legislation is to impose a new duty or burden based upon past acts (*id.* (citations omitted)). The Court noted, however, that it would ''hesitate to approve the retrospective imposition of liability on any theory of deterrence * * * or blameworthiness'' (*id.* (citations omitted)). Neither exception applies to debarment.

As discussed above, debarment is remedial, in that it prohibits certain individuals from providing services to a person that has an approved or pending drug product application, in order to meet the legitimate regulatory purpose of restoring the integrity of the drug approval and regulatory process and protecting the public health. In addition, the remedial nature of the GDEA is not diminished simply because the GDEA deters debarred individuals and others from future misconduct (*U. S.* v. *Halper*, 109 S. Ct. 1892, 1901, n.7 (1989); *Bae* v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995)). Thus, debarment for a 1991 conviction does not violate Mr. Elbert's due process rights.

With regard to his ''takings'' assertion, Mr. Elbert has not established that his debarment affects any property interest protected by the Fifth Amendment. The expectation of employment is not recognized as a protected property interest under the Fifth Amendment (*Hoopa Valley Tribe* v. *Christie*, 812 F.2d 1097, 1102 (9th Cir. 1986); *Chang* v. *United States*, 859 F.2d 893, 896–897 (Fed. Cir. 1988)). One who voluntarily enters a pervasively regulated industry, such as the pharmaceutical industry, and then violates its regulations, cannot successfully claim that he has a protected property interest when he is no longer entitled to the benefits of that industry (*Erikson* v. *United States*, 67 F.3d 858 (9th Cir. 1995)).

Mr. Elbert further alleges that his debarment denies him ''equal protection of law,'' insofar as persons other than individuals are subject to debarment for acts occurring after enactment of the GDEA, and individuals are subject to debarment for acts and convictions that occurred prior to enactment of the statute as well. This argument also must fail. A statutory classification, such as that made in the GDEA between individuals and persons other than individuals, that neither burdens a fundamental right nor targets a suspect class, will be sustained if the classification bears a rational relationship to a legitimate legislative end (*Romer* v. *Evans*, 116 S. Ct. 1620, 1627 (1996)). The classification will be upheld even if it works to the disadvantage of a particular group (*id*). Moreover, under the rational basis standard of review, Congress need not articulate the rationale supporting its classification (*FCC* v. *Beach*, 113 S. Ct. 2096, 2102 (1993)). The distinction drawn between individuals and persons other than individuals may well have been supported by the fact that Congress had before it evidence from hearings that at least one company that had been found guilty or had admitted to fraud had obtained new management prior to passage of the GDEA (*Generic Drug Enforcement: Hearing on H.R. 2454 Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 102d Cong., 60–61 (1991) (statement of Dee Fensterer, President, Generic Pharmaceutical Industry Association)).

Mr. Elbert does not dispute the fact that he was convicted as alleged by FDA. Under section 306(l)(1)(B) of the act, a conviction includes a guilty plea. The facts underlying Mr. Elbert's conviction are not at issue. Mr. Elbert's legal arguments do not create a basis for a hearing. Accordingly, the Deputy Commissioner for Operations denies Mr. Elbert's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act and under authority delegated to him (21 CFR 5.20), finds that Robert Elbert has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Robert Elbert is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective April 3, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Elbert, in any capacity, during his period of debarment, will be subject to a civil money penalty (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Elbert, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any ANDA or abbreviated antibiotic drug application submitted by or with the assistance of Mr. Elbert during his period of debarment.

Mr. Elbert may file an application to attempt to terminate his debarment under section 306(d)(4) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 93N–0457 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–8555 Filed 4–2–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0171]

Discovery Experimental and Development, Inc.; Denial of a Hearing and Refusal to Approve a New Drug Application for Deprenyl (Deprenyl Citrate) Gelatin Capsules and Liquid; Final Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs (the Commissioner) is denying a request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) refusing to approve a new drug application (NDA) for Deprenyl (deprenyl citrate) submitted by Discovery Experimental and Development, Inc., 29949 S.R. 54 West, Wesley Chapel, FL 33543 (Discovery). Discovery requested an opportunity for a hearing after the Food and Drug Administration (FDA) issued a proposal to refuse to approve the firm's NDA for Deprenyl. FDA is denying Discovery's request for a hearing because Discovery failed to raise any genuine and substantial issue of fact that would entitle it to such a hearing. FDA bases this order refusing to approve Discovery's product on a finding that, among other deficiencies in the application, there is insufficient information to determine whether Discovery's deprenyl citrate is safe for use or will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling.

EFFECTIVE DATE: April 3, 1997.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1698.

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 1991, Discovery submitted NDA 20–242 for deprenyl citrate (also referred to in Discovery's response to the notice of opportunity for a hearing (NOOH) as deprenyl and selegiline), proposing to label it for the treatment of Alzheimer's disease.[1] On December 7, 1992, Discovery submitted an amendment to the NDA.

In a letter dated January 17, 1992, FDA notified Discovery that it was not filing NDA 20–242, under § 314.101(d) (21 CFR 314.101(d)), because the application did not contain information necessary to permit a substantive review. In the letter, FDA listed the reasons for its refusal as required by § 314.101. In its reply letter dated January 23, 1992, Discovery requested an informal conference with FDA. Following subsequent communications with Discovery regarding the scheduling of the hearing,[2] the conference was held on November 16, 1992.

At the conference, FDA informed Discovery of its (Discovery's) options in light of FDA's refusal to file the NDA. In a letter dated November 24, 1992, FDA reiterated that Discovery's application could be filed over protest under § 314.101(c),[3] which Discovery requested on December 7, 1992.

In a letter dated December 31, 1992, FDA notified Discovery that FDA would file the NDA over protest; that the application would be reviewed ''as filed;'' that, in accordance with § 314.101(c), any amendment received after December 10, 1992, would not be considered; and that FDA considered Discovery's December 7, 1992, amendment, to be a ''major amendment'' within the meaning of § 314.60(a) (21 CFR 314.60(a)), requiring 180 days for its review.

In a letter dated August 20, 1993, and in accordance with § 314.120 (21 CFR 314.120), FDA advised Discovery that NDA 20–242 was not approvable. In the letter, FDA explained in detail the reasons for its judgment. Discovery responded by letter dated September 1, 1993, and, under § 314.120(a)(5), requested an extension of 180 days to consider its options with respect to the NDA. FDA granted the extension. In a letter dated March 1, 1994, Discovery requested an opportunity for a hearing under § 314.120(a)(3) on the question of whether there were grounds for FDA's refusal to approve NDA 20–242.

In the NOOH of May 19, 1994, FDA proposed to refuse to approve Discovery's NDA and offered Discovery an opportunity for a hearing. FDA's NOOH informed Discovery that if it requested a hearing, it could not rest on mere allegations or denials but would have to present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The NOOH also stated that if it conclusively appeared from the face of the data, information, and factual analysis submitted in support of a hearing request that there was no genuine and substantial issue of fact precluding the refusal to approve the NDA, or if the request for a hearing was not made in the required format with the required analyses, the Commissioner would enter summary judgment against Discovery, denying its request for a hearing. In a letter filed on June 14, 1994, Discovery submitted a request for a hearing and supporting arguments (Discovery's response).[4]

I have reviewed Discovery's arguments and find that Discovery has not raised a genuine and substantial issue of fact requiring a hearing under §§ 12.24(b) and 314.200(g) (21 CFR 12.24(b) and 314.200(g)), and that summary judgment should be granted against Discovery. Moreover, on the basis of all, or any one of, the numerous deficiencies in Discovery's NDA, I find that I cannot approve NDA 20–242, under section 505(d) of the act (21 U.S.C. 355(d)). The reasons for my decision are described below.

II. Discovery's Response to the NOOH

A. Discovery's General Allegations

Before responding to the specific deficiencies in NDA 20–242 cited by FDA in the NOOH, Discovery made numerous preliminary allegations and accusations against FDA in its request for a hearing.[5] Generally, Discovery alleged that FDA was biased, misused its power, and violated numerous regulatory requirements, as well as Discovery's constitutional rights, during its review of NDA 20–242. In sections II.A.1 through II.A.3 of this document, I address allegations that Discovery made on pp. 2–26 of its response, all of which in some way challenge the statutory or regulatory requirements for the approval of new drugs. In section II.A.4 of this document, I address Discovery's allegations of agency bias and incompetency with respect to FDA's review of NDA 20–242, contained in pp. 18–20 of its response. In section II.A.5 of this document, I address 13 specific ''illegalities'' that Discovery alleged were committed by FDA, and which are listed on pp. 27–29 of Discovery's response.

