cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre more accurately reflects 2001 yields.

There was some discussion at the RAC's meeting that the 2.0-ton per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.,* the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 13, 2001, the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated, and the RAC's meeting on November 28, 2001, where a diversion program was announced, were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. An interim final rule concerning this action was published in the **Federal Register** on March 15, 2002 (67 FR 11555). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period which ended April 1, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that finalizing this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 11555 on March 15, 2002, is adopted as a final rule without change.

Dated: May 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11949 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB92

Payment of Post-insolvency Interest In Receiverships With Surplus Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation has adopted a final rule regarding the payment of post-insolvency interest in insured depository institution receiverships with surplus funds. The final rule establishes a single uniform interest rate, calculation method, and payment priority for post-insolvency interest. The final rule provides that where funds remain after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act; paid at the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter; adjusted each quarter after the receivership is established; and based on a simple interest method of calculation.

EFFECTIVE DATE: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, (202) 736–0168; or Rodney Ray, (202) 898–3556.

SUPPLEMENTARY INFORMATION:

I. Background

In December 2000, Congress granted the FDIC express rulemaking authority regarding the payment of post-insolvency interest in receiverships with surplus funds. The American Homeownership and Economic Opportunity Act of 2000 added new subparagraph (C) to section 11(d)(10) of the FDI Act, which reads as follows:

> (C) RULEMAKING AUTHORITY OF CORPORATION. The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payment of post-insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

By virtue of this rulemaking authority, the final rule regarding post-insolvency interest will preempt any inconsistent state law by providing a single uniform interest rate and priority of distribution for post-insolvency interest in receiverships established after the rule becomes effective. *See City of New York* v. *FCC,* 486 U.S. 57, 63 (1988) (regulation promulgated by federal agency acting within the scope of its congressionally delegated authority may preempt state law). The final rule will apply to receiverships established after the effective date of the rule. Historically, relatively few receiverships have generated sufficient recoveries to enable post-insolvency interest to be paid. Consequently, the final rule will probably apply to only a small number of receiverships in the future.

II. Notice of proposed rulemaking

On December 18, 2001 the FDIC caused to be published in the **Federal Register** a notice of proposed rulemaking regarding the payment of post-insolvency interest in receiverships with surplus funds. See 66 FR 65144 (December 18, 2001). The notice of proposed rulemaking discussed the features of a proposed rule and solicited comments from the public for a period of 60 days. The comment period expired on February 19, 2001. The FDIC received one comment from the Co-operative Central Bank, which insures deposits that exceed FDIC deposit insurance limits in 75 co-operative

banks in Massachusetts. The comment described the proposed rule as ''a fair and balanced approach to resolving the difficult issue of payment of post-insolvency interest in receiverships with surplus funds. It is entirely consistent with the public policy set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, the national depositor preference statute, and is in the public interest. By providing uniform interest rate and depositor priority for distributions of post-insolvency interest, the Proposed Regulation appropriately allocates post-insolvency interest more equitably than at present.''

III. Final rule

The final rule is essentially identical to the proposed rule. The final rule provides that after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act. This is consistent with how the principal amounts of creditor claims are paid and would be consistent with Congress's intent that deposit liabilities be preferred over other liabilities.

The final rule further provides for the post-insolvency interest rate for all FDIC-administered receiverships to be based on the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill. The 3-month Treasury bill is widely recognized as a performance benchmark for cash investment management and its yield has historically tracked to some degree changes in the rate of inflation. The post-insolvency interest rate will be adjusted quarterly in order to mitigate interest-rate risk due to changes in economic conditions during the life of the receivership. Post-insolvency interest distributions will be calculated using a simple interest method, which should provide a reasonable amount of interest to compensate receivership creditors for the time value of money owed from the time the receivership is established until dividend payments are received.

