

certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action, of modifying the descriptions of VOR Federal airways V-318 and V-352 to reflect the removal of certain route segments within Canadian airspace deleted by NAV CANADA, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F—Environmental Impacts: Policies and Procedures, Paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). This action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018 and effective September 15, 2018, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

\* \* \* \* \*

#### V-318 [Amended]

From INT Beauce, PQ, Canada 103° and Quebec, PQ, Canada, 047° radials; Houlton, ME; INT Houlton 128° and St John, NB, Canada, 267° radials; to St John. The airspace within Canada is excluded.

#### V-352 [Amended]

From INT Beauce, PQ, Canada 085° and Bangor, ME 336° radials; to Houlton, ME.

\* \* \* \* \*

Issued in Washington, DC, on December 3, 2018.

**Rodger A. Dean, Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2018–26678 Filed 12–10–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 216

[Docket No. FDA-2016-N-2462]

RIN 0910-AH35

### List of Drug Products That Have Been Withdrawn or Removed From the Market for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is amending its regulations to revise the list of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective. Drug products appearing on this list may not be compounded under the exemptions provided by sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act). Specifically, the final rule adds two entries to this list of drug products.

**DATES:** This rule is effective January 10, 2019.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this final rule into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

### FOR FURTHER INFORMATION CONTACT:

Alexandria Fujisaki, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5169, Silver Spring, MD 20993–0002, 301–796–3110.

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#### I. Executive Summary

##### A. Purpose of the Regulatory Action

FDA is amending its regulations to revise the list of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (referred to as “the withdrawn or removed list” or “the list”) (§ 216.24 (21 CFR 216.24)). Drug products appearing on the withdrawn or removed list may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act (21 U.S.C. 353a and 353b). In this final rule, the Agency is finalizing in part the proposed amendments to § 216.24 set forth in the proposed rule published in the **Federal Register** of October 18, 2016 (81 FR 71648).

##### B. Summary of the Major Provisions of the Regulatory Action

After soliciting public comments and consulting with the FDA Pharmacy Compounding Advisory Committee (the Committee), we are adding the following entries to the list in § 216.24 of drug products that have been withdrawn or removed from the market because such drug products or

components of such drug products have been found to be unsafe or not effective:

*Bromocriptine mesylate*: All drug products containing bromocriptine mesylate for prevention of physiological lactation.

*Ondansetron hydrochloride*: All intravenous drug products containing greater than a 16 milligram (mg) single dose of ondansetron hydrochloride.

#### C. Legal Authority

Sections 503A, 503B, and 701(a) of the FD&C Act (21 U.S.C. 353a, 353b, and 371(a)) provide the principal legal authority for this final rule.

#### D. Costs and Benefits

The Agency is not aware of routine compounding of the drug products that are the subject of this final rule. Therefore, we do not estimate any compliance costs or loss of sales as a result of the prohibition against compounding these drug products for human use. The Agency has determined that this rulemaking is not a significant regulatory action as defined by Executive Order 12866.

## II. Background

### A. Relevant Provisions of the Statute

Section 503A of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from the following three sections of the FD&C Act: (1) Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of new drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

In addition, section 503B of the FD&C Act describes the conditions that must be satisfied for a drug compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility to be exempt from three sections of the FD&C Act: (1) Section 502(f)(1), (2) section 505, and (3) section 582 (21 U.S.C. 360eee–1) (concerning drug supply chain security).

One of the conditions that must be satisfied for a drug product to qualify for the exemptions under sections 503A or 503B of the FD&C Act is that the compounder does not compound a drug product that appears on a list published by the Secretary of Health and Human Services (the Secretary) (delegated to FDA) of drug products that have been withdrawn or removed from the market

because such drug products or components of such drug products have been found to be unsafe or not effective (the withdrawn or removed list) (see sections 503A(b)(1)(C), 503B(a)(4), and 503B(a)(11) of the FD&C Act).

### B. The List of Drug Products in § 216.24

The drug products listed in the withdrawn or removed list codified at § 216.24 have been withdrawn or removed from the market because they have been found to be unsafe or not effective. A drug product that is included in the withdrawn or removed list is not eligible for the exemptions provided in section 503A(a) from sections 501(a)(2)(B), 502(f)(1), and 505 of the FD&C Act. In addition, a drug that is included in the withdrawn or removed list is not eligible for the exemptions provided in section 503B(a) from sections 502(f)(1), 505, and 582 of the FD&C Act.

