OSHA has determined that the accident rate per tire serviced would be the same in both sectors. OSHA had estimated in its RIA for the standard governing the servicing single piece rim wheels in general industry [Docket S-010, Ex. 11] that there is about one injury-producing accident for every million truck tire changes. Of these accidents between 15 percent and 20 percent result in a fatality and another 15 percent to 20 percent result in a total disability that would prevent the injured employee from ever working. The remaining 60 to 70 percent of these accidents result in a lost workday injury. These lost workday injuries involve an average of six months lost from work (about 120 days). Therefore, although these accidents infrequently occur, they tend to cause an injury that is substantially more serious than the average occupational injury. Thus, incorrect methods of servicing single piece rim wheels were determined to constitute a serious safety hazard in general industry.

Similarly, OSHA has concluded that such servicing methods produce a serious safety hazard in marine terminals. For example, if an average of only two single piece rim wheels are serviced per day in a marine terminal, then there would be a total of about 200,000 single piece rim wheels annually serviced in marine terminals. Consequently, OSHA anticipates that there would be an average of about two single piece rim wheel servicing accidents (of which one would be either a fatality or a total disability) every 10 years in marine terminals. Preventing these accidents would impose a 10-year total of $64,000 in undiscounted costs of compliance.

OSHA's analysis of the accident data available for single piece rim wheel in general industry indicated that compliance with the provisions of the single piece rim wheel servicing standard would have prevented nearly all of the reported accidents. In addition, OSHA has found that there was a 75 percent national reduction in fatalities and injuries associated with servicing multi-piece rim wheels after the promulgation of the OSHA Multi-Piece Rim Wheel Servicing Standard. Further, that there was a 75 percent reduction in fatalities and injuries in California after the promulgation of their multi-piece and single piece rim wheel servicing standard in 1970. As a result, OSHA has concluded that promulgating this general industry standard for marine terminals would also prevent nearly all single piece rim wheel servicing accidents in marine terminals because the cause and the preventability of the accidents are the same in both sectors. OSHA, therefore, concludes that this standard will likely reduce the number of worker deaths and disabilities, will provide net benefits to society, and will not have a significant adverse effect on marine terminals.

Regulatory Flexibility Certification. In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, (5 U.S.C. 601 et seq.)), OSHA has assessed the potential economic impact of this standard on small entities and has examined some of the alternatives to it. Based on this assessment, OSHA certifies that the standard will not have a significant economic effect on small entities.

The only provisions that may impose costs of compliance are those requiring employee safety training and those requiring that tires be inflated at a distance from the employee. The fact that firms must train new employees at the time they are hired largely precludes training many employees at the same time. Consequently, large employers will not garner any significant economies of scale in training and these costs will be largely proportional to the number of employees trained. Similarly, the increased time needed to service each single piece rim wheel, because the employee must move away from the tire to inflate it, is independent of the number of such rim wheels serviced. As the smaller terminals would service fewer rim wheels than would the large marine terminals, OSHA believes that these minimal costs of compliance will neither significantly affect nor create any competitive disadvantages for small entities.

V. Environmental Impact Assessment—Finding of No Significant Impact

This rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (62 U.S.C. 4321, et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that this rule will have no significant environmental impact.

The amendment to 29 CFR Parts 1910 and 1917 for servicing multi-piece and single piece rim wheels, covers the same activity as the general industry standard. In other words, the reduction of accidents or injuries is to be achieved by means of work practices and procedures, proper use and handling of equipment, and training. Such procedures do not impact on air, water, or soil quality; or plant or animal life; or on the use of land or other aspects of the environment. These safety-oriented revisions are therefore categorized as excluded actions according to Subpart B, § 11.10 of the DOL NEPA regulations.

VI. State Plan Standards

Those of the 25 states with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of this final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective"as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities.

Federal OSHA enforces maritime standards offshore in all states and provides on shore coverage of maritime activities in Federal OSHA states and in the following State plan states: Alaska, Arizona, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York [1], North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming. (All states with State plans must also extend coverage to state and local government employees engaged in maritime activities.)

