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.

§ 558.4 [Amended]

2. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (d) in the ''Category I'' table in the entry for ''Ractopamine'' in the ''Assay limits percent[1] type B/C[2]'' column by removing ''80–110'' and adding in its place ''80–110/75–125''.

3. Section 558.500 is amended in paragraph (a) by removing ''9'' and adding in its place ''9 or 45'' and by revising the table in paragraph (d)(1) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(d) * * *

(1) * * *

Ractopamine grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
(i) 4.5		For increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 pounds (lb) (68 kilograms (kg)) to 240 lb (109 kg) body weight.	Feed continuously as sole ration. Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as ''slows,'' ''subs,'' or ''suspects''). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN. Not for use in breeding swine.	000986
(ii) 4.5	Tylosin 100	Finishing swine: As in paragraph (d)(1)(i) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration for 21 days. Not for use in breeding swine.	000986
(iii) 4.5 to 18		For improved feed efficiency and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight.	Feed continuously as sole ration. Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as ''slows,'' ''subs,'' or ''suspects''). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN. Not for use in breeding swine.	000986
(iv) 4.5 to 18	Tylosin 100	Finishing swine: As in paragraph (d)(1)(iii) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *L. intracellularis*.	Feed continuously as sole ration for 21 days. Not for use in breeding swine.	000986

(2) [Reserved]

Dated: July 9, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–18365 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9005]

RIN 1545–BA87

Refund of Mistaken Contributions and Withdrawal Liability Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the return of employer contributions or withdrawal liability payments made to multiemployer plans due to a mistake of fact or law. Changes to the applicable laws were made by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). The final regulations provide guidance to the public in complying with MPPAA. The regulations affect multiemployer plans which receive mistaken contributions or withdrawal liability payments.

EFFECTIVE DATE: These regulations are effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(2) generally requires a trust instrument forming part of a pension, profit sharing or stock bonus plan to prohibit the diversion of corpus or income for purposes other than the exclusive benefit of employees or their beneficiaries. Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829), contains a parallel rule that prohibits the assets of a plan from inuring to the benefit of any employer and that requires the plan assets be held for the exclusive purposes of providing benefits to plan participants and their beneficiaries and defraying reasonable expenses of administering the plan. Under these rules, employer contributions to qualified plans were generally not refundable. However, a contribution made due to a mistake of

fact was permitted to be returned to the employer within one year after the date of the contribution.

The Multiemployer Pension Plan Amendments Act of 1980 (Public Law 96–364, 410(b) (94 Stat. 1208,1308)) amended section 401(a)(2) of the Internal Revenue Code to reflect Congressional concern that the requirements of prior law for the return of an employer contribution were too narrow in the multiemployer context. Under section 401(a)(2), as amended, a contribution made to a multiemployer plan due to a mistake of fact or law may be returned within six months after the date that the plan administrator determines that it was made in error. Section 401(a)(2) was also amended by MPPAA to permit the return of any withdrawal liability payment determined to be an overpayment made due to a mistake of fact or law within six months after that determination.

The effective date of section 410(b) of MPPAA was January 1, 1975, except that in the case of any determination by a plan administrator made before September 26, 1980 (the date of enactment), that a past contribution was made by of mistake of fact or law was deemed to have been made on the date of enactment. Accordingly, the period of time for refund of these contributions was 6 months from the date of enactment.

The IRS published a notice of proposed rulemaking (EE–133–80) in the **Federal Register** on March 11, 1983, (48 FR 10374) to amend the Income Tax Regulations (26 CFR part 1) under section 401(a)(2) of the Internal Revenue Code of 1954 (Code). At that time, the public was invited to comment in writing, or to make a request for public hearing, upon issues addressed in the proposals. Eight comments were received, but no public hearing was requested.

The proposed amendment to the regulations would have been numbered § 1.401(a)-3. However, in the intervening period of time the IRS has changed its system of numbering regulations to more closely align the regulation number to the number of the underlying Code section. Accordingly, the regulations are being finalized as § 1.401(a)(2)-1.

After consideration of all comments, the proposed provisions are revised and adopted as final regulations under this Treasury decision.

Explanation of Provisions

In general, the final regulations follow the proposed regulations with minor changes described below.

1. *Amount to be refunded.* Several comments concerned the amount to be refunded to the employer when a determination of mistake is made by the plan administrator. Questions were raised relating to the earnings and losses attributable to the excess contribution or overpayment of withdrawal liability, and the Pension Benefit Guaranty Corporation rules regarding the refund of overpayments of withdrawal liability.

