The Record of Decision (ROD) documents the decision of the Department of the Interior, National Park Service, regarding the Sitka National Historical Park. This ROD briefly discusses the background of the planning effort, states the decision and discusses the basis for it, describes other alternatives considered, specifics the environmentally preferable alternative, identifies measures adopted to minimize potential environmental harm, and summarizes the results of public involvement during the planning process.

ADDRESSES: Copies of the ROD are available on request from: Superintendent, Sitka National Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835.

FOR FURTHER INFORMATION CONTACT: Superintendent, Sitka National Historical Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835. Phone (907) 747–6281.

Dated: November 24, 1998.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 98–32238 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–6]

Ronald J. Riegel, D.V.M., Revocation of Registration

On January 28, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ronald J. Riegel, D.V.M. (Respondent) [1] of Ostrander, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AR1930254, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 824(a)(2) and (a)(4), because he was convicted of a felony related to controlled substances and because his continued registration would be inconsistent with the public interest.

By letter dated February 12, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Columbus, Ohio on August 13, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. On March 27, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked. On April 17, 1998, the Government filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on May 28, 1998, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Respondent is a veterinarian who has been licensed to practice in Ohio for approximately 18 years. His DEA Certificate of Registration, that is the subject of these proceedings, expired on April 30, 1997, and he did not submit an application for renewal of this registration. Before reaching the merits of this case, it must be determined whether DEA has jurisdiction to revoke this registration since it has expired with no renewal application being filed.

After the hearing in this matter, the Government filed a Motion for Appropriate Relief on September 3, 1997, arguing that the Administrative Law Judge has no jurisdiction over this matter since Respondent's registration expired before resolution of the issues raised in the Order to Show Cause. The Government further argued that since DEA has not received a renewal application for the registration, ''there is no registration to either suspend or revoke under 21 U.S.C. § 824.'' The Government requested that Judge Randall issue a ruling allowing Respondent an opportunity to submit an application for registration which would then be considered based upon the record in these proceedings, or in the alternative if no such application is submitted, to terminate the proceedings based upon a lack of jurisdiction. Respondent did not file a response to the Government's motion.

On November 7, 1997, Judge Randall issued a Memorandum and Order regarding the jurisdictional issue. As Judge Randall noted, there is nothing in the Controlled Substances Act or its implementing regulations that specifically addresses the status of a registration that expires before the resolution of show cause proceedings where no renewal application has been filed. The Administrative Procedure Act (APA) applies to show cause proceedings, and 5 U.S.C. 558(c) provides that ''[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.'' However, the APA does not specifically address what happens to a registration when no renewal application has been filed.

Pursuant to 21 CFR 1301.36(i), a registration will be automatically extended past its expiration date and continue in effect until a final decision is made regarding the registration if a renewal application is filed at least 45 days before the expiration of the registration. The regulation also provides that:

> The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

Here, no specific findings were made to extend Respondent's registration past the expiration date and therefore, 21 CFR 1301.36(i) does not apply to extend the registration in this proceeding.

As Judge Randall noted, in a prior DEA decision, the then-Administrator addressed facts somewhat similar to the ones at issue in this proceeding. See *Park and King Pharmacy*, 52 FR 13,136 (1987). In that case, the pharmacy's Certificate of Registration expired by its own terms after the Order to Show Cause was issued but before a final order had been issued. No renewal application had been submitted, and instead the pharmacy was sold while the show cause proceeding was pending final agency action. The then-Administrator disagreed with the Administrative Law Judge's finding that the pharmacy's registration terminated pursuant to 21 CFR 1301.62 (now 21 CFR 1301.52) as a result of the sale of the pharmacy, and that the show cause proceeding was moot. In addition, the then-Administrator found that:

[1] The Order to Show Cause indicated that Respondent was an ''M.D.'', however Respondent identified himself as a ''D.V.M.'' in his request for a hearing and the facsimile of Respondent's DEA Certificate of Registration, which was introduced at the hearing as a Government exhibit, also indicates that Respondent is a ''D.V.M.''

The practice of the Drug Enforcement Administration, as well as its predecessor agency, since the implementation of the Controlled Substance[s] Act has been to maintain registrations on a day-to-day basis pending resolution of administrative proceedings seeking to revoke such registrations. The Respondent in this matter possessed a viable DEA registration when he received the Order to Show Cause which initiated the proceedings. That registration remained in effect, on a day-to-day basis, following its nominal expiration date on March 31, 1986. The same administrative ''hold'' that prevented the registration from expiring also prevented the Respondent from renewing the registration. Accordingly, the Administrator concludes that neither the nominal expiration date on the face of the Respondent's registration nor his inability to file a renewal application have any effect upon the matter pending before the Administrator. *Id.*

As Judge Randall noted, the same rationale that applied in *Park and King Pharmacy* would seem to apply in this case. ''At the time the Order to Show Cause was issued, the Respondent held a viable Certificate of Registration. The order placed an 'administrative hold' on that certificate, and likewise placed it in a day-to-day category. The respondent's unilateral action of failing to file a renewal application would not change the status of the registration.''

However, Judge Randall expressed concern that neither the regulations nor *Park and King Pharmacy* provide any authority for placing an ''administrative hold'' on a registration that expires with no renewal application being filed in the midst of a show cause proceeding. As Judge Randall noted, ''[t]o the contrary, the regulations tell the registrant to file a renewal application within a specified time to preserve his registration status.''

But Judge Randall concluded that in light of the decision in *Park and King Pharmacy*, she does not have the authority to terminate these proceedings, because to do so would ''unilaterally change agency policy without giving this Respondent notice of such a change and an opportunity to comply.'' Therefore, Judge Randall denied the Government's motion, concluding that ''consistent with DEA precedent, the Respondent's DEA Certificate of Registration is currently being maintained on a day-to-day basis, that this proceeding is not rendered moot by the Respondent's failure to file a renewal application, and that jurisdiction still rests with this forum to complete these show cause proceedings.''

The Acting Deputy Administrator agrees with Judge Randall's decision not to terminate the proceedings and to forward this matter to the Acting Deputy Administrator. However, the Acting Deputy Administrator is troubled by the decision in *Park and King Pharmacy*. Other than the statement that it has been DEA's practice, no authority was cited in the final order for the position that an expired registration can still be revoked if no renewal application has been filed. The Acting Deputy Administrator can find nothing in the statute or regulations nor any other notice to the public that a registration is extended past its expiration date on a day-to-day basis pending final resolution where no renewal application has been submitted. To the contrary, both the APA and 21 CFR 1301.36(i) specifically state that a registration is extended on a day-to-day basis *if a timely renewal application is filed*. Consequently, it is reasonable for a registrant to assume that its registration would no longer be subject to adverse action once it expires and no application for renewal has been filed regardless of whether an Order to Show Cause has been issued or not.

Therefore, the Acting Deputy Administrator finds no authority to support the then-Administrator's conclusion in *Park and King Pharmacy* that the registration was maintained on a day-to-day basis past the expiration date even though a renewal application had not been filed. If a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke. Accordingly, the Acting Deputy Administrator agrees with the Government's initial position that this matter is moot because there is no viable registration to revoke.

However, as Judge Randall noted in her November 7, 1997 Memorandum and Order, since Respondent has participated in a hearing, it would be unfair to now terminate the proceedings without resolution based upon a deviation from past agency precedent. In fact the Government did not even argue until several weeks after the hearing that Respondent did not have a viable registration. ''Such a deviation mid-case, without notice and opportunity to comply with the changed procedure, specifically prejudices this Respondent.'' Therefore, the Acting Deputy Administrator will address the merits of this case to determine whether Respondent's registration should be revoked.

The Acting Deputy Administrator finds that in January 1995, a cooperating individual who was renting a house from Respondent provided DEA with a vial of etorphine, a Schedule II controlled substance, claiming to have obtained it from Respondent. Etorphine is a strong tranquilizer used on large animals. It is also used illegally on race horses.

On April 5, 1995, DEA and local authorities monitored and tape recorded a meeting between the cooperating individual and Respondent during which the cooperating individual paid Respondent $500 for a previously obtained vial of etorphine. At the hearing in this matter, Respondent acknowledged receiving $500 from the cooperating individual, but testified that the payment was for rent owed to him by the cooperating individual.

After the initial transaction, Respondent returned to the cooperating individual's residence that same day with a vial of etorphine that he had apparently retrieved from his residence. According to Respondent, the cooperating individual had told him the day before during a telephone conversation that the cooperating individual had stored a bottle of etorphine in Respondent's veterinary clinic and that Respondent could sell it and keep the money from the sale as a rent payment. Respondent also testified that during the initial meeting on April 5, the cooperating individual had indicated that he wanted the vial returned to him because he had located a buyer for the etorphine. Therefore, Respondent acknowledged handing a bottle of etorphine to the cooperating individual on April 5, but denied that it was from his office stock. Respondent testified that he returned the vial to the cooperating individual because he was afraid of him.

According to Respondent he had a telephone conversation with the cooperating individual sometime between April 5 and 13, 1995, during which the cooperating individual indicated that he would give Respondent $1,500 that had been obtained from the sale of the etorphine acquired on April 5. Thereafter, on April 13, 1995, during a monitored and recorded meeting, the cooperating individual gave Respondent $1,500 for the bottle of etorphine obtained on April 5.

