

Firm name and address	Drug labeler code
Reid-Provident Laboratories, Inc., 25 Fifth St. NW, Atlanta, GA 30308	000063

(2) * * *

Drug labeler code	Firm name and address
000063	Reid-Provident Laboratories, Inc., 25 Fifth St. NW, Atlanta, GA 30308

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.580 [Amended]

2. In Part 520, § 520.580(b)(2) is amended by deleting sponsor number "000124" and inserting in its place "000063".

Effective date. This amendment is effective January 6, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))
Dated: December 29, 1980.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

(FR Doc. 801-283 Filed 1-5-81; 8:45 am)

BILLING CODE 4110-03-M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone- Nifuroxime-Diperodon Hydrochloride Ear Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration amends the animal drug regulations to reflect the proper sponsor name for a new animal drug application providing for use of nitrofurazone-nifuroxime-diperodon hydrochloride ear solution for treating dogs.

EFFECTIVE DATE: November 23, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert S. Brigham, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 23, 1979 (44 FR 67113), the animal drug regulations were amended to reflect the change in the two sponsors, Norwich Pharmacal Co. and Eaton Labs. to Norwich-Eaton Pharmaceuticals,

Division of Morton-Norwich Products, Inc. Although the regulations were amended to reflect this change, the amendments failed to include a revision of 21 CFR 524.1580a(b). This document corrects that omission.

§ 524.1580a [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 524.1580a Nitrofurazone-nifuroxime-diperodon hydrochloride ear solution is amended in paragraph (b) by deleting the phrase "No. 000035" and inserting in its place "No. 000149".

Effective date. November 23, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 29, 1980.

Leon C. Brunk,

Deputy Associate Director for Surveillance and Compliance.

(FR Doc. 81-281 Filed 1-5-81; 8:45 am)

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-80-902]

General; List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: March 2, 1981.

ADDRESS: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large

volume of legal documents that must be executed on behalf of the Association.

§ 300.11. [Amended]

1. Paragraph (c) of § 300.11 is amended by adding the following names to the current list of attorneys-in-fact:

* * * *

(c) * * *

Name and Region

Margaret G. Hitch, Los Angeles, California

Carmen I. Huertas, Los Angeles, California

Carol King, Los Angeles, California

Floyd McCutcheon, Los Angeles, California

* * * *

(Section 309(d) of the National Housing Act, 12 U.S.C. 1723a(d), and section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))
Issued at Washington, D.C., December 22, 1980.

Ronald P. Laurent,

President, Government National Mortgage Association.

(FR Doc. 81-323 Filed 1-5-81; 8:45 am)

BILLING CODE 4210-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

29 CFR Part 2520

Reporting and Disclosure Under Title I of the Employee Retirement Income Security Act of 1974; Final Regulation Relating to Certain Simplified Employee Pensions

AGENCY: U.S. Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that prescribes an alternative method of compliance with the reporting and disclosure requirements of ERISA for certain simplified employee pensions other than those created by use of Internal Revenue Service Form 5305-SEP.

DATES: The effective date of the final regulation is February 6, 1981.

FOR FURTHER INFORMATION CONTACT:

Charmain B. Gordon, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210 (202) 523-9593, or Robert Doyle, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-8515 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: On April 15, 1980, notice was published in the *Federal Register* (45 FR 25404) that the Department was adopting as a temporary regulation, and was considering a proposal to adopt as a final regulation, 29 CFR § 2520.104-49, under section 110 of the Act. The regulation prescribed an alternative method of compliance with the reporting and disclosure requirements of Part 1 of Title I of the Act (Part 1) for SEPs other than those created by use of IRS Form 5305-SEP, except in those cases where the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions will be made, and those IRAs are subject to internal provisions which prohibit withdrawals of funds by participants for any period of time.¹

Three comments were received in response to the proposal. Upon consideration of the comments, the Department has determined to adopt the regulation in the form set forth herein.