1. FDA has misused its power as a government agency by enforcing its regulations ''as if they were laws enacted by Congress.''

Discovery's allegation is a legal argument that does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Regulations issued under the act and under the notice and comment provisions of the Administrative Procedures Act (5 U.S.C. 553) have the force and effect of law. It is appropriate for FDA to enforce them as having such effect (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); *National Ass'n of Pharmaceutical Mfrs.* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 877 (2d Cir. 1981)). Therefore, there is no misuse of power by FDA, and there is no merit to Discovery's allegation.

2. ''The Commissioner has the power to approve or disapprove any pharmaceutical, without conducting any trials, or without following any regulations, simply with the stroke of a pen.''

The first part of Discovery's allegation, that FDA can approve or disapprove a new drug without it conducting any trials, is true. The act places the burden of conducting the trials required for the approval of a new drug on the applicant, not FDA (section 505(b) of the act). However, this fact has no probative value in the case. It only raises the question whether the necessary trials have been done.

As to the second part of Discovery's assertion, that the Commissioner does not have to follow any regulations, while the Commissioner has the authority to use discretion in the enforcement of the act and its implementing regulations, and while certain criteria that apply to clinical investigations may be waived (e.g., § 314.126(c) (21 CFR 314.126(c))), the

[1] An NDA for another deprenyl product, selegiline hydrochloride (Eldepryl®), was approved by FDA on June 5, 1989, for the treatment of Parkinson's disease. The NDA is held by Somerset Pharmaceuticals, Inc., Tampa, FL (hereinafter referred to as Somerset).

[2] Subsequent communication occurred in letters dated: March 4, 1992; March 17, 1992; March 19, 1992; August 26, 1992; September 16, 1992; September 21, 1992; September 23, 1992; October 8, 1992; October 9, 1992; October 13, 1992; October 20, 1992; and October 28, 1992.

[3] Now codified in § 314.101(a)(3).

[4] On p. 1 of its response, Discovery stated that it was addressing its NADA's 20–242 and 20–244. However, as stated by Discovery on pp. 4 and 5 of its response, it had not yet filed NDA 20–244. The NOOH pertained only to NDA 20–242.

[5] In its response, Discovery refers to itself by its acronym, DEDI.

Commissioner may not disregard the statutory standards for the approval of new drugs (section 505(d) of the act (requiring that the Commissioner *shall* issue an order refusing to approve an NDA if he finds certain information lacking) (emphasis added); *Edison Pharmaceutical Co., Inc.* v. *FDA,* 600 F.2d 831 (D.C. Cir. 1979); *Hoffman-LaRoche, Inc.* v. *Weinberger,* 425 F. Supp. 890 (D.D.C. 1975); see also, § 314.200(e)(3)). New drugs are to be approved on the basis of substantial evidence consisting of adequate and well-controlled investigations, including clinical investigations (section 505(b) of the act). Indeed, FDA's new drug approval process has been upheld by the Supreme Court as a constitutional means of protecting the public from unsafe or ineffective drugs (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609 (1973)). Discovery's response, therefore, is not correct as a matter of law. It does not present an issue of fact for resolution at a hearing, §§ 12.24(b)(1) and 314.200(g), and is without merit.

3. ''FDA requires a drug to be tested in a multitude of phases with the most absurd required testing being the double blind, placebo based clinical trial,'' and that this requirement is unconstitutional.

The act requires an applicant to submit substantial evidence of safety and effectiveness and defines substantial as consisting of well-controlled studies (section 505(b) and (d) of the act). FDA regulations in turn identify the characteristics of a well-controlled study, advising applicants that one hallmark of a well-controlled study is the use of procedures to minimize bias, such as blinding and use of placebos (§ 314.126). Discovery's allegations, therefore, challenge the statutory and regulatory requirements of the act for the approval of a new drug. As such, they are legal arguments, which do not raise an issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Nor do these arguments have any merit. FDA's testing requirements have been specifically upheld by the Supreme Court (*Weinberger* v. *Hynson, Westcott, & Dunning, supra*).

4. FDA is arrogant, incompetent, and biased; and has conspired with the drug industry and the American Medical Association to target nonmainstream practitioners in order to eliminate the competition with certain pharmaceutical companies.

Discovery did not submit any specific evidence that FDA failed to perform a competent review of NDA 20–242, or that it conspired with the American Medical Association to eliminate competition in the drug industry by disapproving NDA 20–242. Similarly, Discovery did not submit any specific and reliable evidence of arrogance or bias in FDA's review of NDA 20–242. Because Discovery's response consists of mere allegations, it fails to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24 (b)(2) and 314.200(g)). I find that the record reflects that, in FDA's review of Discovery's NDA, it was appropriately concerned with one primary issue—whether NDA 20–242 contained the information required by the act. Therefore, I find no merit to Discovery's allegation.

5. FDA has committed 13 ''illegalities,'' as follows (Discovery response, pp. 27–29):

a. FDA violated Discovery's Fourth Amendment rights under the Constitution by illegally searching and seizing all items relating to Deprenyl in December 1990, which led to the illegal arrest and incarceration of Discovery's president in February 1991.

Discovery's allegation that FDA violated Discovery's constitutional rights are legal arguments, which do not raise a genuine and substantial factual issue of fact for which a hearing is required (§§ 12.24(b)(1) and 314.200(g)).

Moreover, in support of this allegation, Discovery submitted exhibit 2, attached to its response. Exhibit 2 consists of photocopies of an Order On Defendant's Motion To Suppress and an Order Dismissing Case and Releasing Cash Bond (Case No. 91–622CFAES). It is facially apparent that these documents pertain to a matter within the jurisdiction of the Criminal Division of the Circuit Court for Pasco County, FL, namely a vehicular stop for a traffic violation and subsequent seizure of unidentified pills and powder by the Pasco County Sheriff's Office from the possession of Mr. James Kimball, President of Discovery, on December 21, 1990.[6] Discovery's exhibit in support of its allegation does not indicate any FDA involvement in the traffic stop and seizure.[7] An alleged violation of Mr. Kimball's or Discovery's constitutional rights involving a traffic stop and seizure by a Pasco County, FL, sheriff's office does not raise a genuine issue of fact related to the approvability of NDA 20–242 requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). The allegation simply is not relevant to this proceeding.

b. FDA deliberately misconstrued applications Discovery submitted to have its products approved and returned them to the company.

Discovery submitted the applications to which it refers in an unsuccessful effort to have its product regulated as a food supplement rather than as a new drug. See letter dated April 10, 1991, from FDA to Discovery submitted in Discovery's NOOH response as exhibit 3. As the letter states, the applications were returned to Discovery because the product could not be regulated as a food supplement as requested by Discovery. Discovery's statement regarding the return of its applications, therefore, is true. Discovery did not submit any evidence, however, in support of its allegation that FDA ''deliberately misconstrued'' its applications.

To the extent that Discovery alleges that FDA returned its applications, there is no question but the allegation is true. To the extent that Discovery alleges that FDA ''deliberately misconstrued'' its applications, however, Discovery's response consists of a mere allegation. Mere allegations do not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(2) and 314.200(g)).

There is nothing in the record that indicates that FDA ''deliberately misconstrued'' Discovery's request that FDA regulate Deprenyl as a food supplement, or that FDA's return of the applications was improper. The letter from FDA to Discovery explains why FDA could not regulate Deprenyl as a food supplement. In its response, Discovery did not challenge the basis of FDA's decision in its response. Finally, Discovery was not hindered in any way from resubmitting the applications as NDA's. Therefore, Discovery's allegation has no probative value in, and is not relevant to, this proceeding.

c. FDA lost two applications that Discovery submitted in April 1991 for Liquid Deprenyl Citrate.

Irrespective of the validity of Discovery's allegation, FDA's action with respect to other NDA's is not determinative of the approvability of NDA 20–242. The matter before me pertains to FDA's proposal to refuse to approve NDA 20–242 due to insufficient information contained in the NDA, not to alleged FDA actions pertaining to other NDA's.

In addition, in light of other serious deficiencies associated with NDA 20–242, resolution of this issue is not determinative with respect to the approvability of NDA 20–242. At most, Discovery's response raises an issue for

[6] Even if this allegation were true, it is difficult to see its relevance given the fact that it occurred before Discovery submitted its NDA to FDA (November 1991).