[1] Plan covers only State and Local government employees.

List of Subjects

29 CFR Part 1910

Chemicals, Diving, Electric power, Electric products, Fire prevention, Gases, Hazardous substances, Health records, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

29 CFR Part 1917

Cargo, Certification, Gear, Intermodal container, Longshoring, Maritime, Occupational safety and health, Safety.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, under sections 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; section 41 of the Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Parts 1910 and 1917 are amended, as set forth below.

Signed at Washington, DC, this 18th day of September, 1987.

John A. Pendergrass,
Assistant Secretary of Labor.

29 CFR Part 1910 is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart B of 29 CFR Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35, et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Sec. 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333; Sec. 41 of the Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Orders 12–71 (36 FR 8754, 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

2. A new paragraph (b)(2)(ix) is added to § 1910.16, to read as follows:

§ 1910.16 Longshoring and marine terminals.

* * * * *

(b) * * *
(2) * * *
(ix) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177.

* * * * *

3. Paragraph (a)(2) of § 1910.177 is revised to read as follows:

§ 1910.177 Servicing multi-piece and single piece rim wheels.

(a) * * *
(2) This section does not apply to employers and places of employment regulated under the Construction Safety Standards, 29 CFR Part 1926; the Agriculture Standards, 29 CFR Part 1928; the Shipyard Standards, 29 CFR Part 1915; or the Longshoring Standards, 29 CFR Part 1918.

* * * * *

29 CFR Part 1917 is amended as follows:

PART 1917—MARINE TERMINALS

4. The authority citation for Part 1917 continues to read as follows:

Authority: Secs. 4, 6, and 8, of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Sec. 41, Longshore and Harborworkers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

5. A new paragraph (a)(2)(ix) is added to § 1917.1 to read as follows:

§ 1917.1 Scope and applicability.

(a) * * *
(2) * * *
(ix) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177.

6. Paragraph (o) of § 1917.44 is revised to read as follows:

§ 1917.44 General rules applicable to vehicles.

* * * * *

(o) *Servicing multi-piece and single piece rim wheels.* Servicing of multi-piece and single piece rim wheels is covered by § 1910.177 of this chapter.

* * * * *

[FR Doc. 87–22105 Filed 9–24–87; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Removal of Conditions From Colorado Permanent Regulatory Program Under Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the removal of two conditions which the Secretary placed on his approval of the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) in response to two legal opinions submitted by Colorado to satisfy the conditions listed at 30 CFR 906.11 (p) and (oo). The conditions pertain to the permit renewal process and Colorado's authority to cease underground mining operations.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Albuquerque, New Mexico 87102. Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent decisions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16 and are discussed in detail in the **Federal Register** published on December 16, 1982 (47 FR 56350); May 1, 1984 (49 FR 18481); November 15, 1985 (50 FR 47216); December 6, 1984 (50 FR 49925); February 5, 1986 (51 FR 4496); May 30, 1986 (51 FR 19548); July 1, 1986 (51 FR 23752); February 5, 1987 (52 FR 3632); and May 7, 1987 (52 FR 17291).

II. Discussion of Conditions and Legal Opinions

Condition "p"

As discussed in Finding 4(d)(xv) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82184), the Secretary found that the Colorado program failed to clearly provide that no holder of a valid permit could continue to mine after the term of his or her original permit expired if the State had determined that the permit should not be renewed. The State statute at CRS 34–33–109(7)(f) and the State regulations at 2.08.5(3)(f) provide that the holder of a valid permit may continue surface mining operations until a final administrative decision on renewal is rendered, provided he or she has submitted an application for renewal 180 days in advance of the permit expiration date. The conflict arises in those situations where the Division of Mined Land Reclamation ("Division") has found that the permit should not be renewed, and the operator has petitioned for administrative review of the decision. Since the final administrative decision would be made by the Mined Land Reclamation Board ("Board"), the entire process could take more than 180 days. The Federal rules applicable to such situations (30 CFR 775.11) allow continuation of mining only where the operator is granted temporary relief. Accordingly, the Secretary conditioned his approval of the Colorado program on the submission of further amendments to require that applications for renewal be submitted one year prior to expiration, or the submission of other program modifications to resolve this problem.

At a June 30, 1986 meeting attended by representatives of the Division, OSMRE's Albuquerque Field Office, and OSMRE's Division of State Program Assistance, Colorado pointed out that CRS 34–33–109(7)(a) allows only the Board to deny renewal applications; therefore, there is no administrative review process and the condition is moot. By letter dated August 14, 1986 (Administrative Record No. CO–299), OSMRE agreed that, if this strict interpretation of the statutory language was correct and affirmed by a legal opinion provided by the State, then the condition as such would cease to be relevant.

In its response of December 22, 1986, Colorado submitted a December 15, 1986 opinion prepared by an assistant attorney general within the Office of the State Attorney General affirming that only the Board has the legal authority to deny permit renewal applications (Administrative Record No. CO–310). Since, under the Colorado program, the Board receives all applications for administrative review and conducts all administrative hearings, a decision of the Board constitutes final agency action from which there is no administrative appeal.

Condition "oo"

This condition concerns the circumstances under which the Division has the authority to cease underground mining operations when they create an imminent danger to persons. Section 516(c) of SMCRA requires the regulatory authority to suspend underground coal mining under urbanized areas and adjacent to industrial or commercial buildings, major impoundments or permanent streams if an imminent danger to the inhabitants exists. The Colorado statue at CRS 34–33–121(3) requires that the Division order such closures after consultation with the operator and the Division of Mines, but only if the mining activities are in violation of CRS 34–29–125 (water control in steeply pitching veins), 34–29–128 (barrier pillars at property lines) or 34–48–102 (mining under buildings), or are adjacent to perennial streams. The Colorado regulations at 2 CCR 407–2, 4.20.4(4) contain provisions similar to the statutory language, but they also (1) extend protection to major impoundments, (2) do not require that the operator first be found in violation of one of the three provisions cited in the State statute, and (3) allow a waiver of the consultation requirement.

Previous discussions of this issue have centered on the "priority of right" exception provided by CRS 34–48–102. As discussed in Finding 4(i)(v) of the December 15, 1980 **Federal Register** notice approving the Colorado program (45 FR 82192), the Secretary conditioned his approval on the future submission of a proposed program amendment disallowing any exception to the requirement that underground mining be ceased where it creates an imminent danger to persons. In subsequent correspondence, Colorado maintained that (1) the priority of right exception provided by CRS 34–48–102 deals only with liability for surface property damage and does not prevent the State from prohibiting mining where an imminent danger to personal safety exists (letter of May 26, 1983, from David Shelton to Robert Hagen, Administrative Record No. CO–207), and (2) CRS 34–48–102 applies only to noncoal mines (letter of May 20, 1986, from David Getches to Jed Christensen, Administrative Record No. CO–290). In addition, as noted above, the Colorado regulations at 2 CCR 407–2, 4.20.4(4) do not require that the operator first be found in violation of CRS 34–48–102 before the Division can order closure of the mine.

Accordingly, by letter of August 14, 1986 (Administrative Record No. CO–229), OSMRE notified Colorado that, if it would clarify by legal certification that State rule 4.20.4(4) is not limited by CRS 34–33–121(3), i.e., that the Division does not have to first find an operator in violation of one of the three cited statutory provisions prior to issuing a cessation order, condition "oo" would be removed. In response, on January 26, 1987, Colorado submitted a December 9, 1986 opinion prepared by the Office of the State Attorney General (Administrative Record No. CO–316) concluding that Rule 4.204.(4) was indeed not limited by CRS 34–33–121(3). As stated in the opinion, the Division is required, pursuant to CRS 34–33–123(1), to order cessation of mining where any operator is in violation of any requirement of Article 33 or any permit condition, which condition, practice or violation creates an imminent danger to the health and safety of the public. This statutory language provides adequate basis for Rule 4.20.4(4). The opinion further states that the language of CRS 34–33–121(3) merely adds or explains additional statutory requirements dealing with environmental protection and public safety beyond the comprehensive protection standards in the enforcement provisions of CRS 34–33–123(1), and that it would therefore be logically inconsistent to intrepret CRS 34–33–121(3) as limiting Rule 4.20.4.

