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 NOT SUBJECT TO CERTIFICATION

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

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1081 is amended by adding paragraph (a)(2)(iii) to read as follows:

§ 522.1081 Chorionic gonadotropin for injection; chorionic gonadotropin suspension.

(a) * * *

(2) * * *

(iii) No. 057926 for use of 10,000 U.S.P. units intramuscularly.

* * * * *

Dated: December 11, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91-31014 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trenbolone Acetate and Estradiol in Combination

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 a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of trenbolone acetate and estradiol in combination in subcutaneous ear implants for increased rate of weight gain and improved feed efficiency in feedlot steers.

EFFECTIVE DATE: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8638.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, filed NADA 140-897 which provides for subcutaneous ear implantation of pellets containing 120 milligrams (mg) of trenbolone acetate and 24 mg of estradiol for increased rate of weight gain and improved feed efficiency in feedlot steers. The NADA is approved as November 27, 1991, and the regulations are amended by adding new 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA is amending 21 CFR 556.240 and removing 21 CFR 556.250. The tolerance is revised to reflect that concentrations of estradiol are given in terms of its activity and not in terms of the particular ester. Therefore, § 556.250 *Estradiol monopalmitate* is removed.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 27, 1991, because new clinical or field investigations (other than bioequivalence or residue studies) were essential to the approval of the application and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (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, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

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 parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

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

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2477 is added to read as follows:

§ 522.2477 Trenbolone acetate and estradiol in combination.

(a) *Specifications.* Each pellet for implanting contains 20 milligrams of trenbolone acetate and 4 milligrams of estradiol.

(b) *Sponsor.* See No. 012799 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.240 and 556.739 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 120 milligrams of trenbolone acetate and 24 milligrams of estradiol (6 pellets) per animal.

(2) *Indications for use.* For increased rate of weight gain and improved feed efficiency in feedlot steers.

(3) *Limitations.* Implant subcutaneously in ear only. Do not use in animals intended for subsequent breeding or in dairy animals.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.240 is amended by revising the heading and introductory text to read as follows:

§ 556.240 Estradiol and related esters.

No residues of estradiol, resulting from the use of estradiol or any of the related esters, are permitted in excess of the following increments above the concentrations of estradiol naturally present in untreated animals:

* * * * *

§ 556.250 [Removed]

5. Section 556.250 *Estradiol monopalmitate* is removed.

Dated: December 20, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-30103 Filed 12-27-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8384]

RIN 1545-AP82

Certification of Enhanced Oil Recovery Projects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that a project satisfies the requirements of section 43(c) of the Internal Revenue Code. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

DATES: These regulations are effective on January 1, 1991 and generally apply to taxable years beginning after December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart, (202) 566-4919 (not a toll-free number).

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 requirement contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1292. The estimated average annual burden per respondent is 73 hours.

These estimates approximate the average time expected to be necessary to collect the information required by this regulation. They are based on the information available to the Internal Revenue Service. Individual respondents may require more time or less time, depending on their particular circumstances.

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

Background

This document amends the Income Tax Regulations (26 CFR part 1) to provide procedures whereby an operator or designated owner of an enhanced oil recovery project certifies to the Internal Revenue Service that a project meets the definition of a qualified enhanced oil recovery project under section 43 of the Internal Revenue Code. The temporary regulations reflect the addition of section 43(c)(2)(B) to the Code by section 11511(a) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

Explanation of Provisions

Section 43(c)(2)(B) provides that a project is not treated as a qualified enhanced oil recovery project unless the operator submits a certification at the time and in the manner prescribed by the Secretary. Section 1.43-3T specifies the certification requirements and is being issued as a temporary regulation, effective for taxable years beginning after December 31, 1990. For the first year in which the enhanced oil recovery credit (the "credit") is allowable with respect to a project, the operator, or any operating mineral interest owner designated by the operator ("designated owner"), must submit a petroleum engineer's certification. The temporary regulations require relatively detailed information to be filed in a project's first year. For subsequent years in which the credit is allowable, the operator or designated owner must certify that the project is being implemented substantially in accordance with the petroleum engineer's certification.

The petroleum engineer's certification and the annual operator's certification must be submitted to the Internal Revenue Service Center, Austin, Texas, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return. A failure by the operator or designated owner to timely file a petroleum engineer's certification or an annual operator's certification will not preclude taxpayers from claiming the credit; however, the credit with respect to any project will be allowed only after the appropriate certifications are submitted.

Upon the termination of a qualified enhanced oil recovery project, a notice of project termination must be submitted to the Internal Revenue Service Center, Austin, Texas, not later than the date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the year in which the project terminates. The notice of project termination is needed to assist the Internal Revenue Service in ensuring that taxpayers do not continue to claim the credit with respect to a terminated project.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

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 Brenda M. Stewart of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.37-1 through 1.44A-4

Credits, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, parts 1 and 602, are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.43-3T also issued under 26 U.S.C. 43(c)(2)(B) * * *

Par. 2. New § 1.43-3T is added to read as follows:

§ 1.43-3T Certification (Temporary).

(a) *Petroleum engineer's certification of a project*—(1) *In general.* A petroleum engineer must certify, under penalties of perjury, that an enhanced oil recovery project meets the requirements of section 43(c)(2)(A). A petroleum engineer's certification must be submitted for each project. The petroleum engineer certifying a project must be duly registered or certified in any state.

(2) *Timing of certification.* The operator of an enhanced oil recovery project or any other operating mineral interest owner designated by the operator ("designated owner") must submit a petroleum engineer's certification to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the first taxable year for which the enhanced oil recovery credit (the "credit") is allowable. The operator may designate any other operating mineral interest owner (the "designated owner") to file the petroleum engineer's certification.

(3) *Content of certification*—(i) *In general.* A petroleum engineer's certification must contain the following information—

(A) The name and taxpayer identification number of the operator or the designated owner submitting the certification;

(B) A statement identifying the project, including its geographic location;

(C) A statement that the project involves a tertiary recovery method (as defined in section 43(c)(2)(A)(i)) and a description of the process used, including—

(*1*) A description of the implementation and operation of the project sufficient to establish that it is implemented and operated in accordance with sound engineering practices and

(*2*) The date on which the first injection of liquids, gases, or other matter occurred or is expected to occur;

(D) A statement that the application of a qualified tertiary recovery method or methods is expected to result in more than an insignificant increase in the amount of crude oil that ultimately will be recovered, including—

(*1*) Data on crude oil reserve estimates covering the project area with and without the enhanced oil recovery process,

(*2*) Production history prior to implementation of the project and estimates or production after production of the project, and

(*3*) An adequate delineation of the reservoir, or portion of the reservoir, from which the ultimate recovery of crude oil is expected to be increased as a result of the implementation and operation of the project; and

(E) A statement that the petroleum engineer believes that the project is a qualified enhanced oil recovery project within the meaning of section 43(c)(2)(A).

(ii) *Additional information for significantly expended projects.* The petroleum engineer's certification for a project that is significantly expanded must in addition contain—

(A) If the expansion affects acreage that was substantially unaffected by a previously implemented project, a precise delineation of the acreage affected by the previously implemented project;

(B) If the expansion affects a reservoir that was unaffected by a previously implemented project, a precise delineation of the reservoir affected by the previously implemented project; or

(C) If the expansion involves the implementation of an enhanced oil recovery project more than 36 months after the termination of a qualified tertiary recovery method that was applied before January 1, 1991, the date on which the previous tertiary recovery method terminated and an explanation of the data or assumptions relied upon to determine the termination date.

(b) *Operator's continued certification of a project*—(1) *In general.* For each taxable year following the taxable year for which the petroleum engineer's certification is submitted, the operator or designated owner must certify, under penalties of perjury, that an enhanced oil recovery project continues to be implemented substantially in accordance with the petroleum engineer's certification submitted for the project. An operator's certification must be submitted for each project.

(2) *Timing of certification.* The operator or designated owner of an enhanced oil recovery project must submit an operator's certification to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last date prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for any taxable year after the taxable year for which the petroleum engineer's certification is filed.

(3) *Content of certification.* An operator's certification must contain the following information—

(i) The name and taxpayer identification number of the operator or the designated owner submitting the certification;

(ii) A statement identifying the project, including its geographical location and the date on which the petroleum engineer's certification was filed;

(iii) A statement that the project continues to be implemented substantially in accordance with the petroleum engineer's certification (as described in paragraph (a) of this section) submitted for the project; and

(iv) A description of any significant change or anticipated change in the information submitted under paragraph (a)(3) of this section, including a change in the date on which the first injection of liquids, gases, or other matter occurred or is expected to occur.

(c) *Notice of project termination*—(1) *In general.* If the application of a tertiary recovery method is terminated, the operator or designated owner must submit a notice of project termination to the Internal Revenue Service.

(2) *Timing of notice.* The operator or designated owner of an enhanced oil recovery project must submit the notice of project termination to the Internal Revenue Service Center, Austin, Texas, or such other place as may be designated by revenue procedure or other published guidance, not later than the last data prescribed by law (including extensions) for filing the operator's or designated owner's federal income tax return for the taxable year in which the project terminates.

(3) *Content of notice.* A notice of project termination must contain the following information—

(i) The name and taxpayer identification number of the operator or the designated owner submitting the notice;

(ii) A statement identifying the project, including its geographical location and the date on which the petroleum engineer's certification was filed; and

(iii) The date on which the application of the tertiary recovery method was terminated.

(d) *Failure to submit certification.* If a petroleum engineer's certification (as described in paragraph (a) of this section) or an operator's certification (as described in paragraph (b) of this section) is not submitted in the time or manner prescribed by this section, the credit will be allowed only after the appropriate certifications are submitted.

(e) *Effective date.* Section 1.43–3T is effective for taxable years beginning after December 31, 1990.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding the following citation:

"§ 1.43–3T(a)(3)....1545–*1292* and § 1.43–3T(b)(3)....1545–*1292*".

Approved:
December 16, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30873 Filed 12–27–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[T.D. 8386]

RIN 1545–A095

Imposition of Penalty for Failure To Comply With Information Reporting Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6721, which imposes a penalty for failure to file correct information returns, section 6722, which imposes a penalty for failure to furnish correct payee statements, section 6723, which imposes a penalty for failure to comply with other reporting requirements, and section 6724, which provides that such penalties may be waived for reasonable cause. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1989. The regulations affect all persons that are required to file information returns with the Internal Revenue Service, furnish statements to payees, or comply with other Reporting Requirements and are necessary to provide them with guidance needed to comply with these changes.

DATES: Effective dates: These regulations are effective January 1, 1990.

Application: These regulations apply to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:CORP:T) (202–377–9344, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301), which provide rules under sections 6721 through 6724 of the Internal Revenue Code of 1986 (the "Code"), relating to the imposition of penalties for failure to comply with certain information reporting requirements. Code sections 6721 through 6724 were amended by the Omnibus Budget Reconciliation Act of 1989 ("OBRA 1989") (Pub. L. No. 101–239, 103 Stat. 2106) and are effective for information returns, payee statements, and certain other documents the due date for which (determined without regard to extensions) is after December 31, 1989. The final regulations provide a special transitional rule for information returns, payee statements, and certain other documents required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.

On February 21, 1991, the **Federal Register** published a notice of proposed rulemaking (56 FR 7001) by cross reference to temporary regulations published the same day in the **Federal Register** (56 FR 6969) under Code sections 6721 through 6724. The preamble to the temporary regulations contains an explanation of the temporary and proposed rules. A public hearing was held on September 9, 1991. After consideration of the public comments, the proposed regulations are adopted as revised by this Treasury decision, and the temporary regulations are removed.

Explanation of Statutory Provisions

Code section 6721(a) imposes a penalty of $50 for every information return with respect to which there is a failure to file timely or a failure to include correct and complete information. If an information return is filed both late and with incorrect or incomplete information, not more than one penalty is imposed with respect to the return. Inconsequential errors and omissions do not constitute failures to include complete and correct information. Section 6721(b) provides a time-sensitive tiered penalty structure under which the $50 penalty is reduced to $15 if the filer corrects the failure within 30 days of the required filing date and to $30 if a failure is corrected after the end of such 30-day period but on or before August 1 of the year in which the return is required to be filed (hereinafter August 1). Aggregate penalties for the filing of late or incorrect information returns in any calendar year may not exceed certain limits. Penalties for failures subject to the first-tier $15 penalty are capped at $75,000; penalties for failures subject to the second-tier $30 penalty are capped at $150,000; and the combined penalties for all failures are capped at $250,000. Lower limits apply to certain small businesses. Code section 6721(d).

Code section 6721(c) provides a *de minimis* exception under which a limited number of returns containing incorrect or incomplete information are treated as having been filed with the correct and complete information if the errors or omissions are corrected by August 1. The *de minimis* exception does not apply to the penalty for late filing. Relief under the *de minimis* exception is available for the greater of 10 returns or one-half of one percent of the total number of returns the filer is required to file during the calendar year.

Code section 6721(e) provides that if failures are due to intentional disregard of the information reporting requirements, higher penalty amounts are imposed for each such failure, and the reduced penalties under the tiered system, the limitations on aggregate penalties, and the *de minimis* rules do not apply.

Code section 6722 imposes a penalty of $50 for every payee statement (up to a maximum of $100,000 for any calendar year) with respect to which there is a failure to furnish timely or a failure to include correct and complete information. As with information returns, a failure to provide incomplete or incorrect information does not encompass inconsequential errors and omissions, and higher penalties apply if a failure is due to intentional disregard of the requirement to furnish timely a payee statement.

Code section 6723 imposes a $50 penalty (up to a maximum of $100,000) for every failure to comply timely with certain specified information requirements, including the requirement under section 6050K(c)(1) that a transferor partner notify the partnership of an exchange of a partnership interest, the requirement that a person provide his or her taxpayer identification number (TIN), or the TIN of another to the Internal Revenue Service or to other persons in specified circumstances. As

with information returns, a failure to provide correct and complete information does not encompass inconsequential errors and omissions.

Code section 6724(a) provides that the penalties imposed by sections 6721, 6722, and 6723 will be waived if the filer demonstrates that the failure was due to reasonable cause and not to willful neglect.

Response To Public Comments

Section 301.6721–1—Failure To File Correct Information Returns

Inconsequential Errors and Omissions

Section 301.6721–1T(c) of the temporary regulations provides that inconsequential errors and omissions are not considered errors, and sets forth a list of errors that are never inconsequential. A number of commentators recommended changes in the rule regarding inconsequential errors and omissions, including the removal of an example which suggested that an error in a payee address is never considered inconsequential. The Service has concluded that the list of errors that are never considered inconsequential reflects the needs and operation of its processing system and matching programs. Therefore, the list has not been altered. The incorrect address example has been removed, however, because an incorrect payee address may or may not be inconsequential, depending upon other information on the filed return. It was not clear in the example why the error in the address hindered the processing of the return. Deletion of the example does not imply, however, that in appropriate circumstances the Service may not impose a penalty for an incorrect address.

Returns Not Due on February 28

Section 301.6721–1T (b)(6) and (d)(4) of the temporary regulations excludes returns not required to be filed on February 28 from the application of the $30 tier of the phased penalty and from the *de minimis* rule. Certain of these returns, such as the Form 8300 on which persons report cash transactions in excess of $10,000, have required filing dates that are linked to the date of a transaction. In such cases, correction of erroneous returns by August 1 has limited, if any, practical effect. Commentators pointed out that because the August 1 correction date may be meaningful for filers of Form 1042S, which is required to be filed on March 15, Form 1042S filers should benefit from these rules. The final regulations adopt this suggestion. The final regulations also clarify that all information returns required to be filed during the calendar year are taken into account in calculating the number of returns subject to the *de minimis* rule, regardless of whether the returns themselves are subject to relief under the rule.

Other Comments

Section 301.6721–1T(f)(3) of the temporary regulations sets forth the facts and circumstances that are considered in determining whether a failure is due to intentional disregard of the information reporting requirements. One commentator recommended that the final regulations clarify that, subject to the special rules for magnetic media reporting, these facts and circumstances include a filer's economic decision to incur the penalty rather than bear the costs of complying with the applicable information reporting requirements. This recommendation applies with respect to both the filing of information returns and the furnishing of payee statements. The legislative history to OBRA 1989 expressly includes this circumstance as a basis for finding intentional disregard of the reporting requirements. H.R. Rep. No. 247, 101st Cong., 1st Sess. 1384 (1989). Therefore, the final regulations incorporate this recommendation.

Section 301.6721–1T(g)(6) defines the term "filer" as "not ordinarily includ[ing] a transfer agent or paying agent of the filer." Several commentators asked that the definition be clarified to indicate the circumstances in which a transfer agent might be considered a filer. The final regulations make clear that the filer of an information return is the person who is required to file under the applicable information reporting rules.

Section 301.6722–1—Failure To Furnish Correct Payee Statements

Section 301.6722–1T(a) of the temporary regulations requires that correct and complete payee statements be furnished timely. One commentator asked that the regulations provide special guidance for brokers holding shares of a regulated investment company in street name. In such cases, persons obligated to furnish correct and complete payee statements may receive the necessary information too late to comply timely with this obligation. Because Code section 6722 makes no provision for corrections made after the date the statement is required to be furnished, the final regulations do not adopt the special rules requested. Nevertheless, penalties imposed for failure to furnish timely correct and complete payee statements may be waived if the filer demonstrates that the failure is due to the filer's inability to obtain necessary information from a person on whom the filer must rely to furnish correct and complete payee statements. *See* the discussion of reasonable cause, below.

