

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 231, 241, and 271**

**[Release Nos. 33-10403; 34-81429; IC-32785]**

**Updates to Commission Guidance Regarding Accounting for Sales of Vaccines and Bioterror Countermeasures to the Federal Government for Placement into the Pediatric Vaccine Stockpile or the Strategic National Stockpile**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretation.

**SUMMARY:** The Securities and Exchange Commission is publishing this interpretive release to update previously issued guidance with respect to accounting for sales of vaccines and bioterror countermeasures to the Federal Government for placement into stockpiles related to the Vaccines for Children Program or the Strategic National Stockpile. This update is being provided to bring existing guidance into conformity with Financial Accounting Standards Board's Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers*. This guidance is applicable upon a registrant's adoption of Accounting Standards Codification Topic 606 and is applicable to all arrangements for which revenue is recognized in accordance with Accounting Standards Codification Topic 606.

**EFFECTIVE DATE:** August 29, 2017.

**FOR FURTHER INFORMATION CONTACT:** Kevin L. Vaughn, Senior Associate Chief Accountant, or Joseph R. Epstein, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551-5300, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6561. Inquiries about this interpretive release also can be directed to [oca@sec.gov](mailto:oca@sec.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

The Securities and Exchange Commission (“Commission”) continues to be committed, as stated in previously-issued guidance (the “2005 Release”),<sup>1</sup> to addressing any unintended consequences of accounting requirements that could impair the nation’s ability to create and maintain sufficient supplies of various vaccines and bioterror countermeasures (“enumerated vaccines”). The Commission issued the 2005 Release to address questions about the timing of revenue recognition for vaccines placed into the Vaccines for Children Program and the Strategic National Stockpile. At the time of the 2005 Release, some expressed concerns that the application of generally accepted accounting principles may require revenue recognition to be delayed beyond the period in which the vaccine is placed in the stockpile, and may have an unintended consequence of causing some vaccine manufacturers to decline to participate in these critical stockpile programs. The Commission published the guidance in the 2005 Release to resolve the accounting questions. With the Financial Accounting Standards Board’s (“FASB”) issuance of Accounting Standards Codification (“ASC”) Topic 606, *Revenues from Contracts with Customers* (“ASC Topic 606”),<sup>2</sup> we are providing this updated guidance.

Government vaccine stockpile programs are unique in many respects. For example, the primary objective of purchasing the vaccines is not to take delivery for ultimate use but rather to be able to require immediate delivery on notice. An additional characteristic of

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<sup>1</sup> See *Commission Guidance Regarding Accounting for Sales of Vaccines and Bioterror Countermeasures to the Federal Government for Placement into the Pediatric Vaccine Stockpile or the Strategic National Stockpile*, Release No. 33-8642 (Dec. 5, 2005).

<sup>2</sup> The International Accounting Standards Board (IASB) has also issued IFRS 15, *Revenue from Contracts with Customers* (IFRS 15). The issuance of ASC Topic 606 and IFRS 15 completes the joint effort by the FASB and IASB that was undertaken with the intent of improving financial reporting by creating converged comprehensive revenue recognition guidance for U.S. GAAP and IFRS.

vaccine stockpiles is the limited shelf life of the vaccines. For these and other reasons, the Commission continues to limit this guidance to the vaccines enumerated below.

## **II. The Application of Generally Accepted Accounting Principles for Revenue**

### **Recognition to Vaccine Stockpiles**

The Commission historically has recognized pronouncements of the FASB as authoritative in the absence of any contrary determination by the Commission.<sup>3</sup> In Financial Reporting Release No. 70,<sup>4</sup> the Commission stated its determination that the FASB and its parent organization, the Financial Accounting Foundation, satisfied the criteria in Section 19(b) of the Securities Act of 1933<sup>5</sup> and, accordingly, FASB's financial accounting and reporting standards are recognized as "generally accepted" for purposes of the federal securities laws. As a result, registrants are required to comply with those standards in preparing financial statements filed with the Commission, unless the Commission provides otherwise.<sup>6</sup>

Although no specific guidance has been published by the FASB related to revenue recognition for vaccine stockpiles, the FASB has issued comprehensive revenue recognition guidance in ASC Topic 606, which supersedes most previous revenue recognition guidance issued by the FASB.

In response to the new, comprehensive revenue recognition model in ASC Topic 606, simultaneous with publication of this release, the Commission has issued an interpretation

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<sup>3</sup> Rule 4-01(a)(1) of Regulation S-X, 17 CFR 210.4-01(a)(1). See Accounting Series Release ("ASR") No. 150 (Dec. 20, 1973) and ASR No. 4 (Apr. 25, 1938).

<sup>4</sup> *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, Release Nos. 33-8221; 34-47743; IC-26028; FR-70 (Apr. 25, 2003) ("FR-70"); 68 FR 23333 (May 1, 2003).

<sup>5</sup> 15 U.S.C 77s(b).

<sup>6</sup> See FR-70; Rule 4-01(a)(1) of Regulation S-X, 17 CFR 210.4-01(a)(1).

stating<sup>7</sup> that upon the registrant's adoption of ASC Topic 606, such registrant should no longer rely on the guidance in Securities Exchange Act Release No. 23507 and Accounting and Auditing Enforcement Release No. 108, *In the Matter of Stewart Parness* ("AAER 108"),<sup>8</sup> which set forth criteria to be met in order to recognize revenue when delivery has not occurred. The Commission staff had previously reiterated the guidance in AAER 108 in Staff Accounting Bulletin ("SAB") Topic 13, *Revenue Recognition*, which the staff is modifying as a result of the FASB's issuance of ASC Topic 606.

Under ASC Topic 606, the general criteria for revenue recognition includes identifying the contract(s) with a customer, identifying the performance obligations in the contract, determining the transaction price, allocating the transaction price to the performance obligations in the contract, and recognizing revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service to a customer.<sup>9</sup> A good or service is transferred when (or as) the customer obtains control of that good or service and ASC Topic 606 sets forth indicators of when control has been transferred.<sup>10</sup>

ASC Topic 606 also provides specific guidance on contracts under which an entity bills a customer for a product but the entity retains physical possession of the product until it is transferred to the customer at a point in time in the future (i.e., a bill-and-hold arrangement).<sup>11</sup> Topic 606 acknowledges that, for some contracts, a customer may obtain control of a product even though that product remains in an entity's physical possession.<sup>12</sup> In order to recognize revenue in a bill-and-hold arrangement, Topic 606 requires consideration of the indicators of

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<sup>7</sup> *Commission Guidance Regarding Revenue Recognition for Bill-and-Hold Arrangements*, Release No. 33-10402 (Aug. 18, 2017).

<sup>8</sup> See *In the Matter of Stewart Parness*, AAER 108 (Aug. 5, 1986).

<sup>9</sup> See ASC paragraph 606-10-05-04.

<sup>10</sup> See ASC paragraphs 606-10-25-23 through 25-30.

<sup>11</sup> See ASC paragraphs 606-10-55-81 through 55-84.

<sup>12</sup> See ASC paragraph 606-10-55-82.

when control has been transferred and sets forth additional criteria to be met.<sup>13</sup>

### **III. Updated Commission Guidance**

The Commission believes vaccine manufacturers should recognize revenue and provide the disclosures required under ASC Topic 606 when vaccines are placed into Federal Governmental stockpile programs because control of the enumerated vaccines will have been transferred to the customer and the criteria to recognize revenue in a bill-and-hold arrangement under ASC Topic 606 will have been met.

The following are the enumerated vaccines subject to this release:

- Childhood disease vaccines;
- Influenza vaccines; and
- Other vaccines and countermeasures sold to the Federal Government for placement in the Strategic National Stockpile.

Due to the uniqueness of the vaccine stockpile programs as discussed above, this interpretative guidance is not applicable to transactions other than the sales of enumerated vaccines by vaccine manufacturers.

Prior to a registrant's adoption of ASC Topic 606, the guidance contained in the 2005 Release is still applicable to all arrangements for which revenue is recognized.

#### **List of Subjects**

17 CFR Parts 231, 241, and 271

Securities.

Amendments to the Code of Federal Regulations

For the reasons set out in the preamble, the Commission is amending Title 17, chapter

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<sup>13</sup> See ASC paragraph 606-10-55-83.

II of the Code of Federal Regulations as set forth below:

**PART 231 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER**

Part 231 is amended by adding Release No. 33-10403 and the release date of August 18, 2017 to the list of interpretive releases.

**PART 241 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER**

Part 241 is amended by adding Release No. 34-81429 and the release date of August 18, 2017 to the list of interpretive releases.

**PART 271 – INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER**

Part 271 is amended by adding Release No. IC-32785 and the release date of August 18, 2017 to the list of interpretive releases.

By the Commission.

Dated: August 18, 2017

Jill M. Peterson  
Assistant Secretary