

Administration, 12420 Parklawn Dr., rm 1-23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. LET19, Docket No. 81N090201, Dockets Management Branch.

2. *United States Pharmacopeia 23—National Formulary 18*, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1345, 1994.

3. *Second Supplement to USP 23 and to NF 18*, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 2671, 1995.

#### IV. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule makes a minor clarification in the concentration of an active ingredient. It does not change the manner in which manufacturers make these pediculicide drug products and will not cause any burden on small entities. The agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

The Unfunded Mandates Act (2 U.S.C. 1501 *et seq.*) does not apply to this final rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million.

#### V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the

preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

#### List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 358 is amended as follows:

#### PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 358.610 is revised to read as follows:

##### § 358.610 Pediculicide active ingredients.

The active ingredients of the product consist of the combination of pyrethrum extract (providing a concentration of pyrethrins of 0.17 to 0.33 percent) with piperonyl butoxide (2 to 4 percent) in a nonaerosol dosage formulation.

Dated: August 5, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98-21794 Filed 8-12-98; 8:45 am]

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#### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

#### 26 CFR Part 1

#### Income Tax; Taxable Years Beginning After December 31, 1953

##### CFR Correction

In Title 26 of the Code of Federal Regulations, part 1 (§§ 1.401 to 1.440), revised as of April 1, 1998, in § 1.402(a)-1, paragraphs (b)(2)(ii)(d) and (c) were inadvertently omitted. The reinstated text of these paragraphs and the source note read as follows:

#### § 1.402(a)-1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(d)(1) In all other cases, there shall be used the average cost (or other basis) to

the trust of all securities of the employer corporation of the type distributed to the distributee which the trust has on hand at the time of the distribution, or which the trust had on hand on a specified inventory date which date does not precede the date of distribution by more than twelve calendar months. If a distribution includes securities of the employer corporation of more than one type, the average cost (or other basis) to the trust of each type of security distributed shall be determined. The average cost to the trust of securities of the employer corporation on hand on a specified inventory date (or on hand at the time of distribution) shall be computed on the basis of their actual cost, considering the securities most recently purchased to be those on hand, or by means of a moving average calculated by subtracting from the total cost of securities on hand immediately preceding a particular sale or distribution an amount computed by multiplying the number of securities sold or distributed by the average cost of all securities on hand preceding such sale or distribution.

(2) These methods of computing average cost may be illustrated by the following examples:

*Example (1).* A, a distributee who makes his income tax returns on the basis of a calendar year, receives on August 1, 1954, in a total distribution, to which paragraph (a)(6) of this section is applicable, ten shares of class D stock of the employer corporation. On July 1, 1954 (the specified inventory date of the trust), the trust had on hand 80 shares of class D stock. The average cost of the 10 shares distributed, on the basis of the actual cost method, is \$100 computed as follows:

Shares	Purchase date	Cost per share	Total cost
20 .....	June 24, 1954.	\$101	\$2,020
40 .....	Jan. 10, 1953	102	4,080
20 .....	Oct. 20, 1952	95	1,900
80 .....	.....	8,000	

*Example (2).* B, a distributee who makes his income tax returns on the basis of a calendar year, receives on October 31, 1954, in a total distribution, to which paragraph (a)(6) of this section is applicable, 20 shares of class E stock of the employer corporation. The specified inventory date of the trust is the last day of each calendar year. The trust had on hand on December 31, 1952, 1,000 shares of class E stock of the employer corporation. During the calendar year 1953 the trust distributed to four distributees a total of 100 shares of such stock and acquired, through a number of purchases, a total of 120 shares. The average cost of the

20 shares distributed to B, on the basis of the moving average method, is \$52 computed as follows:

	Shares	Total cost	Average cost
On hand Dec. 31, 1952 .....	1,000	\$50,000	\$50
Distributed during 1953 at average cost of \$50	100	5,000	(0)
	900	45,000	(0)
Purchased during 1953	120	8,000	(0)
On hand Dec. 31, 1953 .....	1,020	53,040	52

(3) *Unrealized appreciation attributable to employee contributions.* In any case in which it is necessary to determine the amount of net unrealized appreciation in securities of the employer corporation which is attributable to contributions made by an employee:

(i) The cost or other basis of the securities to the trust and the amount of net unrealized appreciation shall first be determined in accordance with the regulations in subparagraph (2) of this paragraph;

(ii) The amount contributed by the employee to the purchase of the securities shall be solely the portion of his actual contributions to the trust properly allocable to such securities, and shall not include any part of the increment in the trust fund expended in the purchase of the securities;

(iii) The amount of net unrealized appreciation in the securities distributed which is attributable to the contributions of the employee shall be that proportion of the net unrealized appreciation determined under the regulations of subparagraph (2) of this paragraph which the contributions of the employee properly allocable to such securities bear to the cost or other basis to the trust of the securities;

(iv) If a distribution consists solely of securities of the employer corporation, the contributions of the employee expended in the purchase of such securities shall be allocated to the securities distributed in a manner consistent with the principles set forth in subparagraph (2)(ii) (a), (b), (c), or (d) of this paragraph, whichever is applicable. Thus, the amount of the employee's contribution which can be identified as having been expended in the purchase of a particular security shall be allocated to such security, and the amount of such contribution which cannot be so identified shall be allocated ratably among the securities distributed. If a distribution consists in

part of securities of the employer corporation and in part of cash or other property, appropriate allocation of a portion of the employee's contribution to such cash or other property shall be made unless such a location is inconsistent with the terms of the plan or trust.

(v) The application of this subparagraph may be illustrated by the following example:

*Example.* A trust distributes ten shares of stock issued by the employer corporation each of which has an average cost to the trust of \$100, consisting of employee contributions in the amount of \$60 and employer contributions in the amount of \$40, and on the date of distribution has a fair market value of \$180. The portion of the net unrealized appreciation attributable to the contributions of the employee with respect to each of the shares of stock is \$48 computed as follows:

(1) Value of one share of stock on distribution date .....	\$180
(2) Employee contributions .....	60
(3) Employer contributions .....	40
(4) Total contributions .....	100
(5) Net unrealized appreciation .....	80
(6) Portion of net unrealized appreciation attributable to employee contributions $\frac{60}{100}$ (amount of employee contributions (item 2) over total contributions (item 4) of \$80 (item 5) .....	48

(vi) For the purpose of determining gain or loss to the distributee in the year or years in which any share of stock referred to in the example in subdivision (v) of this subparagraph is sold or otherwise disposed of in a taxable transaction, the basis of each such share in the hands of the distributee at the time of the distribution by the trust will be \$132 computed as follows:

(a) Employee contributions .....	\$60
(b) Employer contributions (taxable as ordinary income in the year the securities were distributed) .....	40
(c) Portion of net unrealized appreciation attributable to employer contributions (item 5) minus (item 6) (taxable as ordinary income in the year the securities were distributed) .....	32
(d) Basis of stock .....	132

(4) *Change in exempt status of trust.* For principles applicable in making appropriate adjustments if the trust was not exempt for one or more years before the year of distribution, see paragraph (a) of this section.

(c) *Certain distributions by United States to nonresident alien individuals.*

(1) This paragraph applies to a distribution—

(i) Which is made by the United States under a pension plan described in section 401(a);

(ii) Which is made in respect of services performed by an employee of the United States; and

(iii) Which is received by, or made available to, a nonresident alien individual (including a nonresident alien individual who is a beneficiary of a deceased employee) during a taxable year beginning after December 31, 1959. The amount of such a distribution that is includible in the gross income of the nonresident alien individual under section 402(a) (1) or (2) shall not exceed an amount which bears the same ratio to the amount which would be includible in gross income if it were not for this paragraph, as—

(a) The aggregate basic salary paid by the United States to the employee for his services in respect of which the distribution is being made, reduced by the amount of such basic salary which was not includible in the employee's gross income by reason of being from sources without the United States, bears to

(b) The aggregate basic salary paid by the United States to the employee for his services in respect of which the distribution is being made.

See section 402(a)(4). See, also, paragraph (a) of this section for rules relating to the amount that is includible in gross income under section 402(a) (1) or (2) in the case of a distribution under a pension plan described in section 401(a).

(2) For purposes of applying section 402(a)(4) and this paragraph to distributions under the Civil Service Retirement Act (5 U.S.C. 2251), the term "basic salary" shall have the meaning provided in section 1(d) of such Act. In applying section 402(a)(4) and this paragraph to distributions under any other qualified pension plan of the United States, such term shall have a similar meaning. Thus, for example, "basic salary" does not, in any case, include bonuses, allowances, or overtime pay.

(3) The rules in this paragraph may be illustrated by the following examples:

*Example (1).* A, a retired employee of the United States who performed all of his services for the United States in a foreign country, receives, in respect of such services, a monthly pension of \$200 under the Civil Service Retirement Act (a pension plan described in section 410(a)). A received an aggregate basic salary for his services for the United States of \$100,000. A was a nonresident alien individual during the whole of his employment with the United States and,

therefore, his basic salary from the United States was not includible in his gross income by reason of being from sources without the United States. A would be required, under section 72 but without regard to section 402(a)(4) and this paragraph, to include \$60 of each monthly pension payment in his gross income. The amount that is includible in A's gross income under section 402(a)(1) with respect to the monthly payments received during taxable years beginning after December 31, 1959, and while A is a nonresident alien individual, is computed as follows:

