The ANADA is approved as of April 24, 1998, and the regulations in 21 CFR 522.90b(b) are amended 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 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 Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) 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 in 21 CFR Part 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.90b is amended by revising paragraph (b) to read as follows:

§ 522.90b Ampicillin trihydrate for sterile suspension.

* * * * *

(b) *Sponsor.* (1) See 000856 in § 510.600(c) of this chapter for use of 50, 100, and 250 milligrams per milliliter ampicillin suspension.

(2) See 010515 in § 510.600(c) of this chapter for use of 100 and 250 milligrams per milliliter ampicillin suspension.

* * * * *

Dated: June 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–20698 Filed 8–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8777]

RIN 1545–AV17

Qualified Nonrecourse Financing Under Section 465(b)(6)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on certain issues regarding qualified nonrecourse financing under section 465(b)(6). These final regulations affect individuals and C corporations for which the stock ownership requirement of section 542(a)(2) is satisfied. These regulations provide guidance on certain issues relating to section 465(b)(6).

DATES: Effective date: These regulations are effective August 4, 1998.

Applicability dates: See Effective Dates under Supplementary Information of the preamble.

FOR FURTHER INFORMATION CONTACT: Jeff Erickson at (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide rules regarding qualified nonrecourse financing under section 465(b)(6). Section 465 limits a taxpayer's loss deduction for an activity to the taxpayer's amount at risk in the activity at the close of the taxable year. A taxpayer's amount at risk generally includes the amount of any cash and the adjusted tax basis of any property contributed by the taxpayer to the activity plus any amounts borrowed for use in the activity to the extent the taxpayer is personally liable for repayment. For the activity of holding real property, section 465(b)(6) provides that a taxpayer may include as an amount at risk the taxpayer's share of any qualified nonrecourse financing that is secured by real property used in the activity of holding real property, even though the taxpayer is not personally liable for repayment of the financing.

On August 13, 1997, the IRS published in the **Federal Register** (62 FR 43295) a notice of proposed rulemaking regarding section 465(b)(6). A number of comments were received on the proposed regulations. The public hearing scheduled for December 10, 1997, was canceled because no one requested to speak. After considering the written comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

I. Secured by Real Property

A. Proposed Rule

Section 465(b)(6)(A) provides that qualified nonrecourse financing must be secured by real property used in the activity of holding real property. The proposed regulations provided that a financing can be a qualified nonrecourse financing if, in addition to the real property used in the activity of holding real property, the financing is secured by other property that is incidental to the activity of holding real property (incidental property).

B. Discussion of Comments

A commentator recommended that the final regulations clarify the term *incidental property.* Another commentator asked that the IRS and Treasury define incidental property as any property with a value of not more than 15 percent of the value of the real property held by the borrowing partnership. A third commentator explained that real estate partnerships often hold assets in addition to real property and incidental property. This commentator was concerned that only financings held by partnerships that own only real estate assets could satisfy the proposed regulations. Under the final regulations, if the total gross fair market value of property that is neither real property used in the activity of holding real property nor incidental property is less than 10 percent of the total gross fair market value of all the property securing the financing, such other property is ignored in determining whether the financing satisfies the secured-by-real-property requirement.

Another commentator asked for a look-through rule for partnerships that own an interest in another partnership to determine the character of the assets securing a qualified nonrecourse financing. The final regulations adopt this suggestion by requiring a borrower (whether or not a partnership) to determine the character of its assets by treating itself as owning directly its proportional share of the assets in any partnership in which it owns (directly or indirectly through a chain of partnerships) an equity interest. If a borrower pledges a partnership interest as security for a financing, the partnership assets attributable to the borrower's proportional share of the partnership's assets will be treated as security for the financing.

Commentators also asked under what circumstances qualified nonrecourse financing will be treated as secured by real property. Because this issue is closely-related to the determination of whether the personal liability of a partnership will be disregarded, those issues are addressed together and are discussed in II. *Personal Liability* of this preamble.

A commentator suggested that the final regulations adopt a rule to allocate a single debt obligation among multiple brother-sister partnerships when the obligation is secured by the assets of more than one partnership. The IRS and Treasury believe this issue is beyond the scope of these regulations.

II. Personal Liability

A. Proposed Rule

Section 465(b)(6)(B)(iii) provides that, except to the extent provided in regulations, no person may be personally liable for repayment of a qualified nonrecourse financing. The proposed regulations provided that the personal liability of a partnership (including a limited liability company that is treated as a partnership) is disregarded in determining whether a financing is a qualified nonrecourse financing if the entity's only assets are real property used in the activity of holding real property or both real property and other property that is incidental to the activity of holding real property, and no other person is liable for the financing.