[7] Discovery also contends on p. 2 of its response that FDA violated it's First Amendment right to free speech when FDA ''instigated'' the illegal stop, search, and seizure.

which a hearing is not required (§§ 12.24(b)(4) and 314.200(g)).

d. FDA violated § 314.103 (21 CFR 314.103) in January 1992 by not granting a hearing to Discovery regarding its two NDA's for Liquid Deprenyl Citrate.

Section 314.103 expresses FDA's policy in favor of the timely and amicable resolution of disputes between an applicant and FDA reviewing divisions regarding the technical requirements of NDA's. It also advises applicants to seek the assistance of the agency ombudsperson to resolve such difficulties. Section 314.103(c)(2) states that, ''FDA will make every attempt to grant requests for meetings that involve important issues and that can be scheduled at mutually convenient times.''

Discovery requested a meeting with FDA officials in a letter that FDA received on January 29, 1992. Thereafter, the record reflects numerous communications between the agency and Discovery[8] during which Discovery sought the assistance of FDA's ombudsperson in scheduling a meeting. Agency officials met with Discovery on November 16, 1992. Assuming that Discovery's allegation is that FDA officials violated § 314.103 because they failed to meet with Discovery in January 1992, but instead delayed until November 1992, the regulations placed no burden on FDA to meet with Discovery within any specific time period other than ''at [a] mutually convenient'' time. Therefore, I find that the information submitted by Discovery is insufficient to justify Discovery's allegation that FDA ''violated'' § 314.103 in January 1992. A hearing, therefore, is not required (§§ 12.24(b)(3) and 314.200(g)).

Furthermore, even if Discovery's allegation is viewed as accurate, in light of the numerous serious deficiencies in NDA 20–242, resolution of this issue would not be determinative of the basic issue in this matter, the approvability of the NDA, and a hearing, therefore, is not required (§§ 12.24(b)(4) and 314.200(g)).

e. FDA violated § 314.102(c) (21 CFR 314.102(c)) by not granting Discovery a ''90-day conference.''

Discovery's contention is that FDA failed to grant a conference within 90 days after receiving Discovery's NDA. This statement is true. The purpose of a ''90-day conference'' is ''to provide applicants with an opportunity to meet with agency reviewing officials [approximately 90 days after FDA receives an NDA] * * * to inform applicants of the general progress and status of their applications, and to advise applicants of deficiencies that have been identified by that time and that *have not already been communicated*'' (§ 314.102(c) (emphasis added)).

FDA received NDA 20–242 on November 29, 1991, and an amendment to the NDA on December 6, 1991. On January 17, 1992, FDA notified Discovery of the deficiencies in its application, and that it was refusing to file NDA 20–242. Although there is no question that FDA did not offer Discovery a conference on any deficiencies that it had *not* communicated, its failure to do so does not justify a hearing. A 90-day conference with Discovery would have served no purpose. When Discovery filed its application over protest, FDA had already informed Discovery that NDA 20–242 did not contain information required by section 505(b) of the act and § 314.101(d)(3). There was no question about the status of the application or any noncommunicated deficiencies. Therefore, there was no new information to convey to Discovery in a 90-day conference.

I find that Discovery was not prejudiced in any way by FDA's failure to grant it a 90-day conference. Moreover, in light of the other significant deficiencies in NDA 20–242, the issue of whether FDA should have done so is not determinative of whether the NDA is approvable. This allegation by Discovery, therefore, does not raise a factual issue on which a hearing is required (§§ 12.24(b)(4) and 314.200(g); also see *Pineapple Growers Assoc. of Hawaii* v. *Food and Drug Administration,* 673 F.2d 1083, 1086 (9th Cir. 1982)).

f. FDA violated Discovery's constitutional rights under the Fifth and Fourteenth Amendments by ''making up'' rules regarding amendments to Discovery's application during final review.

Discovery's allegation that FDA violated Discovery's constitutional rights are legal arguments and, as such, fail to raise a genuine and substantial factual issue for which a hearing is required (§§ 12.24(b)(1) and 314.200(g)).

Upon review of the record, I find no evidence that FDA ''made up'' rules regarding the submission of amendments to NDA's filed over protest. The record reflects that FDA informed Discovery in a letter dated November 24, 1992, that after an NDA is filed over protest, FDA would not consider additional amendments in the review of the NDA, in accord with § 314.101(c) (now § 314.101(a)(3)). This regulation states that, ''the agency will file the application * * * over protest * * * and review it *as filed*'' (emphasis added). Further, in the November 24, 1992, letter, FDA responded to Discovery's suggestion that it might want to summit an amendment to its NDA and advised Discovery that it could amend its application so long as it did so before it was filed over protest. Discovery was, thus, fully advised of the regulatory requirements regarding the submission of amendments to its NDA filed over protest.

g. FDA violated §§ 314.102(a) and (b) and 314.103(a), (b), and (c) by failing to articulate the deficiencies in Discovery's application during the review process.

Section 314.102 refers to reasonable efforts at notification of easily correctable efficiencies or the need for additional data. Section 314.103 establishes a process for dispute resolution.

The record reflects that Discovery's NDA was not under review until December 7, 1992, at which time Discovery was fully apprised of the application's deficiencies. See letter dated January 17, 1992, from Dr. Paul Leber, FDA, to Mr. James T. Kimball, president of Discovery, with attachment; transcript of the informal meeting between FDA and Discovery held on November 16, 1992; letter dated December 7, 1992, from Mr. James T. Kimball to Dr. Paul Leber, FDA; and letter dated December 31, 1992, from Dr. Paul Leber to Mr. James T. Kimball.

Discovery submitted NDA 20–242 on November 29, 1991, and amended its application on December 6, 1991. In a letter dated January 17, 1992, FDA informed Discovery that its submission was facially deficient, listed the deficiencies in an attachment, and notified Discovery that FDA refused to file the NDA. At this time, the NDA was not under review by FDA. Discovery was again informed of the deficiencies during an informal conference held with FDA on November 16, 1992. On December 7, 1992, Discovery requested that FDA file NDA 20–242 over protest.

Thus, NDA 20–242 was not under review by FDA until December 7, 1992, when the agency filed it over protest. At that time, Discovery had already been informed of the substantial deficiencies in its NDA as a result of the January 17, 1992, letter, and the November 16, 1992, conference. In a letter dated August 20, 1993, FDA informed Discovery that its NDA was not approvable and listed in detail numerous significant deficiencies. Based on this record, it is clear that FDA articulated the deficiencies in NDA 20–242 to Discovery before the review process even began and thus gave Discovery an opportunity to correct the

[8] *Supra* note 2.

deficiencies before it filed Discovery's NDA for review over protest.

Although FDA did not communicate with Discovery after it began its review of NDA 20–242 over protest, it had already done so on two occasions before its review process began, thus fulfilling the intent of the regulations. FDA had communicated the type of information contemplated by §§ 314.102(a) and (b) and 314.103(a), (b), and (c) to Discovery *before* the review began.

Consequently, I find that this allegation by Discovery does not raise a genuine and substantial issue of fact. Therefore, this allegation does not justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

h. FDA violated § 314.100 (21 CFR 314.100) by not notifying Discovery that its application was approved within 180 days of its receipt or disapproved.

Section 314.100 states that within 180 days of receipt of an NDA, FDA will review it and send the applicant either an approval letter or a not approvable letter.

Discovery submitted NDA 20–242 on November 29, 1991, and amended it on December 6, 1991. As stated above, however, Discovery's NDA was not filed until December 7, 1992. FDA issued its not approvable letter on August 20, 1993. Whether measured from November 29, 1991; December 6, 1991; or December 7, 1992, FDA did not meet the 180-day deadline. There is no issue of fact with regard to this point (*Pineapple Growers Assoc. of Hawaii,* 673 F.2d at 1086).

The consequence of FDA delay in approving or disapproving an NDA, however, is not the approval of the NDA. Federal courts have recognized that the proper remedy of a party seeking to enforce a statutory deadline is to seek an order compelling the agency to act, not to challenge the legitimacy of post-deadline agency action. The Federal courts have also recognized that if an agency's regulations do not specify the consequence for noncompliance with regulatory timing provisions, as is the case here, then the provision is merely directory rather than mandatory. In such cases, Federal courts will not ordinarily impose their own sanction nor will they seek to reorder agency priorities.[9]

Discovery has made no showing that FDA did not respond to Discovery's NDA as quickly as possible given the competing demands on its resources. In light of the failure of Discovery to demonstrate that its product is safe and effective, I find that there is no basis, consistent with the act, to grant it the relief it seeks.

i.-m. FDA committed five ''illegalities'' with respect to its approval of an NDA submitted by Somerset Pharmaceuticals, Inc. for its Eldepryl® product.

The five illegalities asserted by Discovery are based upon Discovery's allegation that, at the time of its approval by FDA, Eldepryl® was contaminated with methamphetamine and amphetamine, both of which are controlled substances under laws administered by the Drug Enforcement Agency. Discovery did not submit any evidence to support its allegation. On p. 32 of its response, Discovery merely stated that it ''is fully prepared to argue and prove that Eldepryl®, prior to 1993, was contaminated with a high degree of methamphetamine and amphetamine, and was not selegiline hydrochloride but a contaminated version of selegiline hydrochloride.''

Discovery further alleged that FDA violated various sections of FDA regulations and law by: Approving Eldepryl® knowing it to contain controlled substances; failing to require that Eldepryl® labels declare the presence of the controlled substances; allowing the importation and distribution of Eldepryl®; failing to require that Somerset notify DEA of the presence of controlled substances in its Eldepryl® product; and causing all pharmacists filling prescriptions of Eldepryl® to violate the law.

Discovery submitted no evidence in support of its allegation that Eldepryl® was contaminated with controlled substances when it was approved and that FDA was aware of this fact. Discovery's mere allegations, therefore, do not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(2) and 314.200(g)).

Moreover, Discovery's response to the NOOH failed to make clear the relevance of FDA's approval and regulation of Somerset's Eldepryl® to the issue of whether Discovery's NDA 20–242 for Deprenyl was approvable. In the absence of some reason to conclude otherwise, I find that FDA's approval and regulation of Eldepryl® are irrelevant to the issue before me, i.e., the approvability of NDA 20–242. FDA approval of another drug product does not exempt Discovery's NDA from compliance with the new drug provisions of the act. Resolution of Discovery's allegations, therefore, is not probative of the approvability of NDA 20–242.

B. Statutory and Regulatory Framework

The act provides that:

Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a) of this section. Such person shall submit to the Secretary as a part of the application (A) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (B) a full list of the articles used as components of such drug; (C) a full statement of the composition of such drug; (D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (E) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (F) specimens of the labeling proposed to be used for such drug.[10]

Section 505(b)(1) of the act

The act requires that:

If the Secretary, [and by delegation of authority, the Commissioner of Food and Drugs] finds, after due notice to the applicant in accordance with subsection (c) of this section and giving him an opportunity for a hearing, in accordance with said subsection, that:

* * * * *

(3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity;

(4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions; or

(5) evaluated on the basis of the information submitted to him as part of the application and any other information before him with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the condition of use prescribed, recommended, or suggested in the proposed labeling thereof; * * * he shall issue an order refusing to approve the application.

[9] See *In re. Barr Laboratories, Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1991); *Brotherhood of Railway Carmen* v. *Pena,* 64 F.3d 702, 704 (D.C. Cir. 1995); *United States* v. *James Daniel Good Real Property,* 510 U.S. 43, 62–65 (1993).

[10] Section 314.50 (21 CFR 314.50) sets out what is required to be in such ''full'' reports, statements, and descriptions. The regulation requires an NDA to contain, among other information, a full description of the composition, manufacture, and specifications of the drug substance and the drug product; an environmental assessment or a claim for exclusion; the results of nonclinical studies necessary to assess the pharmacological and toxicological profile of the drug or clinical data to obviate the need for such studies; the results of clinical studies necessary to assess the safety and efficacy of the drug product; the proposed labeling of the drug product; evidence demonstrating the in vivo bioavailability of the drug product or information which would permit FDA to waive such data; and compliance with FDA's current good manufacturing practice (CGMP) regulations for finished pharmaceuticals (parts 210 and 211 (21 CFR parts 210 and 211)).

Section 505(d) of the act[11]

C. Evidence of Safety

For approval of its NDA, Discovery was required to submit to FDA, among other information, ''full reports of investigations which have been made to show, whether or not such drug is safe for use * * *,'' as required by section 505(b)(1) of the act, as well as all information required by § 314.50.

In the NOOH, FDA stated that NDA 20–242 failed to contain any nonclinical studies[12] necessary to assess the safety of the drug or any clinical data to obviate the need for such studies; that the copies of published studies Discovery submitted in support of the safety of Deprenyl were not performed using its product; and that it was apparent from the NDA that Discovery had sought to use the safety studies contained in an NDA for another FDA approved product, Eldepryl®, manufactured by Somerset, as evidence of the safety of its Deprenyl product, which it could not do.[13]

In its response, Discovery made three arguments related to the safety of Deprenyl: that Deprenyl was as safe as Eldepryl®, therefore, FDA should have approved Deprenyl; that Discovery had submitted 29 studies in its NDA that established the safety of Deprenyl; and that FDA had collected a sample of Deprenyl and purposely withheld the results of its analysis from publication in the NOOH. I will consider each of these arguments to see, first, whether they justify granting a hearing, and second, whether they would justify a finding that Deprenyl is safe.

1. Deprenyl is as Safe as Eldepryl®

Eldepryl® is currently being marketed by Somerset for the treatment of Parkinson's disease. However, when Discovery's NDA was filed, Somerset still enjoyed its exclusivity period granted by the act (section 505(c)(3)(D)(ii) of the act and 21 CFR 314.108). Thus, Discovery was prohibited by the act from using any of the data contained in the Eldepryl® NDA to support its NDA for Deprenyl.[14]

Barred by the act from using any information contained in the Eldepryl® NDA, Discovery's mere reassertion in its response to the NOOH that its product is as safe as Eldepryl® does not raise a genuine and substantial issue of fact requiring a hearing. Discovery has not presented any data or other evidence to support its assertion (§§ 12.24(b)(2) and 314.200(g)).

Discovery did not challenge FDA's statement in the NOOH that Discovery claimed that its product is not the same as the FDA-approved product, Eldepryl®. Indeed, Discovery stated that:

> [It] is fully prepared to argue and prove that Eldepryl, prior to 1993, was contaminated with a high degree of methamphetamine and amphetamine, and was not selegiline hydrochloride but a contaminated version of selegiline hydrochloride. These contaminants in Eldepryl lessen the effectiveness of the selegiline. Thus, the product is not selegiline or selegiline hydrochloride as approved by the FDA, but selegiline hydrochloride plus methamphetamine and amphetamine * * *. Even with the improvements made in the methamphetamine/amphetamine content of Eldepryl in 1993, and as reformulated, the Eldepryl product still contains methamphetamine, unlike [Discovery's] selegiline in which the methamphetamine content is, in essence, unmeasurable. * * * [n]o one has made deprenyl that compares to the purity of [Discovery's] product * * *. Products made without contaminates, in their purest form, prove much safer and effective than the contaminated products allowed by the FDA.

Discovery response to NOOH, pp. 32–34

Finally, Discovery failed to challenge the absence in its NDA of a ''right of reference'' to the Eldepryl® NDA or FDA's finding that it (Discovery) had failed to otherwise comply with the requirements of section 505(b)(2) of the act.[15]

Notwithstanding the statutory prohibition against Discovery using safety data contained in the Eldepryl® NDA, Discovery's admission that its product is different than Eldepryl® alone is fatal to its argument that the safety of Deprenyl could be established by comparing it to the approved product, Eldepryl®. Therefore, I find no merit to the first of Discovery's three assertions on the safety of Deprenyl.

2. Discovery Submitted 29 Trials that Showed Deprenyl to be Safe

In its response to the NOOH, Discovery asserted that its product ''has been proven safe in over 30 years of clinical use,'' and that Deprenyl ''has unequivocally proven to be one of the safest, if not the safest product to take'' for the treatment of Alzheimer's disease (Discovery response, pp. 31, 40). Discovery did not present any safety studies in its response. Instead, it stated that:

> it saw absolutely no rationale for conducting clinical safety tests with deprenyl, when [Discovery] submitted at least 29 trials [in its NDA] that stated, in essence, that deprenyl is safer than most pharmaceuticals on the market [and] safer than raw seafood or uncooked fresh fruits and vegetables * * *.

Discovery response, p. 31

Discovery did not identify which of the 171 published studies it submitted in its NDA were the 29 that it believed established the safety of Deprenyl.

As stated in the NOOH, Discovery could have established the safety of Deprenyl in its NDA in two ways. Either it could have performed and submitted the necessary toxicological and pharmacological studies on its product, or it could have submitted clinical data to obviate the need for such data. In its response, Discovery does not contest the absence of pharmacological or toxicological studies in its NDA. Discovery does, however, assert that it submitted 29 studies in its NDA that established the safety of Deprenyl.

