

tartrate injectable solution for the relief of pain in horses.

**DATES:** This rule is effective April 29, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Lonnie W. Luther, Center for Veterinary Medicine (HFV-104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301-827-8549, e-mail: [lluther@cvm.fda.gov](mailto:lluther@cvm.fda.gov).

**SUPPLEMENTARY INFORMATION:** Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed ANADA 200-322 that provides for the use of Butorphanol Tartrate Injection for the relief of pain associated with colic and postpartum pain in adult and yearling horses. Phoenix Scientific's Butorphanol Tartrate Injection is approved as a generic copy of Fort Dodge Animal Health's TORBUGESIC approved under NADA 135-780. The ANADA is approved as of January 22, 2003, and the regulations are amended in 21 CFR 522.246 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 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)(1) 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.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

■ 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 522 is amended as follows:

**PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS**

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 522.246 [Amended]**

■ 2. Section 522.246 *Butorphanol tartrate injection* is amended in paragraph (b)(1) by removing "No. 057926" and by adding in its place "Nos. 057926 and 059130".

Dated: April 1, 2003.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 03-10474 Filed 4-28-03; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 31 and 301**

[TD 9055]

**RIN 1545-BA18**

**Receipt of Multiple Notices With Respect to Incorrect Taxpayer Identification Numbers**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to backup withholding. These regulations clarify the method of determining whether the payor has received two notices that a payee's taxpayer identification number (TIN) is incorrect. If a payor receives two or more such notices with respect to the same account during a three-year period, the payor must begin backup withholding unless the payee provides verification of its correct TIN pursuant to the regulations. This document also contains regulations which clarify when an information return filer must solicit a payee's TIN following the receipt of a penalty notice.

**DATES:** These regulations are effective January 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Nancy L. Rose at (202) 622-4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Internal Revenue Code (Code), and to the Procedure and Administration

Regulations (26 CFR part 301) under section 6724 of the Code. These regulations finalize proposed amendments to existing §§ 31.3406(d)-5(d)(2)(ii) and (g)(4), and 301.6724-1(f)(2), (f)(3), (f)(5) and (k). These regulations also revise existing § 301.6724(f)(1) and (g)(1) to remove obsolete cross-references. A notice of proposed rulemaking (REG-116644-01) was published in the **Federal Register** (67 FR 44579) on July 3, 2002. The IRS received written comments responding to the notice of proposed rulemaking, but no commentators requested the opportunity to present oral comments at a public hearing. A notice cancelling the public hearing scheduled for October 22, 2002, was published on October 17, 2002 (67 FR 64067).

**Explanation of Provisions and Summary of Comments**

*Section 3406*

Section 3406 imposes a requirement to backup withhold on any reportable payment if the Secretary notifies the payor that the TIN furnished by the payee is incorrect. After receiving a notice of incorrect TIN, the payor must backup withhold on reportable payments until the payee furnishes another TIN. However, if the payor receives two notices with respect to the same account within a three-year period, the payor must backup withhold on reportable payments until the payor receives a verification of the payee's TIN from the Social Security Administration or the IRS.

The regulations under section 3406 set forth detailed procedures for payors to follow after receipt of a notice of incorrect TIN from the IRS. When the first such notice is received by the payor, the payor must send a notice (commonly referred to as a "B" notice) to the payee stating that the payee will be subject to backup withholding if the payee does not furnish a certified TIN. If a second notice of incorrect TIN is received by a payor with respect to the payee's account within a three-year period, the payor must send a second "B" notice to the payee stating that the payee will be subject to backup withholding unless the payor receives verification of the payee's TIN from the Social Security Administration or IRS.

If the payor receives two or more notices of incorrect TIN with respect to a payee's account within the same calendar year, the regulations provide that the multiple notices may be treated as one notice for purposes of sending out a first "B" notice, and must be treated as one notice for purposes of sending out a second B notice. However,

in some cases, a payor may receive multiple notices of incorrect TIN in different calendar years which relate to the same payee's account for the same year. This may occur where a payor files different types of information returns with respect to the same payee, such as a Form 1099-B (gross proceeds reported by brokers) and a Form 1099-DIV (payment of dividends). Typically these information returns all contain the same TIN, following information contained in the payor's records. Variations in the processing of such returns by the IRS may result in the issuance of incorrect TIN notices at different times.

The amendments to the regulations provide that two or more notices of incorrect TIN relating to the same payee and the same year, but which are received in different calendar years, count as one notice. Accordingly, a payor who sends a first "B" notice to the payee after receipt of the first notice of incorrect TIN would not be required to send a second "B" notice after receipt of the second notice of incorrect TIN if the second notice relates to an information return filed for the same year as the first notice.

#### Section 6724

Section 6724 provides for a waiver of information reporting penalties under sections 6721 through 6723 where the failure giving rise to such penalties was due to reasonable cause and not willful neglect. Under § 301.6724-1(a) of the regulations, in order to prove reasonable cause for a failure, the filer must establish either that there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer's control. In addition, the filer must have acted in a responsible manner both before and after the failure.

Section 301.6724-1(c)(1)(v) of the regulations provides that certain actions of the payee or another person providing necessary information with respect to the return may be an event beyond the filer's control. Thus, a payee's furnishing of an incorrect TIN to a payor may be an event beyond the payor's control.

As provided in § 301.6724-1(a), the payor must also act in a responsible manner with respect to the failure. That section sets forth special rules for acting in a responsible manner with respect to incorrect TINs. The filer is required to make an initial solicitation for the payee's correct TIN at the time the account is opened, and up to two annual solicitations following receipt of penalty notices.

If a filer receives a penalty notice with respect to an incorrect payee TIN and a

notice of incorrect TIN under section 3406(a)(1)(B) during the same calendar year for the same payee, the filer will satisfy the section 6724 annual solicitation requirements by sending the required "B" notice. The filer does not have to make another solicitation pursuant to section 6724.

The amendments to the regulations address the situation where a filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year, and the following year receives a penalty notice with respect to the same payee and the same year as the section 3406(a)(1)(B) notice. The amendments provide that the filer is not required to make an annual solicitation for the payee's TIN pursuant to section 6724 in this situation, provided the filer has sent the required B notice.

The written comments received expressed the view that the proposed regulations clarified the backup withholding rules and reduced the regulatory burden associated with backup withholding. No revisions to the proposed amendments were suggested by commentators.

#### 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 has also 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 of small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

#### Drafting Information

The principal author of these regulations is Nancy L. Rose of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

#### List of Subjects

##### 26 CFR Part 31

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

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 31 and 301 are amended as follows:

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ 1. The authority citation for part 31 continues to read in part as follows:

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

■ 2. Section 31.3406(d)-5 is amended by revising paragraphs (d)(2)(ii) and (g)(4) to read as follows:

**§ 31.3406(d)-5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Two or more notices for an account for the same year or received in the same year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, need only send one notice to the payee under this section.

\* \* \* \* \*

(g) \* \* \*

(4) *Receipt of two notices for the same year or in the same calendar year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, must treat such notices as one notice for purposes of this paragraph (g).

\* \* \* \* \*

#### PART 301—PROCEDURE AND ADMINISTRATION

■ 3. The authority citation for part 301 continues to read in part as follows:

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

■ 4. Section 301.6724-1 is amended as follows:

■ 1. Amending paragraph (f)(1)(ii), fourth sentence, by removing "(n)" after "section 6721".

■ 2. Revising paragraphs (f)(2) and (f)(3).

■ 3. Amending paragraph (f)(5)(vi), last sentence, by removing the language "paragraph (f)(2)" and adding "paragraph (f)(3)" in its place.

■ 4. Amending paragraph (g)(1) by removing the language "as provided under section 6724(c)(1)".

- 5. Amending paragraph (k), *Example 3(ii)*, second sentence, by removing the language “§ 35a.3406–1(c)(1) of this paragraph” and adding “§ 31.3406(d)–5(d)(2)(i) of this chapter” in its place; and by removing the language “(f)(2)” and adding “(f)(3)” in its place.
- 6. Amending paragraph (k), *Example 3(ii)*, fifth sentence, by removing the language “§ 301.6721–1T” and adding “§ 301.6721–1” in its place.
- 7. Amending paragraph (k), *Example 3(iii)*, fifth sentence, by removing the language “§ 35a.3406–1(c)(1)” and adding “§ 31.3406(d)–5(d)(2)(i)” in its place.
- 8. Amending paragraph (k), *Example 3(iii)*, last sentence, by removing the language “§ 301.6721–1T” and adding “§ 301.6721–1” in its place.
- 9. Amending paragraph (k), *Example 5*, final sentence, by removing the language “§ 301.6721–1T” and adding “§ 301.6721–1” in its place.
- 10. Amending paragraph (k), *Example 6(ii)*, sixth sentence, by removing the language “(f)(3)” and adding the language “(f)(2)” in its place.
- 11. Amending paragraph (k), *Example 7(ii)*, fourth sentence, by removing the language “(f)(2)” and adding “(f)(3)” in its place; and by removing the language “§ 35a.3406–1(c)(1)” and adding “§ 31.3406(d)–5(g)(1)(ii)” in its place.
- 12. Amending paragraph (k), *Example 7(ii)*, fifth sentence, by removing the language “§ 35a.3406–1(c)(1)” and adding “§ 31.3406(d)–5(g)(1)(ii)” in its place.

The revisions read as follows:

**§ 301.6724–1 Reasonable cause.**

\* \* \* \* \*

(f) \* \* \*

(2) *Manner of making annual solicitation if notified pursuant to section 6721.* A filer that has been notified of an incorrect TIN by a penalty notice or other notification pursuant to section 6721 may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section; by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section; or by requesting the TIN in person.

(3) *Coordination with solicitations under section 3406(a)(1)(b).* (i) A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which

§ 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if—

(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either during the same calendar year or for information returns filed for the same year; and

(B) The filer makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies, before the filer is required to make the annual solicitation of this paragraph (f).

(iii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 with respect to a fiduciary or nominee account to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies is required to make the annual solicitation of this paragraph (f).

\* \* \* \* \*

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: April 13, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 03–10403 Filed 4–28–03; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 301 and 602**

[TD 9054]

**RIN 1545–AX85**

**Disclosure of Returns and Return Information to Designee of Taxpayer**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation and removal of temporary regulation.

**SUMMARY:** This final regulation relates to the disclosure of returns and return information to a designee of the taxpayer. The regulation provides guidance to IRS employees responsible for disclosing returns and return information and to taxpayers who wish to designate a person or persons to whom returns and return information may be disclosed.

**DATES:** Effective Date: This regulation is effective April 29, 2003.

*Applicability Date:* For dates of applicability, see § 301.6103(c)–1(f).

**FOR FURTHER INFORMATION CONTACT:** Joseph Conley, (202) 622–4580 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in this final regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1816.

The collections of information relating to requests for or consents to disclosure of returns and return information are in § 301.6103(c)–1(b), (c) and (d). Information provided in a request or consent under paragraph (b) is required by the IRS to identify the return or return information described in the request or consent; to search for and, where found, compile such return or return information; and to identify the person to whom any such return or return information is to be provided. Information provided in a request under paragraph (c) is required by the IRS to determine the nature and extent of the information or assistance requested by the taxpayer; to determine any return or return information to be disclosed to a third party in order to comply with the taxpayer's request; and to search for and, where found, to compile any such return or return information.

Information provided in a request under paragraph (c)(2) is also required by the IRS to confirm the identity of the taxpayer and the designee. Information provided in a consent under paragraph (d)(1) is required by the IRS to make certain disclosures to an electronic return transmitter or other third party in connection with the taxpayer's electronic filing of returns or other documents or information, such as disclosures to a transmitter of the IRS's receipt of a taxpayer's return and its acceptance or rejection by the IRS. The collections of information in this regulation are not mandatory, but are required if the IRS is to make disclosures to designees under the regulation. The likely respondents are individuals and households; farms, businesses, and other for-profit institutions; nonprofit institutions; and small businesses and organizations.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports