

marketing function employees, including drafting and redrafting contract non-price terms, without being classified as marketing function employees.<sup>6</sup>

4. EEI also requests clarification that paragraph 80 in Order No. 717-A was “intended to convey that making business decisions about non-price terms and conditions can be a marketing function if the other ‘marketing function’ criteria are met.”<sup>7</sup>

5. If the Commission does not grant these requested clarifications prior to Order No. 717-A taking effect, EEL, Western Utilities, Otter Tail, and Central Vermont request that the Commission change the effective date of paragraph 80 until 90 days after the Commission issues an order addressing the merits of the issue.

#### *Commission Determination*

6. The Commission clarifies that the language in paragraph 80 of Order No. 717-A was overly broad. The Commission further clarifies that we intended to state in paragraph 80 of Order No. 717-A that an employee making business decisions about non-price terms and conditions can be considered a “marketing function employee” because that employee is actively and personally engaged in marketing functions. However, an employee who simply drafts or redrafts a contract, including non-price terms and conditions, without making business decisions is not a “marketing function employee.” In making our findings in paragraph 80 in Order No. 717-A, the Commission did not intend to depart from the finding in paragraph 131 in Order No. 717 that employees are not subject to the Independent Functioning Rule if they do not perform transmission functions or marketing functions or to depart from the following examples in P 131:

[I]f an attorney is rendering legal advice, he may consult with both transmission function employees and marketing function employees. Likewise, a risk management employee may develop risk guidelines for both transmission function employees and marketing function employees. And regulatory personnel may present before regulatory bodies filings that cover both transmission and marketing issues. Of course, all such employees would remain subject to the No Conduit Rule, and are prohibited from transmitting transmission function information to marketing function employees.<sup>8</sup>

7. In light of the above clarification to paragraph 80 of Order No. 717-A, we

will deny the petitioners’ request to extend the compliance date with respect to paragraph 80.

#### **III. Document Availability**

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC’s Home Page (<http://www.ferc.gov>) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC’s Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the FERC’s Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### **IV. Effective Date**

11. Changes to Order No. 717-A adopted in this order on rehearing and clarification are effective November 23, 2009.

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9-27875 Filed 11-19-09; 8:45 am]

**BILLING CODE 6717-01-P**

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## **DELAWARE RIVER BASIN COMMISSION**

### **18 CFR Part 410**

#### **Amendments to the Water Code and Comprehensive Plan To Implement a Revised Water Audit Approach To Identify and Control Water Loss**

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** By Resolution No. 2009-01 on March 11, 2009, the Delaware River Basin Commission (“Commission” or “DRBC”) approved amendments to its Water Code and Comprehensive Plan to

implement an updated water audit approach to identify and control water loss in the Basin.

**DATES:** *Effective Date:* November 20, 2009. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of November 20, 2009.

*Applicability Date:* Commencing January 1, 2012, the owners of water supply systems serving the public with sources or service areas located in the Delaware River Basin must implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology and corresponding AWWA guidance. Commencing January 1, 2013, reported “non-revenue water” must be computed in accordance with the new methodology and guidance.

**FOR FURTHER INFORMATION CONTACT:** Pamela M. Bush, Commission Secretary and Assistant General Counsel by phoning 609-883-9500 Ext. 203, or by e-mail to [Pamela.Bush@drbc.state.nj.us](mailto:Pamela.Bush@drbc.state.nj.us).

**SUPPLEMENTARY INFORMATION:** The Delaware River Basin Commission (“Commission” or “DRBC”) is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York, and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

Notice of the proposed amendments appeared in the **Federal Register** (73 FR 44945) on August 1, 2008 as well as in the Delaware Register of Regulations on September 1, 2008 (12 DE Reg. 275-278 (09/01/2008)), the New Jersey Register (40 N.J.R. 4499) on August 4, 2008, the New York State Register (page 2) on August 20, 2008 and the Pennsylvania Bulletin (38 Pa. B. 4373) on August 9, 2008.

The amendments to the Comprehensive Plan and Article 2 of the Water Code finalized by the Commission on March 11, 2009 phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). Effective January 1, 2012, the owners of water supply systems serving the public with sources or service areas located in the Delaware River Basin must implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology and corresponding

<sup>6</sup> Otter Tail at 1; Central Vermont at 1.

<sup>7</sup> EEI at 7-8.

<sup>8</sup> Order No. 717 at P 131.

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. \* \* \*

\* \* \* \* \*

Dated: November 12, 2009.

**Pamela M. Bush,**

*Secretary and Assistant General Counsel.*

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

BILLING CODE 6360–01–P

## 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](mailto: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