

& Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141-301 for use of TOPMAX (ractopamine hydrochloride) and COBAN (monensin, USP) single-ingredient Type A medicated articles to formulate two-way combination Type C medicated feeds for finishing hen and tom turkeys. The NADA is approved as of December 11, 2009, and the regulations in 21 CFR 558.500 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 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the 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.

2. In § 558.500, add paragraphs (e)(3)(iii) and (e)(3)(iv) to read as follows:

**§ 558.500 Ractopamine.**

- \* \* \* \* \*
- (e) \* \* \*
- (3) \* \* \*

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(iii) 4.6 to 11.8 (5 to 13 ppm)	Monensin 54 to 90	Finishing hen turkeys: As in paragraph (e)(3)(i) of this section; and for the prevention of coccidiosis in growing turkeys caused by <i>Eimeria adenoides</i> , <i>E. meleagrimitis</i> and <i>E. gallopavonis</i> .	Feed continuously as sole ration during the last 7 to 14 days prior to slaughter. See § 558.355(d).	000986
(iv) 4.6 to 11.8 (5 to 13 ppm)	Monensin 54 to 90	Finishing tom turkeys: As in paragraph (e)(3)(ii) of this section; and for the prevention of coccidiosis in growing turkeys caused by <i>Eimeria adenoides</i> , <i>E. meleagrimitis</i> and <i>E. gallopavonis</i> .	Feed continuously as sole ration during the last 14 days prior to slaughter. Feeding ractopamine to tom turkeys during periods of excessive heat can result in increased mortality. See § 558.355(d).	000986

Dated: February 1, 2010.

**Bernadette Dunham,**  
 Director, Center for Veterinary Medicine.  
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 BILLING CODE 4160-01-S

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 3280 and 3282**

[Docket No. FR-5343-IN-01]

RIN 2502-A177

**Federal Manufactured Home Construction and Safety Standards and Other Orders: HUD Statements That Are Subject to Consensus Committee Processes**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Interpretive rule.

**SUMMARY:** The National Manufactured Housing Construction and Safety Standards Act of 1974 provides that

certain classes of statements by HUD relating to manufactured housing requirements are subject to proposal, review, and comment processes involving a consensus committee. The consensus committee includes representatives of manufactured housing producers and users, as well as general interest and public officials. This rule interprets the statutory requirement to clarify the types of statements that are subject to the proposal, review, and comment processes.

**DATES:** *Effective Date:* February 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; telephone number 202-708-6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this

number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) ("the Act"), as amended by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106-659), provides for the establishment and revision of Federal construction and safety standards for manufactured housing, as well as for procedural and enforcement regulations and interpretive bulletins related to implementation of these standards.

Section 604(a) of the Act provides, among other things, the process for the development, proposal, and issuance of revisions of Federal construction and safety standards, which govern the construction, design, and performance of a manufactured home. Section 604(a) establishes a consensus committee, which is comprised of representatives of manufactured housing producers and

users, as well as general interest and public officials. Section 604(a)(3)(A) provides that the consensus committee shall:

(i) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

(ii) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b) of this section;

(iii) Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and

(iv) Be deemed to be an advisory committee not composed of Federal employees. HUD has by regulation expanded the role of the consensus committee beyond that required under the Act. Although the Act provided that the consensus committee was to develop the original proposed model installation standards for manufactured housing, HUD has provided in 24 CFR 3285.1(c) that whenever HUD proposes to revise the model installation standards, it will also seek input and comment from the consensus committee. Similarly, HUD has provided in 24 CFR 3288.305 that it will seek input from the consensus committee whenever it proposes to revise the manufactured housing dispute resolution regulations.

In accordance with section 604(a) of the Act, the consensus committee may submit to HUD proposals to revise the Federal construction and safety standards, and HUD may either publish recommended standards for notice and public comment, or publish a standard along with its reasons for rejecting the standard. Upon consideration of any public comments, the consensus committee must provide HUD with any proposed revised standards, which HUD must in turn publish with either a description of the circumstances under which the proposed revised standard could become effective or, alternatively, HUD's reasons for rejecting the proposed revised standard. HUD must then adopt, modify, or reject any proposed standards through procedures and within the time frames specified in subsection 604(a).