(i) Amount of distribution includible in gross income under section 72 without regard to section 402(a)(4) .....	\$60
(ii) Aggregate basic salary for services for United States .....	100,000
(iii) Aggregate basic salary for services for United States reduced by amount of such salary not includible in A's gross income by reason of being from sources without the United States .....	0
(iv) Amount includible in A's gross income under section 402(a)(1) ((iii)+(ii)×(i), or \$0/\$100,000×\$60) .....	0

**Example (2).** B, a retired employee of the United States who performed services for the United States both in a foreign country and in the United States, receives, in respect of such services, a monthly pension of \$240 under the Civil Service Retirement Act. B received an aggregate basic salary for his services for the United States of \$120,000; \$80,000 of which was for his services performed in the United States, and \$40,000 of which was for his services performed in the foreign country. B was a nonresident alien individual during the whole of his employment with the United States and, consequently, the \$40,000 basic salary for his services performed in the foreign country was not includible in his gross income by reason of being from sources without the United States. B would be required, under section 72 but without regard to section 402(a)(4) and this paragraph, to include \$165 of each monthly pension in his gross income. The amount that is includible in B's gross income under section 402(a)(1) with respect to the monthly payments received during taxable years beginning after December 31, 1959, and while B is a nonresident alien individual, is computed as follows:

(i) Amount of distribution includible in gross income under section 72 without regard to section 402(a)(4) .....	\$165
(ii) Aggregate basic salary for services for United States .....	120,000
(iii) Aggregate basic salary for services for United States reduced by amount of such salary not includible in B's gross income by reason of being from sources without the United States (\$120,000 – \$40,000) .....	80,000
(iv) Amount includible in B's gross income under section 402(a)(1)((iii)+(ii)×(i), or \$80,000/\$120,000×\$165) .....	110

\* \* \* \* \*

[T.D. 6500, 25 FR 11675, Nov. 26, 1960, as amended by T.D. 6497, 25 FR 10021, Oct. 20,

1960; T.D. 6676, 28 FR 10142, Sept. 17, 1963; T.D. 6717, 29 FR 4092, Mar. 28, 1964; T.D. 6722, 29 FR 5073, Apr. 14, 1964; T.D. 6823, 30 FR 6340, May 6, 1965; T.D. 6885, 31 FR 7800, June 2, 1966; T.D. 6887, 31 FR 8786, June 24, 1966; T.D. 8217, 53 FR 29673, Aug. 8, 1988; T.D. 8357, 56 FR 40545, Aug. 15, 1991; T.D. 8357, 57 FR 10290, Mar. 25, 1992; T.D. 8581, 59 FR 66180, Dec. 23, 1994]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 924

[SPATS No. MS-013-FOR]

#### Mississippi Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with additional requirements, an amendment to the Mississippi regulatory program (hereinafter referred to as the "Mississippi program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed to replace all of its currently approved regulations for surface coal mining and reclamation operations with new regulations. The amendment is intended to revise the Mississippi program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

**EFFECTIVE DATE:** August 13, 1998.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

- I. Background on the Mississippi Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

#### I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior approved the Mississippi program. Background information on the Mississippi program, including the Secretary's findings and the disposition of comments, can be found in the

September 4, 1980, **Federal Register** (45 FR 58520). Subsequent actions concerning the Mississippi program can be found at 30 CFR 924.10, 924.16, and 924.17.

#### II. Submission of the Proposed Amendment

By letter dated March 26, 1998 (Administrative Record No. MS-0355), Mississippi submitted an amendment to its program pursuant to SMCRA. Mississippi submitted the amendment in response to letters dated May 20, 1996, January 6, 1997, and June 17, 1997 (Administrative Record Nos. MS-0333, MS-0336, and MS-0339, respectively), that OSM sent to Mississippi in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 924.16 (a) and (e); and at its own initiative.

OSM announced receipt of the proposed amendment in the April 14, 1998, **Federal Register** (63 FR 18173), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 14, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to administrative and judicial review of permit decisions, procedures for seeking release of performance bond, surface- and ground-water monitoring, revegetation, cessation orders, formal review of citations, and numerous editorial-type errors. OSM notified Mississippi of these concerns by letter dated June 4, 1998 (Administrative Record No. MS-0366).

Mississippi notified OSM by telephone that it would not make changes to the amendment at this time and that OSM should proceed with the publication of the final rule **Federal Register** document.

#### 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 amendment. Detailed findings are only being made for those regulations that require additional explanation or that require additional amendment. In general provisions that are not discussed below contain language that is the same as or similar to the corresponding Federal regulations. Any differences between the State and Federal regulations are either nonsubstantive or add detail not contained in the Federal counterparts. These differences do not adversely