

amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

#### **PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

\* \* \* **Effective February 19, 2004**

Palm Springs, CA, Bermuda Dunes, RNAV (GPS) RWY 10, Orig  
Baker City, OR, Baker City Muni, VOR/DME RWY 13, Amdt 11  
Baker City, OR, Baker City Muni, RNAV (GPS) RWY 13, Orig

[FR Doc. 04–389 Filed 1–9–04; 8:45 am]

**BILLING CODE 4910–13–P**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **Food and Drug Administration**

##### **21 CFR Part 1**

[Docket No. 2003D–0545]

#### **Guidance for Industry: Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities; Availability**

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

**ACTION:** Notice of availability of guidance.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled “Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities.” The guidance responds to various questions raised about section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency’s implementing regulation, which require facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA by December 12, 2003.

**DATES:** Submit written or electronic comments on the agency guidance at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Registration Help Desk, 1–800–216–7331 or 301–575–0156, or FAX: 301–

210–0247. (See **SUPPLEMENTARY INFORMATION**) for electronic access to the guidance document.

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

**FOR FURTHER INFORMATION CONTACT:** Melissa S. Scales, Office of Regulations and Policy (HFS–24), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1720.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the *Federal Register* of October 10, 2003 (68 FR 58894), FDA issued an interim final rule to implement section 305 of the Bioterrorism Act. The registration regulation requires facilities that manufacture/process, pack, or hold food (including animal feed) for consumption in the United States to register with FDA by December 12, 2003.

On December 4, 2003, FDA issued the first edition of a guidance entitled “Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities.” This guidance, (“Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 2)”) is a revision of the December 4, 2003, document and responds to additional questions about the interim final rule on registration. It is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart H.

FDA is issuing the guidance entitled “Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 2)” as a Level 1 guidance. Consistent with FDA’s good guidance practices (GGPs) regulation § 10.115(g)(2) (21 CFR 10.115), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the Bioterrorism Act requires covered facilities to be registered with FDA by December 12, 2003. Clarifying the provisions of the interim final rule will facilitate prompt registration by covered facilities and thus, complete implementation of the interim final rule.

FDA continues to receive a large number of questions regarding the

registration interim final rule, and is responding to these inquiries under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning food facilities registration in a single document that is periodically updated as the agency receives and responds to additional questions. The following indicators will be employed to help users of the guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) new questions and answers will be identified as such in the body of the guidance.

##### **II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

##### **III. Electronic Access**

Persons with access to the Internet may obtain the document at <http://www.cfsan.fda.gov/guidance.html>.

Dated: January 7, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–598 Filed 1–8–04; 10:33 am]

**BILLING CODE 4160–01–S**

#### **NATIONAL LABOR RELATIONS BOARD**

##### **29 CFR Part 102**

#### **Revisions of Regulations Concerning Applicability of Rules Governing Motions for Summary Judgment or Dismissal to Motions for Default Judgment**

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The Board is revising its Rules and Regulations (Motions), (Duties and Powers of Administrative Law Judges), and (Filing and Service of Papers), to clarify, consistent with longstanding Board policy, that the provisions of those sections applicable

to motions for summary judgment or dismissal also generally apply to motions for default judgment.

**DATES:** Effective January 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lester A. Heltzer, Executive Secretary, 202-273-1067.

**SUPPLEMENTARY INFORMATION:** Sections 102.24, 102.35, and 102.114 of the Board's Rules and Regulations contain provisions governing the filing of motions for summary judgment or dismissal with the Board prior to the hearing, authorizing administrative law judges to rule on motions for summary judgment or dismissal, and prohibiting the filing of motions for summary judgment or dismissal by facsimile transmission. Historically, the Board has applied those provisions to motions for judgment based on the respondent's failure to file an answer to the complaint or compliance specification, referring to such motions as motions for "summary judgment." However, the term "default judgment" more accurately describes a judgment issued for failure to file an answer,<sup>1</sup> and the Board has consistently used that term in its more recent decisions and orders.<sup>2</sup> Accordingly, the Board is revising the above sections of its rules to incorporate that term and thereby clarify that those sections apply to motions for default judgment.

The revisions to the Board's rules are purely changes of nomenclature and do not effect any substantive or procedural change in the way that the Board processes or resolves motions for summary judgment based on the respondent's failure to file an answer to the complaint. The one exception is that motions for default judgment will not be subject to the requirement in Section 102.24(b) that motions for summary judgment or dismissal be filed no later than 28 days before the hearing. The Board's experience is that this time limitation is unnecessary in situations where the respondent has failed to file an answer to the complaint.

#### **Administrative Procedure Act**

Because the change involves rules of agency organization, procedure or practice, no notice of proposed rulemaking is required under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

<sup>1</sup> See *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 739 (6th Cir. 1973).

<sup>2</sup> See, e.g., *Rosedale Fabricators, LLC*, 340 NLRB No. 67 (2003); *Hawk One Security*, 339 NLRB No. 65 (2003); and *Malik Roofing Corp.*, 338 NLRB No. 141 (2003).

#### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes are purely changes of nomenclature and merely clarify the rules to conform to the actual practice under the existing rules.

#### **Small Business Regulatory Enforcement Fairness Act**

Because the rule changes relate to agency procedure and practice and merely clarify the rules to conform to existing practices, the NLRB has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

#### **Paperwork Reduction Act**

This part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

#### **List of Subjects in 29 CFR Part 102**

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR Part 102 as follows:

#### **PART 102—RULES AND REGULATIONS**

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended {(29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A))}. Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.24 is revised to read as follows:

**§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; default judgment procedures; summary judgment procedures.**

(a) All motions under §§ 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for default judgment, summary judgment, or dismissal made prior to the hearing shall be filed in writing with the

Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the associate chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth in this paragraph shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in 29 CFR part 102, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Upon receipt of a motion for default judgment, summary judgment, or dismissal, the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely. If a party desires to file an opposition to the motion prior to issuance of the notice to show cause in order to prevent postponement of the hearing, it may do so; Provided however, That any such

opposition shall be filed no later than 21 days prior to the hearing. If a notice to show cause is issued, an opposing party may file a response thereto notwithstanding any opposition it may have filed prior to issuance of the notice. The time for filing the response shall be fixed in the notice to show cause. It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist. If the opposing party files no opposition or response, the Board may treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, shall be entered.

■ 3. In § 102.35 paragraph (a) introductory text is republished and (a)(8) is revised to read as follows:

**§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.**

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

\* \* \* \* \*

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for default judgment, summary judgment, or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

\* \* \* \* \*

■ 4. Section 102.114(g) is revised to read as follows:

**§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service; electronic filings.**

\* \* \* \* \*

(g) Facsimile transmissions of the following documents will not be accepted for filing: Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for Default Judgment; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

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Dated: January 6, 2004.

By direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

[FR Doc. 04-504 Filed 1-9-04; 8:45 am]

**BILLING CODE 7540-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[KY-200404; FRL-7601-2]**

**Approval and Promulgation of Air Quality Implementation Plans; Kentucky Update to Materials Incorporated by Reference**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by Kentucky that are incorporated by reference (IBR) into the Kentucky State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. In this document, EPA is updating the material being IBRed, modifying the IBR table format, and correcting erroneous dates. EPA is also revising the "EPA-Approved Kentucky Non-regulatory Provisions" table by removing provisions which are no longer in effect and provisions which were later revised and are listed elsewhere in the table. This table now lists the most current, approved non-regulatory provision rather than tracking the approval history of individual provisions. This update affects the SIP materials that are available for public

inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

**EFFECTIVE DATE:** This action is effective January 12, 2004.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni at the above Region 4 address, by phone at (404) 562-9031, or via e-mail at: [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On May 27, 1999, EPA published a document in the **Federal Register** (64 FR 28750) with the new IBR procedure for Kentucky. In this document, EPA is updating the material being IBRed, modifying the IBR table format, and correcting erroneous dates. EPA is also revising the "EPA-Approved Kentucky Non-regulatory Provisions" table by removing provisions which are no longer in effect and provisions which were later revised and are listed elsewhere in the table. This table now lists the most current, approved non-regulatory provision rather than tracking the approval history of individual provisions.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed