4. The authority citation for 41 CFR part 301–74 continues to read as follows:

Authority: 5 U.S.C. 5707.

5. Amend § 301–74.1 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 301–74.1 What policies must we follow in planning a conference?

* * * * *

(d) Ensure that the conference planner or designee does not retain for personal use any promotional benefits or materials received from a travel service provider as a result of booking the conference (see §§ 301–53.2 and 301–53.3 of this chapter); and

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also establish the Secretary’s standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(3)). (See also 42 U.S.C. 257a.)

This interim final rule does not change any of the provisions in subpart A (Accreditation) or subpart C (Procedures for Review of Suspension or Proposed Revocation of OTP Certification, and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body). Instead, the rule provides for a minor amendment to subpart B, Certification and Treatment Standards. The rule amends only one section of subpart B, section 8.12(h)(2) Medication administration, dispensing, and use.

Under 42 CFR 8.12(h)(2), OTPs are limited to using only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). This section notes that “currently the following medications will be considered to be approved by the Food and Drug Administration for use in the treatment opioid addiction: (i) Methadone; and (ii) levomethadyl acetate (LAAM).” The effect of this rule is to add buprenorphine and buprenorphine combination to this list by adding a new item (iii).

### Justification for Interim Final Rule

The Administrative Procedure Act (5 U.S.C. 553) requires agencies to follow certain procedures for informal rulemaking, including publication of proposed rules in the Federal Register with an opportunity for public comment. Section 553(b)(B) allows agencies to dispense with prior notice and opportunity for public comment if the agency finds for good cause that use of such procedures is impracticable, unnecessary, or contrary to the public interest. Section 553(d)(3) permits the Secretary to waive the 30 day effective date if it is contrary to the public interest.

The Secretary has determined that good cause exists for publication of this rule without prior notice and opportunity for public comment and without a delayed effective date since such procedures are contrary to the public interest and unnecessary. It is contrary to the public interest to deny OTPs’ access to this important new medication for the treatment of persons addicted to opioids. As compared to methadone and ORLAAM®, the buprenorphine and buprenorphine combination are particularly useful in treating patients who have had a shorter course of addiction. Similarly, it would be contrary to the public interest to deny patients access to such prescription drugs from OTPs particularly in areas in which there are no physicians who have obtained a waiver under the Drug Addiction Treatment Act of 2000 (“DATA,” section 3502 of Pub. L. 106–310).

To further elaborate, while OTPs may continue to use methadone and ORLAAM® for medication-assisted treatment, buprenorphine and buprenorphine combinations will provide OTPs with an important additional option for the treatment of addiction. Indeed, because of its “partial” agonist pharmacology, buprenorphine will provide programs with more flexibility in finding the most appropriate medication for each patient. It would thus be contrary to the public interest to delay the availability of buprenorphine products.

In addition to the public interest in having buprenorphine and buprenorphine combination products available for treatment use as soon as possible, prior notice and comment procedures are unnecessary. Currently, the rule states: “OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration for use in the treatment of opioid addiction: (i) Methadone; and (ii) levomethadyl acetate (LAAM).” The effect of this rule is to add buprenorphine and buprenorphine combination to this list by adding a new item (iii).

### Analysis of Economic Impacts

The Secretary has examined the impact of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). This interim final rule does not establish additional regulatory requirements, it allows an activity that is otherwise prohibited. According to Executive Order 12866, a regulatory action is “significant” if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. A detailed discussion of the Secretary’s analysis is contained in the recent opioid treatment final rule published in the Federal Register of January 17, 2001 (66 FR 4086–4090). That notice described the impact of the opioid treatment regulations, analyzed alternatives, and considered comments from small entities.

The Secretary also finds that this rule is not a significant regulatory action as defined by Executive Order 12866. The rule merely adds buprenorphine and buprenorphine combination products to the list of medications that may be used in the detoxification or maintenance treatment of opioid dependence. If opioid treatment programs choose to use the new medications, the new medications will be used in accordance with the standards set forth in the January 17, 2001, final rule (66 FR 4090). No new regulatory requirements are imposed by this interim final rule.

For the reasons outlined above, the Secretary has determined that this interim final rule will not have a significant impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore an initial regulatory flexibility analysis is not required for this interim final rule.

The Secretary has determined that this rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).
Paperwork Reduction Act of 1995

This interim final rule adds buprenorphine and buprenorphine combination products to the list of approved medications that may be used in SAMHSA-certified opioid treatment programs. The interim final rule establishes no new reporting or recordkeeping requirements beyond those discussed in the January 17, 2001, final rule (66 FR 4076 at 4088). The Office of Management and Budget has approved the information collection requirements of the final rule under control number 0930–0206.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This interim final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175.


Tommy G. Thompson,
Department of Health and Human Services.

List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

For the reasons set forth above, part 8 of title 42 of the Code of Federal Regulations is amended as follows:

PART 8—CERTIFICATION OF OPIOID TREATMENT PROGRAMS

1. The authority citation for part 8 continues to read as follows:

Authority: 21 U.S.C. 823; Sections 301(d), 543, and 1976 of the 42 U.S.C. 257a, 290aa(d), 290 dd–2, 300x–23, 300x–27(a), 300y–II.

2. Section 8.12(h) (2) is revised to read as follows:

§ 8.12 Federal opioid treatment standards.

* * * * *

(2) OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. In addition, OTPs who are fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(i) Methadone;

(ii) Levomethadyl acetate (LAAM); and

(iii) Buprenorphine and buprenorphine combination products that have been approved for use in the treatment of opioid addiction.

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