

Disclosures; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-50 Maintain means of communication; § 13.533-66 Research programs. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590-20 Federal Trade Commission Act; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-5077 Filed 3-3-89; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. C-2929]

Interco Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a portion of the 1978 consent order with Interco Incorporated by setting aside a sentence in the consent order regarding the preticketing provision.

DATES: Consent Order issued September 26, 1978. Set Aside Order issued April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald T. Gregory, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Interco Incorporated, et al. Portions of the prohibited trade practices and/or corrective actions, as set forth at 43 FR 48991, are deleted.

List of Subjects in 16 CFR Part 13

Outerwear, Raincoats, Trade practices.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1528; 15 U.S.C. 45, 13)

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, and Andrew J. Strenio, Jr.

In the Matter of Interco Incorporated, a corporation, Londontown Corporation, a corporation, and Queen Casuals, Inc., a corporation.

Order Reopening and Setting Aside a Portion of Order Issued September 26, 1978

On October 26, 1987, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside A Portion Of Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice.

The Request asked that, with respect to raincoats and outerwear sold by Londontown, the Commission reopen the consent order issued on September 26, 1978, and set aside the following sentence in paragraph 4 of Part I of that order:

A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

On February 23, 1988, the Commission issued its "Order Reopening And Modifying Order Issued September 26, 1978, And Order To Show Cause." The Commission's February 23, 1988, Order modified the order of September 26, 1978, in the manner requested by respondents and, in addition, ordered that respondents show cause within 30 days why the provision in question should not be set aside with respect to all other products covered by the order.

On March 14, 1988, respondents filed their "Answer To Order To Show Cause" with the Commission, requesting that the provision "be deleted in its entirety."

Accordingly, *It is Ordered*, That this matter be and it hereby is reopened and that the last sentence in paragraph 4 of Part I of the Commission's Decision and Order issued on September 26, 1978, shall be set aside as of the effective date of this order.

By the Commission. Commissioner Bailey not participating.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-5078 Filed 3-3-89; 8:45 am]

BILLING CODE 6750-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its February 22, 1989 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code by modifying the provisions of Resolution No. 83-13, relating to diversions, releases and flow objectives during the drought period of 1989.

Resolution No. 83-13, adopted on June 29, 1983 and noticed in the July 21, 1983 issue of the *Federal Register* (48 FR 33253), established a schedule of phased reductions and diversions, releases and flow objectives during periods of drought warning and drought conditions. On January 16, 1989 the Delaware River Basin entered a drought warning, upper half, based upon storage conditions in the Basin's reservoirs. Drought warning, lower half, was triggered on February 5, 1989 as storage conditions worsened. In order to maximize storage in the New York City Delaware Basin reservoirs, the Parties to the U.S. Supreme Court Decree of 1954 unanimously requested that the Commission grant emergency approval to modify Resolution No. 83-13.

On February 8, 1989 the Executive Director, pursuant to Section 2-3.9 of the Commission's Administrative Manual, Part II, Rules of Practice and Procedure, issued an Emergency Certificate temporarily modifying Resolution No. 83-13, pending further review, public hearing and determination by the Commission at its next meeting.

On February 22, 1989, as noticed in the February 15, 1989 issue of the *Federal Register* (54 FR 6942), the Commission held a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code to temporarily revise streamflow objectives at the Montague, New Jersey, USGS gaging station, and release and diversion requirements from the New York City Delaware Basin reservoirs.

The amendment, adopted in response to continuing declines in storage, lack of snowpack above the reservoirs and a long-range weather forecast predicting below normal precipitation, is expected to achieve considerable savings in storage in an effort to defer the time at which drought emergency could occur.

EFFECTIVE DATE: February 22, 1989.

ADDRESS: Copies of the Commission's Water Code and Resolution Nos. 83-13 and 89-5 are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT:

Susan M. Weisman, Commission
Secretary, Delaware River Basin
Commission: Telephone (609) 883-9500.

List of Subjects in 18 CFR Part 410**Water pollution control.**

The Commission's Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are amended by the following addition:

1. The schedule of phased reductions, diversions, and releases and flow objectives set forth in Resolution No. 83-13, during periods of drought warning, are modified as follows:

a. Diversions from the New York City reservoirs to the City of New York shall be limited to a running average of 560 mgd, minus an amount equivalent to the amount that would normally be released to meet the Montague flow objective set forth in Resolution No. 83-13, above and beyond the basic conservation releases.

b. The obligation of the City of New York to release from the three New York City reservoirs to meet the Montague flow objective shall be suspended during the present period of drought warning but the City of New York shall continue to make basic conservation releases as required.

c. During the present period of drought warning, releases to meet the Trenton flow objective shall be made from down basin reservoirs as required by the Executive Director.

d. The provisions concerning out-of-basin diversions to New Jersey during this period of drought warning shall remain at the present 70 mgd level.