III. Secretary's Findings and Decision

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Secretary's findings and decisions concerning the legal opinions submitted by Colorado on December 22, 1986 and Janaury 26, 1987 pertaining to conditions of program approval "p" and "oo".

Condition "p"

For the reasons set forth in Colorado's legal opinion dated December 15, 1986, and prior correspondence from the State of Colorado, as discussed in the section of this notice entitled "Discussion of Conditions and Legal Opinions", the Secretary finds the lack of any provisions for administrative review of decisions denying applications for permit renewal renders condition "p" moot. Therefore, he is amending the Federal rules at 30 CFR 906.11 to remove paragraph (p), which establishes this condition.

Condition "oo"

For the reasons set forth in Colorado's legal opinion dated September 9, 1986, as discussed in the section of this notice entitled "Discussion of Conditions and Legal Opinions", the Secretary finds that, since the Colorado regulations at 2 CCR 407-2, 4.20.4(4) are not limited by the provisions of the Colorado statute at CRS 34–33–121(3), the State regulations are no less stringent than section 516(c) of SMCRA. Therefore, he finds that condition "oo" is now moot, and he is amending the Federal regulations at 30 CFR 906.11 to remove paragraph (oo), which contains this condition.

IV. Public Comment

The Director announced receipt of the legal opinions in the March 27, 1987 **Federal Register**, inviting the public to comment on their adequacy and providing an opportunity for a public hearing (52 FR 9887–9890). No comments were received and since no one requests an opportunity to testify at a public hearing, the hearing scheduled for April 21, 1987 was canceled.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(b)(10)(i), comments were also solicited from various Federal agencies. The Regional Forester for the Rocky Mountain Region of the U.S. Forest Service supported removal of the conditions based on the legal opinions. No other agencies elected to comment, although the Bureau of Mines, the Bureau of Land Management and the Fish and Wildlife Service acknowledged receipt of the request for comments.

V. Procedural Determinations

1. *Compliance with the National Environmental Policy Act* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Compliance with the Regulatory Flexibility Act* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Compliance With Executive Order No. 12291* On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

List of Subjects in 30 CFR Part 906:

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: September 15, 1987

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Part 906 of Title 30, Code of Federal Regulations, is amended as follows:

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

§ 906.11 [Amended]

2. Section 906.11 is amended by removing and reserving paragraphs (p) and (oo).

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[DOD Instruction 6010.15]

Coordination of Benefits

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This part establishes Department of Defense policies under Pub. L. 99–272, section 2001, Consolidated Omnibus Budget Reconciliation Act of 1985, April 7, 1986. It also assigns responsibility for implementing the authority for collection by the United States of inpatient hospital costs incurred by retirees and dependents.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John Maddy, Office of the Assistant Secretary of Defense (Health Affairs), Pentagon, Washington, DC 20301, telephone (202) 694–3242.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 220

Claims, Health insurance, Medical records.

Accordingly, 32 CFR Part 220 is added to read as follows:

PART 220—COORDINATION OF BENEFITS

Sec.

Authority: Pub. L. 99–272, section 2001; 10 U.S.C. Chapter 55

§ 220.1 Purpose.

This part: (a) Establishes DOD policies under Pub. L. 99–272, section 2001 and 10 U.S.C. 1074(b), 1076(a), 1076(b), and 1095.

(b) Assigns responsibility for implementing the authority for collection by the United States of inpatient