and tylosin to make four-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: *daniel.benz@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–424 for use of HEIFERMAX 500 (melengestrol acetate) Liquid Premix, OPTAFLEXX (ractopamine hydrochloride), RUMENSIN (monensin sodium), and TYLAN (tylosin phosphate) single-ingredient Type A medicated article to make dry and liquid, four-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200–424 is approved as a generic copy of Elanco Animal Health's NADA 141–233 for combination feed use of MGA (melengestrol acetate), OPTAFLEXX, RUMENSIN, and TYLAN. The application is approved as of April 27, 2006, and the regulations are amended in 21 CFR 558.500 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) 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.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ 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, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.500 [Amended]

■ 2. In the table in paragraph (e)(2)(x) of § 558.500, in the ''Limitations'' column remove ''No. 000009'' and add in its place ''Nos. 000009 and 021641'', and in the ''Sponsor'' column add in numerical sequence ''021641''.

Dated: May 23. 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–8420 Filed 5–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9262]

RIN 1545–BF57

Computer Software Under Section 199(c)(5)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning the application of section 199 of the Internal Revenue Code, which provides a deduction for income attributable to domestic production activities, to certain transactions involving computer software. The regulations will affect taxpayers engaged in certain domestic production activities involving computer software. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective June 1, 2006.

Applicability Date: For date of applicability, see § 1.199–8T(i)(4).

FOR FURTHER INFORMATION CONTACT: Paul Handleman or Lauren Ross Taylor, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules relating to the deduction for income attributable to domestic production activities under section 199 of the Internal Revenue Code (Code). Section 199 was added to the Code by section 102 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418), and amended by section 403(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135, 119 Stat. 25) and section 514 of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. 109–222, 120 Stat. 345). On January 19, 2005, the IRS and Treasury Department issued Notice 2005–14 (2005–7 I.R.B. 498) providing interim guidance on section 199. On November 4, 2005, the IRS and Treasury Department published in the **Federal Register** proposed regulations under section 199 (70 FR 67220). On January 11, 2006, the IRS and Treasury Department held a public hearing on the proposed regulations. Written and electronic comments responding to the proposed regulations were received. Contemporaneous with the publication of these temporary regulations, final regulations have been published under section 199.

General Overview

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of (A) the qualified production activities income (QPAI) of the taxpayer for the taxable year, or (B) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income (AGI)).

Qualified Production Activities Income

Section 199(c)(1) defines QPAI for any taxable year as an amount equal to the excess (if any) of (A) the taxpayer's domestic production gross receipts (DPGR) for such taxable year, over (B) the sum of (i) the cost of goods sold (CGS) that are allocable to such receipts; and (ii) other expenses, losses, or deductions (other than the deduction under section 199) that are properly allocable to such receipts.

Section 199(c)(4)(A)(i) defines DPGR, in part, to mean the taxpayer's gross receipts that are derived from any lease, rental, license, sale, exchange, or other disposition of qualifying production property (QPP) that was manufactured, produced, grown, or extracted (MPGE) by the taxpayer in whole or in

significant part within the United States. Section 199(c)(5) defines QPP to mean: (A) Tangible personal property; (B) any computer software; and (C) any property described in section 168(f)(4) (certain sound recordings).

Computer Software

Section 4.04(7)(d) of Notice 2005–14 provides that gross receipts derived from computer software do not include gross receipts derived from Internet access services, online services, customer support, telephone services, games played through a Web site, provider-controlled software online access services, and other services that do not constitute the lease, rental, license, sale, exchange, or other disposition of computer software that was developed by the taxpayer. Consistent with Notice 2005–14, the proposed regulations in § 1.199–3(h)(6)(i) state that the provision of online computer software does not rise to the level of a lease, rental, license, sale, exchange, or other disposition as required under section 199, but is instead a service.

Congressional Letter

On July 21, 2005, the Chairman and Ranking Member of the Senate Finance Committee and the Chairman of the House Ways and Means Committee sent a letter to the Treasury Department suggesting that the Treasury Department consider further the treatment of online access to computer software and, in particular, whether such treatment should be similar to the treatment of computer software distributed by other means, such as by physical delivery or delivery via Internet download. The letter notes that gross receipts from the provision of services are not treated as DPGR, regardless of the fact that computer software may be used to facilitate such service transactions.