These final regulations provide a narrow exception to the general rule that trust assets not be used for, or diverted to, purposes other than the exclusive benefit of employees. That the employer may, under limited circumstances, receive a refund of a mistaken contribution does not detract from the primary purpose of ERISA to protect individual pension rights and maintain the solvency and integrity of pension funds.

In general, any earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount to be returned to the employer. As a further limitation on the return of contributions, the final regulations provide that a refund of an excess contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred.

In the case of an overpayment of withdrawal liability, established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayment of withdrawal liability, the overpayment with interest is returned to the employer. (*See* 29 CFR Ch. XL 4219.31(d)).

2. *Amount to be included in income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

Effective Date

These regulations apply for refunds made after July 22, 2002. However, plans and employers may apply the rules of these regulations to refunds made prior to that date.

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, and because the preceding proposed rule was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these regulations is John T. Ricotta, Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt/Government Entities). However, other personnel from the Service 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 to read in part as follows:

Authority: 26 U.S.C. 7805 * * * § 1.401(a)(2)–1 also issued under Multiemployer Pension Plan Amendments Act, Public Law 96–364, 410, (94 Stat. 1208, 1308)(1980). * * *

Par. 2. Section 1.401(a)(2)–1 is added to read as follows:

§ 1.401(a)(2)–1 Refund of mistaken employer contributions and withdrawal liability payments to multiemployer plans.

(a) *Introduction*—(1) *In general.* Section 401(a)(2) provides that a contribution or payment of withdrawal liability made to a multiemployer plan due to a mistake of fact or mistake of law can be returned to the employer under certain conditions. This section specifies the conditions under which an employer's contribution or payment may be returned.

(2) *Effective dates.* This section applies to refunds made after July 22, 2002.

(b) *Conditions for return of contribution*—(1) *In general.* In the case of a contribution or a withdrawal liability payment to a multiemployer plan which was made because of a mistake of fact or a mistake of law, the

plan will not violate section 401(a)(2) merely because the contribution or payment is returned within six months after the date on which the plan administrator determines that the contribution or payment was the result of a mistake of fact or law. The contribution or payment is considered as returned within the required period if the employer establishes a right to a refund of the amount mistakenly contributed or paid by filing a claim with the plan administrator within six months after the date on which the plan administrator determines that a mistake did occur. For purposes of this section, plan administrator is defined in section 414(g) and the regulations thereunder.

(2) *Applicable conditions*—(i) *In general.* The employer making the contribution or withdrawal liability payment to a multiemployer plan must demonstrate that an excessive contribution or overpayment has been made due to a mistake of fact or law. A mistake of fact or law relating to plan qualification under section 401 or to trust exemption under section 501 is not considered to be a mistake of fact or law which entitles an employer to a refund under this section. For purposes of this section, a multiemployer plan is defined in section 414(f) and the regulations thereunder.

(ii) *Amount to be returned*—(A) *General rule.* The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made. This amount is the excess contribution or overpayment. Except as provided in paragraph (b)(2)(ii)(B) of this section, interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount returned to the employer. For purposes of the previous sentence, the application of plan-wide investment experience to the excess contribution would be an acceptable method of calculating losses. A refund of a mistaken contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred. Thus, to the extent that the refund of an excess contribution would reduce a participant's account balance in a defined contribution plan to an amount less than the amount which would properly be in the participant's account had no mistake occurred, the return of the excess contribution would be prohibited by this section.

(B) *Overpayment of withdrawal liability.* In the case of an overpayment of withdrawal liability established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayments of withdrawal liability (29 CFR 4219.31(d)), the overpayment, with interest, is returned to the employer.

(c) *Amount refunded includible in employer's income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

(d) *Application of section 412.* An amount returned under paragraph (b)(2)(ii) of this section is charged to the funding standard account under section 412 in the year in which the amount is returned.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 10, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18019 Filed 7–19–02; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AA97

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is amending its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On March 27, 2002 (at 67 FR 14663), the PBGC published a proposed rule that would authorize a single member of PBGC's Appeals Board to decide routine appeals. The PBGC received no comments in response to the proposed rule and is issuing the final regulation without change.

Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as ''a board consisting of three PBGC officials.''

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this final rule authorizes any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC will continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from notice and public comment requirements. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 604.

The PBGC has determined that good cause exists to dispense with the delayed effective date provisions of the Administrative Procedure Act as unnecessary. These amendments affect only the PBGC's processing of appeals and do not require any person other than the PBGC to take any action. Accordingly, the PBGC has decided to make these amendments effective immediately.

This rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.