ACTION: Interpretation.

SUMMARY: The Commission is rescinding Financial Reporting Release (FRR) No. 3, its interpretive release relating to extinguishment of debt through "in-substance defeasance" arrangements, because the Financial Accounting Standards Board (FASB) has recently issued a standard on that topic. The Commission also emphasized the importance of certain aspects of the new standard.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Dorothy E. Walker, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202)–272–2130).

SUPPLEMENTARY INFORMATION:

Background

In Financial Reporting Release (FRR) No. 3, issued in August 1982 (47 FR 38868), the Commission announced its support of the tentative view of the FASB that, except in certain limited circumstances, debt should not be accounted for as extinguished unless the debtor has no further legal obligation. The Commission indicated that, to avoid inconsistent accounting, registrants should follow that tentative position while the FASB was considering the issue. Recently, after study and deliberation, the FASB issued Statement of Financial Accounting Standards (SFAS) No. 76, "Extinguishment of Debt", which clarifies the accounting for such "quasi-defeasance" or "in-substance defeasance" arrangements. Accordingly, the Commission has determined to rescind FRR No. 3.

Requirements for Extinguishment of Debt

SFAS No. 76 provides that a debtor shall consider debt to be extinguished under three circumstances. The first two are the traditional criteria for extinguishment of debt (payment of the debt and legal release as primary obligor). The third, described in paragraph 3(c), is new and provides for extinguishment under certain conditions when eligible assets are irrevocably placed in a trust to be used solely for satisfying scheduled payments on the debt.

SFAS No. 76 does not have any specific eligibility requirements for the trustee of the trust created pursuant to paragraph 3(c) of that standard. The Commission believes, however, that paragraph 3(c) of the standard contemplates that the trustee should be independent with respect to the company.[1]

Paragraph 4 of SFAS No. 76 provides that the assets used to effect an extinguishment of debt under paragraph 3(c) must be monetary assets essentially risk free as to the amount, timing, and collection of interest and principal. These requirements are designed to assure that all interest and principal payments are made on time. Accordingly, they are very important and must be strictly interpreted.

Paragraph 4 lists the three types of assets in U.S. dollars that might meet those requirements: (1) Direct obligations of the U.S. government, (2) obligations guaranteed by the U.S. government, and (3) securities that are backed by U.S. government obligations as collateral under an arrangement by which the interest and principal payments on the collateral generally flow immediately through to the holder of the security (for example, as in a closed trust). The Commission believes that very few securities of the types listed in (2) and (3) above can satisfy the essentially risk free requirements, particularly because the requirement for the assets to be risk free as to timing of collection applies to the risk of late as well as early payments. For example, if a guarantee provides only for the ultimate collection, but not for the collection of interest and principal in sufficient time to ensure payments on the defeased debt as they become due, the security would not qualify.

The Commission notes that the determination whether debt can be considered to be extinguished requires an assessment as to the likelihood of the debtor being required to make future payments with respect to the debt, not only because of an inadequacy of trust assets attributable to a failure to realize scheduled cash flows, but also because of an acceleration of the debt's maturity. An acceleration might occur because of a violation of a covenant of the debt issue being extinguished, or, under cross-default provisions, because of a violation of a covenant of another debt issue.

The determination whether debt can be considered to be extinguished is also affected by the irrevocable nature of the trust. The trust must be designed so that neither the corporation nor its creditors or others can rescind or revoke it, or obtain access to the assets.

The Commission emphasizes that the qualifications of the trustee and nature of the trust and of the assets in the trust are areas of concern and that it expects registrants which extinguish debt under paragraph 3(c) to carefully evaluate those areas.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated to

1. Delete old Section 217, entitled as follows:

217 Accounting for Extinguishment of Debt

2. Add new Section 217, entitled as follows:

217 Accounting for Extinguishment of Debt

3. Include in Section 217 the sections of this release entitled, "Background," and "Requirements for Extinguishment of Debt," numbered as specified below:

.01 Background

.02 Requirements for Extinguishment of Debt

This codification is a separate publication issued by the SEC; it will not be published in the **Federal Register**/Code of Federal Regulations System.

List of Subjects in 17 CFR Part 211

Accounting, Reporting and recordkeeping requirements, Securities.

Commission Action

The Commission hereby amends Subpart A 17 CFR Part 211 by deleting the reference to Release No. 3, Interpretive Release Relating to Accounting for Extinguishment of Debt and adding the reference to this Release No. 15, Interpretive Release Relating to Accounting for Extinguishment of Debt.

By the Commission.

December 22, 1983.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-34756 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

[1] Trustees that meet the eligibility requirements for trustees under Sections 310(a)(1) and 310(a)(2) of the Trust Indenture Act of 1939 (the "1939 Act"), for example, will be presumed by the staff of the Commission to be appropriate trustees. Those sections of the 1939 Act provide that a trustee must be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia, which (a) is authorized under such laws to exercise corporate trust powers, (b) is subject to supervision or examination by Federal, State, Territorial or District of Columbia authority, and (c) has combined capital and surplus of at least $150,000.

17 CFR Part 271

[Release No. IC-13691]

Applications of Foreign Investment Companies Filed Pursuant to Section 7(d) of the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Statement of Commission position.

SUMMARY: The Securities and Exchange Commission advises any foreign investment company domiciled in a civil law country which desires to sell its shares in the United States to consider organizing a separate company in the United States and offering the latter's shares in this country instead of filing an application under Section 7(d) of the Investment Company Act of 1940 ("Act") for permission to register under the Act and sell its own shares. The Commission makes this suggestion because of the difficulties a foreign company may face in meeting the existing requirements of the Act. The Commission also announces that it is recommending legislation to the Congress to amend Section 7(d) of the Act to make it easier for operating foreign investment companies to register with the Commission when that is consistent with the purposes of the Act and the protection of investors.

EFFECTIVE DATE: December 23, 1983.