### C. Regulatory History of the List

The Food and Drug Modernization Act of 1997 (Pub. L. 105–115) added section 503A to the FD&C Act. On October 8, 1998, FDA proposed a rule in the **Federal Register** (63 FR 54082) to establish the original withdrawn or removed list. On March 8, 1999, FDA finalized this rule (64 FR 10944), prohibiting the products described on the original list from being compounded under the exemptions provided by section 503A(a) of the FD&C Act.

Following the addition of section 503B to the FD&C Act on November 27, 2013, through the enactment of the Drug Quality and Security Act (Pub. L. 113–54), FDA published a proposed rule to revise and update the list in § 216.24 on July 2, 2014 (79 FR 37687); FDA published the final rule to amend § 216.24 in the **Federal Register** of October 7, 2016 (81 FR 69668) (2016 final rule). Given that nearly identical criteria apply for a drug to be included on the list referred to in section 503A(b)(1)(C) and the list referred to in section 503B(a)(4) of the FD&C Act, the 2016 final rule added language to § 216.24 clarifying that it applies for purposes of both sections 503A and 503B.

## III. Proposed Rule and Final Rule

### A. Presentation to the Advisory Committee

At a meeting held on June 17 and 18, 2015 (see the **Federal Register** of May 22, 2015 (80 FR 29717)), FDA presented to the Committee FDA's proposal to add to the withdrawn or removed list all drug products containing more than 325 mg of acetaminophen per dosage unit,

all drug products containing aprotinin, all drug products containing bromocriptine mesylate for the prevention of physiological lactation, and all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride. The Committee voted in favor of including each drug product entry on the list as proposed by FDA.<sup>1</sup>

### B. The Proposed Rule

In the **Federal Register** of October 18, 2016, FDA proposed to revise the withdrawn or removed list to add all drug products containing aprotinin, all drug products containing bromocriptine mesylate for the prevention of physiological lactation, and all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride (October 2016 proposed rule). The addition of all drug products containing more than 325 mg of acetaminophen per dosage unit to the list was not included in the October 2016 proposed rule and remains under consideration by the Agency.

### C. The Final Rule

The Agency has considered the public discussion and the advice provided by the Committee regarding these matters at the June 2015 meeting, as well as the October 2016 proposed rule, including the comments submitted on the proposed rule (see section IV). Based on the information before FDA and its own knowledge and expertise, FDA is adding two entries from the proposed rule to the withdrawn or removed list in § 216.24.

The two entries FDA is adding to § 216.24 are as follows:

*Bromocriptine mesylate*: All drug products containing bromocriptine mesylate for prevention of physiological lactation.

*Ondansetron hydrochloride*: All intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride.

At this time, FDA is not finalizing the entry in the proposed rule for all drug products containing aprotinin. The addition of an entry to the withdrawn or removed list for drug products containing aprotinin remains under consideration by FDA.

<sup>1</sup> A transcript of the June 2015 Committee meeting (Ref. 1) and briefing information that includes reviews and background on the proposed entries (Ref. 2) may be found at the Dockets Management Staff (see ADDRESSES) and at <https://wayback.archive-it.org/7993/20170111202622/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm431285.htm>.

#### IV. Comments on the Proposed Rule and FDA's Responses

Four comments, all from individuals, were submitted on the October 2016 proposed rule. FDA has summarized and responded to the relevant comments in the following paragraphs. A comment about “hernia repair with mesh and plug” has not been answered because it was not relevant to this rulemaking. Comments regarding the proposed addition of an entry to the withdrawn or removed list for aprotinin will not be answered at this time because the entry remains under consideration by FDA.

To make it easier to identify the comments and FDA's responses, the word “Comment,” in parentheses, appears before the comment's description, and the word “Response,” in parentheses, appears before the Agency's response. We have numbered each comment to help distinguish between different comments. Similar comments are grouped together under the same number, and, in some cases, different subjects discussed in the same comment are separated and designated as distinct comments for purposes of FDA's response. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which the comments were received.

##### A. Comments on Proposed Entries for Inclusion on the List

###### 1. Bromocriptine Mesylate

(Comment 1) One comment supported the proposal to include all drug products containing bromocriptine mesylate for prevention of physiological lactation on the withdrawn or removed list.

(Response 1) FDA agrees with the comment.

(Comment 2) FDA received one comment opposing the proposal to include all drug products containing bromocriptine mesylate for prevention of physiological lactation on the withdrawn or removed list. The comment asserts that bromocriptine mesylate offers “significant improvements in the quantity and quality of life,” and, although it has “serious adverse effects,” the benefits of bromocriptine mesylate compared to its risks “should warrant continuous approvability.”

(Response 2) FDA disagrees with the comment. For the reasons that follow, FDA will add all drug products containing bromocriptine mesylate for prevention of physiological lactation to the list in § 216.24.

As a preliminary matter, the issue in this rulemaking is whether all drug products containing bromocriptine mesylate for the indication of prevention of physiological lactation were withdrawn or removed from the market because they were found to be unsafe or not effective for this indication. The criteria that must be met to place a drug product on the withdrawn or removed list are laid out in the FD&C Act. Under sections 503A and 503B of the FD&C Act, to be placed on the withdrawn or removed list, drug products must have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective.

As FDA previously explained in the October 2016 proposed rule, FDA withdrew approval of PARLODEL (bromocriptine mesylate, NDA 17962) for the indication of prevention of physiological lactation in a document published in the **Federal Register** of January 17, 1995 (60 FR 3404). At the time, PARLODEL was the only marketed drug product containing bromocriptine mesylate labeled with this indication. FDA's 2015 “Review of Bromocriptine Mesylate for the Withdrawn or Removed List” indicates that the 1995 withdrawal of PARLODEL for prevention of physiological lactation was based on the unfavorable benefit-risk balance of this product for this indication. See “Review of Bromocriptine Mesylate for the Withdrawn or Removed List” in the FDA Briefing Document for the June 17 and 18, 2015 Pharmacy Compounding Advisory Committee Meeting, available at <https://wayback.archive-it.org/7993/20170113060809/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm449533.htm>. In particular, in a notice published in the **Federal Register** on August 23, 1994 (59 FR 43347), FDA concluded that bromocriptine mesylate's risks of hypertension, seizures, and cardiovascular accidents outweighed the product's marginal benefit in preventing postpartum lactation, which can be suppressed without risk by using more conservative, nonpharmacological treatments. Withdrawal of PARLODEL's indication for the prevention of physiological lactation became effective on February 16, 1995 (60 FR 3404). FDA has determined that all drug products containing bromocriptine mesylate for prevention of physiological lactation were withdrawn or removed from the market because such products have been found to be unsafe or not effective.

We note that FDA-approved drug products containing bromocriptine mesylate for other indications, such as treatment of Parkinson's disease, acromegaly, and prolactin-secreting adenomas, remain marketed.

FDA's 2015 review, which included a discussion of the withdrawal of PARLODEL's indication for the prevention of physiological lactation, was presented to the Committee at the meeting held on June 17 and 18, 2015, and the Committee voted in favor of the Agency's proposal to include all drug products containing bromocriptine mesylate for the prevention of physiological lactation on the list. For these reasons, FDA proposed in the October 2016 proposed rule to include all drug products containing bromocriptine mesylate for the prevention of physiological lactation on the withdrawn or removed list.

The comment offered no scientific rationale or support for its position that this drug product should not be on the list; therefore, FDA is including bromocriptine mesylate for prevention of physiological lactation on the withdrawn or removed list.

###### 2. Ondansetron Hydrochloride

(Comment 3) One comment supported the proposal to include all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride on the withdrawn or removed list.

(Response 3) FDA agrees with the comment.

(Comment 4) FDA received one comment on the proposal to include all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride suggesting “perhaps there is more to investigate and stricter regulation of the administration of IV ondansetron hydrochloride is warranted in the future.”

(Response 4) FDA intends to monitor future approvals, withdrawals, or removals of drugs, to consider other relevant information that may suggest the need to revise the withdrawn or removed list, and to propose modifications as appropriate. In addition, members of the public can submit a citizen petition at any time under 21 CFR 10.25 and 10.30 requesting that FDA add, modify, or remove an entry on the list (with data to support their request), and FDA will consider and respond to the petition.

(Comment 5) FDA received one comment opposing the proposal to include all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride on

the withdrawn or removed list. The comment asserts that ondansetron hydrochloride offers “significant improvements in the quantity and quality of life,” and, although it has “serious adverse effects,” the benefits of ondansetron hydrochloride compared to its risks “should warrant continuous approvability.”

(Response 5) FDA disagrees with the comment. For the reasons that follow, FDA will add all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride to the list in § 216.24.

As noted earlier, the issue in this rulemaking is whether drug products containing greater than a 16 mg single dose of ondansetron hydrochloride were withdrawn or removed from the market because they were found to be unsafe or not effective.

As FDA previously explained in the October 2016 proposed rule, in the **Federal Register** of June 10, 2015 (80 FR 32962), FDA announced its determination under 21 CFR 314.161 and 314.162(a)(2) that the NDA for Ondansetron (ondansetron hydrochloride) Injection, USP, 32 mg/50 mL, single IV dose was withdrawn from sale for reasons of safety. In particular, this product was associated with a specific type of irregular heart rhythm called QT interval prolongation, and the data suggest that any dose above the maximum recommendation of 16 mg per dose intravenously has the potential for increased risk of QT prolongation. FDA made this determination after holders of one NDA and four ANDAs voluntarily removed such products from the market and requested that FDA withdraw approval of their respective applications under 21 CFR 314.150(d). Thus, all drug products containing greater than a 16 mg single dose of ondansetron hydrochloride have been withdrawn or removed from the market because such drug products have been found to be unsafe or not effective. We note that FDA-approved drug products containing lower single doses of ondansetron hydrochloride remain marketed.

FDA’s review of intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride was presented to the Committee at the meeting held on June 17 and 18, 2015, and the Committee voted in favor of the Agency’s proposal to include all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride on the list. For these reasons, FDA proposed in the October 2016 proposed rule to include all intravenous drug products containing greater than a 16

mg single dose of ondansetron hydrochloride on the withdrawn or removed list.

(Comment 6) FDA received one comment asserting that ondansetron hydrochloride should not be recommended for use by pregnant women because it was not approved by FDA for pregnant women.

(Response 6) This comment is outside the scope of this rulemaking. Compounded drugs are not FDA approved and this rulemaking addresses the placement of certain drug products on the withdrawn or removed list, including all intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride. As previously noted, drugs appearing on this list may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act. Therefore, to the extent the commenter believes that intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride should not be compounded for pregnant women under the exemptions provided by sections 503A and 503B of the FD&C Act, we agree. The addition of the entry FDA is finalizing regarding ondansetron hydrochloride through this rulemaking for the list in § 216.24 will prohibit compounding of intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride under the exemptions provided by sections 503A and 503B of the FD&C Act for all patients, including pregnant women.

#### V. Legal Authority

Sections 503A and 503B of the FD&C Act provide the principal legal authority for this final rule. As described previously in section II, section 503A of the FD&C Act describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist or licensed physician to be exempt from three sections of the FD&C Act (sections 501(a)(2)(B), 502(f)(1), and 505). One of the conditions that must be satisfied to qualify for the exemptions under section 503A of the FD&C Act is that the licensed pharmacist or licensed physician does not compound a drug product that appears on a list published by FDA in the **Federal Register** of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (see section 503A(b)(1)(C) of the FD&C Act). Section 503A(c)(1) of the FD&C Act also states that the Secretary shall issue regulations to implement section 503A, and that before issuing regulations to implement

section 503A(b)(1)(C) pertaining to the withdrawn or removed list, among other sections, the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health.<sup>2</sup>

Section 503B of the FD&C Act describes the conditions that must be satisfied for a drug compounded for human use by or under the direct supervision of a licensed pharmacist in an outsourcing facility to be exempt from three sections of the FD&C Act (sections 502(f)(1), 505, and 582). One of the conditions in section 503B of the FD&C Act that must be satisfied to qualify for the exemptions is that the drug does not appear on a list published by FDA of drugs that have been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective (see section 503B(a)(4)). To be eligible for the exemptions in section 503B, a drug must be compounded in an outsourcing facility in which the compounding of drugs occurs only in accordance with section 503B, including as provided in section 503B(a)(4) of the FD&C Act.

