Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Panhandle Eastern Pipe Line Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5418.

SUPPLEMENTARY INFORMATION:

Order Granting in Part and Denying in Part Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

In the matter of Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, (Panhandle Eastern Pipe Line Company); Docket No. RM85-1-000 (Parts A-D)

On October 21, 1985 Panhandle Eastern Pipe Line Company (Panhandle) filed a request, in accordance with Rule 212 of the Commission's Rules of Practice and Procedure, for clarification of certain discrete portions of Order No. 436.[1] Panhandle requests clarification on four aspects of existing and transitional transportation arrangements:

1. Order No. 436 provides for the "grandfathering" of certain existing transportation arrangements (*See* proposed § 284.105). However, Order No. 436 does not discuss "grandfathering" of existing transportation certificates obtained in accordance with the existing provisions of Part 284 subpart G pertaining to transportation by interstate pipelines for other interstate pipelines. It is assumed that these transportation arrangements were inended by the Commission to continue beyond November 1, 1985. Please clarify the Commission's intent.

2. Similarly, revised § 284.105(a) addresses transportation service authorized prior to November 1, 1985 and specifies the term that is to be grandfathered. However, § 284.105(a)(i) implies that any underlying transportation agreement must have been executed by October 9 so that a "term * * * was in effect on the date of issuance. * * *" Please clarify whether agreements executed or amended between October 9 and November 1 are grandfathered. Also, please clarify whether service (i.e. deliveries) must actually commence prior to November 1 in order to qualify for the grandfathered status.

3. Please clarify whether a grandfathered transportation arrangement can be amended (to change the term, points of receipt or redelivery, volume levels, or to change other conditions) after Novemer 1, 1985 without terminating the grandfathered status.

4. Finally, if an interstate pipeline elects to obtain a blanket certificate in accordance with revised Section 284.221, is it the Commission's intent and is there any authority under the Regulations for commencing transportation service on behalf of others after November 1, 1985 but before the new blanket transportation certificate is issued and accepted?

Panhandle's first two questions were clarified in the Technical Corrections issued by the Commission on October 24, 1985 in the above-captioned docket.[2] As explained therein, an authorized transportation arrangement under Order No. 60 (interstate pipelines on behalf of other interstate pipelines) may continue subject to the "grandfathering" provisions of Subparts B and C of Part 284, as amended. Therefore, Panhandle's assumption that these transportation arrangements were intended by the Commission to be, and in fact are, eligible for the "grandfathering" provisions of § 284.105 is correct.

The Technical Corrections also clarify that agreements executed or amended between October 10 and November 1, 1985 are not eligible for the "grandfathering" provisions. Section 284.105(a) requires the actual commencement of transportation on or before October 9, 1985 in order to be eligible for "grandfathering."

With respect to Panhandle's third question, a "grandfathered" transportation arrangement may not be amended after October 9, 1985, because § 284.105 specifically limits that transaction to the operative terms and conditions of the transportation arrangements that existed on October 9, 1985. Any changes to those terms and conditions would be considered an initiation of a new NGPA section 311 transportation transaction under § 284.102.

With respect to Panhandle's fourth question, if a pipeline elects to obtain a blanket certificate under section 284.221, transportation under the blanket certificate cannot be performed, under NGA section 7, until the blanket certificate for it has been issued.[3]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-28542 Filed 12-2-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 50 FR 42408 (October 18, 1985).

[2] Final Rule, Technical Corrections (October 24, 1985), 50 FR 45907, Nov. 5, 1985.

[3] If the pipeline wishes to commence a transportation service prior to issuance of that new blanket certificate, it may use other self-implementing authority available to it under NGPA section 311. If a pipeline elects to initiate NGPA section 311 transportation on an interim basis pending the issuance of the blanket certificate, however, it will incur the responsibilities attached to that authority, such as, *inter alia*, the filing fee, initial report, and termination notice when the tansaction is transferred to its blanket certificate authority. We note that under the express terms of § 284.10(a) the contract demand reduction and conversion options are only triggered by action beginning December 15, 1985.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 173, 175, 181, and 184

[Docket No. 85N-0525]

Food Additives; Substances Generally Recognized as Safe; Editorial Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on food additives and food substances that are generally recognized as safe to correct certain Chemical Abstracts Registry Numbers (CAS Reg. Nos.) and typographical errors.

DATES: Effective December 3, 1985; objections to revised 21 CFR Parts 172, 173, and 175 by January 2, 1986.

ADDRESS: Written objections to revised 21 CFR Parts 172, 173, and 175 to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alan Rulis, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the course of its work, FDA has discovered that incorrect CAS Reg. Nos. and certain other typographical errors have found their way into the agency's codified regulations on food additives and substances generally recognized as safe.

To remedy this situation, FDA is correcting these incorrect numbers and typographical errors. These corrections are nonsubstantive.

The portions of this final rule that revise 21 CFR Parts 181 and 184 are being promulgated under the authority of sections 201(s), 402, 409, and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 342, 348, and 371(a)). Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure on these corrections are unnecessary because FDA is merely remedying typographical and other inadvertent, nonsubstantive errors.

The portions of this final rule that revise 21 CFR Parts 172, 173, and 175 are being promulgated under the authority of sections 201 and 409 of the act (21 U.S.C. 321 and 348), which require the agency to consider objections to final rulemaking. The act also requires that FDA propose any changes that it makes on its own initiative in those regulations. However, FDA is dispensing with such notice in this case because it is not making any substantive changes but is merely correcting typographical and other inadvertent errors.

Any person who will be adversely affected by the revisions to 21 CFR Parts 172, 173, and 175 may at any time on or before January 2, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives, Food preservatives, Spices and flavorings.

21 CFR Part 173

Food additives, Food processing aids.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 181

Food additives, Prior-sanctioned food ingredients.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 172, 173, 175, 181, and 184 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 172.155 [Amended]

2. In § 172.155 *Natamycin (pimaricin)* in paragraph (a) by revising "(CAS Reg. No. 768–93–8)" to read "(CAS Reg. No. 7681–93–8)".

§ 1723.834 [Amended]

3. In § 172.834 *Ethoxylatged mono- and diglycerides* in the introductory text by removing "[Chemical Abstracts Registry No. 977051–30–1]".

§ 172.846 [Amended]

4. In § 172.846 *Sodium stearoyl lactylate* in the introductory text by revising "(CAS Reg. No. 977052–12–2)" to read "(CAS Ret. No. 25–383–997)".

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

5. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 173.310 [Amended]

6. In § 173.310 *Boiler water additives* in the list of substances in paragraph (c) in the entry "Polymaleic acid" by revising "[CAS Reg. No. 70247–90–4]" to read "[CAS Reg. No. 30915–61–8]".

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

7. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 175.300 [Amended]

8. In § 175.300 *Resinous and polymeric coatings* in paragraph (b)(3)(xxiv) by revising "3(2-Xenoxyl)-1,2-epoxypropane" to read "3-(2-Xenolyl)-1,2-epoxypropane".

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

9. The authority citation for 21 CFR Part 181 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10

§ 181.27 [Amended]

10. In § 181.27 *Plasticizers* by revising "3-(2-Xenoyl)-1,2-epoxypropane" to read "3-(2-Xenolyl)-1,2-epoxypropane".

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

11. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 401, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

§ 184.1090 [Amended]

12. In § 184.1090 *Stearic acid* by revising "5–11–4" to read "57–11–4".

§ 184.1099 [Amended]

13. In § 184.1099 *Tartaric acid* in paragraph (a) by revising "82–69–4" to read "87–69–4".

§ 184.1553 [Amended].

14. In § 184.1553 *Peptones* in paragraph (a) by removing "(CAS Reg. No. 977027–88–5)".

§ 184.1685 [Amended]

15. § 184.1685 *Rennet (animal-derived)* in paragraph (a) by revising "90001–98–3" to read "9001–98–3".