Section 301.6723–1—Failure To Comply with Specified Information Reporting Requirements

Section 301.6723–1T(a) of the temporary regulations sets forth the specified information reporting requirements to which the penalty may apply and states that failures subject to the penalty include: (1) A failure to comply timely with such a requirement; and (2) a failure to provide correct and complete information. The temporary regulations provide further that multiple penalties may be imposed with respect to a document with multiple failures, but that only one penalty is imposed for each discrete failure regarding such document. One commentator asked that the final regulations clarify that only a single penalty may be imposed with respect to any specified document. The final regulations make clear that if a return would be subject to a penalty because, with respect to any one specified reporting requirement, the required information is both late and incorrect or incomplete, only a single penalty is imposed. Section 301.6723–1T(b) *Example 1* shows, however, that if a single document contains failures to comply with more than one specified information reporting requirement or if on a single document there are multiple instances of a failure to comply with a specified information reporting requirement (such as reporting the TIN of a dependent), a penalty is imposed for each such requirement with respect to which a failure occurs.

Section 301.6724–1—Reasonable Cause

Under Code section 6724, a penalty imposed under sections 6721–6723 may be waived if the failure was due to reasonable cause and not willful neglect. Section 301.6724–1T(a)(2) of the temporary regulations provides that reasonable cause is present if the filer establishes that either (1) there are significant mitigating factors for the failure or (2) the failure arose from events beyond the filer's control. The filer must establish further that it acted in a responsible manner both before and after the failure occurred.

Significant Mitigating Factors

Under § 301.6724–1T(b) of the temporary regulations, significant mitigating factors include, but are not limited to, the following: (1) the filer is a

first-time filer of the particular type of return or payee statement with respect to which the penalty arises; or (2) the filer has an established history of compliance with the information reporting requirement with respect to which the failure occurs. In determining a filer's history of compliance, the filer's prior penalty history and the filer's success in reducing its error rate from year to year are taken into account. In response to commentators' suggestions, the final regulations provide that, for purposes of determining a filer's prior penalty history, penalties that were self-assessed under provisions amended or repealed by OBRA 1989 are not treated as penalties incurred by the filer.

A number of commentators asked that the final regulations adopt a "safe harbor" under which a filer that has at least a 95 percent accuracy rate when matched against the information on records maintained by the Service would be deemed to have demonstrated a history of compliance. The final regulations do not adopt this recommendation because of the serious impediments it would present for the effectiveness of the Service's matching programs. First, a "safe harbor" standard would reduce the incentive for filers to improve their accuracy rate beyond the safe-harbor threshold. This would undermine the matching programs that depend on the Service's receiving the best possible information. Second, excusing five percent of the returns required to be filed annually from the penalty system would eliminate a significant number of returns from the matching programs every year.

Several commentators suggested that a filer's maintenance of a well-designed internal system for complying with information reporting requirements should satisfy the significant mitigating factors requirement. This suggestion would substitute the quality of the filer's efforts to comply for the quality of the filer's compliance results. The legislative history of Code section 6724 considered an established history of compliance in determining whether reasonable cause is present. It supports, however, only criteria based on compliance results for demonstrating that significant mitigating factors exist. Because the Service must rely on filers to provide the best possible information for use in its matching programs, the final regulations do not adopt this suggestion.

Other commentators focused on additional circumstances that should constitute significant mitigating factors. Commentators requested similar expansions of the circumstances that should be treated as "events beyond the filer's control" (see below). The regulations make clear that both the significant mitigating factors and the applicable criteria for establishing an event beyond the filer's control are not exclusive. Therefore, it is neither necessary nor useful to provide additional possible fact patterns regarding significant mitigating factors or events beyond a filer's control in the final regulations.

Events Beyond the Filer's Control

Section 301.6724–1T(c)(1) of the temporary regulations sets forth a non-exclusive list of events or circumstances that will be treated as events beyond the filer's control for purposes of establishing reasonable cause. A discussion of the comments on the list follows.

Unavailability of Filer's business records.

Under § 301.6724–1T(c)(2) of the temporary regulations, the unavailability of the filer's business records is an event beyond the filer's control if the records are unavailable for a two-week period prior to the required filing date of the return and the unavailability is due to a supervening event, such as a fire or other casualty, a statutory or regulatory change, or the unavoidable absence of the person solely responsible for filing. Commentators noted that the two-week requirement was unnecessarily rigid and should be modified to take into account differing situations. The final regulations adopt this suggestion.

Undue economic hardship relating to magnetic media filing. Section 301.6724–1T(c)(3)(iv) of the temporary regulations provides another circumstance that constitutes an event beyond the filer's control. This is a filer's inability to file on magnetic media because of undue economic hardship. Undue economic hardship is established only if the filer attempts, at least 90 days before the required filing date, to contract out the magnetic media filing and is unable to do so because of prohibitive cost. Ordinarily, a filer may not claim undue economic hardship in more than one year because the Service's acceptance of information on "floppy" disks should put the capability of complying with the magnetic media requirements within the reach of any person filing more than 250 information returns of any one type.

One commentator argued that the 90-day period should be shortened. The Service agrees that the 90-day period may be overlong in light of common business practices. Accordingly, the final regulations adopt a 45-day minimum period in place of the 90-day minimum period. Another commentator argued that the one-year only limitation is contrary to legislative intent as disclosed in the legislative history, which contemplates "multi-year exemptions" from the magnetic media requirements. H.R. Rep. No. 247, 101st Cong., 1st Sess., 1386 (1989). The pertinent language from that report states that the Service should take into consideration "other instances of undue hardship, such as temporary equipment breakdowns or destruction of magnetic media equipment in granting one-year or multi-year exemptions." The one-year limitation relating to a claim of undue economic hardship does not prevent a filer from establishing that records are unavailable due to equipment malfunction or destruction in as many years as the facts will support. Thus, the one-year limitation is consistent with the legislative history and is retained in the final regulations.

Actions of the Internal Revenue Service. Section 301.6724–1T(c)(4) of the temporary regulations provides that a filer's reasonable reliance on erroneous written information from the Service constitutes an event beyond the filer's control. One commentator asked that the written information upon which a filer may rely in establishing such reasonable reliance be expanded to include publications and forms instructions. The regulations already provide for filer reliance on such guidance. See §§ 301.6721–1T(a)(2)(ii) and 301.6722–1T(a)(2)(ii). Therefore, the final regulations retain the rule in the temporary regulations. However, the language of the regulation is modified to provide clarity.

Actions of an agent. Under § 301.6724–1T(c)(5) of the temporary regulations, an event beyond the filer's control can arise from the filer's contracting with an agent to perform the filing of information returns or the furnishing of the payee statements. The temporary regulations require that the filer establish that it contracted sufficiently in advance of the required filing date to permit timely filing; that it monitored the agent's efforts to perform; and that the agent can demonstrate that an event beyond the agent's control prevented timely correct filing.

Commentators asked that the requirement that filers monitor their agents be deleted because it is not consistent with ordinary business practices. The final regulations adopt this suggestion, and require instead that the filer exercise reasonable business judgment in selecting its agent.

Several commentators recommended that the requirement that the agent demonstrate that the failure was due to

an event beyond its control be deleted because the filer does not control the agent. Another commentator suggested that the requirement not be deleted, but rather that the agent's ability to demonstrate significant mitigating factors also be taken into account. Because the Service believes that the mere act of hiring an agent should not insulate a filer from penalties, it has not adopted the first recommendation. The Service has concluded that it is appropriate to take into account the agent's ability to demonstrate the presence of significant mitigating factors. Therefore, the final regulations incorporate the requirement that the agent establish the presence of either an event beyond the agent's control or significant mitigating factors.

Actions of the payee or other person. Section 301.6724–1T(c)(6) of the temporary regulations provides that an event beyond the filer's control can result from the failure of the payee (or other person required to provide necessary information to the filer) to provide timely correct information to the filer. Commentators requested clarification that an inability to obtain information from any person, including upstream payors who may not be required to provide information until after the required filing date of the filer's information returns or payee statements, qualify as "action of the payee or other person" in establishing reasonable cause. The final regulations adopt this clarification.

Responsible Manner

Under § 301.6724–1T(d)(1) of the temporary regulations, every filer seeking a waiver for reasonable cause must establish that it acted in a responsible manner both before the failure (by prudently determining its filing obligations and handling its account obligations and by taking steps to avoid or prevent the failure where possible) and after the failure (by correcting the failure promptly, generally within 30 days of the time correction becomes possible).