In the NOOH, FDA explained that it could not accept any of the 171 published studies submitted in NDA 20–242 as evidence of the safety of Discovery's product because none of the studies used Discovery's product. Any study purporting to compare the safety of Discovery's product to other pharmaceutical products on the market, or to raw seafood and uncooked fresh fruits and vegetables, would have to use Discovery's product as a test article or one shown to be bioequivalent to Discovery's product. Because none of the published studies submitted in NDA 20–242 used Discovery's product, and Discovery did not submit any information showing that any of the test articles used in the studies was bioequivalent to its product, none of the

[11] Section 314.125(b) (21 CFR 314.125(b)) sets forth additional reasons for which FDA may refuse to approve an NDA, including: The absence of bioavailability data required by part 320 (21 CFR part 320); the failure of drug products' proposed labeling to comply with the requirements for labels and labeling in part 201 (21 CFR part 201); and the failure to assure that the methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, or holding of the drug substance or the drug product comply with the CGMP regulations in parts 210 and 211. Further, § 314.125(a)(3) states that FDA may refuse to approve an NDA for any of the reasons listed in § 314.125(b).

[12] Nonclinical studies are studies involving animals as test subjects and are designed to determine if the new drug is safe for use in humans.

[13] FDA notified Discovery in its ''not approvable letter'' dated August 20, 1993, that Somerset was granted exclusive marketing for Eldepryl® in NDA 19–338 for 5 years from the date of its approval (June 5, 1989) and that section 505(c)(3)(D)(ii) of the act prohibited anyone from submitting an NDA seeking to use the safety and efficacy data contained in the approved application for any other form of the drug (including other salts, esters, etc.) until the exclusivity period expired (June 6, 1994).

[14] Somerset's exclusivity period expired on June 6, 1994. This fact is not relevant to this proceeding because I am reviewing an application that was filed before that date. I express no view as to the significance of the safety and effectiveness data in NDA 19–338 (Eldepryl®) for Discovery's application because that question is not before me.

[15] Absent a right of reference, Discovery would have had to comply with other requirements of section 505(b)(2) of the act, including that Discovery submit a certification that the patent for Eldepryl® did not apply, which it did not do.

studies could be used to make such comparisons nor to reach such conclusions.

In its response, Discovery did not challenge FDA's statements in the NOOH that NDA 20–242 failed to contain any safety studies of Deprenyl, preclinical or clinical, and that the 171 studies it submitted were not conducted using its product. Discovery thus fails to raise an issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Discovery's mere assertions that its product has been proven safe; that it is has been proven to be one of the safest products to take for the treatment of Alzheimer's disease; that it is safer than most pharmaceuticals on the market; and that it is safer than raw seafood or uncooked fresh fruits and vegetables are not sufficient to raise a genuine and substantial issue of fact requiring a hearing, §§ 12.24(b)(2) and 314.200(g), or to establish the safety of its product. Therefore, I find that Discovery's second allegation is also without merit.

3. FDA's Analytical Evidence Showed Deprenyl to be Safe

Finally, Discovery asserted that FDA had collected a sample of 50 bottles of its product during an FDA inspection of Discovery and had ''conveniently'' left the results out of the NOOH, implying that the results were favorable to Discovery. Discovery submitted no evidence that FDA had performed any safety studies using the sample it collected from Discovery (Discovery response, p. 33).

FDA has no obligation to, nor does it, use the results of tests performed on samples that it collects during an inspection as a substitute for safety studies conducted by a sponsor in support of approval of a new drug product. The act places the burden of establishing the safety of a new drug on the NDA sponsor, not FDA (section 505(b)(1) of the act).

Moreover, with respect to the sample of Discovery's product collected by FDA investigators, in its response to the NOOH Discovery admitted that it ''held back **DELIBERATELY**, due to **MISTRUST**, the **PUREST LIQUID DEPRENYL** product [from the FDA investigators] which would have been put into [its] production runs'' (Discovery response, p. 8 (emphasis in original)). Thus, notwithstanding the fact that the act places the burden for safety studies on the applicant, even if FDA did perform safety studies using the sample collected during the inspection, such studies could not demonstrate the safety of the form of the product that Discovery itself says that it uses. Thus, Discovery's third assertion neither suggests the existence of an issue of fact that would justify a hearing nor the existence of evidence to establish the safety of Discovery's product.

In sum, Discovery offered no evidence in its response to challenge FDA's conclusion in the NOOH that NDA 20–242 was not approvable because it failed to contain any safety studies of Deprenyl, preclinical or clinical, or that the studies it submitted as part of its NDA were not acceptable as evidence of Deprenyl's safety because the studies were not conducted with its product. Mere assertions that Discovery's product is safe are insufficient to raise a genuine and substantial issue of fact requiring a hearing. Discovery's failure to present any evidence establishing the safety of its product requires, in and of itself, summary judgment against Discovery and disapproval of NDA 20–242 (§§ 12.24(b)(1) and (b)(2), 314.200(g), and section 505(d)(4) of the act).

D. Evidence of Effectiveness

In addition to evidence of safety, to obtain approval of NDA 20–242, Discovery was required to submit, among other information, full reports of investigations that were made to show whether or not Deprenyl is effective in use (section 505(b)(1) of the act and § 314.50).

In its NDA, Discovery proposed to label Deprenyl as effective for the treatment of Alzheimer's disease and claimed that its product demonstrated a ''quantitative and qualitative improvement in cognitive functions of Alzheimer's patients as a result of the inhibition of MAO–B activity.'' To support the statutory requirement for adequate and well-controlled studies that demonstrate the effectiveness of Deprenyl, Discovery submitted in its NDA reprints from 171 articles published in the medical and scientific literature, specifically identifying in the table of contents 12 of these 171 articles as evidence of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease.

In the NOOH, FDA explained in general why it could not accept any of the 171 published studies submitted in NDA 20–242 as evidence of the effectiveness of Deprenyl. The agency pointed out that even though some of these articles pertained to deprenyl, not one of the studies used Discovery's product or a product with a known bioavailability relationship to Discovery's product.

Regarding the 12 published studies identified in the NDA's table of contents as evidence supporting the effectiveness of Deprenyl, the NOOH explained the reasons why each one was inherently incapable of being regarded as substantial evidence of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease, as follows:

Study No. 1: Mangoni, A. et al., ''Effects of a MAO–B Inhibitor in the Treatment of Alzheimer Disease,'' *European Neurology*, 31:100–107, 1991.

While finding that this study suggested a positive effect of L-deprenyl in patients with Alzheimer's disease, the agency found that the published report lacked many details required by FDA's regulations to enable the agency to assess the study, including data from a bioequivalence study that demonstrates that the rate and the extent of absorption of Deprenyl are essentially identical to the product used in the published study (§§ 320.21 and 314.126(d)); a protocol to determine whether the study design and analysis, including analysis of patients not completing the study, were performed as proposed (§§ 314.50 and 314.126(b)(1)); the measures used to minimize bias in the study such as the details of randomization, blinding, maintenance of patient assignment code, including an explanation for the unequal number of patients treated with the drug versus the number receiving a placebo (§ 314.126(b)(5); and copies of case report forms or data tabulations, and individual patient data on safety and effectiveness measures (§§ 314.50 and 314.126(a)).

Study No. 2: Knoll, J., J. Dallo, and T. T. Yen: ''Striatal Dopamine, Sexual Activity and Lifespan. Longevity of Rats Treated With (-) Deprenyl,'' *Life Sciences*, 45:525–531, 1989. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was a study in rats and not a clinical (human) study.

Study No. 3: Heinonen, E. H. et al., ''Pharmacokinetics and Metabolism of Selegiline,'' *Acta Neurologica Scandinavia*, 126:93–99, 1989. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because the clear objective of the study was to study the pharmacokinetics, not the effectiveness, of selegiline (deprenyl).

Study No. 4: Shoulson, I. et al. (The Parkinson Study Group), ''Effect of Deprenyl on the Progression of Disability in Early Parkinson's Disease,'' *The New England Journal of Medicine*, 321:1364–1370, 1992. This study was not an adequate and a well-controlled clinical study of the effectiveness of

deprenyl citrate in the treatment of Alzheimer's disease because it was a study of Parkinson's, and not Alzheimer's, disease.

Study No. 5: Tariot, P. N. et al., ''Cognitive Effects of L-Deprenyl in Alzheimer's Disease,'' *Psychopharmacology,* 91:489–495, 1987. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because there was no protocol available to provide details of the study; the study did not use a randomized concurrent control or other means of assuring comparability of treatment and control groups; the procedures used to minimize bias, such as blinding, were not described; and the test drug was not identified.