§ 184.1742 [Amended]

16. In § 184.1742 *Sodium carbonate* in paragraph (a) by revising "487–19–8" to read "497–19–8".

§ 184.1973 [Amended]

17. In § 184.1973 *Beeswax (yellow and white)* in paragraph (a) by revising

"(CAS Reg. No. MX 8012–89–3 and MX 8006–40–4)" to read "(CAS Reg. No. 8012–89–3)".

§ 184.4560 [Amended]

18. By redesignating § 184.4560 *Ox bile extract* as § 184.1560 and in paragraph (a) by removing "MX".

Dated: November 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner For Regulatory Affairs.

[FR Doc. 85–28635 Filed 12–2–85; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of a new animal drug application (NADA) for dichlorophene and toluene capsules held by Vortech Pharmaceuticals, Ltd. (formerly North American Pharmacal). The drug is labeled for use as an anthelmintic in dogs and cats. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: December 13, 1986.

FOR FURTHER INFORMATION CONTACT: John Augsburg, Center for Veterinary Medicine (HFV–216), 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**, FDA is withdrawing approval of NADA 110–736 for dichlorophene and toluene capsules. This document removes those portions of the regulations that reflect approval of the NADA. Additionally, because North American Pharmacal does not currently hold a codified approved new animal drug, it is being removed from the list of sponsors of approved applications.

The agency has determined under 21 CFR 25.24(d)(3) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "North American Pharmacal" and in paragraph (c)(2) by removing the entry for "000298".

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

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)); 21 CFR 5.10 and 5.83.

§ 520.580 [Amended]

4. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing the entry "000298".

Dated: November 26, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–28631 Filed 12–2–85; 8:45 am]

BILLING CODE 4160–01–M

---

21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Sulfamethoxypyridazine Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulation that reflected approval of a new animal drug application (NADA) filed by Parke-Davis, providing for use of sulfamethoxypyridazine tablets in treating dogs and cats for sulfa-susceptible, gram-positive and gram-negative, bacterial infections. In a notice published elsewhere in this issue of the **Federal Register**, the agency is withdrawing approval of the subject NADA at the request of the sponsor.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: John K. Augsburg, Center for Veterinary Medicine (HFV–216), 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**, the agency is withdrawing approval of Parke-Davis' NADA 12–821 which covers use of Midicel® Tablet. (sulfamethoxypyridazine) in treating dogs and cats for sulfa-susceptible, gram-positive and gram-negative, bacterial infections. This document removes the regulation that reflected approval of the NADA.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

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

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.2300 [Removed]

2. Section 520.2300 *Sulfamethoxypyridazine tablets* is removed.

Dated: November 26, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–28633 Filed 12–2–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-85-1267; FR-2188]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief, Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 11.50 percent to 11.00 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 4166) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum, except that where an application for commitment was received by the Secretary before November 20, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 11.0 percent per annum except that where an application for commitment was received by the Secretary before November 20, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 20, 1985, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 11.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed

upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: November 19, 1985.

Janet Hale,

General Deputy Assistant Secretary for Housing—Deputy, Federal Housing Commissioner.

[FR Doc. 85-28629 Filed 12-2-85; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2642

Non-Statutory Allocation Methods Not Requiring PBGC Approval

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation sets forth certain modifications to two of the statutory methods for the allocation of withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980. The modifications are intended to relieve the administrative burden placed on certain plans by the Deficit Reduction Act of 1984. The effect of this regulation is to describe these modifications to the allocation methods and to waive the Pension Benefit Guaranty Corporation's right of prior approval of their adoption.

EFFECTIVE DATE: This regulation is effective December 3, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), 2020 K Street NW., Washington, DC 20006; telephone 202-254-4860 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Under the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act" or the "Act"), an employer that withdraws from a multiemployer plan may be liable to the plan for a proportionate share of the plan's unfunded vested benefits. The Multiemployer Act provides four methods for allocating this proportionate share, which is the basis for computing withdrawal liability: the presumptive method; the modified presumptive method; the rolling-5 method; and the direct attribution method. Additionally, the Multiemployer Act provides that a plan may adopt by plan amendment allocation methods that are different from those specified in the Act. Any such non-statutory method, however, is subject to approval by the Pension Benefit Guaranty Corporation (the "PBGC").