Thus, sections 503A and 503B of the FD&C Act, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)), serve as our principal legal authority for this final rule revising FDA’s regulation on the list of drug products withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective in § 216.24.

#### VI. Analysis of 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.

#### VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is

<sup>2</sup> Note: The functions of the Secretary described herein have been delegated to FDA.

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” This final rule is not a significant regulatory action as defined by Executive Order 12866 and is not subject to Executive Order 13771.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because small businesses are not expected to incur any compliance costs or loss of sales due to this regulation, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing “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 \$150 million, using the most current (2017) Implicit Price Deflator for the Gross Domestic Product. This final rule is not expected to result in an expenditure in any year that would meet or exceed this amount.

This final rule amends § 216.24 concerning human drug compounding. Specifically, the final rule adds to the list of drug products that may not be compounded under the exemptions provided by sections 503A and 503B of the FD&C Act because the drug products have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective (see section II). We are adding two entries to the list: Drug products containing bromocriptine mesylate for prevention of physiological lactation and intravenous drug products containing greater than a 16 mg single dose of ondansetron hydrochloride. The Agency is not aware of routine compounding of these drug products; therefore, we do not estimate any compliance costs or loss of sales as a result of the prohibition against compounding these drugs for human use.

Unless we certify that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options to minimize any significant economic impact of a regulation on small entities. Most pharmacies meet the Small Business Administration definition of a small entity, which is defined as having annual sales less than \$27.5 million for this industry. We are not aware of any routine compounding of the drug products that are the subject of this final rule and do not estimate any compliance costs or loss of sales to small businesses as a result of the prohibition against compounding these drug products. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### VIII. Paperwork Reduction Act of 1995

This final 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.

#### IX. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

#### X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency concludes 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.

#### XI. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Transcript for the June 17–18, 2015, Meeting of the Pharmacy Compounding Advisory Committee, available at <https://wayback.archive-it.org/7993/2017011202622/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm431285.htm>.

2. Briefing Information for the June 17–18, 2015, Meeting of the Pharmacy Compounding Advisory Committee, available at <https://wayback.archive-it.org/7993/2017011202622/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/ucm431285.htm>.

#### List of Subjects in 21 CFR Part 216

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 216 is amended as follows:

#### PART 216—HUMAN DRUG COMPOUNDING

■ 1. The authority citation for part 216 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353a, 353b, 355, and 371.

■ 2. Amend § 216.24 by adding, in alphabetical order, to the list of drugs “Bromocriptine mesylate” and “Ondansetron hydrochloride” to read as follows:

#### § 216.24 Drug products withdrawn or removed from the market for reasons of safety or effectiveness.

\* \* \* \* \*

*Bromocriptine mesylate:* All drug products containing bromocriptine mesylate for prevention of physiological lactation.

\* \* \* \* \*

*Ondansetron hydrochloride:* All intravenous drug products containing greater than a 16 milligram single dose of ondansetron hydrochloride.

\* \* \* \* \*

Dated: December 4, 2018.

**Scott Gottlieb,**

*Commissioner of Food and Drugs.*

[FR Doc. 2018–26712 Filed 12–10–18; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD–2018–HA–0062]

RIN 0720–AB75

#### TRICARE Pharmacy Benefits Program Reforms

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule implements Section 702 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18). The law makes significant changes to the TRICARE Pharmacy Benefits Program, specifically it: Updates co-payment requirements; authorizes a new process for encouraging use of pharmaceutical agents that provide the best clinical effectiveness by excluding coverage for particular pharmaceutical agents that provide very little or no clinical effectiveness relative to similar agents and for giving preferential status to agents that provide enhanced clinical effectiveness; and authorizes special reimbursement methods, amounts, and procedures to encourage use of high-value products and discourage use of low-value products with respect to pharmaceutical agents provided as part of medical services from authorized providers.

**DATES:** This interim final rule is effective December 11, 2018. Comments must be received by February 11, 2019.

**FOR FURTHER INFORMATION CONTACT:** David W. Bobb, RPh, JD, Chief, Pharmacy Operations, Defense Health Agency (DHA), telephone (703) 681–2890.

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. Purpose of the Interim Final Rule

This interim final rule implements Section 702 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18), which does three things: (1) It updates cost-sharing requirements for outpatient pharmaceutical prescriptions filled by retail pharmacies and the TRICARE mail order pharmacy

program. (2) It authorizes a new Uniform Formulary process for encouraging use of pharmaceutical agents in the TRICARE Pharmacy Benefits Program that provide the best clinical effectiveness by excluding coverage for particular pharmaceutical agents that provide very little or no clinical effectiveness relative to similar agents and giving preferential status to agents that provide enhanced clinical effectiveness. (3) It authorizes special reimbursement methods, amounts, and procedures to encourage use of high-value products and discourage use of low-value products with respect to pharmaceutical agents provided as part of medical services from authorized providers. This interim final rule implements each of these three statutory changes. This is being issued as an interim final rule in order to implement expeditiously the reforms authorized by Section 702, as specifically authorized by subsection (b)(3) of that section. Based on that clear Congressional authority and intent, the Department finds that obtaining public comment in advance of issuing this rule is impracticable, unnecessary, and contrary to the public interest. Delaying expeditious implementation by waiting for public comments to this interim rule not only delays the significant cost savings to the government that will be realized through implementation but also continues to allow coverage of pharmaceutical agents that do not provide the best clinical effectiveness for beneficiaries. In addition, subsection (b)(3) of Section 702 states that “in order to implement expeditiously the reforms authorized . . . (A) the Secretary of Defense may prescribe an interim final rule, (B) not later than one year after prescribing the interim final rule and considering public comments with respect to such interim final rule, by prescribing a final rule.” Clearly Congressional intent is to implement the authorized reforms quickly. Nonetheless, DoD invites public comments on this rule and is committed to considering all comments and issuing a final rule as soon as practicable (but not later than one year after issuance of this interim final rule).

###### B. Legal Authority for the Regulatory Action

This interim final rule is under the primary authority of 10 U.S.C. 1074g, 1079 and 1086, and Section 702 of NDAA–18. Specifically, section 702(b)(3) of NDAA–18 authorizes DoD to “prescribe such changes to the regulations implementing the TRICARE program . . . by prescribing an interim final rule.” TRICARE program

regulations (32 CFR part 199) are issued under statutory authorities including 10 U.S.C. 1074g (the Pharmacy Benefits Program) and 10 U.S.C. 1079 and 1086 (TRICARE medical benefits). Section 702 of NDAA–18 amends both section 1074g and section 1079 (the section 1079 amendment being automatically applicable to section 1086).

###### C. Summary of Major Provisions of the Interim Final Rule

The major provisions of the interim final rule are the following.

1. *Updating Cost-Sharing.* Under the authority of section 1074g(a)(6), as amended by Section 702(a) of NDAA FY18, we are amending 32 CFR 199.21(i) to cross reference the statutory changes.

2. *Uniform Formulary Changes.* Based on section 1074g(a)(10), as added by Section 702(b)(1) of NDAA FY 18, we are changing the Uniform Formulary process under 32 CFR 199.21(e) by authorizing the exclusion of any pharmaceutical agent that provides very little or no clinical effectiveness relative to similar agents, and preferential status for pharmaceutical agents that have enhanced clinical effectiveness relative to similar agents.

3. *Pharmaceutical Agents as Part of Medical Services.* Based on 10 U.S.C. 1079(q), as added by Section 702(b)(2) of NDAA FY18, we are changing provisions of 32 CFR 199.14 to authorize the adoption of special reimbursement methods, amounts and procedures to encourage the use of high value products and discourage the use of low value products—both relative to similar agents—in connection with pharmaceutical agents provided as part of outpatient medical services covered by TRICARE.

## II. Provisions of Interim Final Rule

### A. Updating Co-Payments

The interim final rule amends 32 CFR 199.21(i)(2), which is the paragraph of the TRICARE regulation that governs cost-sharing amounts under the Pharmacy Benefits Program. The amended language simply cross references the statutory specifications on cost-sharing, including the table set forth in 10 U.S.C. 1074g(a)(6)(A). This table lists cost sharing amounts for the years 2018 through 2027 for generic, formulary, and non-formulary pharmaceutical agents dispensed by retail network pharmacies and the mail order pharmacy program. Two exceptions are that there is a \$0 cost-share for vaccines/immunizations authorized as preventive care for eligible beneficiaries and provided by