Study No. 6: Tariot, P. N. et al., ''L-Deprenyl in Alzheimer's Disease: Preliminary Evidence for Behavioral Change With Monoamine Oxidase B Inhibition,'' *Archives of General Psychiatry,* 44:427–433, 1987. This was a preliminary report of the data from the Tariot study described under Study No. 5 above. Therefore, it suffers from the same deficiencies cited above.

Study No. 7: Tariot, P. N. et al., ''Tranylcypromine Compared With L-Deprenyl in Alzheimer's Disease,'' *Journal of Clinical Psychopharmacology,* 8:23–27, 1988. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because its primary purpose was to investigate tranylcypromine, a drug of unknown effectiveness in the treatment of Alzheimer's disease.

Study No. 8: Sunderland, T. et al., ''Dose-Dependent Effects of Deprenyl on CSF Monoamine Metabolites in Patients With Alzheimer's Disease,'' *Psychopharmacology,* 91:293–296, 1987. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because the clear objective of the study was to study the pharmacokinetics, not the effectiveness, of deprenyl.

Study No. 9: Konradi, C., P. Riederer, and M. B. H. Youdim, ''Hydrogen Peroxide Enhances the Activity of Monoamine Oxidase Type-B But Not of Type-A: A Pilot Study,'' *Journal of Neural Transmission,* Suppl. 22:61–73, 1986. This study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because its primary purpose was the study of the effects in certain tissues of hydrogen peroxide, not deprenyl citrate, and it was not a clinical study, i.e., a study in human patients with the disease intended to be treated.

Study No. 10: Maurizi, C. P., ''The Therapeutic Potential for Tryptophan and Melatonin: Possible Roles in Depression, Sleep, Alzheimer's Disease and Abnormal Aging,'' *Medical Hypotheses,* 31:233–242, 1990. This review article was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was not the report of an investigation, and moreover, it did not even mention the drugs deprenyl or selegiline.

Study No. 11: Knoll, J., ''The (-)Deprenyl-Medication: A Strategy To Modulate the Age-Related Decline of the Striatal Dopaminergic System,'' *Journal of the American Geriatric Society,* 40:839–847, 1992. This review article was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was not the report of an investigation.

Study No. 12: Martini, E. et al., ''Brief Information an Early Phase-II Study With Deprenyl in Demented Patients,'' *Pharmacopsychiatry,* 20:256–257, 1987. This 11-patient uncontrolled study was not an adequate and a well-controlled clinical study of the effectiveness of deprenyl citrate in the treatment of Alzheimer's disease because it was not the report of an investigation that permitted a valid comparison with a control.

In its response to the NOOH, Discovery did not challenge FDA's statement that none of the 171 articles contained in NDA 20–242 involved studies that used its product or a product with a known bioavailability relationship to its product. Nor did it challenge the reasons cited in the NOOH as to why the 12 published studies that it highlighted in its NDA were not adequate to support evidence of the effectiveness of Discovery's product.

Instead, Discovery submitted abstracts of studies Nos. 1 and 5; quoted from study articles Nos. 1 and 5; and merely asserted that: (1) ''the trial publications submitted by [Discovery], not only should indicate to any normal human being that deprenyl is effective in Alzheimer's Disease * * *.''; (2) ''[a]ll journal trials submitted referenced definite improvement in people afflicted with Alzheimer's Disease treated with deprenyl since 1985''; and (3) ''Not only has the product unequivocally proven to be effective in the treatment of Alzheimer's, but has unequivocally proven to be one of the safest, if not the safest product to take'' (Discovery response, pp. 36 and 39–40).

Discovery's responses fail to raise a genuine and substantial issue of fact requiring a hearing. First, the abstracts of studies Nos. 1 and 5 provided by Discovery in its response included no new information that had not already been submitted in the NDA. Second, Discovery did not explain how or why the quoted statements from the studies already submitted and reviewed by FDA should be found adequate to fulfill the statutory requirements for adequate and well-controlled studies of the effectiveness of its product. Third, Discovery's response consisted of mere allegations that its product was effective. A hearing, therefore, is not required (§§ 12.24(b)(1) and (b)(2) and 314.200(g)).

Discovery also alleged in its response that: (1) FDA did not review all 2,000 pages of the 171 published articles submitted in the NDA, and (2) that FDA reviewed NDA 20–242 based upon an incorrect table of contents instead of an amended table of contents submitted after its NDA was filed over protest.

Regarding the first allegation, FDA advised Discovery in its ''not approvable letter'' dated August 20, 1993, that it had reviewed the published literature provided in its application. (See letter dated August 20, 1993, from Robert Temple to James T. Kimball, p. 3.) Discovery did not submit any evidence to challenge this statement. Therefore, it did not justify a hearing (§§ 12.24(b)(2) and 314.200(g)).

Regarding the second allegation, notwithstanding the fact that FDA was only obligated to review NDA 20–242 as filed over protest, even if FDA were to have reviewed the amended table of contents, it would not have altered FDA's review of the material that was filed. As stated in its letter to Discovery, FDA had reviewed the studies that Discovery submitted in its NDA, and Discovery did not identify any specific evidence or specific studies that FDA failed to review that addressed the deficiencies in NDA 20–242 raised in the NOOH. Discovery's response, therefore, consisted of mere allegations, which do not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(2) and 314.200(g)).

Moreover, Discovery's failure to challenge substantively FDA's assertion that none of the 171 studies related to the effectiveness of *its* product or to a product with a known bioavailability relationship to its product deprives Discovery's allegation of significance as far as justifying a hearing is concerned. If FDA had failed to review any of the

171 studies submitted, such a failure would be significant if Discovery had alleged that FDA's failure had caused it to miss evidence that would justify granting the NDA. Discovery makes no such claim. Thus, Discovery has not presented an issue that warrants a hearing (§§ 12.24(b)(4) and 314.200(g)).

Finally, Discovery alleged that FDA approved a different, more dangerous, and less effective product than Discovery's product for the treatment of Alzheimer's disease when it approved Tacrine Hydrochloride (Cognex® , Parke-Davis) (Discovery response, p. 41). FDA's approval of another drug product is irrelevant to the question of whether NDA 20–242 meets the requirements in section 505(b) of the act and § 314.50. FDA approval of another drug product does not exempt Discovery's NDA from compliance with the new drug provisions of the act. Discovery's allegations, therefore, do not raise a genuine and substantial issue of fact regarding FDA's proposal to refuse to approve NDA 20–242 because it failed to contain information required by section 505(b) of the act and § 314.50. A hearing, therefore, is not required (§§ 12.24(b)(1) and 314.200(g)).

In sum, Discovery failed to raise a genuine and substantial issue of fact regarding FDA's findings in the NOOH that Discovery had failed to comply with the requirements of section 505(b)(1)(A) of the act and § 314.50. Thus, FDA's findings stand unchallenged. Discovery's failure to present any evidence establishing the effectiveness of its product requires, in and of itself, summary judgment against Discovery and disapproval of NDA 20–242 (section 505(d)(5) of the act).

E. Methods, Facilities, and Controls

To gain approval of its NDA, Discovery was required to submit information in NDA 20–242 that the methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, and holding of the drug substance and the drug product were adequate to preserve the identity, strength, quality, purity, stability, and bioavailability of the drug substance and the drug product (§ 314.50(d)(1)(i) and (d)(1)(ii)(*a*)).

In the NOOH, FDA stated that the deficiencies in Discovery's NDA related to the drug substance included a lack of information concerning the methods used in the synthesis, extraction, isolation, and purification of the new drug substance to determine its identity, strength, quality, and purity. With respect to the drug product, the NOOH stated that Discovery's NDA lacked information about the drug product components, composition, and formulation; how the drug product was to be manufactured; the laboratory methods to be used to test the drug product, including validation of the test methods; and the product container system and packaging to be used for the drug product.

Discovery's reply to this issue appears on pp. 42–43 and 50–53 of its response and consists of the following:

1. With respect to the absence of information in NDA 20–242 about the methods, facilities, and controls used for the manufacture of Deprenyl, Discovery stated in its response that, ''The absolute facts are that the FDA inspectors, who spent four days at [Discovery's] facility, found none of the above,'' and that ''[t]he FDA inspection of February, 1993 confirmed the methods and procedures used by [Discovery] in the formulation and bottling of the product exceeded FDA standards'' (Discovery response, pp. 42 and 51).