The final rule contains a revision to paragraph (c)(3) of the proposed rule to clarify that post-insolvency interest will be calculated, not ''distributed,'' on proven claims from the date the receivership is established. Revised paragraph (c)(3) also provides that post-insolvency interest on a contingent claim will be calculated from the date that the claim becomes proven. A contingent claim is a claim that has not accrued as of the date of the appointment of the receiver, but is dependent on some future event. A contingent claim may become proven if the event triggering payment occurs in time for the claim to be paid by the receiver. In such case, post-insolvency interest will be calculated from the date the claim becomes proven, not from the date the receivership is established.

IV. Paperwork Reduction Act

The proposed rule will not involve any collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the FDIC has certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will only apply to FDIC-administered receiverships established after the effective date of the rule, and it does not impose new reporting, recordkeeping or other compliance requirements on receivership creditors. The final rule continues the FDIC's existing practice of making post-insolvency interest distributions to creditors holding proven claims in surplus receiverships prior to making distributions to equityholders, based on their equity interests, in a failed insured depository institution. In addition, the final rule will provide interested parties, including small entities, with greater certainty in future FDIC-administered receiverships by establishing a single uniform interest rate and method for making post-insolvency interest distributions. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis are not applicable.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set forth in the preamble, the FDIC Board of Directors amends 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

2. Section 360.7 is added to part 360 to read as follows:

§ 360.7 Post-insolvency interest.

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insolvency interest to creditors with proven claims in all FDIC-administered receiverships established after June 13, 2002.

(b) *Definitions.* (1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until the principal amount of a proven claim has been fully distributed but not thereafter. Post-insolvency interest shall be calculated on a contingent claim from the date such claim becomes proven.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of May, 2002.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–11947 Filed 5–13–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

Exports; Notification and Recordkeeping Requirements; Stay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; stay.

SUMMARY: The Food and Drug Administration (FDA) is staying the final rule on notification and recordkeeping requirements for persons exporting human drugs, animal drugs, biological products, devices, food, and cosmetics that may not be marketed or sold in the United States. This action is in response to four requests for a stay because certain parties would not be able to comply with the effective date of March 19, 2002.

DATES: Effective May 14, 2002; 21 CFR 1.101 is stayed until June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 2001 (66 FR 65429), FDA (we) published a final rule entitled ''Exports: Notification and Recordkeeping Requirements.'' The final rule established the export notification and recordkeeping requirements for persons exporting human drugs, animal drugs, biological products, devices, food, and cosmetics that may not be marketed or sold in the United States. The final rule implements certain statutory changes made by the FDA Export Reform and Enhancement Act and will be codified at § 1.101 (21 CFR 1.101).

The final rule was to become effective on March 19, 2002. On March 1, 2002, and later on March 8, 11, and 12, 2002, we received three petitions for stay of administrative action and one letter requesting that we stay the final rule's effective date by 6 months. In general, the petitions and letter stated that certain parties would be unable to comply by the original March 19, 2002, effective date and that some parties were confused as to the final rule's applicability to certain products.

On March 18, 2002, we notified the parties that the agency intended to grant the petitions and the letter's request, in part, by extending the final rule's effective date by 3 months, and that the agency would publish a document in the **Federal Register** staying the rule under 21 CFR 10.35(e). This stay should allow the parties and other affected industry members more time to understand and to establish programs and policies for complying with the regulatory requirements that apply to exported products that may not be marketed or sold in the United States. The new effectiveness for § 1.101 is June 19, 2002.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The agency is staying § 1.101 until June 19, 2002, because the agency has determined that it is appropriate to allow affected industry members more time to understand and to establish programs and policies for complying with the regulatory requirements that apply to exported products that may not be marketed or sold in the United States.

This action pertains solely to the requirements of the final rule. Affected industry members must continue to comply with the statutory requirements for exports under section 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 and 321).

Dated: May 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11935 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin

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 abbreviated new animal drug application (ANADA) filed by Alpharma, Inc. The ANADA provides for use of an injectable lincomycin solution for the treatment of infectious arthritis and mycoplasma pneumonia in swine.

DATES: This rule is effective May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed ANADA 200–274 that provides for the use of Lincomycin (lincomycin HCl) Injectable 30% by intramuscular injection for the treatment of infectious arthritis and mycoplasma pneumonia in swine. Alpharma's Lincomycin Injectable 30%