A. Background

On September 25, 1979, the Department published in the *Federal Register* a notice of proposed rulemaking which described a proposed alternative method of compliance with the reporting and disclosure requirements of Part 1 for SEPs established by use of IRS Form 5305-SEP (Model SEPs) (44 FR 55205). Many of the comments on that proposed regulation indicated that Model SEPs were of limited utility to employers and requested that the Department provide an alternative method of compliance for SEPs other than Model SEPs. In the discussion of those comments in the preamble to the final regulation concerning Model SEPs (§ 2520.104-48 (45 FR 24866, April 11, 1980)), the Department noted that it believed that an alternative method of compliance might be appropriate for SEPs other than Model SEPs.² The Department therefore,

published a proposed and temporary regulation § 2520.104-49 (45 FR 25404, April 15, 1980) containing an alternative method of compliance for certain SEPs other than Model SEPs. The proposal was made temporarily effective as of April 14, 1980 so that the alternative method of compliance would be available to employers who had established or wished to establish non-Model SEPs for calendar year 1979. Under the tax laws, such employers were entitled to make SEP contributions at any time until April 15, 1980. Although the regulation was made effective as of April 14, 1980, comments were solicited as to whether the temporary regulation should be adopted, with or without change, in final form.

B. Discussion of Comments

Three comments were received. One of the comments did not pertain to the regulation, but simply brought to the Department's attention certain administrative problems that have allegedly been encountered in administering SEPs. The other comments raised several points, which are discussed below.

(1) First, one commenter requested that the Department clarify that the requirements of section (a)(1) of the regulation would be satisfied if the SEP agreement itself was provided to participants. Section (a)(1) requires that specific information be furnished to employees regarding the SEP. That information includes the participant requirements for the SEP; the allocation formula for the SEP; the name of an individual designated by the employer to furnish additional information regarding the SEP; and, under certain circumstances, a clear explanation of the terms of the IRA into which SEP contributions are made. In support of the suggestion that the SEP agreement be deemed to meet the disclosure requirements of (a)(1), the commenter noted that, under regulation 104-48, an employer using a Model SEP agreement provides specific information regarding the SEP to participants by simply furnishing them a copy of the completed Model SEP agreement.

Under sections 101(a) and 102(a)(1) of the Act, the administrator of any employee benefit plan must provide

each participant covered under the plan a summary plan description that is "written in a manner calculated to be understood by the average plan participant". Regulation 104-48 permits the employer or other plan administrator to furnish participants a copy of the Model SEP agreement, rather than a summary thereof, because, in the Department's opinion, the Model SEP agreement is drafted in a manner calculated to be understood by the average plan participant. If a non-Model SEP agreement were drafted in a similar manner, the Department believes the non-Model SEP agreement could be used to satisfy the requirements of paragraphs (a)(1)(i) through (iii) of regulation 104-49. Since a SEP agreement would not ordinarily contain the information required in paragraph (a)(1)(iv), which requires specific information about the IRA, the agreement could not generally be used to meet the requirements of that paragraph. To clarify the regulation with respect to these matters, a new section (b)(1) has been added. The previous section (b) and section (c) have been redesignated accordingly.

(2) A commenter noted that the requirement in section (a)(1)(iii) of the regulation—that the name or title be given of an individual who is designated by the employer to provide additional information to participants concerning the SEP—has no parallel in the previously published Model SEP regulation. Although the commenter indicated that the requirement appeared to be a salutary one, the commenter objected that there was no reason to distinguish Model SEPs from non-Model SEPs in this regard. The commenter therefore argued that the requirement should be either eliminated from the non-Model SEP regulation, or added to the Model SEP regulation.

As discussed earlier, under regulation 104-48, an employer or other plan administrator must furnish participants a copy of the completed Model SEP agreement itself. This agreement necessarily contains the name of the person who signs the agreement on behalf of the employer. If the employer wishes to designate an individual for participants to contact other than, or in addition to, the individual signing the SEP agreement, the employer would, of course, be free to do so under the regulation.

In contrast to regulation 104-48, regulation 104-49 would not otherwise require that a document be provided which necessarily contains the name of any individual whom participants could contact. As a result, the Department

¹ Non-Model SEPs which are subject to such prohibitions would, therefore, be subject to the reporting and disclosure requirements of Part 1. As the Department noted in the preamble to the proposed regulation, however, in the case of IRAs that are selected by an employer who establishes a SEP and that are subject to provisions that allow withdrawals but reduce earnings or impose other penalties, the SEP would be covered by this alternative method of compliance.

² Under section 110 of the Act, the Department may prescribe an alternative method for satisfying any requirement of Part 1 with respect to a pension plan or class of pension plans subject to that requirement if it determines:

(1) That the use of the alternative method is consistent with the purposes of Title I and that it provides adequate disclosure to participants and beneficiaries of the plan, and adequate reporting to the Department;

(2) That the application of that requirement would—

(A) increase the costs of the plan, or
(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or type of plan involved; and

(3) That the application of Part 1 would be adverse to the interests of plan participants in the aggregate.

believes it is appropriate to require, in the regulation relating to non-Model SEPs, the designation of an individual who could provide additional information.

(3) A commenter pointed out that the information required by paragraph (a)(1)(iv) might, in some cases, duplicate information provided to participants by the financial institution in which the participant's IRA is maintained. The commenter therefore suggested that the requirements of the paragraph should be satisfied if the financial institution in question provides the information specified therein. The Department believes that this comment has merit and, accordingly, a sentence has been added to the regulation in this regard.

(4) A commenter suggested that the disclosure requirements of sections (a)(1)(iv) and (a)(3) regarding the rate of return and other terms of the IRA into which SEP contributions are made should be consolidated and simplified. To achieve this, the commenter suggested that the two sections should be modified to require the employer or other plan administrator to state that "other IRAs * * * either may not be subject to such restrictions or may be subject to different restrictions or charges." Alternatively, the commenter proposed that a provision be added to the regulation indicating that paragraphs (a)(1)(iv) and (a)(3) would be satisfied if the participant were given a combined statement containing (1) the IRA's disclosure materials (which, pursuant to other federal regulations, may contain information on rates of return and restrictions on withdrawals), and (2) the sentence quoted above.

As to paragraph (a)(1)(iv) of the regulation, the Department does not believe that a general statement of the sort proposed by the commenter is an adequate substitute for the specific disclosure required by that paragraph. As to paragraph (a)(3), the commenter's proposed language fails to supply the information contained in subparagraphs (ii) and (iii) of that paragraph. The Department believes that this information is useful to participants and has therefore decided not to adopt the language proposed by the commenter.

With respect to the alternative proposal of the commenter, the Department has already noted above that the IRA's disclosure materials may, under some circumstances, be used to satisfy the requirements of paragraph (a)(iv). A general statement could, of course, be added to those materials to satisfy the requirements of paragraph (a)(3), although the statement proposed by the commenter would not be adequate for this purpose. However, it

should be noted that there would be no need to add such a general statement to the IRA disclosure materials if the IRS Notice, discussed below, is supplied to participants, as the information contained in the Notice already contains this general information.

(5) Finally, one commenter requested that the regulation be clarified to state that an employer would not have to meet the disclosure requirements of paragraph (a)(1)(iv) of the regulation if the employer chose the institution in which IRA contributions were deposited (e.g. a savings and loan association), but left to the employee the choice as to which investment vehicle would be used at that institution (e.g. passbook account or certificate of deposit). As was noted above, section (a)(1)(iv) of the regulation requires specific information about the IRA to which employer contributions are made if the employer selects, recommends or substantially influences the choice of the IRA. In the Department's view, an employer would have to meet the disclosure requirements of paragraph (a)(1)(iv) of the regulation in the circumstances described by the commenter. However, as discussed above, in many cases the employer would be able to use the institution's existing disclosure materials for this purpose.

C. The IRS Notice

When regulation 104-49 was published on April 15, 1980, the Department indicated that the regulation had been developed in coordination with the IRS. The Department also noted that it anticipated publication by the IRS of a Notice containing information that would satisfy the requirements of paragraph (a)(2) of the regulation. In this regard, the information contained in the IRS Notice³, in the Department's opinion, will meet the requirements not only of paragraph (a)(2), but also of paragraphs (a)(3), (a)(4) and (a)(5) of the alternative method of compliance.

In addition, we note that several changes have been made to paragraph (a)(6) of the regulation. Paragraph (a)(6)(ii) of the proposal, which required, in the case of a SEP that provides for integration with Social Security, that the administrator of the SEP furnish to the employee several examples of the effect integration would have on actual employer contributions under a SEP, has been modified. In place of the requirement that examples be included, the administrator of such a SEP will be required to furnish the employee in writing with a description of the effect that integration with Social Security

would have on employer contributions under a SEP. In addition, paragraph (a)(6)(iii) has been added to make clear that an employee must be furnished with a copy of the integration formula itself. The Department believes that these revised disclosure requirements will be less burdensome for plan administrators than the requirements originally proposed, while providing adequate disclosure to plan participants.

It is the Department's opinion that the information contained in the Notice, which highlights the effect of integration with Social Security on employer contributions to SEPs, would satisfy the requirements of paragraph (a)(6)(ii), as modified.

D. Other Matters

The Department notes that the alternative method of compliance for non-Model SEPs relates solely to reporting and disclosure under Title I of the Act, and that nothing in the regulation relieves any person (including a fiduciary) from compliance with the fiduciary responsibility and other provisions of the Act.⁴

Pursuant to the requirements of section 110 of the Act, the Secretary makes the following determinations:

(1) that the use of the alternative method of compliance is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to participants and beneficiaries in the covered SEPs, and adequate reporting to the Secretary;

(2) that the application of the requirements of Part 1 would—

(A) increase the costs to the covered SEPs, or

(B) impose unreasonable administrative burdens with respect to the operation of such plans, having regard to the particular characteristics of those plans; and

(3) that the application of Part 1 would be adverse to the interests of participants in the covered SEPs in the aggregate.

E. Statutory Authority

The final regulation set forth below is adopted pursuant to sections 110 and

⁴If the assets of a SEP are used for the benefit of a party in interest or disqualified person with respect to that SEP (as defined in sections 3(14) of the Act and 4975(e)(2) of the Code) violations of sections 406 of the Act and 4975(c)(1) of the Code may occur. For example, if, in connection with the establishment and maintenance of a SEP, an employer directs its employees to open IRAs with a particular financial institution and in return for making SEP contributions to those IRAs the employer receives from that institution a loan or other benefits, such conduct would involve violations of sections 406(a)(1)(D) and 406(b) of the Act and 4975(c)(1) (D), (E) and (F) of the Code.

³ Notice 81-1, I.R.B. 1981-2.

505 of the Act (Pub. L. 93-406, 88 Stat. 829, 851, 894, 29 U.S.C. 1030, 1135).

Accordingly, regulation 29 CFR 2520.104-49 is revised to read as follows:

§ 2520.104-49 Alternative method of compliance for certain simplified employee pensions.

Under the authority of section 110 of the Act, the provisions of this section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in Part 1 of Title I of the Act for a simplified employee pension (SEP) described in section 408(k) of the Internal Revenue Code of 1954 as amended, except for (1) a SEP that is created by proper use of Internal Revenue Service Form 5305-SEP, or (2) a SEP in connection with which the employer who establishes or maintains the SEP selects, recommends or influences its employees to choose the IRAs into which employer contributions will be made and those IRAs are subject to provisions that prohibit withdrawal of funds by participants for any period of time.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter) or up to 90 days after the effective date of this regulation, whichever is later, the administrator of the SEP (generally the employer establishing or maintaining the SEP) shall furnish the employee in writing with:

(1) Specific information concerning the SEP, including:

(i) The requirements for employee participation in the SEP,

(ii) The formula to be used to allocate employer contributions made under the SEP to each participant's individual retirement account or annuity (IRA),

(iii) The name or title of the individual who is designated by the employer to provide additional information to participants concerning the SEP, and

(iv) If the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions under the SEP will be made, a clear explanation of the terms of those IRAs, such as the rate(s) of return and any restrictions on a participant's ability to roll over or withdraw funds from the IRAs, including restrictions that allow rollovers or withdrawals but reduce earnings of the IRAs or impose other penalties.

(2) General information concerning SEPs and IRAs, including a clear explanation of:

(i) What a SEP is and how it operates,

(ii) The statutory provisions prohibiting discrimination in favor of highly compensated employees,

(iii) A participant's right to receive contributions under a SEP and the allowable sources of contributions to a SEP-related IRA (SEP-IRA),

(iv) The statutory limits on contributions to SEP-IRAs,

(v) The consequences of excess contributions to a SEP-IRA and how to avoid excess contributions,

(vi) A participant's rights with respect to contributions made under a SEP to his or her IRA(s),

(vii) How a participant must treat contributions to a SEP-IRA for tax purposes,

(viii) The statutory provisions concerning withdrawal of funds from a SEP-IRA and the consequences of a premature withdrawal, and

(ix) A participant's ability to roll over or transfer funds from a SEP-IRA to another IRA, SEP-IRA, or retirement bond, and how such a rollover or transfer may be effected without causing adverse tax consequences.