Respondent testified that in June of 1995, the cooperating individual's dog developed a cough which did not get better with prescribed antibiotics. According to Respondent, the cooperating individual then requested some Vicodin, a Schedule III controlled substance, stating that it had worked for his sister's dog. Respondent testified that, ''[f]inally, because I am so busy and everything, and just to get him off my back, I called in a prescription, but I am suspicious of him by this time.'' Respondent indicated that in light of his suspicions, he called in a prescription

for hydrocodone, the generic for Vicodin, because he ''felt [the cooperating individual] could not resell or, you know, do anything with [it].''

On July 13, 1995, the cooperating individual was observed by investigators giving Respondent $75. Respondent admitted at the hearing to accepting $75 from the cooperating individual, but testified that the money was for rent that the cooperating individual owed him.

As a result of this investigation, Respondent was charged criminally. Following a jury trial, the Court of Common Pleas of Delaware County, Ohio entered judgment on February 23, 1996, finding Respondent guilty of one count of Aggravated Trafficking, for activities involving etorphine, and one count of Trafficking in Drugs, for activities involving hydrocodone, both felony offenses in violation of Ohio state law.

On February 9, 1994, the Ohio Veterinary Medical Licensing Board (Board) issued an order suspending Respondent's license to practice veterinary medicine for six months. The Board's order was based on a finding that Respondent had permitted a ''graduate animal technician to administer treatment and care to and to perform surgeries on patients while in his employ.'' Following the rejection of Respondent's appeal of the Board's order, the suspension was effective from September 12, 1995 to March 12, 1996. By notice dated May 16, 1996, the Board initiated another administrative action against Respondent's veterinary license, however, there is no evidence in the record regarding the resolution of that action.

Pursuant to 21 U.S.C. 824(a), ''A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—* * * (2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance. * * *''

In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

It is undisputed that Respondent was convicted on February 23, 1996, in the Court of Common Pleas of Delaware County, Ohio of two felony counts relating to controlled substances. Therefore, grounds exist to revoke Respondent's DEA registration under 21 U.S.C. 824(a)(2).

Next, the Acting Deputy Administrator considers whether Respondent's continued registration would be inconsistent with the public interest. Regarding factor one, in 1994, Respondent's veterinary license was suspended for six months based upon a finding that he had allowed a graduate technician to perform surgery and care for patients in violation of Ohio law. The Board again initiated proceedings against Respondent's license in May 1996; however, there is no evidence in the record regarding the resolution of those proceedings. Therefore, based upon the record before him, the Acting Deputy Administrator finds that Respondent possesses a valid state license.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are clearly relevant in determining the public interest. There is some dispute regarding the circumstances surrounding Respondent's providing the cooperating individual with the bottle of etorphine and the prescription for hydrocodone. But even if the Acting Deputy Administrator were to accept Respondent's version of events, there is still cause for concern regarding Respondent's continued registration.

Respondent admitted at the hearing that he gave the cooperating individual the bottle of etorphine on April 5, 1995, knowing that the cooperating individual intended on selling it. Respondent indicated that he did so out of fear. The Acting Deputy Administrator agrees with Judge Randall's conclusion that ''[i]f accepted as true, the Respondent's demonstrated susceptibility to coercion puts the public at risk of controlled substance diversion.'' Regarding the hydrocodone prescription, Respondent stated that he issued the prescription ''because I am so busy and everything, and just to get him off my back,'' despite his suspicion of the cooperating individual.

However as Judge Randall noted, Respondent was convicted of aggravated trafficking in etorphine and trafficking in drugs, to wit hydrocodone, and it is not proper to look behind these convictions. Therefore, the Acting Deputy Administrator concludes that there was no legitimate medical purpose for the hydrocodone prescription in violation of 21 U.S.C. 841(a)(1), 21 CFR 1306.04 and Ohio law, and Respondent distributed the etorphine in violation of 21 U.S.C. 841(A)(1) and Ohio law.

As to factor three, it is undisputed that Respondent was convicted of two felony offenses relating to controlled substances.

Regarding such other conduct as may threaten the public health and safety, the Acting Deputy Administrator is deeply troubled by Respondent's conduct if one assumes, as Respondent suggests, that he was merely returning the cooperating individual's bottle of etorphine to him on April 5, 1995. As Respondent admitted, he knew that the cooperating individual intended on selling the etorphine, yet Respondent did not notify DEA or the local authorities. Instead, he just gave this potentially lethal medication to the cooperating individual because he was afraid of him. As Judge Randall concluded, ''[s]uch behavior is a direct threat to the public safety and is not the action of a responsible registrant.''

