

Dated: November 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-33637 Filed 12-18-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline and Monensin Sodium

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 the use of approved chlortetracycline Type A medicated articles and monensin sodium Type A medicated articles in making Type C medicated chicken feed used as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatments and as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati* in broiler chickens.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0209.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is the sponsor of ANADA 200-263 that provides for the use of approved ChlorMax™ Coban®, chlortetracycline Type A medicated articles and monensin sodium Type A medicated articles in making Type C medicated chicken feed used as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatments, and as an aid in the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati* in broiler chickens. The ANADA is approved as a generic copy of Roche Vitamins, Inc.'s NADA 121-553, Aureomycin®-Coban®. ANADA 200-263 is approved as of September 21, 1998, and the regulations are amended in 21 CFR 558.355 to reflect the approval. The basis for approval is

discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 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 Dockets Management Branch (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(a)(2) 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (b)(11) by removing "(f)(1)(xviii)" and adding in its place "(f)(1)(xiv), (xviii)," and in paragraph (f)(1)(xiv)(b) by removing the phrase "No. 063238" and adding in its place "Nos. 046573 and 063238".

Dated: November 30, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98-33636 Filed 12-18-98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8794]

RIN 1545-AW58

Increase in Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance relating to the increase from \$3,500 to \$5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate, for most distributions, the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. The final and temporary regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The final regulations also amend the existing final regulations to cross-reference the temporary regulations. The text of the temporary regulations also serves, in part, as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the **Federal Register**.

DATES: Effective Date: These regulations are effective December 21, 1998.

Applicability Date: These final and temporary regulations generally apply to distributions made on or after March 22, 1999. However, employers are permitted to apply the final regulations and the temporary regulations other than § 1.411(a)-11T(c)(3)(i) to plan years beginning on or after August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Karlan, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) under sections 411(a)(7), 411(a)(11), and 417(e)(1) regarding restrictions on involuntary distributions and joint and survivor annuity requirements for qualified plans. The final and temporary regulations change the existing regulations to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105-34, 111 Stat. 788 (1997).

Explanation of Provisions

A. Restrictions on Mandatory Distributions

Prior to the enactment of TRA '97, section 411(a)(11)(A) provided that if the present value of any nonforfeitable accrued benefit exceeded \$3,500, a plan met the requirements of section

411(a)(11) only if such plan provided that such benefit could not be immediately distributed without the consent of the participant. TRA '97 changed this cash-out limit to \$5,000, effective for plan years beginning after August 5, 1997. For this purpose, both before and after the enactment of TRA '97, the present value of a participant's nonforfeitable benefit is calculated in accordance with section 417(e)(3).

Interpreting the law prior to the enactment of TRA '97, § 1.411(a)-11(c)(3) provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than \$3,500. If the present value does not exceed \$3,500, the consent requirements are deemed satisfied, and the plan may distribute such portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds \$3,500, then the present value at any subsequent time is deemed to exceed \$3,500; this is commonly referred to as the "lookback rule."

Consistent with the TRA '97 change, these regulations increase the cash-out limit to \$5,000. In determining whether a participant's nonforfeitable accrued benefit may be distributed without consent during plan years beginning on or after August 6, 1997, the new cash-out limit of \$5,000 is permitted to be applied as though it were in effect for all plan years, including those beginning before August 6, 1997. Thus, for example, a calendar year plan may be amended to provide for the involuntary distribution after December 31, 1997, of the accrued benefit of a participant who terminated employment on or before that date, if the present value of the accrued benefit does not exceed \$5,000 at the time of the distribution (subject to the exception described below for optional forms of benefit under which at least one scheduled periodic distribution is still payable). This result is the same even if the accrued benefit could only have been distributed with the participant's or the spouse's consent at termination of employment because the present value of the benefit exceeded \$3,500 at that time.

In addition, these temporary regulations eliminate, for many distributions, the lookback rule under § 1.411(a)-11(c)(3). Under these regulations, a plan may provide that the present value of a participant's nonforfeitable accrued benefit generally

may be distributed without consent if that present value does not exceed the cash-out limit as determined at the time of the current distribution without regard to the present value of the participant's benefit at the time of an earlier distribution. However, under these temporary regulations, if a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable, and if the present value of the participant's nonforfeitable accrued benefit exceeded the \$5,000 cash-out limit at the time of the first distribution under that optional form of benefit, then the present value of the participant's nonforfeitable accrued benefit may not be distributed without consent.

B. Immediate Distribution of the Present Value of a QJSA or QPSA

Prior to the enactment of TRA '97, section 417(e)(1) provided that a plan subject to sections 401(a)(11) and 417 could provide that the present value of a qualified joint and survivor annuity ("QJSA") or a qualified preretirement survivor annuity ("QPSA") would be immediately distributed if such value did not exceed \$3,500. Pursuant to section 417(e)(1), no distribution could be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant had died, the surviving spouse) consented in writing to such distribution. TRA '97 changed this dollar limit from \$3,500 to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These regulations change only the dollar limit in § 1.417(e)-1(b)(2)(i) from \$3,500 to the dollar limit under section 411(a)(11)(A), and do not revise the lookback rule set forth in that section for plans subject to sections 401(a)(11) and 417.

C. Proposed Regulations

The proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the **Federal Register** completely repeal the lookback rule under §§ 1.411(a)-11(c)(3) and 1.417(e)-1(b)(2)(i), i.e., both for plans that are and plans that are not subject to sections 401(a)(11) and 417. In accordance with section 417(e)(1), the proposed regulations provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and

survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed, this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

D. Disregard of Certain Past Service

Section 411(a)(7)(B)(i) provides that, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount not more than \$3,500 (prior to the amendment of the cash-out limit under TRA '97), as permitted under regulations prescribed by the Secretary. Section 411(a)(7)(B)(i) applies only if the distribution was made on termination of the employee's participation in the plan, and § 1.411(a)-7(d)(4)(i)(C) provides that such involuntary distributions must have been made due to the termination of the employee's participation in the plan. TRA '97 changed this \$3,500 limit to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These temporary regulations provide that, for purposes of applying section 411(a)(7)(B)(i), an involuntary distribution of an employee's nonforfeitable accrued benefit the present value of which does not exceed \$5,000 may be treated as having occurred due to termination of participation if the distribution could have been made due to termination of participation but for the fact that the present value exceeded \$3,500 at that time.

E. Conforming Amendments

Several other provisions of the Treasury Regulations incorporate the cash-out limit, and these regulations make conforming amendments to those provisions in order to incorporate the new cash-out limit under section 411(a)(11). Specifically, conforming amendments are made to the following sections: §§ 1.401(a)-20 Q&A-8(d); 1.401(a)-20 Q&A-24; 1.401(a)(4)-4(b)(2)(ii)(C); 1.401(a)(26)-4(d)(2); 1.401(a)(26)-6(c)(4); 1.411(a)-11(b); 1.411(a)-11(c)(7); 1.411(d)-4 Q&A-2(b)(2)(v); 1.411(d)-4 Q&A-4(a); 1.417(e)-1(b)(2)(i); and 31.3121(b)(7)-2(d)(2)(i).

F. Valuation Rules

Section 417(e)(3) prescribes rules and definitions for determining the present

value of an accrued benefit under a defined benefit plan for purposes of sections 417 and 411(a)(11)(A). (In the case of a defined contribution plan, the present value of the accrued benefit is the value of the account balance.) The present value of a participant's accrued benefit for purposes of the cash-out limit is determined in accordance with section 417(e)(3) using the interest rate and mortality tables in effect under the plan for the annuity starting date. Thus, for example, if the present value of the participant's accrued benefit using the rate described in section 417(e)(3)(B) (often referred to as the "PBGC rate") exceeds \$5,000, and the plan is subsequently amended to reflect the interest rate described in section 417(e)(3)(A)(ii), the plan may provide that the present value of the accrued benefit may be distributed without the participant's or spouse's consent if the value of the accrued benefit does not exceed \$5,000, as determined under the plan provisions then in effect.

G. Benefits Protected From Reduction or Elimination

Section 411(d)(6) provides, in general, that a plan shall be treated as not satisfying the requirements of section 401(a) if the accrued benefit of a participant is decreased, or an optional form of benefit is eliminated, by an amendment of the plan. Section 1.411(d)-4, paragraph (b)(2)(v) of Q&A-2 provides that a plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such distribution is permitted under sections 411(a)(11) and 417(e). In accordance with that provision, a plan may be amended for plan years beginning on or after August 6, 1997, to permit the involuntary distribution of an accrued benefit using a cash-out limit of \$5,000, with respect to benefits accrued before the amendment was adopted and effective. Such an amendment is permitted even if the plan, prior to amendment, did not permit involuntary distributions (as well as if the plan permitted involuntary distributions if the present value of the participant's benefit did not exceed the prior cash-out limit of \$3,500). Such an amendment will not violate the anti-cutback rules of section 411(d)(6).

H. Remedial Amendment Period

Rev. Proc. 98-14 (1998-4 I.R.B. 22) at section 4, provides the remedial amendment period for certain plan amendments made pursuant to TRA '97. A plan may be amended retroactively to implement the increase in the cash-out limit to \$5,000 in accordance with section 4 of the revenue procedure.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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 regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michael J. Karlan, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.411(a)-7T and revising the entry for § 1.411(d)-4 to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(a)-7T also issued under 26 U.S.C. 411(a)(7)(B)(i).

§ 1.411(d)-4 also issued under 26 U.S.C. 411(d)(6). * * *

Par. 2. Section 1.411(a)-7 is amended by adding a sentence at the end of the concluding text of paragraph (d)(4)(i) to read as follows:

§ 1.411(a)-7 Definitions and special rules.

* * * * *

(d) * * *

(4) *Certain cash-outs of accrued benefits.* (i) * * *

* * * * *

* * * (For distributions made on or after March 22, 1999, see § 1.411(a)-7T.)

* * * * *

Par. 3. Section 1.411(a)-7T is added to read as follows:

§ 1.411(a)-7T Definitions and special rules (temporary).

(a) through (d)(3) [Reserved]. For further guidance, see § 1.411(a)-7(a) through (d)(3).

(d)(4) *Certain cash-outs of accrued benefits—(i) Involuntary cash-outs.* For purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution;

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution;

(C) The distribution is made due to the termination of the employee's participation in the plan; and

(D) The plan has a repayment provision which satisfies the requirements of § 1.411(a)-7(d)(4)(iv) in effect at the time of the distribution.

(d)(4)(ii) through (v) [Reserved]. For further guidance, see § 1.411(a)-7(d)(4)(ii) through (v).

(vi) For purposes of paragraph (d)(4)(i) of this section, a distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs, or if such distribution would have been made under the plan by the close of such second plan year but for the fact that the present value of the nonforfeitable accrued benefit then exceeded the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in § 1.411(a)-7(d)(2)(i).

(vii) *Effective date.* Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999 through December 18, 2001. For plan years beginning before March 22, 1999, see § 1.411(a)-7(d)(4)(i). However, an employer is permitted to apply paragraphs (d)(4)(i) and (vi) of this section to plan years beginning on or after August 6, 1997.

(d)(5) and (6) [Reserved]. For further guidance, see § 1.411(a)-7(d)(5) and (6).

Par. 4. Section 1.411(a)-11 is amended by adding a sentence at the end of paragraph (c)(3) to read as follows:

§ 1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(3) \$3,500. * * * (For distributions made on or after March 22, 1999, see § 1.411(a)-11T.)

* * * * *

Par. 5. Section 1.411(a)-11T is added to read as follows:

§ 1.411(a)-11T Restriction and valuation of distributions (temporary).

(a) and (b) [Reserved]. For further guidance, see § 1.411(a)-11(a) and (b).

(c) *Consent, etc. requirements*—(1) *General rule.* [Reserved]. For further guidance, see § 1.411(a)-11(c)(1).

(2) *Consent.* [Reserved]. For further guidance, see § 1.411(a)-11(c)(2).

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if

such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see § 1.417(e)-1(d). If a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution has not yet been made, and if the present value of the participant's nonforfeitable accrued benefit, determined at the time of the first distribution under that optional form of benefit, exceeded the cash-out limit currently in effect under paragraph (c)(3)(ii) of this section, then the present value of the participant's nonforfeitable accrued benefit is deemed to continue to exceed the cash-out limit. Thus, for example, if the present value of a participant's accrued benefit does not exceed the cash-out limit on the date of a distribution after termination of employment but did, at the time of an earlier in-service hardship withdrawal, exceed the cash-out limit in effect on the date of the post-termination distribution, the plan is permitted to distribute the present value of the participant's accrued benefit on the date of the post-termination distribution without the participant's consent. However, if a participant began to receive scheduled installment payments under a plan and, at that time, the

participant's accrued benefit exceeded the cash-out limit currently in effect, the present value of the participant's accrued benefit is deemed to continue to exceed the cash-out limit and may not be distributed without the participant's consent.

(ii) The cash-out limit in effect for a date is the amount described in section 411(a)(11)(A) for the plan year that includes that date. The cash-out limit in effect for dates in plan years beginning on or after August 6, 1997, is \$5,000. The cash-out limit in effect for dates in plan years beginning before August 6, 1997, is \$3,500.

(iii) *Effective date.* Paragraphs (c)(3)(i) and (ii) of this section apply to distributions made on or after March 22, 1999 through December 18, 2001. For plan years beginning before March 22, 1999, see § 1.411(a)-11(c)(3). However, an employer is permitted to apply paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997.

(c)(4) through (e) [Reserved]. For further guidance, see § 1.411(a)-11(c)(4) through (e).

PARTS 1 AND 31—[AMENDED]

Par. 6. In the table below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.401(a)-20, Q&A-8, paragraph (d), first sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)-20, Q&A-24, paragraph (a)(1), fourth sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)(4)-4, paragraph (b)(2)(ii)(C)	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)(26)-4, paragraph (d)(2), last sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.401(a)(26)-6, paragraph (c)(4), first sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(a)-11, paragraph (b), first sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(a)-11, paragraph (c)(7), third sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second, third, and fourth sentences.	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(d)-4, Q&A-2, paragraph (b)(2)(v), second sentence	\$1,750	\$3,500.
1.411(d)-4, Q&A-4, paragraph (a), eighth sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
1.411(d)-4, Q&A-4, paragraph (a), last sentence in the parenthetical.	§ 1.401(a)-4 Q&A-4.	§ 1.401(a)(4)-4(b)(2)(ii)(C).
1.417(e)-1, paragraph (b)(2)(i), first, fourth, and fifth sentences.	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii).
31.3121(b)(7)-2, paragraph (d)(2)(i), last sentence	\$3,500	the cash-out limit in effect under § 1.411(a)-11T(c)(3)(ii) of this chapter.

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

Approved: November 18, 1998.

Donald C. Lubick,
Assistant Secretary of the Treasury.
[FR Doc. 98-32928 Filed 12-18-98; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8798]

RIN 1545-AW74

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the due diligence requirements for paid preparers of federal income tax returns or claims for refund involving the earned income credit. The temporary regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The temporary regulations provide guidance to paid preparers who prepare federal income tax returns or claims for refund claiming the earned income credit. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622-4940 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1570. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 602) under section 6695(g) relating to the penalty for failure of a preparer to be diligent in determining a taxpayer's eligibility for the earned income credit (EIC). Section 6695(g) was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (11 Stat. 788, 955 (1997)) (the Act), effective for taxable years beginning after December 31, 1996.

Section 6695(g) imposes a \$100 penalty for each failure by an income tax return preparer to meet the due diligence requirements set forth in this regulation. The IRS may impose the section 6695(g) penalty in addition to any other applicable penalty provided by law.

In Notice 97-65 (1997-51 I.R.B. 14 (December 22, 1997)), the IRS set forth the preparer due diligence requirements for 1997 returns and claims for refund involving the EIC. To avoid the imposition of the section 6695(g) penalty for 1997 returns and claims for refund, Notice 97-65 requires preparers to meet four requirements: (1) Complete the Earned Income Credit Eligibility Checklist attached to Notice 97-65 (Eligibility Checklist), or otherwise record the information necessary to complete the Eligibility Checklist; (2) complete the Earned Income Credit Worksheet (Computation Worksheet), as contained in the 1997 Form 1040 instructions, or otherwise record the computation and information necessary to complete the Computation Worksheet; (3) have no knowledge that any information used by the preparer in determining eligibility for, and amount of, the EIC is incorrect; and (4) retain for three years the Eligibility Checklist and

Computation Worksheet (or alternative records), and a record of how and when the information used to determine eligibility for, and amount of, the EIC was obtained by the preparer. This information may be retained either as a paper record or in magnetic media format consistent with Rev. Proc. 81-46 (1981-2 C.B. 621).

Notice 97-65 also requested comments on preparer due diligence requirements for tax years after 1997. Two comments were received. The commentators did not suggest alternative due diligence requirements. One commentator suggested, however, increased education for the public. The IRS and Treasury Department adhere to the principle that education is an integral part of good tax administration. Therefore, as part of its overall EIC strategy, the IRS has established various educational tools and outreach programs for taxpayers and preparers. These efforts are intended to provide the public with the tools necessary to receive the full amount of the EIC allowed by law.

The second commentator suggested that preparers should be able to meet the due diligence requirements by using software reviewed and approved by the IRS. The IRS does not approve commercial software. The IRS is currently exploring, however, new opportunities for partnership with outside stakeholders to reduce burden, enhance customer service, and increase compliance. As part of this effort, the IRS will continue to review this comment and evaluate options.

Explanation of Provisions

The temporary and proposed regulations impose due diligence standards on persons who are income tax return preparers with respect to determining eligibility for, or the amount of, the EIC. Consistent with existing regulations under section 6695, these temporary regulations apply a modified definition of income tax return preparer. Section 7701(a)(36) provides that, in general, the term *income tax return preparer* means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return or claim for refund of tax imposed by subtitle A. The preparation of a substantial portion of a return or claim for refund is treated as if it were the preparation of such return or claim for refund. Persons are considered preparers if they give legal advice concerning a return or claim for refund or if they prepare another return which affects the return or claim for refund (§ 301.7701-15(a)(2) and (b) and § 301.7701-15(b)(3), respectively). The