The Multiemployer Act was amended in 1984 by the Deficit Reduction Act ("DEFRA"). Before DEFRA, the withdrawal liability provisions of the Multiemployer Act were, in most instances, effective as of April 29, 1980, approximately five months before the date of enactment of the Multiemployer Act, September 26, 1980. As part of DEFRA, however, Congress voided this retroactive application of the withdrawal liability provisions and required plan administrators to refund any amounts paid in satisfaction of a withdrawal liability obligation that arose before September 26, 1980. At the same time, Congress enacted changes, termed conforming amendments, that adjusted certain other dates appearing in the Multiemployer Act to coincide with the September 26, 1980 date. The conforming amendments, as well as the provisions voiding pre-September 26, 1980 liabilities and mandating refunds, were effective July 18, 1984, and are found in section 558 of DEFRA.

Section 558 of DEFRA and its legislative history raised questions as to who it was to be applied. These questions were addressed in the Multiemployer Bulletin issued by the PBGC on March 6, 1985 (the "Multiemployer Bulletin"). In the Multiemployer Bulletin, the PBGC concluded that plan administrators should not recompute and reassess the withdrawal liabilities of employers that withdrew after the Multiemployer Act's effective date of September 26, 1980, but before DEFRA's effective date of July 18, 1984. The Multiemployer Bulletin also pointed out that the changes in the Multiemployer Act made by DEFRA will, in certain situations, affect individual employers who are assessed withdrawal liability on or after July 18, 1984, DEFRA's effective date. It added that plan administrators complying with DEFRA's changes and attempting to reallocate liabilities to achieve the same degree of allocation that existed before DEFRA may also be affected by an increased administrative burden.

This regulation is intended to ease some of the burden of complying with DEFRA's changes. It describes three permissible modifications to certain of the statutory allocation methods. Specifically, the modifications described in this regulation apply only to plans presently using the presumptive or the modified presumptive methods of allocation described in sections 4211(b) and 4211(c)(2) of the Act. (These modifications, however, do not apply to plans that primarily cover employees in the building and construction industry.) Plans using a modification of either of these two statutory methods permitted under 29 CFR § 2642.6 may also be amended to adopt the methods described in this regulation. Finally, these modifications may be adopted without requesting the PBGC's approval because the PBGC, pursuant to section 4211(c)(5)(B) of the Multiemployer Act, is waiving its approval authority for these methods.

This rule adds a new section, § 2642.8, to the Interim Regulation on Allocating Unfunded Vested Benefits, 29 CFR Part 2642. The PBGC is currently working on a proposed revision of Part 2642, but is promulgatig this rule at this time in order to provide immediate relief from some of the burden of complying with DEFRA's changes. This rule will be incorporated in the revision of Part 2642.

The Regulation

As stated in the Multiemployer Bulletin, the PBGC has concluded that the date changes in the allocation provisions in section 4211 do not apply to employers that withdrew between September 26, 1980 and July 17, 1984. Thus, these employers do not share in the reallocation of costs resulting from DEFRA. However, the application of the DEFRA changes in computing withdrawal liability can create certain amounts that would otherwise be charged to these employers. This situation can arise under the presumptive and the modified presumptive methods, as well as under the variations of these two methods described in § 2642.6 of the allocation regulation.

DEFRA altered the presumptive method in three respects. First, the date for the initial determination of unfunded vested benefits was changed from the close of the last plan year before April 29, 1980 to the close of the last plan year before September 26, 1980. Second, the first plan year ending after September 25, 1980, rather than April 28, 1980, became the first year for which annual changes in unfunded vested benefits had to be computed. Third, the denominator for allocating initial unfunded vested benefits was modified to exclude the contributions of all employers that withdrew before September 26, 1980.

Plans with plan years ending between September 26, 1979 and April 28, 1980 are not affected by the first two changes, because the plan year for determining initial unfunded vested benefits and the first plan year for