Summary of Comments

Numerous commentators have suggested that the provision of computer software for online use should qualify under section 199. Some commentators proposed that gross receipts derived from providing online access to computer software should qualify under section 199 if the substance of the transaction that gives rise to the gross receipts is the distribution of the computer software's functionality to end users. These commentators suggested that factors to be considered in determining the substance of the transaction should include: (1) Whether an agreement exists, regardless of its form, between the computer software producer and the customer that gives the customer permission to use the computer software; (2) whether the use of computer software is merely incidental to the provision of a separate service or transaction; (3) whether the end user has made a payment to the computer software producer directly for the right to access and use the computer software's functionality, as opposed to a payment for a separate service or good in which the use of the underlying computer software is only incidental to the separate service or transaction; (4) whether the computer software producer holds itself out to the public as being in the computer software business; (5) whether the computer software producer uses alternate channels for distributing its computer software product or functionality other than through online access; and (6) whether a competitive marketplace exists for the same or similar computer software functionality that provides customers with alternative distribution choices in addition to online access. The commentators explained that this proposed list of factors is not exhaustive and there may be other relevant factors. The commentators suggested that no single factor should control and that failure to satisfy one or more factors should not necessarily result in gross receipts derived from online access to computer software being non-DPGR.

Other commentators suggested that a customer's use of computer software is tantamount to a license of the computer software. In addition, several commentators asserted that the phrase ''other disposition'' in section 199(c)(4)(A) is broad enough to include the provision of computer software for online use.

Explanation of Provisions

The temporary regulations do not adopt these comments. However, as a matter of administrative convenience, the temporary regulations provide two exceptions under which gross receipts derived by a taxpayer from providing computer software to customers for the customers' direct use while connected to the Internet will be treated as being derived from the lease, rental, license, sale, exchange, or other disposition of such computer software. Such gross receipts will be treated as DPGR if all the other requirements of section 199 are met (for example, the taxpayer MPGE computer software in whole or in significant part within the United States).

The first exception applies to a taxpayer that derives gross receipts from providing computer software to customers for the customers' direct use while connected to the Internet (online software) and also derives gross receipts from the lease, rental, license, sale, exchange, or other disposition to customers that are unrelated persons of computer software that has been provided to such customers affixed to a tangible medium or by allowing them to download the computer software from the Internet. The second exception applies if a taxpayer that derives gross receipts from providing online software and an unrelated person derives on a regular and ongoing basis in the unrelated person's business gross receipts from the lease, rental, license, sale, exchange, or other disposition of substantially identical software to its customers affixed to a tangible medium or by allowing its customers to download the substantially identical computer software from the Internet.

The temporary regulations define substantially identical software as computer software that, from a customer's perspective, has the same functional result as the online software and has a significant overlap of features or purpose with the online software. To avoid controversy between taxpayers and the IRS, the temporary regulations provide a safe harbor under which all computer software games are deemed to be substantially identical software.

If a taxpayer's provision of computer software for online use meets the requirements set forth in the temporary regulations, then an allocation of gross receipts between DPGR and non-DPGR will be necessary if, as part of the same transaction, the taxpayer derives gross receipts other than from providing computer software to a customer for the customer's direct use while connected to the Internet. For example, if in connection with providing computer software to a customer for the customer's direct use while connected to the Internet, a taxpayer also provides a service such as storing its customers' data or providing telephone support, then the taxpayer must allocate its gross receipts between DPGR and non-DPGR using any reasonable method.

These rules are specifically limited to the deduction under section 199 and no inference can be drawn with respect to any other provision of the Code (such as the tax treatment of these transactions under those provisions regarding character, timing, or source).

Effective Date

Section 199 applies to taxable years beginning after December 31, 2004. These temporary regulations are applicable for taxable years beginning on or after June 1, 2006. A taxpayer may apply these temporary regulations to

taxable years beginning after December 31, 2004, and before June 1, 2006. The applicability of these temporary regulations expires on or before May 25, 2009. Section 1.199–8(i)(1) of the final regulations issued contemporaneous with these temporary regulations provides that, in certain circumstances, a taxpayer may rely on the guidance in Notice 2005–14 (2005–7 I.R.B. 498), the proposed regulations under section 199 that were published in the **Federal Register** on November 4, 2005 (70 FR 67220), or the final regulations. Regardless of which guidance a taxpayer applies, the taxpayer may apply these temporary regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Paul Handleman and Lauren Ross Taylor, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.199–3T also issued under 26 U.S.C. 199(d). * * *

Section 1.199–8T also issued under 26 U.S.C. 199(d). * * *

■ **Par. 2.** Section 1.199–3T is added to read as follows:

1.199–3T Domestic production gross receipts (temporary).