B. Discussion of Comments

Commentators focused on how the proposed regulations apply to tiered partnership structures—when a partnership (the upper-tier partnership) owns a partnership interest in another partnership (the lower-tier partnership). These commentators questioned whether the personal liability of an upper-tier partnership that holds, directly or indirectly, only real property or incidental property should disqualify a financing under section 465(b)(6). As mentioned in I. *Secured by Real Property* of this preamble, commentators also requested guidance as to the situations in which a nonrecourse financing will be treated as secured by real property.

In order to address these comments, the final regulations adopt a three-part test. Under the final regulations, the personal liability of any partnership will be disregarded and, provided certain other requirements are satisfied, the financing will be treated as qualified nonrecourse financing secured by real property if (i) the only persons personally liable to repay the financing are partnerships; (ii) each partnership with personal liability holds only property that is permitted as security for qualified nonrecourse financing (applying a look-through rule for lower-tier partnerships); and (iii) in exercising its remedies to collect on the financing in a default or default-like situation, the lender may proceed only against property that is permitted as security for qualified nonrecourse financing and that is held by the partnership or partnerships (applying a look-through rule for lower-tier partnerships). Similar principles apply in determining the treatment of financing incurred by an entity that is disregarded for federal tax purposes under § 301.7701–3 of the Procedure and Administration Regulations. The final regulations contain three examples illustrating the application of these rules to tiered partnerships and one example addressing a situation that involves a disregarded entity.

III. Other Issues

A commentator asked that the final regulations clarify whether an entity is disregarded for purposes of section 465(b)(6) if that entity is disregarded as separate from its owner under § 301.7701–3. An entity that is disregarded as an entity separate from its owner under § 301.7701–3 is disregarded under section 465(b)(6). Certain rules that apply to financings involving disregarded entities are discussed above.

Commentators also raised several other issues, including the treatment of publicly traded financing, that are beyond the scope of these regulations.

IV. Effective Dates

The final regulations are effective for any financing incurred on or after August 4, 1998. In response to comments, however, the final regulations include a provision allowing taxpayers to apply the regulations retroactively for financing incurred before August 4, 1998. If a taxpayer chooses to apply these regulations retroactively to financing incurred before August 4, 1998, the IRS will require the taxpayer to reduce the amounts at risk as a result of the application of the regulations to taxable years ending before August 4, 1998, only to the extent the application increases the losses allowed for such years.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Jeff Erickson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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 an entry in numerical order to read as follows:

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

§ 1.465–27 also issued under 26 U.S.C. 465(b)(6)(B)(iii).* * *

Par. 2. Section 1.465–27 is added to read as follows:

§ 1.465–27 Qualified nonrecourse financing.

(a) *In general.* Notwithstanding any provision of section 465(b) or the regulations under section 465(b), for an activity of holding real property, a taxpayer is considered at risk for the taxpayer's share of any qualified nonrecourse financing which is secured by real property used in such activity.

(b) *Qualified nonrecourse financing secured by real property*—(1) *In general.* For purposes of section 465(b)(6) and this section, the term *qualified nonrecourse financing* means any financing—

(i) Which is borrowed by the taxpayer with respect to the activity of holding real property;

(ii) Which is borrowed by the taxpayer from a qualified person or represents a loan from any federal, state,

or local government or instrumentality thereof, or is guaranteed by any federal, state, or local government;

(iii) For which no person is personally liable for repayment, taking into account paragraphs (b)(3), (4), and (5) of this section; and

(iv) Which is not convertible debt.

(2) *Security for qualified nonrecourse financing*—(i) *Types of property.* For a taxpayer to be considered at risk under section 465(b)(6), qualified nonrecourse financing must be secured only by real property used in the activity of holding real property. For this purpose, however, property that is incidental to the activity of holding real property will be disregarded. In addition, for this purpose, property that is neither real property used in the activity of holding real property nor incidental property will be disregarded if the aggregate gross fair market value of such property is less than 10 percent of the aggregate gross fair market value of all the property securing the financing.

(ii) *Look-through rule for partnerships.* For purposes of paragraph (b)(2)(i) of this section, a borrower shall be treated as owning directly its proportional share of the assets in a partnership in which the borrower owns (directly or indirectly through a chain of partnerships) an equity interest.

(3) *Personal liability; partial liability.* If one or more persons are personally liable for repayment of a portion of a financing, the portion of the financing for which no person is personally liable may qualify as qualified nonrecourse financing.

(4) *Partnership liability.* For purposes of section 465(b)(6) and this paragraph (b), the personal liability of any partnership for repayment of a financing is disregarded and, provided the requirements contained in paragraphs (b)(1)(i), (ii), and (iv) of this section are satisfied, the financing will be treated as qualified nonrecourse financing secured by real property if—

(i) The only persons personally liable to repay the financing are partnerships;

(ii) Each partnership with personal liability holds only property described in paragraph (b)(2)(i) of this section (applying the principles of paragraph (b)(2)(ii) of this section in determining the property held by each partnership); and

(iii) In exercising its remedies to collect on the financing in a default or default-like situation, the lender may proceed only against property that is described in paragraph (b)(2)(i) of this section and that is held by the partnership or partnerships (applying the principles of paragraph (b)(2)(ii) of this section in determining the property held by the partnership or partnerships).

(5) *Disregarded entities.* Principles similar to those described in paragraph (b)(4) of this section shall apply in determining whether a financing of an entity that is disregarded for federal tax purposes under § 301.7701–3 of this chapter is treated as qualified nonrecourse financing secured by real property.

(6) *Examples.* The following examples illustrate the rules of this section:

Example 1. Personal liability of a partnership; incidental property. (i) X is a limited liability company that is classified as a partnership for federal tax purposes. X engages only in the activity of holding real property. In addition to real property used in the activity of holding real property, X owns office equipment, a truck, and maintenance equipment that it uses to support the activity of holding real property. X borrows $500 to use in the activity. X is personally liable on the financing, but no member of X and no other person is liable for repayment of the financing under local law. The lender may proceed against all of X's assets if X defaults on the financing.

(ii) Under paragraph (b)(2)(i) of this section, the personal property is disregarded as incidental property used in the activity of holding real property. Under paragraph (b)(4) of this section, the personal liability of X for repayment of the financing is disregarded and, provided the requirements contained in paragraphs (b)(1)(i), (ii), and (iv) of this section are satisfied, the financing will be treated as qualified nonrecourse financing secured by real property.

Example 2. Bifurcation of a financing. The facts are the same as in *Example 1,* except that A, a member of X, is personally liable for repayment of $100 of the financing. If the requirements contained in paragraphs (b)(1)(i), (ii), and (iv) of this section are satisfied, then under paragraph (b)(3) of this section, the portion of the financing for which A is not personally liable for repayment ($400) will be treated as qualified nonrecourse financing secured by real property.

Example 3. Personal liability; tiered partnerships. (i) UTP1 and UTP2, both limited liability companies classified as partnerships, are the only general partners in Y, a limited partnership. Y borrows $500 with respect to the activity of holding real property. The financing is a general obligation of Y. UTP1 and UTP2, therefore, are personally liable to repay the financing. Under section 752, UTP1's share of the financing is $300, and UTP2's share is $200. No person other than Y, UTP1, and UTP2 is personally liable to repay the financing. Y, UTP1, and UTP2 each hold only real property.

(ii) Under paragraph (b)(4) of this section, the personal liability of Y, UTP1, and UTP2 to repay the financing is disregarded and, provided the requirements of paragraphs (b)(1)(i), (ii), and (iv) of this section are satisfied, UTP1's $300 share of the financing and UTP2's $200 share of the financing will be treated as qualified nonrecourse financing secured by real property.

Example 4. Personal liability; tiered partnerships. The facts are the same as in *Example 3,* except that Y's general partners are UTP1 and B, an individual. Because B, an individual, is also personally liable to repay the $500 financing, the entire financing fails to satisfy the requirement in paragraph (b)(1)(iii) of this section. Accordingly, UTP1's $300 share of the financing will not be treated as qualified nonrecourse financing secured by real property.

Example 5. Personal liability; tiered partnerships. The facts are the same as in *Example 3,* except that Y is a limited liability company and UTP1 and UTP2 are not personally liable for the debt. However, UTP1 and UTP2 each pledge property as security for the loan that is other than real property used in the activity of holding real property and other than property that is incidental to the activity of holding real property. The fair market value of the property pledged by UTP1 and UTP2 is greater than 10 percent of the sum of the aggregate gross fair market value of the property held by Y and the aggregate gross fair market value of the property pledged by UTP1 and UTP2. Accordingly, the financing fails to satisfy the requirement in paragraph (b)(1)(iii) of this section by virtue of its failure to satisfy paragraph (b)(4)(iii) of this section. Therefore, the financing is not qualified nonrecourse financing secured by real property.

Example 6. Personal liability; Disregarded entity. (i) X is a single member limited liability company that is disregarded as an entity separate from its owner for federal tax purposes under § 301.7701–3 of this chapter. X owns certain real property and property that is incidental to the activity of holding the real property. X does not own any other property. For federal tax purposes, A, the sole member of X, is considered to own all of the property held by X and is engaged in the activity of holding real property through X. X borrows $500 and uses the proceeds to purchase additional real property that is used in the activity of holding real property. X is personally liable to repay the financing, but A is not personally liable for repayment of the financing under local law. The lender may proceed against all of X's assets if X defaults on the financing.

(ii) X is disregarded so that the assets and liabilities of X are treated as the assets and liabilities of A. However, A is not personally liable for the $500 liability. Provided that the requirements contained in paragraphs (b)(1)(i), (ii), and (iv) of this section are satisfied, the financing will be treated as qualified nonrecourse financing secured by real property with respect to A.

(c) *Effective date.* This section is effective for any financing incurred on or after August 4, 1998. Taxpayers, however, may apply this section retroactively for financing incurred before August 4, 1998.

Approved: July 16, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 98–20801 Filed 8–3–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SPATS No. KY–191–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval, with an exception, of an amendment to the Kentucky permanent regulatory program approved pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment provides that areas reclaimed following the removal of temporary structures such as sedimentation ponds, roads, and small diversions are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. The amendment is intended to clarify ambiguities in the State regulations and to improve operational efficiency.

EFFECTIVE DATE: August 4, 1998.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2894.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Background information on the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By letter dated June 28, 1991 (Administrative Record No. KY–1059, Kentucky submitted revisions to section 1(7) of the Kentucky Administrative Regulations (KAR) at 405 KAR 16:200 and 18:200 as part of a larger rulemaking. OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33398), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 21, 1991. Since no one requested an opportunity to testify at a public hearing, no hearing was held.

By letter dated January 22, 1992 (Administrative Record No. KY–1107), Kentucky revised the proposed amendment in response to changes made during its promulgation process. OSM announced receipt of the revised amendment in the April 13, 1992, **Federal Register** (57 FR 12775), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on May 13, 1992. As with the previous submittal, no one requested an opportunity to testify at a public hearing; therefore, no hearing was held.

OSM subsequently announced its decision on most provisions of the proposed amendment in the June 9, 1993 **Federal Register** (58 FR 32283). Like the corresponding Federal regulations at 30 CFR 816/817.116(c)(1) and (c)(2), proposed sections 1(7) of 405 KAR 16:200 and 18:200 require that the revegetation responsibility period begin after the last augmented seeding, fertilizing, irrigating or other work and continue for a minimum of 5 years. However, proposed subsections 1(7)(b) would exempt haul roads, areas from which sedimentation ponds and associated diversion have been removed, and disposal areas for accumulated sediment and sedimentation pond embarkment material from the full revegetation responsibility period, provided vegetation established on all these areas has been in place at least 2 years before final bond release. In its final decision, OSM stated at 58 FR 32285 that it was deferring a decision on section 1(7)(b) of 405 KAR 16:200 and 18:200 until additional opportunity for public comment was provided in a separate **Federal Register** notice. That commitment was fulfilled by the notice published on September 15, 1993 (58 FR 48333), which opened the public comment period until October 15, 1993. Since no one requested an opportunity to testify at a public hearing, no hearing was held. This notice also included similar proposed revisions to the Illinois and Ohio regulations as well as a discussion of OSM's proposed policy concerning restart of the revegetation responsibility period every time a small portion of the permit area requires reseeding or replanting. Subsequent to this notice, on May 29, 1996, OSM approved similar proposed revisions to the Colorado regulations (61 FR 26792) and on October 22, 1997, the Illinois regulations (62 FR 54765).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the deferred revisions at sections 1(7)(b) of 405 KAR 16:200 and 18:200.

A. OSM's policy concerning the term of liability for reclamation of roads and Temporary Sediment Control Structures

The following discussion of the rules in 30 CFR Part 816, which applies to surface mining activitities, also pertains to similarly or identically constructed sections in 30 CFR Part 817, which applies to underground mining activities.

Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence ''after the last year of augmented seeding, fertilizing, irrigation, or other work'' needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion in 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039, September 26, 1983). Such areas would include sediment control structures and associated structures and facilities such as diversion ditches, disposal and storage