FOR FURTHER INFORMATION CONTACT: Glen A. Payne, Assistant Director (202) 272-3018, Mary A. Cole, Special Counsel (202) 272-3023, or Brian M. Kaplowitz, Staff Attorney (202) 272-3024, Division of Investment Management, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") has determined to issue the following release in order to describe problems that certain foreign investment companies may encounter in filing applications for orders under Section 7(d) of the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a-7(d)], and to suggest that any such company desiring to offer its shares for sale in the United States should consider forming a separate company in the United States and offering the latter's shares.

Background

Section 7(d) of the Act prohibits foreign investment companies from offering their shares in the United States unless the Commission issues an order permitting them to register under the Act. Under the section, the Commission must find that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of [the Act] against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors." In 1975, the Commission published an interpretive release ("Guidelines") setting forth its policy and guidelines for filing an application for an order under Section 7(d). The Guidelines included an analysis of the standards foreign investment companies should meet in order to enable the Commission to make the finding required by Section 7(d).[1] This release supplements the Guidelines.

The Commission recognized in the Guidelines that differences in foreign law and capital markets may make it difficult or impossible for foreign investment companies to comply with all the requirements of the Act or with those of Rule 7d-1 under the Act [17 CFR 270.7d-1].[2] Accordingly, the Commission indicated that it would entertain applications for orders pursuant to Section 7(d) and, where necessary, grant exemptive relief from other provisions of the Act pursuant to Section 6(c) of the Act [15 U.S.C. 80a-6(c)].[3] The Commission further stated, however, that any foreign investment company requesting an order under Section 7(d) should, at a minimum, demonstrate: (a) That the protections accorded to investors by the legal and regulatory system under which it operates are substantially equivalent to provisions of the Act; and (b) that, in conformity with standards listed in the Guidelines, it: (1) Is a bona fide and established company; (2) is subject to actual regulation by an appropriate governmental authority; (3) would not be dependent solely on sales in the United States; (4) would be a vehicle for investment primarily in foreign securities; (5) would subject itself and its management to service of process in the United States; and (6) would provide adequate disclosure to investors in the United States.

Only one foreign investment company has filed an application (which was subsequently withdrawn) for an order allowing it to sell its shares in the United States based on the Guidelines. However, the processing of that application made apparent certain difficulties, discussed below, that foreign investment companies, particularly those organized in civil law countries, may encounter in attempting to register under the Act pursuant to Section 7(d).

Discussion

The structure and operations of foreign investment companies, as well as the legal, regulatory and business environment in which they operate, can present varied and unforeseen problems in light of the mandate of Section 7(d) of the Act. For example, the Guidelines make clear that the foreign investment company and its managers are to consent to United States jurisdiction. However, the business practices and customs of a particular country may make it difficult or impossible for a foreign company to get its managers to accept personal liability by submitting to United States jurisdiction. The inability to submit to the jurisdiction of United States courts makes it difficult for the Commission to find under Section 7(d) that the Act would be legally enforceable against the applicant. Another problem may arise from the applicant's inability to comply with many of the provisions of Rule 7d-1. While that rule addresses Canadian investment companies and strict adherence to the rule therefore is not required, nonetheless, Rule 7d-1 provides guidance as to the types of conditions or arrangements that the Commission may rely on to support a determination to permit foreign investment companies to offer their shares in the United States.

The Commission's experience has also demonstrated that, beyond the Section 7(d) considerations, a foreign investment company may need extensive exemptive relief pursuant to Section 6(c) of the Act in order to function in a manner consistent with its own domestic laws and business practices. For example, exemptions may be necessary to reconcile the Act's

[1] Investment Company Act Release No. 8959 (September 26, 1975) [40 FR 45424, October 2, 1975], Commission Policy and Guidelines for Filing of Application for Order Permitting Registration under the Act and Sale of Shares in the United States of Foreign Investment Companies.

[2] Rule 7d-1 provides, in general, that a Canadian management investment company may obtain an order pursuant to section 7(d) if it complies with certain specified conditions and arrangements listed in the rule and designed to ensure the enforceability of the Act against such a company. It also states that "conditions and arrangements proposed by investment companies organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case."

[3] Section 6(c) provides that "the Commission * * * may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."

corporate governance provisions, which are based on a concept of disinterested directors, with foreign law, which may not contemplate such a concept.[4]

Finally, a number of practical difficulties may arise in the context of a Section 7(d) application. Among such difficulties are the possible inability to obtain English translations of all applicable foreign laws and the delays inherent in communicating with and obtaining information and documents from foreign entities. In addition, there exists the problem of jurisdictional sensitivity which may be involved in inquiring into the operations and effectiveness of foreign regulatory bodies. Such an inquiry may be necessary so that the Commission can determine whether the applicable foreign system affords United States investors protections substantially equivalent to those provided by the Act, a determination required by the Guidelines.[5]

Resolution of problems of this type normally will involve time delays and significant legal and other expenses. For this reason, the Commission urges any foreign investment company operating in a legal or regulatory environment which differs significantly from the Act and which wants to sell its shares in the United States to consider forming a separate United States company and offering the latter company's shares instead of seeking an order under Section 7(d) of the Act.[6] Formation of a United States "mirror fund", *i.e.*, a United States investment company investing primarily in the securities of foreign issuers in which the foreign investment company invests, would enable a foreign investment adviser to offer its services to United States investors without the need for registration of the foreign investment company under Section 7(d). Organization of such a surrogate fund appears to be the most expeditious and least costly way to accomplish the objectives of a foreign investment adviser wishing to offer shares of a foreign investment company in the United States. It would avoid the need for the extensive exemptions that otherwise would be needed for such a foreign company to directly offer its shares in this country. In this regard, it should be noted that the Commission did not intend, when it issued the Guidelines, that foreign investment companies should rule out the possibility of using alternatives other than applications under Section 7(d).[7]

The Commission also wishes to emphasize that, in suggesting the above procedures, it is not criticizing any foreign regulatory system. The difficulties lie in the specific legal finding the Commission must make under Section 7(d) of the Act. Because the Commission believes that the present standards in Section 7(d) of the Act present unnecessary obstacles to operating foreign investment companies the Commission will recommend that the Congress amend the standards of Section 7(d) to make it easier for such companies to register and sell shares in this country when that is consistent with the purposes of the Act and the protection of investors.

List of Subjects in 17 CFR Part 271

Investment companies, Securities.

Accordingly, 17 CFR Part 271 is hereby amended by adding a reference to this statement of Commission position.

By the Commission.

Dated: December 23, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34832 Filed 12-30-83; 8:45 am]

BILLING CODE 8010-01-M

[4] *See e.g.*, Section 10(a) of the Act [15 U.S.C. 80a-10(a)], which requires that at least 40 percent of an investment company's board of directors be persons who are not "interested persons" of the company as that term is defined in Section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)]; and Section 15(c) of the Act [15 U.S.C. 80a-15(c)], which requires that any underwriting or investment advisory agreement entered into by an investment company must be approved by a majority of its directors who are not parties to the agreement or "interested persons" of any party.

[5] *See* pages 3-4, *supra*.

[6] The Commission notes that certain foreign investment advisers in civil law countries have organized United States companies whose portfolios consist of securities traded outside of the United States. *See e.g.*, Mexico Fund, Inc., Investment Company Act Registration No. 811-3170, Securities Act of 1933 Registration No. 2-49027, a Maryland corporation advised by Impulsora del Fondo Mexico, S.A. de C.V., a Mexican corporation; Nomura Index Fund of Japan, Inc., Investment Company Act Registration No. 811-2813, Securities Act of 1933 Registration No. 2-60896, a Maryland Corporation sponsored by Nomura Securities Co., a Japanese securities firm which, through various subsidiaries, acts as investment adviser and principal underwriter to Nomura Index Fund. *Cf.* G.T. Pacific Fund, Inc., Investment Company Act Registration No. 811-2699; Securities Act of 1933 Registration No. 2-57526, a California company investing primarily in securities of issuers of Far Eastern countries and advised by a subsidiary of an English company.

[7] A further potential problem that an applicant under Section 7(d) should anticipate is the filing with the Commission of a request for a hearing by other parties. Even if the Commission ultimately issues a notice of an application, the Act affords "interested persons" the right to make such request. In that event, the Commission may conclude that, because of the matters raised in the hearing petition, the provisions of the Act and considerations of due process and fairness require or make it appropriate that it convene a hearing.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM80-73-004, et al. and RM80-74-004, et al.; Order No. 334-A]

Delivery and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978; Order Denying Rehearing

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 334 (48 FR 44495, September 29, 1983), a final rule that established allowances that may be recovered by "first sellers," as defined by the Natural Gas Policy Act of 1978, for delivering and compressing natural gas. The Commission received six applications to rehear the final rule and requests to stay its effect. For the reasons discussed in this order and in the final rule, the Commission denies the applications for rehearing and the requests to stay the effect of the final rule.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stosser, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033

Louis J. Engel, Federal Energy Regulatory Commission, Office of Producer and Pipeline Regulation, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8667

SUPPLEMENTARY INFORMATION:

In the matter of Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978, Docket Nos. RM80-73-004, RM80-73-005, RM80-73-006, RM80-73-007, RM80-73-008, RM80-73-009; and Gathering Allowances Under Section 110 of the Natural Gas Policy Act of 1978, Docket Nos. RM80-74-004, RM80-74-005, RM80-73-006, RM80-74-007, RM80-74-008, RM80-74-009; Order Denying Application for Rehearing and of Order No. 334 and Denying Requests for Stay of Order No. 334.

Issued: December 27, 1983.

I. Introduction

The Federal Energy Regulatory Commission (Commission) denies six petitions for rehearing of Order No. 334.[1] Order No. 334 is a final rule implementing section 110 of the Natural Gas Policy Act of 1978 (NGPA).[2] It amended 18 CFR 271.1104(d), effective October 31, 1983, to allow a "first seller"[3] of natural gas to recover costs incurred for delivering or compressing that gas. In Order No. 334, the Commission revised, but substantially retained, the interim rule promulgated on January 24, 1983.[4] That rule established the amounts which may be collected for costs incurred for delivering and compressing natural gas.

II. Discussion of Applications for Rehearing and Request for Clarification

The Commission received six applications for rehearing of Order No. 334,[5] which raise several substantive issues. Primarily, these issues relate to the applicability of the delivery allowances in certain situations.

Some issues raised in the applications received by the Commission with respect to Order No. 334 involve the decisions made and policies set forth in Order Nos. 94–A and 94–B, such as the scope of the Commission's discretion to implement NGPA section 110, and allegations that the Commission did not adequately consider the effect of its section 110 regulations on NGPA objectives, consumers of natural gas, and the natural gas market. Such issues were adequately addressed by the Commission in those orders, and this proceeding is therefore not an appropriate forum in which to discuss them once again.

Applicants also argue that the Commission erroneously permitted the operation of area rate clauses to operate as evidence of authorization to qualify for the allowance. The same issue was raised in the comments filed subsequent to the issuance of the interim rule. As the Commission explained in Order No. 334 in response to identical comments made in the interim rule, this issue was considered and decided in the Order No. 94 series of orders.[6]

Therefore, Order No. 334 incorporated the analysis in those orders,[7] and the Commission does so again here.

A. Delivery Allowances

The final rule provides that, if construction of the delivery system commenced before November 9, 1978 (old system), the seller may collect 5 cents per MMBtu for gas delivered, irrespective of the length of the delivery system. If construction of the delivery system commenced on or after November 9, 1978 (recent system), the seller may collect 7 cents per MMBtu for the first mile of haul, or fraction thereof, measured from the wellhead or lease separator, plus 2 cents per MMBtu for each mile of haul or fraction thereof, not to exceed 20 miles. The rule imposes general limitations on when, where, and how both of these allowances may be collected.

The Commission imposed several limitations on collecting the allowance for recent delivery systems. First, the gas delivered must be commingled with other gas; second, the gas delivered must be measured from a specific point; third, the line of measurement must be continuous; and fourth, the overall distance may not exceed 20 miles.

1. *Allowances for old delivery system.* Two applicants address the amount of the allowance established for an old delivery system. One of these applicants, a group of producers, argue that in establishing the allowance the Commission improperly limited the allowance to 5 cents per MMBtu failed to provide reasonable cost recovery. The applicants conclude that the amount established is insufficient and unsupported by the record. The other applicant, a pipeline, also argues that the amount in unsupported by the record, but concludes that the allowance is excessive because it would overcompensate a seller in certain situations.

In Order No. 334, the Commission recited the considerations that were employed to develop the old delivery system allowance. The Commission reemphasizes that the allowance is based not only on adequate cost recovery, but also on other factors.[8] First, the Commission considered that Order Nos. 94 and 94–A removed the requirement that a producer perform substantial off-lease gathering as a qualification for the area-wide gathering allowances under the Natural Gas Act. In addition, it removed the requirements present in some of the area-wide allowances that in order to qualify a seller had to deliver to the buyer at a central point in the field, the tailgate of a processing plant, a point on a buyer's pipeline, or an offshore platform on the buyer's pipeline.[9] These simplified the eligibility criteria for the delivery allowance. Second, it considered the benefits conferred upon first sellers by related NGPA section 110 proceedings. The Commission's rules implementing NGPA section 110 provided for collection of production-related costs other than delivery and compression. These allowances, most of which were not available under the Natural Gas Act, together with allowances for delivery and compression, provide representative compensation to sellers that perform those services. As the Commission explained in Order No. 334, once it had developed a reasonable range from which an allowance could be established, the non-cost factors were weighed as a means of setting an appropriate allowance.

The Commission has reviewed all the available data, comments and

[1] Order No. 334, "Final Rule and Order Granting in Part and Denying in Part Rehearing of Interim Rule," issued September 29, 1983, Docket No. RM80–73, *et al.*, (48 FR 44495, Sept. 29, 1983).

[2] 15 U.S.C. 3301–3432 (Supp. V 1981).

[3] For a definition of "first sale", see 15 U.S.C. 3301(21) (Supp. V 1981).

[4] Interim Rule, "Delivery Allowances Under Section 110 of the Natural Gas Policy Act of 1978 and Compression Allowances Under Section 110 of the Natural Gas Policy Act of 1978." 48 FR 5,180 (Feb. 3, 1983), Docket No. RM80–73–000, *et al.*, issued January 24, 1983 [hereinafter cited as *interim rule*].

[5] Applications were filed by Michigan Wisconsin Pipe Line Company, Docket Nos. RM80–73–004 and RM80–74–004; Indicated Producers, Philips Petroleum *et al.*, Docket Nos. RM80–73–005 and RM80–74–005; Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Docket Nos. RM80–73–006 and RM80–74–006; Associated Gas Distributors, Docket Nos. RM80–73–007 and RM80–74–007; Natural Gas Pipeline Company of America, Docket Nos. RM80–73–008 and RM80–74–008; and United Gas Pipe Line Company, Docket Nos. RM80–73–009 and RM80–74–009. In order to have sufficient time to consider the applications for rehearing, the Commission granted, by order issued November 25, 1983, 48 FR 54000 (Nov. 30, 1983), rehearing of the regulations solely for purposes of further consideration.

[6] Order No. 94–A, "Final Rule and Order on Rehearing: Regulations Implementing section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," 48 FR 5152, 5163–164 (Feb. 3, 1983), Docket No. RM80–47–002, issued January 24, 1983, [hereinafter cited as *Order No. 94–A*], *reh. denied*, Order No. 94–C "Order Denying Rehearing and Denying Petitions for Stay of, or Further Comment on, Final Rule," 48 FR 24039, 24043–044 (May 31, 1983), Docket Nos. RM80–47–002–012, issued May 24, 1983. In this order, the Commission promulgated regulations for the recovery of production-related costs other than delivery and compression. Order No. 94–B, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act; Order Amending Regulations in Subpart B of Part 270 and Subparts E, F, and K of Part 271, and Affirming Certain Final Regulations Issued in Order No. 68," 48 FR 5190, 5194–196 (Feb. 3, 1983), Docket No. RM80–47–003, issued January 24, 1983, *reh. denied*, Order No. 94–D, "Order Denying Rehearing and Denying Stay of Order No. 94–B," 48 FR 24051, 24055–056 (May 31, 1983). In this order, special provisions were made for first sellers of natural gas priced under NGPA sections 105 and 106(b) who incur production-related costs.

[7] 48 FR at 44496–7.

[8] *Id.* at 44497–8.

[9] See 18 CFR 2.56a(d).

applications and again concludes that the allowance is neither excessive nor inadequate. There are no new arguments presented by the applicants and further recapitulation of the Commission's previous discussion on this point is therefore unnecessary.

2. *Limitation on Collecting the Delivery Allowance for a Recent System—the Commingling Requirement.* The final rule requires that, in order to recover the allowance for a recent delivery system, the gas delivered must be commingled with other gas before the location of the final first sale.[10] The Commission imposed this limitation in order to ensure that the seller collecting the recent delivery allowance was performing a delivery function. The rule provides that, in the case of gas from a single gas well, the gas must be delivered to a point of commingling with gas from other wells. In the case of gas produced from an offshore platform, the gas from two or more wells must be commingled before delivery, even if delivery occurs at the platform. In the case of oil wells producing natural gas, delivery of the gas must extend downstream from the lease or field separator to a point of commingling with gas from other wells or other lease or field separators. The commingling requirement is only imposed for collecting the allowances established for recent delivery systems.

One applicant states that the Commission should not presume in all cases that a seller who delivers gas through an old delivery system has incurred significant costs relating to a delivery function and therefore argues that the commingling limitation should also be imposed on old delivery systems to ensure that a delivery function was performed. In Order No. 334, the Commission stated that the commingling requirement was imposed for recent delivery systems in order to ensure that the seller collecting the allowance had in fact provided a delivery service.[11] The Commission required this assurance because it had established a two part allowance for recent delivery systems based on the measurement of the length of the gas haul. It did so based on studies which indicated that small diameter gathering lines, most frequently used in connecting wells, were costlier than large diameter delivery lines. In other words, the greatest costs per MMBtu delivered are incurred at the very initial stages of delivery. As a result, the rule affords the seller 7 cents per MMBtu to compensate for the large investment in small diameter delivery lines in the first mile of line or fraction thereof. For each additional mile, it permits 2 cents per MMBtu to compensate for the smaller investment in larger diameter lines. Because the first part of the allowance for new systems is proportionately large, the Commission was inclined to impose a strict test to help ensure appropriate cost recovery.

The Commission did not impose the commingling limitation for old delivery systems in consideration of its development of the 5 cent allowance. First, there is no correlation between the amount established for the old delivery allowance and the length of the gas haul. In contrast to the allowance for a recent system, the Commission did not base the 5 cent allowance on the size or the length of the pipe used. It therefore concluded that the added safeguard supplied by the commingling limitation, *i.e.*, to ensure that the seller perform a delivery function, was unnecessary. As added support for its conclusion, the Commission recognized that some area-wide allowances, as discussed above, included eligibility requirements which resulted in commingling prior to qualification for the allowance. These are reliable indicators that, at least in those areas, most sellers already performed the requisite delivery function. In light of the fact that some of these area-wide rates contained the eligibility requirements and because the Commission considered simplification of the eligibility requirements in establishing the allowance, it determined that the requirement was unnecessary.

3. *Offshore Delivery.* Order No. 334 provides that a first seller may collect either the old or the recent delivery allowances for costs incurred to deliver gas from offshore, depending on the date construction of the facilities commenced,[12] and clarified how a seller could collect the allowance. Several applicants addressed application of the allowances to offshore delivery.

As a general matter, one applicant states that the Commission erred in establishing any allowance for offshore delivery arguing that when gas is brought to an offshore platform, it is brought to the platform in the process of production.

Past Commission practice guided the Commission's decision on this issue. In the area[13] and nationwide[14] rate proceedings, the Commission established gathering allowances for offshore delivery. A specific amount representing a gathering allowance was established for the "Other Southwest,"[15] the "Southern Louisiana,"[16] and "Texas Gulf Coast"[17] areas where the gas was delivered to a buyer "at a central point in the field, the tailgate of a processing plant, a point on the buyer's pipeline, *or an offshore platform on the buyer's pipeline*" (emphasis added).

As evidenced by the limitations on the points of delivery for gas priced under the area and nationwide rates, the Natural Gas Act did not distinguish between onshore and offshore delivery of gas. Therefore, with respect to interstate sellers of old gas, there was an expectation of collecting an allowance for offshore delivery upon passage of the NGPA. Similarly, because the NGPA does not distinguish between onshore and offshore delivery of gas, the same expectation can be applied to all sellers after the passage of the NGPA. The Commission finds no persuasive reason to depart from its long-standing policy of establishing delivery allowances for offshore delivery gas, and finds no basis upon which it should deny application of NGPA section 110 for offshore delivery of gas.

a. *Amount of the recent delivery allowance as it applies to offshore delivery.* Three of the applicants argue that the allowance for recent delivery systems is excessive as it applies to offshore delivery. As support for its argument, two of the applicants argue that, generally, a seller who delivers gas on an offshore platform is overcompensated because the delivery lines on an offshore platform are usually short. Another applicant cites an example where the seller's line is "no more than fifty feet." Therefore, this applicant proposes that the Commission adopt different allowances for shorter delivery lines. The Commission already addressed these applicants' argument in Order No. 334:

> * * * Admittedly, short delivery lines are common in offshore delivery. However, delivery offshore differs from delivery onshore in one important respect. Offshore delivery generally involves much greater costs in relation to the length of delivery line.[18]

[10] A "final first sale" is the first sale as defined in NGPA section 2(21), at which a volume of gas is transferred for value to a purchaser that will not also be a first seller of that gas.

[11] 48 FR at 44498–9.

[12] *Id.* at 44500.

[13] For a discussion of these proceedings, *see* Order No. 94–A, *supra*, note 6, at 5153–155.

[14] *Id.*

[15] 18 CFR 256a(d)(3).

[16] 18 CFR 256a(d)(6).

[17] 18 CFR 256a(d)(7).

[18] 48 FR at 44498.

To guard against overcompensation for offshore delivery, the Commission imposed the commingling requirement as a limitation on collecting those allowances and addressed the opposite concerns raised by commenters that the commingling requirement, if applied offshore, would prohibit collection of the allowance. The Commission clarified the purpose of the requirement as follows:

The Commission emphasizes its concern that eligibility to recover the allowance should relate to performance of a service and not necessarily to the length of the seller's delivery line * * *. It is less arbitrary to determine whether sellers have performed the delivery function and thereby deserve the allowance, based on whether such "commingling" has occurred, than to attempt to devise a standard length of delivery line that a seller must build from the wellhead in order to be eligible for the first 7 cents of the allowance. By means of the commingling criterion, the rule is designed to assist sellers who perform gathering services that optimize delivery, so-called "packaging," or who otherwise incur the cost of delivery. This approach should result in savings to consumers by limiting the availability of the allowances and may discourage economic waste.[19]

Most importantly, the Commission also recognized that a seller offshore performs the same function as a seller onshore who delivers gas to a central point in the field. The Commission continues to believe that the allowances for delivery should apply offshore just as onshore. Its review, prior to issuing the rule, of the comments which discussed the costliness of offshore delivery relative to onshore delivery and leads it to the conclusion that such allowances are justified.

b. *Casinghead gas.* In Order No. 334, the Commission explained that the commingling requirement operates to prohibit a first seller of casinghead gas from collecting the recent delivery allowance for offshore delivery through a recent delivery system. Casinghead is gas produced in conjunction with oil. One applicant argues that the Commission should permit an exception to the commingling requirement for offshore casinghead gas deliveries because the delivery lines are used to deliver both gas and oil.

The Commission believes that the principles of cost recovery does not warrant collection of an allowance under NGPA section 110 in this case. As it stated in the final rule:

The reason for not creating an exception to the commingling requirement in this case is that a delivery line which extends from an oil wellhead is used primarily to deliver oil, not gas. While the Commission agrees that delivery at a platform offshore is equivalent to delivery of gas onshore to a central point in the field, the Commission will only permit a first seller who delivers gas offshore to collect the allowance if the gas from the field separator is commingled with other gas, either from other wells or from other leases or field separators.[20]

The Commission emphasizes that the delivery allowances established under NGPA section 110 were designed to reimburse the seller for costs incurred to deliver gas, not oil. Whether the Commission would permit a seller to collect the delivery allowance for the delivery of casinghead gas depends on whether the lines are used primarily to deliver gas, not oil. The Commission permits a seller of casinghead gas to collect the allowance onshore because usually the gas is delivered through a line leading from the lease separator. That line is for gas fathering and delivery prior to the point of final first sale. In such cases, commingling with other gas may or may not occur and may be collected only if that requirement is met, just as for all kinds of gas. In the case of delivery of casinghead gas offshore, however, the point of final first sale usually occurs immediately after the gas and oil are separated, and there are no lines used primarily to deliver gas. Coincidentally, because no commingling occurs under such circumstances, the rule would almost invariably bar collection of an allowance for offshore casinghead gas delivered through a new system.

The Commission notes, however, that with regard to offshore delivery of casinghead gas through an old delivery system, the Commission will permit the seller to collect the old delivery allowance. As a matter of policy, the Commission believes that a sale of gas subject to the jurisdiction of the Natural Gas Act delivered through an old delivery system is entitled to collect the allowances previously authorized by the Federal Power Commission under that Act. Sellers of casinghead gas were entitled to collect delivery allowances for offshore delivery of casinghead gas under the area and nationwide rates, if contractually authorized to collect the allowance, and, therefore, they ought to be able to collect the contractually-authorized amounts or the allowance established in Order No. 334 for delivery of gas through old delivery systems (5 cents per MMBtu), whichever is less.

4. *Allowance for combination of old or recent systems.* In Order No. 334, the Commission clarified the interim rule and provided that a seller that delivers gas through a delivery system that is both an old system and a recent system may collect the sum of the allowance applicable under the rule to both old and recent systems.

Applicants argue that, in certain instances, the delivery allowance for a recent system that has been connected to an old system may result in an amount greater than that which would be permitted for a recent system of the same length. Specifically, if the old delivery facility is two miles or less in length, and the new line connected is one mile or less in length, the resultant allowance is greater than the allowance for a new system three miles in length. They argue that a seller which is permitted the combination allowance in those instances is overcompensated. Therefore, they request that in those instances, the Commission limit the seller to the allowance for a recent system.

In order No. 334, the Commission responded to a similar comment that posed a hypothetical situation wherein a seller who combines an old system two miles or less in length with a new system would be eligible to receive an allowance greater than that afforded an entirely recent system. Just as the Commission recognized then, it agrees that this might in fact occur. However, the situations presented in that hypothetical and by the applicant for rehearing are aberrations. In Order No. 334, the Commission noted that:

[R]arely will a seller attach new lines to an old system that will provide delivery of only 1 mile. In light of the uniform 5 cents per MMBtu allowance for all delivery by means of pre-NGPA facilities, the disproportionate allowance for the combined system cited by the commenter would only exist where the old portions of the delivery system is two miles or less in length.[21]

It went on to state that normally a seller uses a length of pre-NGPA line greater than two miles.

As previously discussed, the 5-cent allowance was established without regard to the length of the delivery system involved. If the Commission were to limit the allowance because of the length of the old delivery system, the seller would be required to measure every system that combines an old and a recent system. The Commission does not believe that imposing such a burden is warranted because it does not share the applicants' concerns that the slight anomaly that results from the application of the rule in such cases will result in overcompensation or in the abnormal manipulation of a

[19] *Id.* at 44500.

[20] *Id.*

[21] *Id.* at 44501.

configuration of pipelines designed to take advantage of the provisions.

5. *Replacement of Delivery Systems.* In Order No. 334, the Commission recognized that situations would arise where a seller would need to replace a portion of an old system on or after November 9, 1978. It, therefore, states that a seller who incurs unrepresentative replacement costs for which the 5 cents allowance would work a special hardship, inequity, or unfair distribution of burdens may apply for an adjustment under NGPA section 502(c).

One of the applicants argues that adjustments under NGPA section 502(c) are inappropriate means for dealing with replacement of parts of old delivery systems, particularly if the out-of-pocket test is applied in such a proceeding. Instead, the applicant argues that the recent allowance should apply to any *necessary* replacement of a portion of line of pre-NGPA delivery system. The applicant states that replacement of only a small length of pipe falls into the category of repair, and believes that the Commission should establish criteria for what length of line would constitute replacement.