(3) A statement to the effect that:

(i) IRAs other than the IRA(s) into which employer contributions will be made under the SEP may provide different rates of return and may have different terms concerning, among other things, transfers and withdrawals of funds from the IRA(s),

(ii) In the event a participant is entitled to make a contribution or rollover to an IRA, such contribution or rollover can be made to an IRA other than the one into which employer contributions under the SEP are to be made, and

(iii) Depending on the terms of the IRA into which employer contributions are made, a participant may be able to make rollovers or transfers of funds from that IRA to another IRA.

(4) A description of the disclosure required by the Internal Revenue Service to be made to individuals for whose benefit an IRA is established by the financial institution or other person who sponsors the IRA(s) into which contributions will be made under the SEP.

(5) A statement that, in addition to the information provided to an employee at the time he or she becomes eligible to participate in a SEP, the administrator of the SEP must furnish each participant:

(i) Within 30 days of the effective date of any amendment to the terms of the SEP, a copy of the amendment and a clear written explanation of its effects, and

(ii) No later than the later of:

(A) January 31 of the year following the year for which a contribution is made,

(B) 30 days after a contribution is made, or

(C) 30 days after the effective date of this regulation

written notification of any employer contributions made under the SEP to that participant's IRA(s).

(6) In the case of a SEP that provides for integration with Social Security

(i) A statement that Social Security taxes paid by the employer on account of a participant will be considered as an employer contribution under the SEP to a participant's SEP-IRA for purposes of determining the amount contributed to the SEP-IRA(s) of a participant by the employer pursuant to the allocation formula,

(ii) A description of the effect that integration with Social Security would have on employer contributions under a SEP, and

(iii) The integration formula, which may constitute part of the allocation formula required by paragraph (a)(1)(ii) of this section.

(b)(1) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(6)(i) of this regulation may be met by furnishing the SEP agreement to participants, provided that the SEP agreement is written in a manner reasonably calculated to be understood by the average plan participant.

(2) The requirements of paragraph (a)(1)(iv) of this regulation may be met through disclosure materials furnished by the financial institution in which the participant's IRA is maintained, provided the materials contain the information specified in such paragraph.

(c) No later than the later of:

(1) January 31 of the year following the year for which a contribution is made,

(2) 30 days after a contribution is made, or

(3) 30 days after the effective date of this regulation

the administrator of the SEP shall notify a participant in the SEP in writing of any employer contributions made under the SEP to the participant's IRA(s).

(d) Within 30 days of the effective date of any amendment to the terms of the SEP, the administrator shall furnish each participant a copy of the amendment and a clear explanation in writing of its effect.

Signed at Washington, D.C. this 31st day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

(FR Doc. 81-328 Filed 1-5-81; 8:45 am)

BILLING CODE 4510-29-M

29 CFR Part 2520

Regulation Relating to Reporting and Disclosure for Short Plan Years

AGENCY: U.S. Department of Labor.

ACTION: Adoption of final regulation.

SUMMARY: This document contains a regulation that, under certain circumstances, permits the administrator of an employee benefit plan incurring a plan year of seven or fewer months' duration to defer engaging an independent qualified public accountant and including an opinion rendered by such accountant in the annual report of the plan, as would otherwise be required under section 103 of the Employee Retirement Income Security Act of 1974 (the Act).

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: John Malagrin, Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8684, or J. Scott Galloway, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8658 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: On August 26, 1980, the Department of Labor (the Department) published in the Federal Register (45 FR 56843) a proposed regulation which would permit the administrator of an employee benefit plan to defer the audit requirement for the first of two consecutive plan years, one of which is a short plan year of seven or fewer months duration, and to file an audited statement for that plan year when he files the annual report for the immediately following plan year, subject to certain conditions. One person commented to the Department with respect to the proposal.

One of the conditions included in the proposal was that the annual report for the second of two consecutive plan years must include a statement by the independent accountant identifying any material differences between the unaudited information contained in the annual report for the first of the two consecutive plan years and the audited financial information relating to that plan year contained in the annual report

for the immediately following plan year. The commenter suggested that providing the statement of material differences was outside the scope of the duties of the independent accountant. The responsibility for the content of financial statements is generally imposed upon the plan administrator, whose statements are audited by an independent accountant. It appears that requiring the plan administrator, rather than the independent accountant, to supply the statement of material modifications will provide sufficient information to the Department, without increasing costs to the plan. Consequently, the regulation has been revised to remove the requirement that the independent accountant provide the statement of material differences.

The commenter also indicated that there may be confusion concerning the operation of the regulation in situations where the short plan year ends with the termination of the plan. Specifically, the commenter suggested that a plan administrator might assume that a short plan year in which the plan terminates is the year with respect to which the audit requirement is deferred, and might never file audited financial statements for that short plan year. In light of the language of the regulation, however, such an assumption would be erroneous.

29 CFR 2520.104-50(b) provides that "[a] plan administrator is not required to include the report of an independent qualified public accountant in the annual report for the first of two consecutive plan years, one of which is a short plan year," provided that, among other conditions, the annual report for the second of the plan years includes an accountant's report with respect to each of the two plan years. The operation of the regulation in a situation where a plan is terminating may be illustrated by the following example. A plan which has a calendar year plan year will be terminating on May 31, 1981. Pursuant to § 2520.104-50(a)(3), the period from January 1, 1981, through May 31, 1981, constitutes a short plan year. The plan year from January 1, 1980, through December 31, 1980, is the first of two consecutive plan years, one of which is a short plan year. Under the regulation, the plan administrator is not required to provide audited financial statements in the annual report for the plan year from January 1, 1980, through December 31, 1980, provided that, among other conditions, the annual report for the short plan year, January 1, 1981, through May 31, 1981, includes an accountant's report with respect to the plan year from January 1, 1980, through December 31, 1980. The audit requirement for a short

plan year ending in the termination of the plan cannot be deferred under the regulation because, if the plan terminates, the year in which it terminates cannot be the first of two consecutive plan years.

An additional change without substantive effect has been made in the regulation for purposes of clarity.

The Department has determined that this proposed regulation is a significant regulation within the meaning of the Department's guidelines for improving government regulations (44 FR 5570, January 26, 1979). This regulation is effective upon its adoption because it grants an exemption from various reporting and disclosure requirements of Part 1.

With regard to pension plans, the Department has determined that the use of the deferral of the accountant's examination and report in connection with short plan years as specified in 29 CFR 2520.104-50 is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to participants and beneficiaries in such plans, and adequate reporting to the Secretary, and that application of the requirements of Title I of the Act regarding the accountant's examination and report without permitting the short plan year deferral would increase the costs to such plans, and would be adverse to the interests of plan participants in the aggregate. With regard to welfare plans, the Department finds that it would be inappropriate to apply the requirements of Title I of the Act regarding the accountant's examination and report to such plans without permitting the deferral of the accountant's examination and report in connection with short plan years, as specified in 29 CFR 2520.104-50.

Statutory Authority

The regulation set forth below is issued under the authority of sections 104, 110 and 505 of the Act [29 U.S.C. 1024, 1030, and 1135].

Regulation

In consideration of the matters discussed above, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding thereto a new § 2520.104-50, reading as follows:

§ 2520.104-50 Short plan years, deferral of accountant's examination and report.

(a) *Definition of "short plan year."* For purposes of this section, a short plan year is a plan year, as defined in section 3(39) of the Act, of seven or fewer months' duration, which occurs in the event that—(1) a plan is established or

commences operations; (2) a plan is merged or consolidated with another plan or plans; (3) a plan is terminated; or (4) the annual date on which the plan year begins is changed.

(b) *Deferral of accountant's report.* A plan administrator is not required to include the report of an independent qualified public accountant in the annual report for the first of two consecutive plan years, one of which is a short plan year, provided that the following conditions are satisfied:

(1) The annual report for the first of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with the requirements of section 103(b) of the Act and regulations promulgated thereunder;

(ii) An explanation why one of the two plan years is of seven or fewer months' duration; and

(iii) A statement that the annual report for the immediately following plan year will include a report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both of the two plan years.