Discovery's response did not address the deficiency in NDA 20–242 that was cited in the NOOH. In the NOOH, FDA stated that NDA 20–242 failed to contain certain information concerning: The drug substance; the drug product; methods validation; stability data; establishment locations; and an environmental assessment. In its response, Discovery did not challenge that this information was not included in its NDA. Discovery, therefore, failed to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Without this information, it obviously was not possible for FDA to do the type of evaluation that was necessary to assess the safety and effectiveness of a new drug.

2. ''[T]he method used in the manufacture of deprenyl by [Discovery] is a trade secret. It was kept so due to the total mistrust of the FDA * * * '' (Discovery response, p. 50).

Discovery's response is an admission that it did not provide FDA with information about the manufacture of Deprenyl. Such information is required to be in an NDA by the act (section 505(b)(1)(D) of the act). Because Discovery's response does not challenge the absence of such information in NDA 20–242, Discovery's response does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Moreover, Discovery conceded that its application did not comply with the act.

3. ''The evidence submitted to the FDA unequivocally proved that [Discovery's] deprenyl is deprenyl'' (Discovery response, p. 51).

Discovery's response did not challenge FDA's statements in the NOOH that NDA 20–242 lacked the information about the drug substance and the drug product required by § 314.50(d)(1)(i) and (d)(1)(ii)(*a*). Discovery's response, therefore, does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)).

4. ''How a product is manufactured should be of no concern to the FDA, only the purity of the end product[,]'' and ''[t]he methods of manufacture, in essence, mean absolutely nothing, as long as the end product is a pure and chemically correct product'' (Discovery response, pp. 50–51).

FDA is required by statute to review the manufacturing process of a new drug in its review of an NDA (section 505(d)(3) of the act). In addition, Congress has recognized the connection between the purity of a drug and the manner in which it is manufactured by the fact that any drug not manufactured in conformity with current good manufacturing practices is deemed adulterated (section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B))). Discovery's response, therefore, does not raise an issue of fact, §§ 12.24(b)(1) and 314.200(g), but concedes that it has not complied with the act. If Discovery wishes to change the law as to whether how a product is manufactured is of significance, its venue is the Congress. I must enforce the act as written, and given that state of affairs, the record establishes that Discovery's application is deficient.

5. ''[Discovery] is fully prepared to prove that if a product, is a product chemically, then it unequivocally is that product'' (Discovery response, p. 43).

Discovery's response does not challenge FDA's statement in the NOOH that Discovery's NDA lacked the information required by the act. The fact that Discovery is fully prepared to prove its statement is insufficient to raise a genuine and substantial issue of fact. The opportunity to offer evidence in support of its assertion was in response to the NOOH. Discovery's response, therefore, does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)).

6. Regarding the absence of an environmental statement in its NDA Discovery stated that:

> [T]he EPA stated that the manufacturing methods of Liquid Deprenyl Citrate being used by [Discovery] did not warrant an inspection, and that the EPA would not inspect [Discovery] as [Discovery] was in total compliance. The FDA's duplication of the EPA's jurisdiction is ludicrous and totally redundant.

Discovery response, p. 52

FDA regulations require an NDA to contain an environmental assessment under 21 CFR 25.31, or a claim for exclusion under 21 CFR 25.24 (§ 314.50(d)(1)(iii) and 21 CFR 25.22(a)(14)).

In the NOOH, FDA stated that Discovery had not claimed exclusion, and that NDA 20–242 was facially unresponsive to FDA's regulatory requirement in that it was lacking identification of the chemical substances that were the subject of the assessment. Discovery's response, therefore, that FDA's requirements are duplicative of the Environmental Protection Agency's (EPA's) requirements, raises an issue of law rather than an issue of fact, which does not require a hearing (§§ 12.24(b)(1) and 314.200(g)).

Furthermore, Discovery's response amounts to a request that FDA ignore the requirements of its existing regulations. Discovery's response, therefore, is inconsistent with the provisions of FDA's regulatory requirements and, therefore, is wrong as a matter of law.

FDA's environmental assessment regulations were issued to implement the requirements of EPA, under which each agency must assess the effects of its actions (40 CFR 1506.5(b) and 21 CFR part 25). Nothing in what Discovery reports EPA as saying is in derogation of that fact. Therefore, there is no merit to Discovery's claim, and I find that Discovery's application is deficient in this regard. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(5) and 314.200(g)).

7. FDA failed to post the results of its analysis of a sample of 50 bottles of Discovery's product collected during its February 1993, inspection of Discovery (Discovery response, p. 42).

With respect to the sample of Discovery's product collected by FDA investigators, Discovery cannot seriously suggest that FDA would use this sample to establish, itself, the safety and effectiveness of Discovery's product. First, as stated above, in its response to the NOOH, Discovery admitted that it ''held back **DELIBERATELY**, due to **MISTRUST**, the **PUREST LIQUID DEPRENYL** product [from the FDA investigators] which would have been put into [its] production runs'' (Discovery response, p. 8 (emphasis in original)). Consequently, even if FDA were to test the sample provided by Discovery for safety or effectiveness, Discovery's admission that it did not provide FDA with the most potent formulation of its drug product would render worthless any such test results and render the issue not determinative of the approvability of NDA 20–242. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

Second, as a matter of law, the statute places these burdens on the applicant. Thus, I find this allegation to be utterly without merit or probative value (section 505(b) of the act).

In sum, Discovery's response either does not challenge FDA's conclusion that NDA 20–242 lacked the information required by section 505(b)(1) of the act and § 314.50(d)(1) or requests an action inconsistent with the requirements of the act. Discovery thus fails to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and (b)(5) and 314.200(g)).

Discovery's failure to include information regarding the methods, facilities, and controls to be used for the manufacture and control of Deprenyl in NDA 20–242 requires, in and of itself, summary judgment against Discovery and refusal to approve NDA 20–242 (section 505(d)(3) of the act).

F. Drug Product Labeling

In the NOOH, FDA stated that, among other deficiencies related to the proposed labeling of Deprenyl, NDA 20–242 did not contain copies of the labeling to be used for the packaged drug product, as required by § 314.50(e)(2)(ii), and did not contain copies of the labeling to be used for the shipment and storage of the bulk drug substance, as required by §§ 314.125(b)(8) and 201.122.

In its response, Discovery did not challenge the accuracy of FDA's statements in the NOOH. Instead, Discovery contended that FDA had not addressed any specific problem regarding the labeling of Deprenyl in the NOOH, except to state that Discovery had proposed labeling of Deprenyl for over-the-counter marketing, as opposed to distribution by prescription.

Discovery's contention that FDA did not address in the NOOH any specific labeling deficiencies associated with NDA 20–242 is belied by the NOOH itself. In the NOOH (59 FR 26239 at 26243), FDA listed three labeling deficiencies associated with NDA 20–242. I find, therefore, that Discovery's contention is an error of fact. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

Discovery's contention that FDA raised the marketing status of Deprenyl in the NOOH is also belied by the NOOH itself. The marketing status of Deprenyl was not raised in the NOOH. The record does, however, reflect that FDA raised the issue on p. 12 of its ''not approvable'' letter to Discovery, dated August 20, 1993, under the heading ''Proposed Marketing Status.'' I find, therefore, that Discovery's contention is an error of fact. Thus, Discovery failed to raise an issue of fact that would justify a hearing (§§ 12.24(b)(1) and 314.200(g)).

Discovery also alleged in its response that FDA rewrote the labeling for Somerset when Somerset's labeling and packaging for Eldepryl® were found to be deficient—Discovery response, p. 53 and exhibit 10 (including a copy of a letter from FDA to Somerset to which FDA attached a revised package insert for Eldepryl®).

Because Discovery's response does not challenge FDA's finding in the NOOH, it fails to raise a genuine and substantial issue of fact requiring a hearing. Furthermore, evidence that FDA revised labeling submitted in an NDA by another applicant does not address the absence of such required labeling in NDA 20–242 and, therefore, is not determinative with respect to the approvability of NDA 20–242. As such, Discovery's allegation does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and (b)(4) and 314.200(g)).

Discovery's failure to include information required by § 201.122, in and of itself, is a sufficient basis upon which to refuse to approve NDA 20–242 (§ 314.125(b)(8)).

G. Bioavailability Data

In order for Discovery to obtain approval of NDA 20–242, the application had to contain either: (1) Evidence demonstrating the in vivo bioavailability of the drug product, or (2) information that would permit the agency to waive demonstration of in vivo bioavailability (§§ 314.50(d)(3) and 320.21(a)). In its NDA, Discovery contended that it was entitled to a waiver of the demonstration of in vivo bioavailability because the drug and its metabolites are not measurable in plasma ''at their designated levels.''

In the NOOH, FDA stated that Discovery's conclusion was incorrect, based upon two articles in the scientific literature that provided information on the metabolites of selegiline (deprenyl). (See, Salonen, J. S., ''Determination of the Amine Metabolites of Selegiline in Biological Fluids by Capillary Gas Chromatography,'' *Journal of Chromatography*, 527:163–168, 1990; Heinonen, E. H., and R. Lammintausta, ''A Review of the Pharmacology of

Selegiline,'' *Acta Neurologica Scandinavia,* Suppl., 136:44–59, 1990.)

In response to the NOOH, Discovery merely asserted that,

> In addition, the FDA reverts to bio-equivalency, and [Discovery] will again unequivocally state that Liquid Deprenyl Citrate is selegiline, period. Selegiline or selegiline hydrochloride was used in all references. [Discovery] is prepared to prove that if a product, is a product chemically, then it unequivocally is that product. Discovery response, p. 43

Discovery's response, which referred to ''bio-equivalency,'' did not challenge FDA's assertion that NDA 20–242 lacked bioavailability data, nor did it challenge the basis for FDA's conclusion that bioavailability data could not be waived because published scientific literature demonstrated that the metabolites of selegiline are measurable.

As it did in response to other issues raised by FDA in the NOOH, Discovery sought to fulfill its obligation to provide the information required by the act and FDA by a mere assertion that its product is what it purports to be. FDA regulations, however, require Discovery to submit evidence of the bioavailability of its product or to obtain a waiver of the requirement to submit such information. Mere assertions of bioavailability are not sufficient to raise an issue of fact or to fulfill the requirements for FDA approval of NDA 20–242.

Because Discovery failed to challenge FDA's conclusion in the NOOH that its NDA failed to contain required bioavailability data, it failed to raise an issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)). Discovery's mere assertion that its product is bioequivalent to a drug substance is also insufficient to raise an issue of fact requiring a hearing regarding the absence of bioavailability data in NDA 20–242 (§§ 12.24(b)(2) and 314.200(g)).

Discovery's failure to include bioavailability data in NDA 20–242 is a sufficient basis, in and of itself, to refuse to approve NDA 20–242 (§ 314.125(b)(9)).

H. CGMP Requirements

In addition to the requirement that an NDA contain a description of the manufacturing and packaging procedures and in-process controls designed to assure the identity, strength, quality, purity, and bioavailability of the drug substance and drug product (§ 314.50(d)(1)(i) and (d)(1)(ii)(*a*)), FDA requires that an applicant be in compliance with CGMP as set forth at parts 210 and 211 (§ 314.125(b)(13)).

Between February 25 and March 2, 1993, FDA investigators made an inspection of Discovery's establishment in Wesley Chapel, FL, and the investigators observed numerous violations of the CGMP regulations. The following were among numerous CGMP violations observed during the February through March, 1993, inspection.

1. Discovery lacked adequate standard operating procedures with regard to: (a) Responsibilities of the quality control unit (§ 211.22); (b) cleaning and maintenance of equipment used in manufacturing products (§ 211.67); (c) receipt and handling of components (§ 211.82); (d) production and process control, e.g., weighing components (§ 211.101); and (e) in-process controls or testing (§ 211.110).

2. Discovery lacked a written stability program. Additionally, Discovery could locate no records documenting stability testing of selegiline citrate (§ 211.166).

3. Discovery could not produce batch production records showing manufacture of the one batch produced, which was intended by the firm for use in clinical trials (§ 211.188).

In its response to the NOOH, Discovery asserted that: (1) The faults found in its NDA should have been addressed in the first 90 days during the review of Discovery's application; (2) the CGMP violations cited in the NOOH did not exist at the time of the FDA inspection; and (3) the FDA investigators did not inform Discovery of the CGMP violations at the time of their inspection (Discovery response, p. 52).

With respect to Discovery's first assertion, Discovery's response did not address the issue raised by FDA in the NOOH. FDA's statements regarding this issue in the NOOH did not pertain to the contents of Discovery's NDA. Rather, they concerned the findings of an FDA inspection conducted in February and March 1993, that showed that Discovery was in violation of CGMP regulations at the time of the inspection. Thus, the deficiencies could not have been discovered by FDA during its review of Discovery's NDA as asserted by Discovery. Discovery's response does not challenge the issue raised by FDA in the NOOH. Thus, I find that Discovery's response is not probative of the issue raised by FDA and, therefore, does not raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and 314.200(g)).

In its response to this issue, Discovery failed to distinguish between § 314.50(d)(1)(i) and (d)(1)(ii)(*a*), which require an NDA to contain certain information about the manufacture and control of a new drug substance and drug product,[16] and § 314.125(b)(13), which permits FDA to refuse to approve an NDA if the applicant's methods, facilities, and controls do not conform to CGMP requirements set forth at parts 210 and 211.

Regarding Discovery's second and third assertions, that the CGMP violations cited in the NOOH did not exist at the time of the FDA inspection, and that the FDA investigators did not mention the deficiencies to Discovery at the time of the inspection, I find that the record clearly establishes that Discovery's assertions are incorrect.

Contrary to Discovery's assertion, it is facially evident from the record that FDA investigators issued a Form FDA 483 (list of observations) to Mr. James T. Kimball, President at the conclusion of the inspection on March 2, 1993, which listed all of the above CGMP violations. Indeed, on p. 9 of its response, Discovery admitted that it ''received the FDA's noted deficiencies.''

Moreover, Discovery admitted on p. 53 of its response that FDA investigators ''found that most everything [Discovery] was doing was in order, except for a couple of written GMP's [sic] that needed to be amended.'' On p. 9 of its response, Discovery further admitted that ''[i]n fact, some of [Discovery's] procedures were above FDA standards, but not all of these procedures were written into [Discovery's] GMP, which is a requirement.''

Finally, Discovery did not submit any evidence that it had the written procedures in place during the March 1993 FDA inspection. Discovery's mere assertions that the CGMP violations did not exist, and that none had been communicated to it during the FDA inspection, in the face of its admissions that CGMP deficiencies did exist, and that it had received notice of them, fail to raise a genuine and substantial issue of fact requiring a hearing (§§ 12.24(b)(1) and (b)(2) and 314.200(g)).

Discovery's failure to comply with CGMP is, in and of itself, a sufficient basis upon which to refuse to approve NDA 20–242 (§ 314.125(b)(13)).

III. Findings and Conclusions

Based upon the above, I find that Discovery has failed to raise a genuine and substantial issue of fact related to the approvability of NDA 20–242 in its response to the NOOH. A hearing, therefore, is not required.

Further, I find that NDA 20–242: (1) Fails to contain information about Deprenyl to determine whether the product is safe for use under the

[16] FDA may refuse to approve an NDA that lacks such information under § 314.125(b)(1).

conditions suggested in its proposed labeling; (2) lacks evidence consisting of adequate and well-controlled investigations that Deprenyl will have the effect it is represented to have in the NDA; (3) fails to contain bioavailability data required by § 320.21; (4) fails to contain information that establishes that the methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, or holding of the drug substance and the drug product are adequate to preserve their identity, strength, quality, purity, stability, and bioavailability; and (5) does not contain the proposed labeling for the bulk drug substance and the packaged drug product. I also find that Discovery was not in compliance with FDA's CGMP regulations published at parts 210 and 211.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505(d)) and under the authority delegated to me in 21 CFR 5.10, Discovery's request for a hearing is denied and approval of NDA 20–242 is denied.

Dated: February 28, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–8517 Filed 4-2-97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–R–204]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Data Collection for the Second Generation Social Health Maintenance Organization Demonstration; *Form No.:* HCFA–R–204; *Use:* The data collected under this effort will be used to support the operational and evaluation needs of the Congressionally-Mandated Second Generation of the Social Health Maintenance Organization Demonstration. *Frequency:* On occasion, Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 157,056; *Total Annual Responses:* 157,056; *Total Annual Hours:* 133,652.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 26, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–8526 Filed 4–2–97; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–R–203]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Data Collection Forms for a Project to Develop a Case-Mix Adjustment System for a National Home Health Prospective Payment Program; *Form No.:* HCFA–R–203; *Use:* The data collection from this form will support analysis of home health utilization patterns and develop predictive models of home health resource use. That will serve as the basis for a system to adjust payments for Medicare home health services for differences/changes in patient service needs; *Frequency:* On Occasion; *Affected Public:* Not-for-profit, Business or other for-profit; *Number of Respondents:* 893,629; *Total Annual Responses:* 893,629; *Total Annual Hours:* 52,156.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 11, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–8525 Filed 4–2–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the