The Commission addressed this argument in Order No. 334. The Commission did not permit recovery of the recent delivery allowance for replacement of old delivery lines on a generic basis because it did not want to provide sellers with an economic incentive to replace delivery lines unnecessarily. Furthermore, the Commission believed that, in many cases, the replacement will be minor and that the allowance for old delivery systems will be adequate. However, the Commission permitted a seller to apply for the recent delivery allowance for replacement of a portion of an old delivery system. As shown by the applicant, and as recognized by the Commission, such replacement presents unique questions of fact that cannot be determined on a generic basis. Therefore, the Commission decided to permit recovery of the recent delivery allowance only by means of a sufficient showing of a special hardship, inequity, or unfair distribution of burdens in an NGPA section 502(c) adjustment proceeding. The Commission believes that this approach best avoids the possibility of abuse. The questions presented in such an NGPA section 502(c) adjustment proceeding will be whether the replacement of an old delivery system is necessary and whether the allowance for an old delivery system is inadequate. The Commission makes clear its discussion in the final rule reiterating that an applicant that meets both of those tests will be permitted to collect the delivery allowance for a recent delivery system. It will not be restricted to the out-of-pocket test.

B. Compression Allowance

The final rule provides that, if construction of the compression facility commenced before November 9, 1978, no allowance is allowed. If construction of the compression facility commenced on or after November 9, 1978, a qualifying seller may collect an allowance of 6.0 cents per MMBtu for each stage of compression set at a ratio of 3.5 to 1 (representing the overall compression ratio of the outlet pressure of the last stage of compression to the inlet pressure of the first stage of compression), with the overall allowance not to exceed three stages.

1. *Pre-NGPA Compression.* Only one applicant addressed the compression allowances. The applicant, a group of producers, renewed their argument that the area and nationwide rates might have included separate allowances for compression.

In Order No. 334, the Commission stated that it found no instance in which compression allowances were separately provided for under the Natural Gas Act prior to the passage of the NGPA. The applicant has not supplied the Commission with any new evidence. The Commission reiterates its conclusion

> that, prior to the passage of the NGPA, interstate sellers of old gas did not have any expectation of collecting an allowance for production-related compression costs. However, investors in pre-NGPA facilities can reasonably be assumed to have anticipated and provided for other means of recovering the necessary costs of compression. This contrasts with the separate delivery allowances devised under the NGA for the long-term recovery of capital.[22]

C. Procedure for Collecting Delivery and Compression Allowances

In establishing the allowances under NGPA section 110, the Commission sought to develop a self-executing procedure. It provided that only the final first seller may collect the allowance but that the seller had an obligation to make a fair and proportional distribution to any other first seller. The buyer has the obligation of paying that allowance so long as exists contractual obligation for the first seller to collect the allowance.

A pipeline applicant opposes the obligation imposed on the buyer and argues that the Commission should impose the burden of proof on the seller and require the seller to submit to the buyer certain information as verification to the buyer. It therefore proposes that the Commission require the buyer to file with the buyer well-by-well information, schematic flow diagrams, stages of compression, and other information as the Commission deems necessary to verify the charges.

The Commission believes that in order to maintain the self-executing procedure for the collection of production-related costs, it must continue to require that the seller compute the allowance and that the buyer pay the allowance if the seller is expressly authorized to collect it. The success of the self-executing mechanism depends on minimal involvement by the Commission in arbitrating disputes. The Commission suggests that sellers and buyers work out between themselves what information each of them requires in order for the allowances to be paid.

The Commission notes that it has provided buyers, sellers and third parties with a forum for redress if there are over-collections.[23] A person may file a complaint with the Commission alleging that an allowance is being charged, collected, or not paid in violation of § 271.1104(d) of the Commission's regulations.

In conclusion, the applications for rehearing are hereby denied.

III. Requests for Stay

Several of the applicants request that the Commission suspend or stay the effectiveness of the rule to permit further consideration of issues they raise in their applications to rehear the final rule. The requests for further consideration and stay pending rehearing are denied.

The Commission believes that both in this order and in the final rule it has addressed all the issues raised by the applicants in their motions for clarification. There appears to be no demonstrated hardship or inequity that would incline the Commission to believe that justice requires a stay of the rule.[24] Therefore, no purpose would be served by staying the effect of the rule. The request for suspension or stay are hereby denied.

List of Subjects in 18 CFR Part 271

Natural gas, High-cost gas, Tight formations.

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[22] *Id.* at 44502.

[23] *See* Order No. 333, "Final Rule, Regulations Implementing Refund Procedures Under Subpart K of Part 271 for Production Related Costs," issued September 27, 1983, Docket No. RM83-6, (48 FR 44492, Sept. 29, 1983).

[24] *See* 5 U.S.C. 705 (1976).

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (Supp. V 1981), Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); Executive Order 12,009, 3 CFR Part 142 (1978))

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–34819 Filed 12–30–83; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N-0366 and 83C-0128]

Provisional Listing of D&C Yellow No. 10; Postponement of Closing Date and Stay of Effectiveness

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Yellow No. 10 for use as a color additive in drugs and cosmetics. The new closing date will be March 5, 1984. FDA is establishing a new closing date for D&C Yellow No. 10 to give the agency time to complete its evaluation of objections received in response to the final regulation approving the petition for the permanent listing of D&C Yellow No. 10. The effective date of the amendments that permanently list D&C Yellow No. 10 and that remove it from the provisional list is stayed pending final agency action.

DATES: Effective January 3, 1984, the new closing date for D&C Yellow No. 10 will be March 5, 1984. The amendments to 21 CFR 74.1710, 74.2710, 81.1, 81.25 (a)(1), (b)(1)(i), and (c)(1), 81.27, and 82.1710 that were published on August 30, 1983 (48 FR 39217) are stayed pending final agency action.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 30, 1983 (48 FR 39217), FDA published a final rule that would "permanently" list D&C Yellow No. 10 for use in drugs and cosmetics, except for use in the area of the eye. The final rule also amended § 81.1(b) (21 CFR 81.1(b)) by removing D&C Yellow No. 10 from the provisional list of color additives; § 81.25 (21 CFR 81.25) by removing the entries for D&C Yellow No. 10 in paragraphs (a)(1), (b)(1)(i), and (c)(1); and § 81.27(d) (21 CFR 81.27(d)) by removing D&C Yellow No. 10 from the conditions of provisional listing. Additionally, the final rule amended § 82.1710 (21 CFR 82.1710) for D&C Yellow No. 10 to reference § 74.1710 (a)(1) and (b) (21 CFR 74.1710 (a)(1) and (b)).

The agency stated that the final rule would become effective on September 30, 1983, unless stayed by the filing of proper objections. At the same time, to provide for the continued use of D&C Yellow No. 10 during the period established for receipt and evaluation of objections, FDA established the closing date of November 1, 1983, for the provisional listing of D&C Yellow No. 10 for use in drugs and cosmetics (48 FR 39220).

FDA received three letters objecting to the listing regulation. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), the final rule (48 FR 39217) that permanently lists D&C Yellow No. 10 and that removes this color additive from the provisional list is stayed until the agency can rule on the objections. In the **Federal Register** of November 1, 1983 (48 FR 50311), FDA postponed the closing date for the provisional listing of D&C Yellow No. 10 until January 3, 1984, to provide additional time for the agency to complete its evaluation of the objections that it received.

FDA's review and evaluation of these objections have required more time than anticipated. Therefore, FDA concludes that an additional brief postponement is necessary at this time.

Because of the short time until the January 3, 1984 closing date, FDA concludes that notice and public procedure on this rule is impracticable. Thus, good cause exists for issuing the postponement as a final rule. Moreover, this action is consistent with the protection of the public health because the agency has previously concluded that D&C Yellow No. 10 is safe for its intended uses. This final rule will permit the uninterrupted use of this color additive until March 5, 1984. To prevent any interruption in the provisional listing of D&C Yellow No. 10 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective on January 3, 1984.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:

§ 74.1710 [Stayed]

a. By staying § 74.1710 *D&C Yellow No. 10.*

§ 74.2710 [Stayed]

b. By staying § 74.2710 *D&C Yellow No. 10.*

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

2. Part 81 is amended:

a. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "D&C Yellow No. 10" in paragraph (b) to read "March 5, 1984."

§ 81.25 [Partial stay]

b. In § 81.25 *Temporary tolerances* the entries for D&C Yellow No. 10 in paragraphs (a)(1), (b)(1)(i), and (c)(1) are stayed.

§ 81.27 [Amended]

c. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "D&C Yellow No. 10" in paragraph (d) to read "March 5, 1984."

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

§ 82.1710 [Stayed]

3. Part 82 is amended by staying § 82.1710 *D&C Yellow No. 10.*

Effective date. This final rule shall be effective January 3, 1984.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: December 14, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–34763 Filed 12–30–83; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the regulations to remove those portions reflecting approval of a new animal drug application (NADA) providing for use of a 2-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds used for increased rate of weight gain and improved feed efficiency. The sponsor, Central Soya Co., Inc., requested the withdrawal of approval. In addition, the former sponsor, the O.A. Cooper Co., is being removed from the list of sponsors of approved NADA's.

EFFECTIVE DATE: January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV–218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 96–779 for Central Soya Co.'s Cooper 40% Super–T For Pigs Medicated (2-gram-per-pound tylosin phosphate premix) is withdrawn. This document amends the regulations to remove those portions of 21 CFR 510.600 and 558.625 which reflect approval of the NADA.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, New animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

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 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. Part 510 is amended in § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* by removing from paragraph (c)(1) the entry for "The A.O. Cooper Co." and removing from paragraph (c)(2) the entry for "043426." (Note: The entry was incorrectly listed as A.O. Cooper instead of O.A. Cooper.)

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 [Amended]

2. Part 558 is amended in § 558.625 *Tylosin* by removing paragraph (b)(21) and marking it "[Reserved]."

Effective date. January 13, 1984.

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

Dated: December 22, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83–34780 Filed 12–30–83; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[T.D. 7933]

Temporary Employment Tax Regulations Under the Interest and Dividend Tax Compliance Act of 1983; Backup Withholding

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document supplements the temporary regulations relating to backup withholding. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369). These regulations affect brokers with respect to reportable gross proceeds and provide them with the guidance necessary to comply with the law.

DATE: The temporary regulations are effective for payments made after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Diane Kroupa of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202–566–3590, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1983, the **Federal Register** published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR Part 35a) under sections 3406 and 6676 of the Internal Revenue Code of 1954 (26 CFR Part 35a.9999–1; 48 FR 45362). Additional temporary regulations were published in the **Federal Register** on November 25, 1983 (26 CFR Part 35a.9999–2; 48 FR 53104) and on December 20, 1983 (26 CFR Part 35a.9999–3; 48 FR 56330). Those regulations were published to conform the regulations to the statutory changes enacted by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369). These regulations supplement 26 CFR Part 35a.9999–3 (December 20, 1983), by adding Question (Q) and A–28B.

These temporary regulations, presented in question and answer format, are intended to provide guidelines upon which brokers may rely in order to resolve questions specifically set forth herein. However, no inference should be drawn regarding issues not raised herein or reasons certain questions, and not others, are included in these regulations.

Explanation of Provisions

These regulations provide transition rules applicable to backup withholding on gross proceeds reportable by brokers under section 6045. In summary, the regulations provide that, for purposes of backup withholding on gross proceeds, the written certification requirement for post-1983 accounts may be delayed, at the broker's option, until March 31, 1984. Thus, a customer who opens an account after December 31, 1983, and who consummates a sale prior to April 1, 1984, will not be subject to backup withholding, provided that he furnishes a taxpayer identification number to the broker prior to the sale.

In addition, until March 31, 1984, a broker may give customers with pre-1984 accounts, who have not furnished taxpayer identification numbers, 30 days after a sale to provide their numbers, without being subject to backup withholding. Until such a customer provides a number, however, the customer is not permitted to withdraw the cash proceeds from the account. If no number is furnished within 30 days after the sale, the broker must withhold 20 percent of the reportable gross proceeds on the 31st day.