(2) The annual report for the second of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with section 103(b) of the Act and regulations promulgated thereunder with respect to both plan years;

(ii) A report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both plan years; and

(iii) A statement identifying any material differences between the unaudited financial information relating to, and contained in the annual report for, the first of the two consecutive plan years and the audited financial information relating to that plan year contained in the annual report for the immediately following plan year.

(c) *Accountant's examination and report.* The examination by the accountant which serves as the basis for the portion of his report relating to the first of the two consecutive plan years may be conducted at the same time as the examination which serves as the basis for the portion of his report relating to the immediately following plan year. The report of the accountant shall be prepared in conformity with section 103(a)(3)(A) of the Act and regulations thereunder.

Signed at Washington, D.C., this 29th day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

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29 CFR Part 2550

Maintenance of Indicia of Ownership of Plan Assets Outside Jurisdiction of the District Courts of the United States

AGENCY: Department of Labor.

ACTION: Adoption of Final Regulation.

SUMMARY: This document contains revisions to existing regulations under section 404(b) of the Employee Retirement Income Security Act of 1974 (ERISA), which prescribe conditions under which a fiduciary of an employee benefit plan is permitted to maintain the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States. The revisions broaden the circumstances under which the indicia of ownership of certain plan assets may be maintained by certain banks in the custody of specified foreign entities.

EFFECTIVE DATE: February 6, 1981.

FOR FURTHER INFORMATION CONTACT:

J. Scott Galloway, Office of the Solicitor, U.S. Department of Labor, (202) 523-8658. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On August 5, 1980, the Department of Labor (the Department) published in the *Federal Register* (45 FR 51840) a notice of proposed rulemaking proposing certain amendments to 29 CFR 2550.404b-1.

Under section 404(b) of ERISA, a plan fiduciary is prohibited from maintaining the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States except as authorized by regulation. On October 4, 1977, the Department published regulation 404b-1 which specifies the circumstances under which a fiduciary of an employee benefit plan may maintain the indicia of ownership of plan assets abroad. The regulation provides that the indicia of ownership of certain types of plan assets may be held abroad if, among other things, the indicia of ownership are maintained by certain banks, brokers or dealers in the custody of an entity which has been designated by the U.S. Securities and Exchange Commission (the Commission) as a "satisfactory control location" under the Securities Exchange Act of 1934 (Exchange Act). The Commission's

staff, however, has taken the position that the Commission designates a "satisfactory control location" only upon application by a broker or dealer registered under the Exchange Act. As a result, banks have been limited in their ability to utilize the Department's regulation in holding plan assets abroad.

The proposed revisions to the regulation would permit banks that satisfy specified criteria intended to ensure financial responsibility to maintain the indicia of ownership of plan assets in the custody of certain foreign entities which are supervised or regulated by a government agency or regulatory authority, under conditions designed to parallel the criteria for designating satisfactory control locations.

At the time the proposed revisions were published, the Department solicited comments from interested persons. Two comments were received. The Department has reviewed the comments, and has made changes in the final revisions where appropriate, as discussed below. The Department considers the final regulation to be "significant" within the meaning of Department of Labor guidelines (44 FR 5570, January 26, 1979) implementing Executive Order 12044 (43 FR 12661, March 23, 1978).

Discussion

Under the proposed revisions, the specified U.S. banks may maintain the custody of foreign securities only in a foreign bank or a foreign securities depository. One commenter requested that the revisions be modified to make clear that the specified banks may utilize the services of certain foreign clearing agencies. The commenter noted that under Rule 15c3-3,¹ adopted under the Exchange Act, the Commission may designate (and has in fact designated) not only foreign banks and foreign securities depositories, but also foreign clearing agencies as "satisfactory control locations." See Securities Exchange Act Release No. 10429 (October 12, 1973).

In light of this comment, the Department has decided to amend the revisions to include government regulated foreign clearing agencies which act as security depositories among the entities in which banks may maintain the indicia of ownership of plan assets held abroad.

The commenter also requested that the Department eliminate the requirement in the proposed revisions that the banks identify to a plan, at the time an annual report is submitted to the

¹ 17 CFR 240.15c3-3.