The Acting Deputy Administrator concludes that the Government has presented a *prima facie* case for revocation of Respondent's DEA Certificate of Registration. Further, the Acting Deputy Administrator concurs with Judge Randall's conclusion that rather than presenting any mitigating evidence, ''the Respondent continues to fail to take responsibility for his actions, to show any remorse for his controlled substance convictions, or to give any assurance that he will not participate in such activities in the future.'' The Acting Deputy Administrator concludes

that Respondent's continued registration would be inconsistent with the public interest and therefore grounds exist to revoke his DEA registration pursuant to 21 U.S.C. 824(a)(4).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AR1930254, previously issued to Ronald J. Riegel, D.V.M., be, and it hereby is revoked. This order is effective January 4, 1999.

Dated: November 27, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–32225 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 1938–98]

Filing of Applications and Petitions for Treaty Trader and Treaty Investor (E) and Alien Entrepreneur (EB–5) Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of location of filing petitions and applications.

SUMMARY: This notice announces that the Immigration and Naturalization Service (Service) is directing all petitions and applications related to classification as a treaty trader (E–1), treaty investor (E–2), or alien entrepreneur (EB–5) to be filed at the newly defined jurisdictional areas of either the Texas Service Center or the California Service Center. This action is necessary to provide more effective monitoring and control of these often complex, time-consuming adjudications.

DATES: This notice is effective December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Katharine Auchincloss-Lorr, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

What Change is the Service Announcing Through the Publication of This Document?

Until this time, treaty trader and treaty investment applications and alien entrepreneur petitions have been processed at the four Service Centers located in California, Vermont, Texas, and Nebraska. With the publication of this notice, pursuant to 8 CFR 103.1 and 103.2, the Service is consolidating all petitions and applications relating to classification as a treaty trader (E–1), treaty investor (E–2), and alien entrepreneur (EB–5) at two Service Centers, namely those in Texas and California.

Why is the Service Changing the Location for Processing E–1 and E–2 Applications and EB–5 Petitions?

By consolidating these applications and petitions at the Texas and California Service Centers, the Service will ensure that the procedures related to the adjudication of these highly technical requests for immigration benefits are more uniform, consistent, and streamlined. Quality control and other necessary program oversight functions may be more readily undertaken as necessary. The Service can more easily ensure that the officers adjudicating these cases are appropriately trained and experienced in the relevant areas of regulatory trade, investment, financial, and economic policy and analysis, and that they have access to the additional expertise necessary in particularly complex matters.

How Will the Public Benefit From These Changes?

These petitioners and applicants will receive more comprehensive and effective adjudication of their requests for benefits. These adjudications will be performed only by trained and skilled adjudicators, familiar with these complex financial and economic requirements and the issues involved. Consolidation will enable the Service to respond more effectively to any procedural concerns and to provide prompt adjudication.

What Petitions and Forms are Involved?

The petitions and applications involved in this change of filing location include applications for extension or change of status of nonimmigrant classification to treaty trader (E–1) and treaty investor (E–2) status which are processed on Form I–129; petitions for alien entrepreneur classification, which are filed on Form I–526, and; petitions to remove conditions at the end of the 2 year period of conditional residence, which are filed on Form I–829.

What are the Mailing Addresses for These New Filing Locations?

The current mailing addresses for these petitions and applications are as follows: for the California Service Center, 24000 Avila Road, 2nd floor (P.O. Box 10526), Laguna Niguel, California 92607–0526; for the Texas Service Center, P.O. Box 852135, Mesquite TX 75185–2135.

Is This Change in Location a Change in Service Center Jurisdiction?

The Nebraska and Vermont Service Centers will no longer have jurisdiction over E–1, E–2, and EB–5 matters. The Texas and California Service Centers will have jurisdiction over these matters.

Effective [Insert date of publication in the **Federal Register**], petitions for immigrant investor classification which have been filed pursuant to § 204.6(b) with the Service Center having jurisdiction over the area in which the new commercial enterprise is or will be principally doing business, will be filed with: (1) The Texas Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the Vermont and Texas Service Centers; (2) the California Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the California and Nebraska Service Centers.

The same change will occur with regard to applications for extension of stay or change of status into E–1 or E–2 classification which are filed pursuant to the instructions on Form I–129 with the Service Center with jurisdiction over the location of employment.

What Will Happen to My Application or Petition if I Already Filed It at Another Service Center?

During the first 60 days following the effective date of this Notice, the Service Centers in Vermont and Nebraska will forward in a timely fashion to the Service Centers in Texas and California, as appropriate, any of these applications and petitions which have been inadvertently filed with the Service Centers in Vermont or Nebraska. In order to facilitate this transition, applicants and petitioners will be provided a notice at the time of filing at Vermont or Nebraska advising them that their application or petition is being forwarded to the correct service center, either Texas of California, for initial processing. When applications or petitions are forwarded from the Vermont or Nebraska Service Centers, they will be receipted and filed when they arrive at the Texas or California Service Centers, After the 60-day transition period, applications and petitions related to classification as treaty trader (E–1), treaty investor (E–2),