2. Except as modified herein, the provisions of Resolution No. 83-13 shall remain in full force and effect.

3. The modified schedule of diversions, releases and flow objectives set forth in this resolution shall remain in effect during the current period of drought warning and shall terminate at such time as the Basin shall enter a drought condition as defined in Resolution No. 83-13, at the termination of the existing drought warning condition as provided in Resolution No. 83-13 or on April 30, 1989, whichever comes first, or by further order of the Commission.

4. When and if the Basin enters a drought condition, the Parties will meet to review the possibility of continuing a similar savings program. Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,
Secretary.

February 27, 1989.

[FR Doc. 89-5058 Filed 3-3-89; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 74**

[Docket No. 87N-0182]

Confirmation of Effective Date for D&C Red No. 36 Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 27, 1989, for the final rule that amended the color additive regulations to modify a limitation on use in ingested drugs.

EFFECTIVE DATE: Effective date confirmed: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 27, 1988 (53 FR 52129), FDA amended 21 CFR 74.1336(c) to provide for a higher limit on the amount of color additive that may be consumed in drugs that are taken for less than 1 year.

FDA gave interested persons until January 26, 1989, to file objections or requests for a hearing on this amendment. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the Federal Register of December 27, 1988, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the December 27, 1988, final rule. Accordingly, the amendment promulgated thereby became effective January 27, 1989.

Dated: February 28, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 89-5062 Filed 3-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TREASURY**Internal Revenue Service****26 CFR Part 7**

[T.D. 8243]

Temporary Income Tax Regulations; Requirements Relating to Certain Exchanges Involving a Foreign Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations concerning requirements relating to certain exchanges involving a foreign corporation as required by section 367 (b) of the Internal Revenue Code as enacted by the Tax Reform Act of 1976. These regulations would provide guidance needed to comply with these requirements. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations that are cross-referenced in the proposed rules section of this issue of the Federal Register.

DATES: Section 7.367 (b)-2 (d) and (f) are effective on January 1, 1978, and applies to exchanges beginning on or after that date. Sections 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) (4) are effective on March 3, 1989 and apply to transactions beginning on or after that date.

FOR FURTHER INFORMATION CONTACT: Richard Chewing of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 [Attention: CC:CORP:TR (INTL-988-86)] (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to §§ 7.367 (b)-2 (d) and (f), 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) of 26 CFR Part 7. Temporary regulations under those sections with cross-reference notice were originally published on December 20, 1977 (42 FR 65152, 65204).

Need for Temporary Regulations

This Treasury decision with respect to § 7.367 (b)-2 (d) and (f) merely clarifies existing rules in the section 367 (b) temporary regulations. With respect to §§ 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) (4), this Treasury decision eliminates unintended opportunities available under the existing section 367 (b) temporary regulations to avoid liability

for income tax. For these reasons, it is found impractical to issue this Treasury decision with notice and public procedure either under section 553 (b) of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section. In addition, in order to prevent avoidance by taxpayers of the changes made to §§ 7.367 (b)-7 (c) (1) and 7.367 (b)-9 (b) (4), it is provided that those changes will be effective on March 3, 1989.

Explanation of Provisions

Section 7.367 (b)-2 (d) defines the term "section 1248 amount" to mean the earnings and profits or deficit in earnings and profits which would have been attributed under section 1248 to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248 (a) applied. Section 7.367 (b)-2 (f) defines the term "all earnings and profits amount" to mean the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248. This section is amended by these regulations to clarify that for purposes of exchanges of stock in a first-tier foreign corporation described by § 7.367 (b)-7 (c) (1) (i) or distributions by a foreign corporation covered by § 7.367 (b)-10 (i) in which an inclusion determined by reference to the "section 1248 amount" is required, the term "section 1248 amount" means only the net positive earnings and profits attributable to stock. For purposes of asset repatriations covered by §§ 7.367 (b)-5 (b), 7.367 (b)-6 (c), 7.367 (b)-7 (c) (2) and 7.367 (b)-10 (j), the term "all earnings and profits amount" means only the net positive earnings and profits. This amendment applies to exchanges beginning on or after January 1, 1978. For all other purposes, the terms "section 1248 amount" and "all earnings and profits amount" mean earnings and profits or deficits for all taxable years attributable to stock. Section 7.367 (b)-7 (c)(1) is amended by these regulations to provide that the addition procedure of paragraph (c)(1) (ii) will not apply if the stock received is of a domestic corporation which is a member of the affiliated group as defined in section 1504(a) (without application of section 1504(b)(3)) that also includes the exchanging foreign corporation. This amendment applies to exchanges beginning on or after March 3, 1989.

Section 7.367(b)-9 is amended by these regulations to provide that a foreign corporation will not succeed to the earnings and profits or deficit in earnings and profits of another foreign

corporation except to the extent provided in section 381(a) and the regulations under that section if the stock of such corporation is received in an exchange subject to section 7.367(b)-9, and a U.S. shareholder described in section 7.367(b)-7(b) or section 7.367(b)-8(c)(1) owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of both the corporation whose stock is received in the exchange and the corporation whose stock is exchanged. This amendment is effective on or after March 3, 1989. Under these regulations, the foreign corporation whose stock is received in the exchange will only succeed to the earnings and profits or deficit in earnings and profits of the acquired corporation and lower-tier subsidiaries of the acquired corporation as provided in section 381(a) and the regulations thereunder.

Post-exchange distributions of earnings and profits and sales of stock may in some circumstances result in double counting of section 1248 earnings. Regulations which will finalize the temporary regulations under section 367(b) will be issued to prevent this double counting of earnings and profits. The regulations with regard to this issue, when finalized, will be retroactive to the effective date of the above amendment.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Richard Chewing of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 7 is amended as follows:

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Paragraph 1. The authority for Part 7 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * * § 7.367(b)-2 (d) and (f) also issued under 26 U.S.C. 367(b)(2). * * * § 7.367(b)-7(c)(1) also issued under 26 U.S.C. 367(b)(2). * * * § 7.367(b)-9(b)(4) also issued under 26 U.S.C. 367(b)(2). * * *

Par. 2. Section 7.367(b)-2 is amended by revising paragraphs (d) and (f) to read as set forth below:

§ 7.367(b)-2 Definitions.

(d) *Section 1248 amount.* In the case of an exchange of stock in a first-tier foreign corporation described in § 7.367(b)-7(c)(1)(i) or a distribution by a foreign corporation described in § 7.367(b)-10(i) in which an inclusion in gross income determined by reference to the "section 1248 amount" is required by those provisions, the term "section 1248 amount" means the net positive earnings and profits which would have been attributable under section 1248 and the regulations under that section to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248(a) applied. For all other purposes of this section, in the case of an exchange of stock in a first-tier foreign corporation to which section 367(b) applies, the term "section 1248 amount" means the earnings and profits or deficit in earnings and profits which would have been attributable under section 1248 and the regulations under that section to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248(a) applied.

(f) *All earnings and profits amount.* For purposes of asset repatriations covered by §§ 7.367(b)-5(b), 7.367(b)-6(c), 7.367(b)-7(c)(2) and 7.367(b)-10(j), the term "all earnings and profits amount" means the net positive earnings and profits, if any, for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248 (whichever is applicable) and the regulations under that section. For all other purposes, the term "all earnings and profits amount" means the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248 (whichever is applicable) and the

regulations under that section. The determination shall be made by applying section 1246 or 1248 as modified by §§ 7.367(b)-2 through 7.367(b)-12 as if there were no distinction in those sections between earnings and profits accumulated before or after December 31, 1962.

Par. 3. Section 7.367(b)-7(c)(1) is amended as follows:

1. Subdivision (ii) is amended by adding after the second sentence the following sentence: "Subdivision (iii) of this paragraph, and not this subdivision (ii), applies if the stock received (A) is of a domestic corporation which is a member of an affiliated group (as defined in section 1504(a), without application of section 1504(b)(3)) that also includes the exchanging foreign corporation as a member, and (B) is not received in an exchange pursuant to which the foreign corporation whose stock is exchanged transfers its assets to a domestic corporation."

2. Subdivision (iii) is redesignated as subdivision (iv) and a new subdivision (iii) is added immediately after subdivision (ii) and before subdivision (iv) to read as follows:

§ 7.367(b)-7 Exchange of stock described in section 354.

(c) Receipt of other stock—(1) General rule.

(iii) For exchanges beginning after March 3, 1989, if the stock received is described in the last sentence of subdivision (ii), then the foreign corporation whose stock is exchanged will be considered to be a foreign corporation for purposes of section 354 or 356. This subdivision (iii) may be illustrated by the following examples:

Example (1). A U.S. parent corporation (USP) owns all of the stock of a foreign corporation (CFC1), which in turn owns all of the stock of a second foreign corporation (CFC2), which in turn owns all of the stock of a third foreign corporation (CFC3). USP also owns all of the stock of U.S. subsidiary (Subsidiary). CFC2 and CFC3 have accumulated earnings and profits or accumulated deficits in earnings and profits. Subsidiary acquires all of the stock of CFC2 from CFC1 in exchange for stock of Subsidiary in a reorganization described in section 368 (a) (1) (B). CFC1 will not recognize gain on the exchange. Moreover, CFC2's and CFC3's accumulated earnings and profits or accumulated deficits in earnings and profits will remain in CFC2 and CFC3, respectively, and will not be added to the earnings and profits or deficit in earnings and profits account of CFC1.

Example (2). USP owns all of the stock of CFC1, which in turn owns all of the stock of

CFC2. USP also owns all of the stock of a U.S. subsidiary (Subsidiary), which in turn owns all of the stock of CFC3. CFC3 acquires the assets of CFC2 in exchange for voting stock of Subsidiary in a reorganization described in section 368 (a) (1) (C). Pursuant to the reorganization, CFC2 distributes the stock of Subsidiary to CFC1. CFC1 will not recognize gain on the exchange. In addition, CFC2's accumulated earnings and profits or accumulated deficit in earnings and profits will be added to CFC3's earnings and profits account under section 381 (c) (2), subject to the limitations contained in section 381 and in the regulations under that section.

Par. 4. Section 7.367 (b)-9 is amended by adding a new paragraph (b) (4) immediately after paragraph (b) (3) to read as follows:

§ 7.367 (b)-9 Attribution of earnings and profits on an exchange described in section 351, 354, or 356.

(b) General rule. * * *

(4) For exchanges beginning on or after March 3, 1989, paragraph (b) (2) and (3) of this section will not apply if a U.S. shareholder described in § 7.367 (b)-7 (b) or § 7.367 (b)-8 (c) (1) owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of both the corporation whose stock is received in the exchange and the corporation whose stock is exchanged. If this paragraph (b) (4) applies, the rules of section 381 (a) and the regulations under that section will determine the extent to which the corporation whose stock is received in the exchange (or other acquiring corporation) will succeed to the earnings and profits or a deficit in earnings and profits of the corporation whose stock is exchanged and of lower-tier corporations. This paragraph (b) (4) may be illustrated by the following examples:

Example (1). A U.S. parent owns all of the stock of CFC1 and CFC2. CFC1 has accumulated earnings and profits or an accumulated deficit in earnings and profits. CFC2 acquires all of the stock of CFC1 from the U.S. parent in a reorganization described in section 368 (a) (1) (B). CFC2 will not succeed to the earnings and profits or the accumulated deficit in earnings and profits of CFC1.

Example (2). A U.S. parent owns all of the stock of CFC1, which in turn owns all of the stock of CFC2. The U.S. parent also owns all of the stock of CFC3. CFC2 has accumulated earnings and profits or an accumulated deficit in earnings and profits. CFC3 acquires all of the assets of CFC1, including the stock of CFC2, in a reorganization described in section 368 (a) (1) (D). CFC3 will not succeed to the earnings and profits or the

accumulated deficit in earnings and profits of CFC2.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: January 30, 1989.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
[FR Doc. 89-4993 Filed 3-3-89; 11:08 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt. No. 20]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Peer Review Organization (PRO) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule supplements rules and procedures currently applicable to the CHAMPUS Peer Review Organization program with a number of additions and clarifications. Major provisions are: Establishment of special payment and financial liability rules relating to certain PRO determinations of medically unnecessary care; quality of care reviews of proposed hospital discharges; and clarifications to follow the procedures of the Medicare PRO program.

EFFECTIVE DATE: This final rule is effective for hospital admissions that occur on or after April 8, 1989.

ADDRESS: Office of the Assistant Secretary of Defense (Health Affairs), Health Program Management, The Pentagon, Room 1B657, Washington, DC 20301.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the Federal Register is \$1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Nancy Gidley or LCDR A.R. Miller, MSC, USN, Office of the Assistant Secretary of Defense (Health Affairs), telephone (202) 697-8975.

SUPPLEMENTARY INFORMATION

I. Synopsis

On October 1, 1987, CHAMPUS adopted a DRG-based payment system