

AWWA guidance. Commencing January 1, 2013, reported “non-revenue water” must be computed in accordance with the new methodology and guidance. During the period between the effective date of the rule and ending December 31, 2011 (hereinafter, “phase-in period”) water purveyors are encouraged to implement the new methodology and guidance on a voluntary basis.

The Commission has determined that the new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the current approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the Water Resources Plan for the Delaware River Basin (DRBC 2004), which calls for ensuring maximum feasible efficiency of water use across all sectors.

The Commission conducted an informational meeting on the proposed amendments on September 10, 2008 and a public hearing on September 25, 2008, both in West Trenton, New Jersey. Written comment on the proposed amendments was accepted through October 3, 2008. The Commission received one written submission and no oral testimony on the proposed amendment. The agency made revisions to the proposed rule on its own initiative for clarification. A comment and response document summarizing the comments on the proposed rule and setting forth the Commission’s responses and revisions in detail was approved by the Commission simultaneously with adoption of the final rule.

The final form of the rule differs from the proposed rule in the following respects: For purposes of clarity, a definition of “non-revenue water” consistent with the AWWA definition was added to Section 2.1.6.A. of the rule. The definition of “unaccounted-for water” in the same section was amended to include a definition of “unaccounted-for water percent.” This change was made because the computation must return a percentage value so that it can be measured against the performance target of less than 15% unaccounted-for water.

The Commission also added language to establish that until use of the IWA/ AWWA Water Audit methodology becomes mandatory on January 1, 2012, DRBC’s regulatory standards for leak detection and repair (*i.e.*, measurement

and control of unaccounted-for-water), set forth in Section 2.1.6 of the Water Code, shall remain in force. System operators who voluntarily submit audits in a form consistent with the new methodology during the phase-in period are advised in the Commission’s comment and response document that non-revenue water volume expressed as a percentage of input volume will be treated as the equivalent of unaccounted-for-water, the measure applicable under the existing rule. The comment and response document explains that once the Water Audit method is introduced throughout the Delaware Basin and a body of data is available for analysis, a more meaningful measure of system performance will be established.

DRBC Resolution No. 2009–1 and a copy of the comment and response document are both available on the DRBC Web site, <http://www.drbc.net>. Resolution No. 2009–1 incorporates Article 2 of the Water Code, showing the amendments as proposed in August 2008 and as finally approved by the Commission on March 11, 2009. Copies of Resolution No. 2009–1 and the Water Code may be obtained from the Commission’s Secretary and Assistant General Counsel at the telephone number and e-mail address listed above. A charge for printing and mailing may apply.

List of Subjects in 18 CFR Part 410

Incorporation by reference, Water audit, Water pollution control, water reservoirs, Water supply, Watersheds.

■ For the reasons set forth in the preamble, the Delaware River Basin Commission amends part 410 of title 18 of the Code of Federal Regulations as follows:

PART 410—BASIN REGULATIONS; WATER CODE AND ADMINISTRATIVE MANUAL—PART III WATER QUALITY REGULATIONS

■ 1. The authority citation for part 410 continues to read:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 2. Revise the first sentence of paragraph (c) of § 410.1 to read as follows:

§ 410.1 Basin regulations—Water Code and Administrative Manual—Part III Water Quality Regulations.

* * * * *

(c) Work, services, activities and facilities affecting the conservation, utilization, control, development or management of water resources within the Delaware River Basin are subject to

regulations contained within the Delaware River Basin Water Code with Amendments Through March 11, 2009, Printed: November 12, 2009, and the Administrative Manual—Part III Water Quality Regulations with Amendments Through July 16, 2008, Printed: September 12, 2008. * * *

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Dated: November 12, 2009.

Pamela M. Bush,

Secretary and Assistant General Counsel.

[FR Doc. E9–27645 Filed 11–19–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2009–N–0665]

Oral Dosage Form New Animal Drugs; Sulfadimethoxine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for use of Sulfadimethoxine Soluble Powder in medicated drinking water of cattle, chickens, and turkeys for the treatment of various bacterial infections.

DATES: This rule is effective November 20, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: john.harshman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1590 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–443 for use of Sulfadimethoxine Soluble Powder in medicated drinking water of cattle, chickens, and turkeys for the treatment of various bacterial infections. First Priority, Inc.’s Sulfadimethoxine Soluble Powder is approved as a generic copy of ALBON (sulfadimethoxine) Soluble Powder, sponsored by Pfizer, Inc., under NADA 46–285. The ANADA is approved as of October 28, 2009, and 21 CFR 520.2220a are amended to reflect the approval.

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 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 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, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.2220a [Amended]

■ 2. In § 520.2220a, in paragraph (a)(2), add in numerical sequence "058829".

Dated: November 16, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR 2550

RIN 1210-AB13

Investment Advice—Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Withdrawal of final rule.

SUMMARY: This document withdraws final rules under the Employee

Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). Final rules were published in the **Federal Register** on January 21, 2009 (74 FR 3822). The effective and applicability dates of the final rules had been deferred until May 17, 2010, in order to permit a review of policy and legal issues raised with respect to the rules. As discussed in this Notice, the Department has determined to withdraw the final rules. The Department also intends to soon propose a revised rule limited to the application of the statutory exemption relating to investment advice.

DATES: Effective January 19, 2010, the final rule published January 21, 2009 amending 29 CFR Part 2550 (74 FR 3822), for which the effective and applicability date was delayed on March 20, 2009 (74 FR 11847), May 22, 2009 (74 FR 23951) and November 17, 2009 (74 FR 59092), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts and certain similar plans (IRAs) (74 FR 3822). The rules implement a statutory prohibited transaction exemption under ERISA Section 408(b)(14) and Sec. 408(g), and under section 4975 of the Internal Revenue Code of 1986 (Code),¹ and also contain an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. On February 4, 2009, the Department published in the **Federal Register** (74 FR 6007) an invitation for public comment on a proposed 60-day extension for the effective dates of the final rules until May 22, 2009, and a proposed conforming amendment to the applicability date of Section 2550.408g-1, in order to afford the Agency the opportunity to review legal and policy

issues relating to the final rules. The Department also invited public comments on the provisions of those rules and on the merits of rescinding, modifying or retaining the rules. In response to this invitation, the Department received 28 comment letters.² On March 20, 2009, the Department adopted the 60-day extension of the final rule's effective and applicability date. (See 74 FR 11847). In order to afford the Department additional time to consider the issues raised by commenters, the effective and applicability dates were further delayed until November 18, 2009 (74 FR 23951), and then until May 17, 2010.

B. Comments Received

A number of the commenters expressed the view that the final rule raises significant issues of law and policy, and should be withdrawn. Several of these commenters argued that the class exemption contained in the final rule permits financial interests that would cause a fiduciary adviser, and individuals providing investment advice on behalf of a fiduciary adviser, to have conflicts of interest, but does not contain conditions that would adequately mitigate such conflicts. They asserted that investment advice provided under the class exemption therefore might be tainted by the fiduciary adviser's conflicts. Other commenters expressed concerns about those provisions of the rule relating to the "fee-leveling" requirement under the statutory exemption. In particular, some opined that the Department's interpretation of the statutory exemption's fee-leveling requirement is incorrect for permitting the receipt of varying fees by an affiliate of a fiduciary adviser. As a result, they argued, a fiduciary adviser under such a fee-leveling arrangement has a conflict of interest, and the final rule does not adequately protect against investment advice that is influenced by the financial interests of the fiduciary adviser's affiliates. Commenters who advocated retention of the final rule argued that it contains strong safeguards that would protect the interests of plan participants and beneficiaries.

C. Analysis and Determination

As documented in the Department's regulatory impact analysis (RIA) of the January 2009 final regulation and class exemption, defined contribution (DC) plan participants and IRA beneficiaries

¹ These provisions were added to ERISA and the Code by the Pension Protection Act of 2006 (PPA), Public Law 109-280, 120 Stat. 780 (Aug. 17, 2006).

² These comments are available on the Department's Web site at: <http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html>.