(a) through (h) [Reserved]. For further guidance, see § 1.199–3(a) through (h).

(i) *Derived from the lease, rental, license, sale, exchange, or other disposition.*

(1) through (5) [Reserved]. For further guidance, see § 1.199–3(i)(1) through (5).

(6) *Computer software*—(i) [Reserved]. For further guidance, see § 1.199–3(i)(6)(i).

(ii) *Gross receipts derived from services.* Gross receipts (as defined in § 1.199–3(c)) derived from customer and technical support, telephone and other telecommunication services, online services (such as Internet access services, online banking services, providing access to online electronic books, newspapers, and journals), and other similar services do not constitute gross receipts derived from a lease, rental, license, sale, exchange, or other disposition of computer software (as defined in § 1.199–3(j)(3)).

(iii) *Exceptions.* Notwithstanding paragraph (i)(6)(ii) of this section, if a taxpayer derives gross receipts from providing to customers computer software MPGE in whole or in significant by the taxpayer within the United States for the customers' direct use while connected to the Internet (online software), then such gross receipts will be treated as being derived from the lease, rental, license, sale, exchange, or other disposition of computer software only if—

(A) The taxpayer also derives, on a regular and ongoing basis in the taxpayer's business, gross receipts from the lease, rental, license, sale, exchange, or other disposition to customers that are unrelated persons (as defined in § 1.199–3(b)(1)) of computer software that—

(*1*) Has only minor or immaterial differences from the online software;

(*2*) Has been MPGE (as defined in § 1.199–3(e)) by the taxpayer (as defined in § 1.199–3(f)) in whole or in significant part (as defined in § 1.199–3(g)) within the United States (as defined in § 1.199–3(h)); and

(*3*) Has been provided to such customers either affixed to a tangible medium (for example, a disk or DVD) or by allowing them to download the computer software from the Internet; or

(B) An unrelated person derives, on a regular and ongoing basis in the unrelated person's business, gross receipts from the lease, rental, license, sale, exchange, or other disposition of substantially identical software (as described in paragraph (i)(6)(iv)(A) of this section) (as compared to the taxpayer's online software) to its customers pursuant to an activity described in paragraph (i)(6)(iii)(A)(*3*) of this section.

(iv) *Definitions and special rules*—(A) *Substantially identical software.* For purposes of paragraph (i)(6)(iii)(B) of this section, substantially identical software is computer software that—

(*1*) From a customer's perspective, has the same functional result as the online software described in paragraph (i)(6)(iii) of this section; and

(*2*) Has a significant overlap of features or purpose with the online software described in paragraph (i)(6)(iii) of this section.

(B) *Safe harbor for computer software games.* For purposes of paragraph (i)(6)(iv)(A) of this section, all computer software games are deemed to be substantially identical software. For example, computer software sports games are deemed to be substantially identical to computer software card games.

(C) *Regular and ongoing basis.* For purposes of paragraph (i)(6)(iii) of this section, in the case of a newly-formed trade or business or a taxpayer in its first taxable year, the taxpayer is considered to be engaged in an activity described in paragraph (i)(6)(iii) of this section on a regular and ongoing basis if the taxpayer reasonably expects that it will engage in the activity on a regular and ongoing basis.

(D) *Attribution.* For purposes of paragraph (i)(6)(iii)(A) of this section—

(*1*) All members of an expanded affiliated group (as defined in § 1.199–7(a)(1)) are treated as a single taxpayer; and

(*2*) In the case of an EAG partnership (as defined in § 1.199–9(j)), the EAG partnership and all members of the EAG to which the EAG partnership's partners belong are treated as a single taxpayer.

(E) *Qualified computer software maintenance agreements.* Section 1.199–3(i)(4)(i)(B)(*5*) does not apply if the computer software is online software under paragraph (i)(6)(ii) of this section.

(v) *Examples.* The following examples illustrate the application of this paragraph (i)(6):

Example 1. L is a bank and produces computer software within the United States that enables its customers to receive online banking services for a fee. Under paragraph (i)(6)(ii) of this section, gross receipts derived from online banking services are attributable to a service and do not constitute a lease, rental, license, sale, exchange, or other disposition of computer software. Therefore, L's gross receipts derived from the online banking services are non-DPGR.

Example 2. M is an Internet auction company that produces computer software within the United States that enables its customers to participate in Internet auctions for a fee. Under paragraph (i)(6)(ii) of this section, gross receipts derived from online services are attributable to a service and do not constitute a lease, rental, license, sale, exchange, or other disposition of computer software. M's activities constitute the provision of online services. Therefore, M's gross receipts derived from the Internet auction services are non-DPGR.

Example 3. N provides telephone services, voicemail services, and e-mail services. N produces computer software within the United States that runs all of these services. Under paragraph (i)(6)(ii) of this section, gross receipts derived from telephone and related telecommunication services are attributable to a service and do not constitute a lease, rental, license, sale, exchange, or other disposition of computer software. Therefore, N's gross receipts derived from the telephone and other telecommunication services are non-DPGR.

Example 4. O produces tax preparation computer software within the United States. O derives, on a regular and ongoing basis in its business, gross receipts from both the sale to customers that are unrelated persons of O's computer software that has been affixed to a compact disc as well as from the sale to customers of O's computer software that customers have downloaded from the Internet. O also derives gross receipts from customers from providing the computer software to its customers for the customers' direct use while connected to the Internet. Assume that the computer software sold on compact disc or by download has only minor or immaterial differences from the computer software provided over the Internet, and O does not provide any services in connection with the computer software provided over the Internet. Under paragraph (i)(6)(iii)(A) of this section, O's gross receipts derived from providing its computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are domestic production gross receipts (DPGR) (as defined in § 1.199–3) (assuming all the other requirements of § 1.199–3 are met).

Example 5. The facts are the same as in *Example 4,* except that O does not sell the tax preparation computer software to customers affixed to a compact disc and O's only method of providing the tax preparation computer software to customers is over the Internet. P, an unrelated person, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of P's substantially identical tax preparation computer software that has been affixed to a compact disc as well as from the sale to customers of P's substantially identical tax preparation computer software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, O's gross receipts derived from providing its tax preparation computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of § 1.199–3 are met).

Example 6. P produces payroll management computer software within the United States. For a fee, P provides the payroll management computer software to customers for the customers' direct use while connected to the Internet. This is P's sole method of providing its payroll management computer software to customers. In conjunction with the payroll management computer software, P provides storage of customers' data and telephone support. Q, an unrelated person, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of Q's substantially identical payroll management software that has been affixed to a compact disc as well as from the sale to customers of Q's substantially identical payroll management software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, P's gross receipts derived from providing its payroll management computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of § 1.199–3 are met). However, P's gross receipts derived from the fees it receives that are properly allocable to the storage of customers' data and telephone support are non-DPGR.

Par. 3. Section 1.199–8T is added to read as follows:

§ 1.199–8T Other rules (temporary).

(a) through (h) [Reserved]. For further guidance, see § 1.199–8(a) through (h).

(i) *Effective dates.* (1) through (3) [Reserved]. For further guidance, see § 1.199–8(i)(1) through (3).

(4) *Computer software.* Section 1.199–3T(i)(6)(ii) through (v) are applicable for taxable years beginning on or after June 1, 2006. Taxpayers may apply these temporary regulations to taxable years beginning after December 31, 2004, and before June 1, 2006. The applicability of § 1.199–3T(i)(6)(ii) through (v) expires on or before May 25, 2009.

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

Approved: May 2, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06–4828 Filed 5–24–06; 11:47 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, and 4007

RIN 1212–AB02

Electronic Premium Filing

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The PBGC is changing its regulations to require that premium declarations be filed electronically. The requirement becomes effective for plans with 500 or more participants for the prior plan year starting with filings for plan years beginning in 2006 that are made on or after July 1, 2006, and for smaller plans starting with filings for plan years beginning after 2006. Plans may apply for exemptions on a case-by-case basis. Filings may be submitted through the PBGC's on-line e-filing application (''My Plan Administration Account,'' or ''My PAAA''). My PAA has data entry and editing screens that can be used to create and submit a filing, and can also accept uploaded files containing filing information that has been prepared and formatted using private-sector software in accordance with the PBGC's published standards.

DATES: Effective date: July 1, 2006. For a discussion of applicability of these amendments, see the *Applicability* section in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, or Deborah C. Murphy, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: This final rule is part of an ongoing implementation of the Government Paperwork Elimination Act by the Pension Benefit Guaranty Corporation (''PBGC'') and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule addresses electronic submission of premium filings that are required under the regulation on Payment of Premiums (29 CFR part 4007) and builds in the flexibility needed to allow updating of the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under Title IV of the Employee Retirement Income