Section 604(b) of the Act provides, among other things, the process for issuance of "other orders," which consist of procedural and enforcement

regulations and interpretive bulletins. Interpretive bulletins clarify the meaning of Federal manufactured home construction and safety standards, procedural regulations, and enforcement regulations. Before HUD issues a procedural regulation, enforcement regulation, or interpretive bulletin, it must submit its proposed regulation or interpretive bulletin to the consensus committee for review and comment. HUD may accept or reject any consensus committee comments, but upon doing so, it must publish for public notice and comment the proposed regulation or interpretive bulletin, along with the consensus committee's comments and HUD's responses to the consensus committee's comments. The consensus committee may also submit its own proposed procedural regulations, enforcement regulations, and interpretive bulletins to HUD. Upon receiving such a proposal from the consensus committee, HUD must either approve the proposal and publish it for public notice and comment, or reject the proposal and publish it along with its reasons for the rejection and any recommended modifications.

Section 604(b)(6) of the Act is entitled "Changes" and reads in its entirety as follows:

Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to [section 604(a)] or this [section 604(b)]. Any change adopted in violation of [section 604(a)] or this [section 604(b)] is void.

Some questions have arisen within the consensus committee over what statements by HUD fall within the scope of section 604(b)(6). For example, some have asserted that the consensus committee has broad jurisdiction and authority over all aspects of HUD's manufactured housing program, such that HUD's internal budgets, contract decisions, and determinations whether to take enforcement action must be made or approved in advance by the consensus committee. HUD is concerned that such assertions may lead to confusion among members of the public, which is routinely invited to attend consensus committee meetings, with regard to the consensus committee's role. Accordingly, HUD is issuing this interpretive rule to clarify the scope of section 604(b)(6)'s coverage.

## II. This Interpretive Rule

This rule interprets the scope of section 604(b)(6) to clarify the types of statements by HUD to which the section applies. HUD notes that in specifying which statements "relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities" are subject to section 604(a) or (b), section 604(b)(6) uses language that is nearly identical to that found in the Administrative Procedure Act's (5 U.S.C. 551 *et seq.*) (the APA) definition of a "rule." The APA definition states, in pertinent part:

"Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." (5 U.S.C. 551(4))

Over the 63 years since enactment of the APA, courts have developed extensive case law interpreting the APA's definition of a rule. (*See, e.g.,* Jeffery S. Lubbers, *A Guide to Federal Agency Rulemaking*, 4th ed., (2006), pp. 49–126.) HUD will not attempt to summarize this case law in this interpretive rule, but views section 604(b)(6) as demonstrating Congress's intent to incorporate the APA's definition of a rule as developed by the courts, except to the extent that section 604(b)(6) deviates substantively from the APA definition. HUD notes that the only substantive difference between the scope of section 604(b)(6) and the APA's definition of a rule is that section 604(b)(6) excludes from coverage statements describing agency organization. Although section 604(b)(6) does not repeat the APA definition's express provision that the statement be one "of future effect," HUD does not interpret this difference as a substantive one, since virtually any statement that "implements, interprets, or prescribes law or policy" is necessarily a statement of future effect. Finally, the scope of section 604(b)(6) is limited by its own terms to statements relating to manufactured housing "construction and safety standards, regulations, inspections, monitoring, or other enforcement activities" that amount to a "change." Statements relating to other matters, including interpretation of other matters covered by the Act, statements that merely summarize or repeat the substance of prior statements or practices, and statements that merely provide guidance, are beyond the scope of section 604(b)(6).

Accordingly, HUD interprets the scope of section 604(b)(6) to include only statements by HUD that:

(1) Relate to manufactured housing construction and safety standards, regulations, inspections, monitoring, or other enforcement activities;

(2) Meet the definition of a "rule" under the APA and applicable case law, except that statements describing agency organization are not included; and

(3) Constitute a change from prior HUD statements or practice on the same subject matter.

### III. Findings and Certifications

#### *Environmental Impact*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### List of Subjects

##### *24 CFR Part 3280*

Fire prevention, Housing standards.

##### *24 CFR Part 3282*

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

Dated: January 27, 2010.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2010-2571 Filed 2-4-10; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-8115]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood

insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES: Effective Dates:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act.** This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

**Regulatory Classification.** This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.