One commentator argued that the 30-day correction period is onerous and can result in daily filings of corrections. For instance, if failures are discovered on a daily basis, the filer must correct the error almost on a daily basis to ensure that its corrections are made promptly within 30 days. The Service believes that the 30-day period provided in the regulations should require filing of corrections no more frequently than once every 30 days. Therefore, the final regulations modify the general rule that prompt corrections ordinarily occur within 30 days by permitting corrections to be made as part of a general submission of corrections no less frequently than once every 30 days.

Several commentators recommended that the final regulations clarify that the correction requirement of § 301.6724–1T(d)(1)(ii)(D) of the temporary regulations applies only to the information returns or payee statements filed for the year with respect to which the filer is notified under Code section 6721. Except as noted below with respect to incorrect TINs (which are not required to be corrected), the temporary regulations clearly provide that a filer may establish rectification of a failure on a document for which a penalty is imposed by showing correction of the document (*i.e.*, the information return, the payee statement, or document on which a specified information requirement must be satisfied) with respect to which the failure occurs. Thus, there is no indication that the filer must show correction of other documents in order to obtain a waiver. The final regulations, therefore, retain the rule in the temporary regulations. Filers, however, who have errors on returns or other documents for which the statute of limitations has not expired may want to rectify those errors for potential examination or audit.

Certain information reporting requirements prohibit the filer from altering information reported on the required filing date of the information return. See § 1.6045–4(i)(5) of the Income Tax Regulations. The final regulations also clarify that the requirement to correct promptly does not apply in the case of such a requirement.

Special Rules for Taxpayer Identification Numbers (TINs)

Under § 301.6724–1T(e) and (f) of the temporary regulations, a filer seeking to establish that it acted in a responsible manner with respect to failures resulting from missing or incorrect TINs must show that (1) it solicited the TIN at the time the payee's account was opened (or the transaction giving rise to the reporting requirement occurred) and (2) if the TIN was missing or the filer was notified that the TIN was incorrect, it made at least two additional solicitations at prescribed times after the initial solicitation. These solicitations may be conducted by mail or, under certain circumstances, by telephone. If a filer fails to make the required solicitations at the prescribed times, it may satisfy the solicitation requirement by performing solicitations in the proper manner in two consecutive subsequent years. Under § 301.6724–1T(h)(2) of the regulations, special transitional rules apply to returns required to be filed after December 31, 1989, and on or before April 22, 1991.

One commentator noted that reportable payments made to fiduciary and nominee accounts are temporarily exempt from backup withholding due to an incorrect TIN under Code section 3406(a)(1)(B) and correlatively from the solicitation for a correct TIN (B-notice mailings). This commentator argued that filers of returns reporting such payments should therefore not be subject to a penalty under section 6721 for the failure to include the correct TIN on the return. The preamble explaining § 35a.3406–1(a)(3)(x) of the Temporary Employment Tax Regulations, which provides this exemption from backup withholding for fiduciary and nominee accounts, makes clear that filers continue to be subject to penalties imposed by section 6721. 55 FR 39400 (September 27, 1990). It would be inappropriate, therefore, to exempt information returns that report payments to such accounts from the penalty imposed by section 6721. Nevertheless, in view of the exemption from backup withholding provided for these accounts, it is appropriate to permit payors to satisfy the less burdensome solicitation requirements under § 301.6724–1T(f)(3) of the Regulations on Procedure and Administration that apply to filers that have not received a notice of an incorrect TIN pursuant to section 3406(a)(1)(B). These requirements permit solicitations by telephone and generally provide a longer period within which the filer may make the solicitations. Therefore, the final regulations clarify that filers for such fiduciary accounts may satisfy the solicitation requirements applicable to non-backup-withholding type of accounts.

Several commentators requested clarification of requirements to solicit a TIN under § 301.6724–1T(e)(1)(vi) and (f)(5)(i) of the temporary regulations. These provisions provide, in part, that if the information reporting requirement under which an information return is filed sets forth specific requirements relating to the time or manner in which TINs must be solicited, the filer must satisfy those specific requirements to meet the solicitation requirements under the temporary regulations. The final regulations make clear that the specific solicitation requirements of timing (*i.e.*, within a certain number of days) and manner, (*i.e.*, by mail or otherwise) imposed under a particular information reporting requirement must be satisfied. It is not necessary that other substantive requirements (such as the request for a certified TIN or the requirement that a

payor search for payee accounts other than the one to which the penalty notice relates) be satisfied.

In order to act in a responsible manner with respect to TINs, the solicitation requirements under §§ 301.6724–1T (e)(1)(iv) and (f)(1)(iv) of the temporary regulations require a filer, after receiving a TIN, to include that TIN in its business records, file a return correcting the missing (or incorrect TIN) and reflect the TIN on any returns thereafter filed. However, the solicitation requirements under Code section 3406, which satisfy the solicitation requirements of these regulations, do not require the filer to correct the missing or incorrect TIN by refiling the information return with correct information. To bring about parallel results, the final regulations delete the correction requirement for TINs from the special rule for acting in a responsible manner.

Comentators also requested clarification of particular circumstances that would satisfy the initial solicitation requirement, the application of the special transitional rules to accounts opened before 1989, the dates by which first annual solicitations must be made if accounts are opened in the month of December, the definition of a "missing TIN," and the application of the requirement that the filer make two consecutive annual solicitations to a year in which no return is required to be filed. The final regulations include clarifications on these points. The final regulations also provide clarification through a number of editorial changes.

Other Comments

Commentators made a number of recommendations relating to programs, systems, procedures and legislative initiatives the Service should adopt or pursue in connection with its administration of the information reporting penalty provisions. These comments are beyond the scope of the regulations and are therefore not addressed in the final regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 because the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these final regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Personnel from other Offices of the Internal Revenue Service and the Treasury Department participating in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate tax, Excise taxes, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Statistics, Taxes.

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURES AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *

§§ 301.6721–0T through 301.6724–1T [Removed]

Par. 2. Temporary regulations §§ 301.6721–0T through 301.6724–1T are removed.

Par. 3. Sections 301.6721–0 through 301.6724–1 are added to read as follows:

§ 301.6721–0 Table of Contents.

In order to facilitate the use of §§ 301.6721–1 through 6724–1, this § 301.6721–0 lists the paragraph headings contained in these sections.

§ 301.6721–1 Failure to file correct information returns.

(a) Imposition of penalty.
  (1) General rule.
  (2) Failures subject to the penalty.
(b) Reduction in the penalty when a correction is made within specified periods.
  (1) Correction within 30 days.
  (2) Correction after 30 days but on or before August 1.
  (3) Required filing date defined.
  (4) Penalty amount for return with multiple failures.
  (5) Examples.
  (6) Applications to returns not due on February 28 or March 15.
(c) Exception for inconsequential errors or omissions.
  (1) In General.
  (2) Errors or omissions that are never inconsequential.
  (3) Examples.
(d) Exception for a *de minimis* number of failures.
  (1) Requirements.
  (2) Calculation of the *de minimis* exception.
  (3) Examples.
  (4) Nonapplication to returns not due on February 28 or March 15.
(e) Lower limitations on the $250,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000.
  (1) In general.
  (2) Gross receipts test.
(f) Higher penalty for intentional disregard of requirement to file timely correct information returns.
  (1) Application of section 6721(e).
  (2) Meaning of "Intentional disregard."
  (3) Facts and circumstances considered.
  (4) Amount of the penalty.
  (5) Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.
  (6) Examples.
(g) Definitions.
  (1) Information return.
  (2) Statements.
  (3) Returns.
  (4) Other items.
  (5) Payee.
  (6) Filer.

§ 301.6722–1 Failure to furnish correct payee statements.

(a) Imposition of penalty.
  (1) General rule.
  (2) Failures subject to the penalty.
(b) Exception for inconsequential errors or omissions.
  (1) In general.
  (2) Errors or omissions that are never inconsequential.
  (3) Examples.
(c) Higher penalty for intentional disregard of requirement to furnish timely correct payee statements.
  (1) Application of section 6722(c).
  (2) Amount of the penalty.
  (3) Computation of the penalty; aggregate dollar amount of items required to be shown correctly.
(d) Definitions.
  (1) Payee.
  (2) Payee statement.
  (3) Other items.

§ 301.6723–1 Failure to comply with other information reporting requirements.

(a) Imposition of penalty.
  (1) General rule.
  (2) Failures subject to the penalty.
  (3) Exception for inconsequential errors or omissions.
  (4) Specified information reporting requirement defined.
(b) Examples.

§ 301.6724–1 Reasonable cause.

(a) Waiver of the penalty.
  (1) General rule.
  (2) Reasonable cause defined.
(b) Significant mitigating factors.
(c) Events beyond the filer's control.

(1) In general.
(2) Unavailability of the relevant business records.
(3) Undue economic hardship relating to filing on magnetic media.
(4) Actions of the Internal Revenue Service.
(5) Actions of agent—imputed reasonable cause.
(6) Actions of the payee or any other person.
(d) Responsible manner.
(1) In general.
(2) Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.
(e) Acting in a responsible manner—special rules for missing TINs.
(1) In general.
(i) Initial solicitation.
(ii) First annual solicitation.
(iii) Second annual solicitation.
(iv) Additional requirements.
(v) Failures to which a solicitation relates.
(vi) Exceptions and limitations.
(2) Manner of making annual solicitations—by mail or telephone.
(i) By mail.
(ii) By telephone.
(f) Acting in a responsible manner—special rules for incorrect TINs.
(1) In general.
(i) Initial solicitation.
(ii) First annual solicitation.
(iii) Second annual solicitation.
(iv) Additional requirements.
(2) Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.
(3) Manner of making annual solicitation if notified pursuant to section 6721.
(4) Failures to which a solicitation relates.
(5) Exceptions and limitations.
(g) Due diligence safe harbor.
(h) Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.
(1) In general.
(2) Special rule on TINs.
(i) [Reserved].
(j) Failures to which this section relates.
(k) Examples.
(l) [Reserved].
(m) Procedure for seeking a waiver.
(n) Manner of payment.

§ 301.6721–1 Failure to file correct information returns.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (g) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed $250,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a *de minimis* number of failures. See paragraph (e) of this section for lower limitations to the $250,000 maximum penalty. See paragraph (f) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (a)(1) of § 301.6724–1 for waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6721(a) and paragraph (a)(1) of this section apply are—

(i) A failure to file an information return on or before the required filing date ("failure to file timely"), and

(ii) A failure to include all of the information required to be shown on the return or the inclusion of incorrect information ("failure to include correct information"). A failure to file timely includes a failure to file in the required manner, for example, on magnetic media or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2)(A), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement). The 250-threshold requirements applies separately to each type of information return required to be filed. Further, the 250-threshold requirement applies separately to original and corrected returns. Thus, for example, if a filer files 300 returns on Form 1099–DIV and later files 70 corrected returns on Form 1099–DIV, the corrected returns may be filed either on the prescribed paper form (because they fall below the 250-threshold requirement) or on magnetic media or other machine-readable form. Filers who are required to file information returns on magnetic media and who file such information returns electronically are considered to have satisfied the magnetic media filing requirement. Except as provided in paragraph (c)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms and form instructions). A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on a magnetic media submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the magnetic media submission, such an error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure

(b) *Reduction in the penalty when a correction is made within specified periods*—(1) *Correction within 30 days.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $15 in lieu of $50 if the failure is corrected on or before the 30th day after the required filing date ("within 30 days"). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed $75,000.

(2) *Correction after 30 days but on or before August 1.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $30 in lieu of $50 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs ("after 30 days but on or before August 1"). (See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on February 28 or March 15.) The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed $150,000.

(3) *Required filing date defined.* The term "required filing date" means the date prescribed for filing an information return with the Internal Revenue Service (or the Social Security Administration in the case of Forms W–2) determined with regard to any extension of time for filing.

(4) *Penalty amount for return with multiple failures.* If a return is subject to a penalty for more than one failure, and the penalty amounts for the failures differ, the higher penalty amount will be imposed.

(5) *Examples.* The provisions of paragraphs (a) and (b) (1) through (4) of this section may be illustrated by the following examples. These examples do

not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. Corporation R fails to file timely 11,000 Forms 1099–MISC (relating to miscellaneous income) for the 1990 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 6,000 after 30 days but on or before August 1, 1991. For the same year R fails to file timely 400 Forms 1099–INT (relating to payments of interest) which R eventually files on September 28, 1991, after the period for reduction of the penalty has elapsed. R is subject to a penalty of $20,000 for the 400 forms which were not filed by August 1 ($50 × 400 = $20,000), $150,000 for the 6,000 forms filed after 30 days ($30 × 6,000 = $180,000, limited to $150,000 under paragraph (b)(2) of this section), and $75,000 for the 5,000 forms filed within 30 days ($15 × 5,000 = $75,000), for a total penalty of $245,000.

Example 2. Corporation T fails to file timely 6,000 Forms 1099–MISC for the 1990 calendar year. T files the 6000 Forms 1099–MISC on September 1, 1991. Because T does not correct the failure by August 1, 1991, T is subject to a penalty of $250,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a), T would be subject to a $300,000 penalty ($50 × 6,000 = $300,000).

Example 3. Corporation U files timely 300 Forms 1099–MISC on paper for the 1990 calendar year with correct information. Under section 6011(e)(2) a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 1991. It is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of $2,500 for 50 returns ($50 × 50 = $2,500).

Example 4. Corporation V files 300 Forms 1099–MISC on paper for the 1990 calendar year. The forms were filed on March 15, 1991, rather than on the required filing date of February 28,1991. Under Section 6011(e)(2), a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 1991. V is subject to a penalty of $3,750 for filing 250 of the returns late ($15 × 250) and $2,500 for failing to file 50 returns on magnetic media ($50 × 50) for a total penalty of $6,250.

(6) *Application to returns not due on February 28, or March 15.* For returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more), the penalty is $15 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is $50 rather than $30. There is no period during which the penalty is reduced to $30 under paragraph (b)(2) of this section.

(c) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term "inconsequential error or omission" means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (g)(5) of this section for the definition of "payee."

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential—

(i) A taxpayer identification number;

(ii) A surname of a payee (*i.e.*, the person required to be furnished a copy of the information set forth on an information return); and

(iii) Any monetary amounts. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. A filer files a Form 1099–MISC (relating to miscellaneous income) with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the word "street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's first name, William, is misspelled as "Willaim." the error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (c)(2) of this section. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 3. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's name, "John Doe," is misspelled as "John Ode." Under paragraph (c)(2) of this section, supplying an incorrect surname for a payee is never considered an inconsequential error. Therefore, a penalty is imposed under paragraph (a) of this section.

(d) *Exception for a de minimis number of failures*—(1) *Requirements.* The penalty under paragraph (a) of this section is not imposed for a *de minimis* number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. (See paragraph (d)(4) of this section for special rules relating to returns that are not due on February 28 or March 15.)

(2) *Calculation of the de minimis exception.* The number of returns to which the *de minimis* exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the *de minimis* exception applies, the *de minimis* exception applies to those returns that will afford the filer the greatest reduction in penalty. The *de minimis* exception applies to failures to include correct information that exist after the application (if any) of the waiver for reasonable cause under section 6724(a) and § 301.6724–1. Returns to which the *de minimis* exception applies are treated as having been originally filed with correct information.

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1 of this section.

Example 1. Corporation T files timely 10,000 Forms 1099–INT (relating to payments of interest) for 1990 by February 28, 1991. The 10,000 returns are all the information returns that T is required to file during the 1991 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 1991. No penalty is imposed for 50 of the failures (*i.e.*, the greater of 10 or .005 x 10,000 = 50) even though the

total failures, 70, exceed the number to which the *de minimis* exception may apply. The $30 penalty under paragraph (b)(2) of this section is imposed, in lieu of $50, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of $600 ($30 x 20 = $600).

Example 2. Corporation U files timely 9,500 Forms 1099–INT for 1990 by February 28, 1991, the required filing date. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 1991. U also files 500 Forms 1099–INT for 1990 on August 30, 1991, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 1991 calendar year. The calculation of the *de minimis* exception is based on the 10,000 returns required to be filed during the 1991 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the *de minimis* exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099–INT that were corrected on August 1, 1991. However, the $50 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely, resulting in a total penalty of $25,000 ($50 x 500 = $25,000).

Example 3. Corporation V files timely 9,950 Forms 1099–INT for 1990 by February 28, 1991. However, V fails to file timely 50 of its Forms 1099–INT. The 10,000 returns are all the information returns that V is required to file during the 1991 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 1991. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 1991. Absent application of the *de minimis* exception, the penalty imposed for the failure to include correct information would be $1,500 ($30 x 50 = $1,500). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the *de minimis* exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the *de minimis* exception does not apply to the penalty for the failure to file timely. Hence, a penalty of $750 ($15 x 50 = $750) is imposed.

Example 4. Corporation W files timely 100 Forms 1099–DIV and files an additional 50 Forms 1099–DIV late, but within 30 days of February 28, 1991. These are all the information returns that W was required to file during the 1991 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The *de minimis* exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (*i.e.*, applying the exception to a return filed late with incorrect information would save W $15, by reducing the penalty on that return from $30 to $15, but applying the exception to a return filed timely would save W $30, by reducing the penalty on that return from $30 to $0). (See paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on February 28 or March 15.* The exception for a *de minimis* number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more). Nevertheless, the returns that are not due on February 28 or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the *de minimis* exception under paragraph (d)(2) of this section.

(e) *Lower limitations on the $250,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000*—(1) *In general.* If a person meets the gross receipts test (as defined in paragraph (e)(2) of this section) for any calendar year, the total amount of the penalty imposed on such person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during such calendar year shall not exceed $100,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed $25,000 for such calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed $50,000 for such calendar year.

(2) *Gross receipts test.* A person meets the gross receipts test for any calendar year if the average annual gross receipts for such person for the three most recent taxable years ending before such calendar year do not exceed $5,000,000. For purposes of determining the amount of gross receipts during the three most recent taxable years, the rules of section 448(c) (2) and (3) shall apply.

(f) *Higher penalty for intentional disregard of requirement to file timely correct information returns*—(1) *Application of section 6721(e).* If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (g) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (f)(4) of this section.

(2) *Meaning of "intentional disregard."* A failure is due to intentional disregard if it is a knowing or willful—

(i) Failure to file timely, or

(ii) Failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

(3) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure is due to intentional disregard include, but are not limited to—

(i) Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information;

(ii) Whether correction was promptly made upon discovery of the failure;

(iii) Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the Internal Revenue Service to file or to correct; and

(iv) Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each such failure determined under this paragraph (f)—

(i) Paragraphs (b), (d), and (e) of this section shall not apply;

(ii) The $250,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (f) shall not be taken into account in applying the $250,000 limitation (or any similar limitation under paragraph (b) or (e) of this section) to penalties not determined under this paragraph (f);

(iii) The penalty imposed under paragraph (a) of this section shall be $100 or, if greater, the statutory percentage; and

(iv) The term "statutory percentage" means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I (for amounts received after November 5, 1990), 6050J, 6050K, or 6050L, 10 percent of the aggregate dollar amount of the items required to be reported correctly,

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly, or

(C) In the case of a return required to be filed under section 6050I(a) with respect to amounts received after November 5, 1990, for any transaction (or related transactions), the greater of $25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed $100,000.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (f) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be reported, only the $800 amount is taken into account in computing the penalty.

(6) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. On December 1, 1990, Automobile dealer P receives $55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as "John Doe." However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the payor. Because P knew at the time of filing the Form 8300 that the payor's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (f)(2) of this section. Therefore, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is $55,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is $55,000 (*i.e.*, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

Example 2. On December 1, 1990, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F $20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the payor, F writes "confidential." Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is $20,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is $25,000 (*i.e.*, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

Example 3. Corporation M deliberately does not include $5,000 of dividends on a Form 1099–DIV (relating to payments of dividends) on which a total of $200,000 (including the $5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) is determined under paragraph (f)(4) of this section. Because the Form 1099–DIV is required to be filed under section 6042(a), under paragraph (f)(4)(ii)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (f)(5) of this section, $5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is $500 ($5,000 × .10 = $500).

Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of $1,000,000, when the correct amount was $1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show $80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of $120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as $80,000. Thus A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of $40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be $4,000 (*i.e.*, 10 percent of the difference between the $40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(g) *Definitions*—(1) *Information return.* For purposes of this section the term "information return" means any statement described in paragraph (g)(2) of this section, any return described in paragraph (g)(3) of this section, and any other items described in paragraph (g)(4) of this section.

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041 (a) or (b) (relating to certain information at source, generally reported on Form 1099–MISC, Form W–2G, Form W–2, and Form 1099–INT),

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099–DIV),

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099–PATR),

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099–INT),

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099–MISC),

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099–INT), or

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W–2).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099–MISC),

(ii) Section 6045(a) or (d) (relating to returns of brokers generally reported on Form 1099–B for broker transactions, Form 1099–S for gross proceeds from the sale or exchange of real estate, and Form 1099–MISC for certain substitute payments),

(iii) Section 6050H(a) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098),

(iv) Section 6050I(a) (relating to cash received in trade or business, generally reported on Form 8300),

(v) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099–A),

(vi) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308),

(vii) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282),

(viii) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W-2),

(ix) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027),

(x) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition)),

(xi) Section 4093(c)(4)(A) or (C) or, effective for information returns required to be filed after December 31, 1989, and before December 1, 1990, section 4093(e) (relating to information reporting with respect to tax on diesel and aviation fuels),

(xii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990)), or

(xiii) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition)).

(4) *Other items.* The term "information return" also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the Form 1042S.

(5) *Payee.* For purposes of section 6721 the term "payee" means any person who is required to receive a copy of the information set forth on an information return by the filer of the return as defined in section 6724(d)(1).

(6) *Filer.* For purposes of this section the term "filer" means a person that is required to file an information return as defined in paragraph (g)(1) of this section under the applicable information reporting section described in paragraph (g) (2) through (4) of this section.

§ 301.6722-1 Failure to furnish correct payee statements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each payee statement (as defined in section 6724(d)(2)) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A "composite substitute payee statement" is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed $100,000. See section 6722(c) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (a)(1) of § 301.6724-1 for a waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6722(a) and paragraph (a)(1) of this section apply are—

(i) A failure to furnish a payee statement on or before the prescribed date therefore to the person to whom such statement is required to be furnished ("failure to furnish timely"), and

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information ("failure to include correct information"). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (b), the term "inconsequential error or omission" means any failure that cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement to its intended use.

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential:

(i) A dollar amount,

(ii) The significant items in the address of a payee, which is the address provided by the payee to the filer,

(iii) The appropriate form for the information provided (*i.e.*, whether or not the form is an acceptable substitute for an official form of the Internal Revenue Service), and

(iv) The manner of furnishing a statement required under sections 6042(c), 6044(e), 6049(e), and 6050N(b). The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

Example 1. A payor furnishes a statement with respect to a Form 1099-MISC (relating to miscellaneous income). The payee statement is complete and correct, except the word "boulevard" is misspelled in the payee's address. The error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. Assume the same facts in *Example 1*, except that the only error on the payee statement is that the payee's street address, 4821 Grant Boulevard, is reported incorrectly as 8421 Grant Boulevard. A penalty is imposed under paragraph (a) of this section with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use.

(c) *Higher penalty for intentional disregard of requirement to furnish timely correct payee statements*—(1) *Application of section 6722(c).* If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under § 301.6721–1(f)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) *Amount of the penalty.* If one or more failures under paragraph (a) of this section are due to intentional disregard of the requirement to furnish timely payee statements or of the requirement to include correct information, then, with respect to each such failure determined under this paragraph (c)(2)—

(i) The $100,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the $100,000 limitation to penalties not determined under this paragraph (c)(2);

(ii) The penalty imposed under paragraph (a) of this section shall be $100 or, if greater, the statutory percentage; and

(iii) The term "statutory percentage" means—

(A) In the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6060L(c), 10 percent of the aggregate dollar amount of the items required to be reported correctly, or

(B) In the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate dollar amount of the items required to be reported correctly

(3) *Computation of the penalty; aggregate dollar amount of items required to be shown correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (c) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining such amount the same item shall be counted only once. For example, if a filer willfully fails to furnish a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be shown, only the $800 amount is taken into account in computing the penalty.

(d) *Definitions*—(1) *Payee.* See § 301.6721–1(g)(5) for the definition of "payee."

(2) *Payee statement.* The term "payee statement" means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K–1 (Form 1065) for section 6031(b) or (c), a copy of the Schedule K–1 (Form 1041) for section 6034A, and a copy of Schedule K–1 (Form 1120S) for section 6037(b)),

(ii) Section 6039(a) (relating to information required in connection with certain options),

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099–MISC, Form W–2, Form 1099–INT, and the winner's copies of Form W–2G),

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099–MISC),

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099–DIV),

(vi) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099–PATR),

(vii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099–B for broker transactions, the transferor copy of Form 1099–S for reporting proceeds from real estate transactions, and the recipient copy of Form 1099–MISC for certain substitute payments),

(viii) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099–INT),

(ix) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099–MISC),

(x) Section 6050H(d) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098),

(xi) Section 6050I(e) (relating to returns relating to cash received in trade or business, generally a copy of Form 8300),

(xii) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099–A),

(xiii) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308),

(xiv) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282),

(xv) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099–MISC),

(xvi) Section 6051 (relating to receipts for employees, generally the employee copy of Form W–2),

(xvii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W–2),

(xviii)(Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W–2), and

(xix) Section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels).

(3) *Other items.* The term "payee statement" also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the recipient copy of Form 1042S.

§ 301.6723–1 Failure to comply with other information reporting requirements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each failure to comply timely with a specified information reporting requirement (as defined in paragraph (a)(4) of this section) or for each failure to include correct specified information. Multiple penalties are imposed with respect to a document with failures to comply with more than one of the requirements set forth in paragraph (a)(4) of this section or multiple instances of failures to comply with any one of these requirements. Nonetheless, if a failure that occurs with respect to any requirement defined in paragraph (a)(4) of this section would be subject to a penalty under both paragraph (a)(2)(i) and paragraph (a)(2)(ii) of this section, no more than one penalty is imposed for such failure. The total amount imposed on any person for all failures during any calendar year with respect to all

specified information reporting requirements shall not exceed $100,000. See paragraph (a) of § 301.6724–1 for the waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which paragraph (a)(1) of this section apply are—

(i) A failure to comply timely with a specified information reporting requirement on or before the date prescribed therefor ("failure to comply timely"), and

(ii) A failure to include all the information required by a specified information reporting requirement or the inclusion of incorrect information ("failure to include correct information").

(3) *Exception for inconsequential errors or omissions.* An inconsequential error or omission is not considered a failure to comply with a specified information reporting requirement. For purposes of paragraph (a)(3) of this section, an error or omission is considered inconsequential if it does not frustrate the purpose or use for which the information is intended.

(4) *Specified information reporting requirement defined.* For purposes of section 6723 and this section, a "specified information reporting requirement" means—

(i) The requirement to provide the notice under section 6050K(c)(1) (relating to the requirement that a transferor notify the partnership of an exchange of a partnership interest);

(ii) Any requirement contained in the regulations under section 6109 that a person—

(A) Include his or her taxpayer identification number ("TIN") on any return, statement, or other document (other than an information return or payee statement),

(B) Include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person, or

(C) Furnish his or her TIN to another person;

(iii) Any requirement contained in the regulations under section 215 that a person—

(A) Furnish his or her TIN to another person, or

(B) Include on his or her return the TIN of another person; and

(iv) The requirement under section 6109(e) that a person include the TIN of any dependent on his or her return.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples which do not take into account the reasonable cause waiver under section 6724(a) and paragraph (a)(1) of § 301.6724–1.

Example 1. Individual A, who has two dependents ages 7 and 9, files his 1990 Form 1040 in 1991. The Form 1040 requires him to provide the TINs of his two dependents, which A fails to do. Because A fails to comply timely with two requirements to include on his return the TIN of another person, a $50 penalty under paragraph (a) of this section is imposed on A for each of the two failures, for a total penalty of $100.

Example 2. In 1991 Individual B opens with Bank X an account which pays reportable interest under section 6049. When B opens the account, Bank X requests that B provide his TIN on a Form W–9. B does not provide his TIN as required by § 301.6109–1(b). As a result B fails to comply timely with a specified information reporting requirement under paragraph (a) of this section for furnishing his TIN to another person. Therefore, a $50 penalty is imposed on B under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which X may be subject if X files a Form 1099–INT (relating to payments of interest) for calendar year 1991 without B's TIN. See section 3406(a)(1)(A) which requires X to impose backup withholding on reportable payments of interest to B's account.

Example 3. In 1991 Individual C is a nonresident alien with an account inside the U.S. with Bank Z. The account pays interest that would be reportable under section 6049 but for the fact that it is paid to a nonresident alien. Under section 6109 and § 301.6109–1(b), Bank Z is required to request the TIN from C. C claims that he is a nonresident alien and that his account is not subject to information reporting under section 6049. Because of this, C contends he is not required to provide any TIN information. As a result of this discussion, Bank Z then requests C to provide it with a Form W–8 in order for C to certify that he is a nonresident alien which C fails to do. C fails to comply timely with a specified information reporting requirement under paragraph (a) of this section to furnish his TIN to another person. Therefore, a penalty is imposed on C under paragraph (a) of this section for the failure. See section 6721(a) for the penalty that may be imposed on Z if Z files a Form 1099–INT for calendar year 1991 without C's TIN. See section 3406(a)(1)(A) under which Z is required to impose backup withholding on reportable payment of interest to C's account.

Example 4. In 1991 Partnership D opens with Bank Y an account that pays reportable interest under section 6049. When D opens the account, Y requests the partnership's employer identification number (EIN) on a Form W–9 as required under § 301.6109–1(b). The partnership provides its EIN on the Form W–9. Y files an information return with respect to D for the 1991 calendar year. Subsequently, the Internal Revenue Service later notifies Y that D's EIN is incorrect as defined under section 3406 and § 35a.3406–1(a)(6). D fails to comply timely with a specified reporting requirement under paragraph (a) of this section of furnishing its correct EIN to another person. Therefore, a penalty is imposed on D under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which Y may be subject if Y files a Form 1099–INT for calendar year 1991 without D's correct EIN. See section 3406(a)(1)(B), which requires Y to impose backup withholding on reportable payments of interest to B's account when the Internal Revenue Service or a broker has notified Y that the EIN is incorrect.

§ 301.6724–1 Reasonble cause.

(a) *Waiver of the penalty*—(1) *General rule.* The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Reasonable cause defined.* The penalty is waived for reasonable cause only if the filer establishes that either—

(i) There are significant mitigating factors with respect to the failure, as described in paragraph (b) of this section; or

(ii) The failure arose from events beyond the filer's control ("impediment"), as described in paragraph (c) of this section.

Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence.

(b) *Significant mitigating factors.* In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. The mitigating factors include, but are not limited to—

(1) The fact that prior to the failure the filer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or

(2) The fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to—

(i) Whether the filer has incurred any penalty under §§ 301.6721–1, 301.6722–1,

or 301.6723-1 in prior years for the failure (or under parallel provisions of prior law), and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

A filer may treat as a penalty not incurred any penalty under sections 6721 through 6723 that was self-assessed under section 6724(c)(3) and any penalty under section 6676(b) that was self-assessed under section 6676(d), prior to amendment or repeal by the Omnibus Budget Reconciliation Act of 1989. See paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent.

(c) *Events beyond the filer's control*—(1) *In general.* In order to establish reasonable cause under this paragraph (c)(1), the filer must satisfy paragraph (d) of this section and must show that the failure was due to events beyond the filer's control. Events which are generally considered beyond the filer's control include but are not limited to—

(i) The unavailability of the relevant business records (as described in paragraph (c)(2) of this section),

(ii) An undue economic hardship relating to filing on magnetic media (as described in paragraph (c)(3) of this section),

(iii) Certain actions of the Internal Revenue Service (as described in paragraph (c)(4) of this section),

(iv) Certain actions of an agent (as described in paragraph (c)(5) of this section), and

(v) Certain actions of the payee or any other person providing necessary information with respect to the return or payee statement (as described in paragraph (c)(6) of this section).

(2) *Unavailability of the relevant business records.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the unavailability of the relevant business records, the filer's business records must have been unavailable under such conditions, in such manner, and for such period as to prevent timely compliance (ordinarily at least a 2-week period prior to the due date (with regard to extensions) of the required return or the required date (with regard to extensions) for furnishing the payee statement), and the unavailability must have been caused by a supervening event. A "supervening event" includes, but is not limited to—

(i) A fire or other casualty that damages or impairs the filer's relevant business records or the filer's system for processing and filing such records;

(ii) A statutory or regulatory change that has a direct impact upon data processing and that is made so close to the time that the return or payee statement is required that, for all practical purposes, the change cannot be complied with; or

(iii) The unavoidable absence (*e.g.*, due to death or serious illness) of the person with the sole responsibility for filing a return or furnishing a payee statement.

(3) *Undue economic hardship relating to filing on magnetic media.* In order to establish reasonable cause under paragraph (c)(1) of this section due to an undue economic hardship for filing on magnetic media, the filer must show that it failed to file on magnetic media because the filer lacked the necessary hardware. For purposes of this paragraph (c)(3), the filer will not be considered to have acted in a responsible manner under paragraph (d) of this section unless—

(i) The filer attempted on a timely basis to contract out the magnetic media filing;

(ii) The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions) (90 days for information returns the due date for which (without regard to extensions) is after December 31, 1989, and by or before February 28, 1991 (March 15, 1991, for Forms 1042S));

(iii) The cost was supported by a minimum of two cost estimates from unrelated parties; and

(iv) The filer filed the returns on paper. Reasonable cause will not ordinarily be established under this paragraph (c)(3) if a filer received a reasonable cause waiver in any prior year under paragraph (c)(1) of this section due to an undue economic hardship relating to filing on magnetic media.

(4) *Actions of the Internal Revenue Service.* In order to establish reasonable cause under paragraph (c)(1) of this section due to certain actions of the Internal Revenue Service, a filer must show that the failure was due to the filer's reasonable reliance on erroneous written information from the Internal Revenue Service. Reasonable reliance means that the filer relied in good faith on the information. The filer shall not be considered to have relied in good faith if the Internal Revenue Service was not aware of all the facts when it provided the information to the filer. In order to substantiate reasonable cause under this paragraph (c)(4), the filer must provide a copy of the written information provided by the Internal Revenue Service and, if applicable, the filer's written request for the information.

(5) *Actions of agent—imputed reasonable cause.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of an agent, the filer must show the following:

(i) The filer exercised reasonable business judgment in contracting with the agent to file timely correct returns or furnish timely correct payee statements with respect to which the failure occurred. This includes contracting with the agent and providing the proper information sufficiently in advance of the due date of the return or statement to permit timely filing of correct returns or timely furnishing of correct payee statements; and

(ii) The agent satisfied the reasonable cause criteria set forth in paragraph (b) or one of the reasonable cause criteria set forth in paragraph (c) (2) through (6) of this section.

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of the payee or any other person, such as a broker as defined in section 6045(c), providing information with respect to the return or payee statement, the filer must show either—

(i) That the failure resulted from the failure of the payee, or any other person required to provide information necessary for the filer to comply with the information reporting requirements ("any other person"), to provide information to the filer, or

(ii) That the failure resulted from incorrect information provided by the payee (or any other person) upon which information the filer relied in good faith. To substantiate reasonable cause under this paragraph (c)(6), the filer must provide documentary evidence upon request of the Internal Revenue Service showing that the failure was attributable to the payee (or any other person). See paragraph (d)(2) of this section for special rules relating to the availability of a waiver where the filer's failure relates to a taxpayer identification number (TIN), and the failure is attributable to actions of the payee described in paragraph (c)(6) (i) or (ii) of this section.

(d) *Responsible manner*—(1) *In general.* Acting in a responsible manner means—

(i) That the filer exercised reasonable care, which is that standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations and in handling account information such as account numbers and balances, and

(ii) That the filer undertook significant steps to avoid or mitigate the failure, including, where applicable—

(A) Requesting appropriate extensions of time to file, when practicable, in order to avoid the failure,

(B) Attempting to prevent an impediment or a failure, if it was foreseeable,

(C) Acting to remove an impediment or the cause of a failure, once it occurred, and

(D) Rectifying the failure as promptly as possible once the impediment was removed or the failure was discovered. Ordinarily, a rectification is considered prompt if it is made within 30 days after the date the impediment is removed or the failure is discovered or on the earliest date thereafter on which a regular submission of corrections is made. Submissions will be considered regular only if made at intervals of 30 days or less. A failure may be rectified by filing or correcting the information return, furnishing or correcting the payee statement, or by providing or correcting the information to satisfy the specified information reporting requirement with respect to which the failure occurs. Paragraph (d)(ii)(D) of this section does not apply with respect to information the filer is prohibited from altering under specific information reporting rules. See § 1.6045–4(i)(5) of this chapter.

(2) *Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.* A filer seeking a waiver for reasonable cause pursuant to paragraph (c)(6) of this section with respect to a failure resulting from a missing or an incorrect TIN will be deemed to have acted in a responsible manner in compliance with this paragraph (d) only if the filer satisfies the requirements of paragraph (e) of this section (relating to missing TINs) or paragraph (f) of this section (relating to incorrect TINs), whichever is applicable.

(e) *Acting in a responsible manner—special rules for missing TINs*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN or an information return resulted from the failure of the payee to provide information to the filer (*i.e.*, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (required solicitations). For purposes of this section, a number is treated as a "missing TIN" if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral) as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. See paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. See paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term "account" includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)–3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations ("annual solicitations").

(ii) *First annual solicitation.* Except as provided in paragraph (e)(1)(vi) of this section, a filer must undertake an annual solicitation if a TIN is not received as a result of an initial solicitation (or if the filer was not required to make an initial solicitation under paragraph (e)(1)(i) of this section and the filer has not received a payee's TIN). The first annual solicitation must be made on or before December 31 of the year in which the account is opened (for accounts opened before December) or January 31 of the following year (for accounts opened in the preceding December) ("annual solicitation period").

(iii) *Second annual solicitation.* If the TIN is not received as a result of the first annual solicitation, the filer must undertake a second annual solicitation. The second annual solicitation must be made after the expiration of the annual solicitation period and on or before December 31 of the year immediately succeeding the calendar year in which the account is opened.

(iv) *Additional requirements.* After receiving a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(v) *Failures to which a solicitation relates.* The initial and first annual solicitations relate to failures on returns filed for the year in which an account is opened. The second annual solicitation relates to failures on returns filed for the year immediately following the year in which an account is opened and for succeeding calendar years.

(vi) *Exceptions and limitations.* (A) The solicitation requirements under this paragraph (e) do not apply to the extent an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721–1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (e) will be satisfied only if the filer complies with the manner and time period requirements of the specific information reporting provision and the provisions of this paragraph (e) to the extent applicable. Also, see section 3406(e) which provides rules on the manner and time period in which a TIN must be provided for certain accounts with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(B) An annual solicitation is not required to be made for a year under this paragraph (e) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721–1 is required to be filed for the account for the year.

(C) If a filer fails to make one (or more) of the required solicitations under paragraphs (e)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by—

(*1*) Making two consecutive annual solicitations in subsequent years ("make-up solicitations"), and

(2) Satisfying paragraph (e)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (e)(1)(vi)(B) of this section applies shall be disregarded. If a filer fails to make the initial solicitation under paragraph (e)(1)(i) of this section, the make-up solicitations described in this paragraph (e)(1)(vi)(C) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures with respect to years for which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make its initial solicitation) if the second make-up solicitation is made in the following year.

(D) A financial institution is not required to make an annual solicitation by mail on accounts with "stop-mail" or "hold-mail" instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(E) A filer is not required to make annual solicitations on accounts with respect to which the filer undertook two consecutive annual mailings by December 31, 1989, under Q/A–5 through Q/A–7B or under Q/A–56 of § 35a.9999–1 of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, as provided under section 6676(b) (prior to its amendment by the Omnibus Budget Reconciliation Act of 1989).

(F) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(G) Except as provided in paragraph (e)(1)(vi) (A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

(2) *Manner of making annual solicitations—by mail or telephone*—(i) *By mail.* A mail solicitation must include—

(A) A letter informing the payee that he or she must provide his or her TIN and that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(B) A Form W–9 or an acceptable substitute form, as defined in § 31.3406 (h)–3 (a), (b), or (c) of this chapter, on which the payee may provide the TIN, and

(C) A return envelope for the payee to provide the TIN which may be, but is not required to be, postage prepaid.

(ii) *By telephone.* An annual solicitation may be made by telephone if the solicitation procedure is reasonably designed and carried out in a manner that is conducive to obtaining the TIN. An annual solicitation is made pursuant to this paragraph (e)(2)(ii) for a failure if the filer—

(A) Completes a call to each person with a missing TIN and speaks to an adult member of the household, or to an officer of the business or the organization,

(B) Requests the TIN of the payee,

(C) Informs the payee that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(D) Maintains contemporaneous records showing that the solicitation was properly made, and

(E) Provides such contemporaneous records to the Internal Revenue Service upon request.

(f) *Acting in a responsible manner—special rules for incorrect TINS*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (*i.e.*, inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). See paragraph (e)(1) of this section for the definition of the term "solicitation." See paragraph (f)(5)(i) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term "account" includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)–3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. No additional solicitation is required after the filer receives the TIN unless the Internal Revenue Service or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraph (f)(1) (ii) and (iii) of this section.

(ii) *First annual solicitation.* Except as provided in paragraph (f)(5) of this section, a filer must undertake an annual solicitation only if the payor has been notified of an incorrect TIN and such account contains the incorrect TIN at the time of the notification. The first annual solicitation must be made as required by paragraph (f) (2) or (3) of this section, whichever applies. An account contains an incorrect TIN at the time of notification if the name and number combination on the account matches the name and number combination set forth on the notice from the Internal Revenue Service or a broker. A filer may be notified of an incorrect TIN by the Internal Revenue Service or by a broker pursuant to section 3406(a)(1)(B) and § 35a.3406–1 (c) and (f) of this chapter issued under the Interest and Dividend Tax Compliance Act of 1983, or by a penalty notice issued by the Internal Revenue Service pursuant to section 6721(n). Except as otherwise provided in this section, the annual solicitation required by this paragraph (f) must be made on or before December 31 of the year in which the filer is notified of the incorrect TIN or by January 31 of the following year if the filer is notified of an incorrect TIN in the preceding December.

(iii) *Second annual solicitation.* A filer must undertake a second annual solicitation as required by paragraph (f) (2) or (3) of this section, whichever applies, if the filer is notified in any year following the year of the notification described in paragraph (f)(1)(ii) of this section that the account of a payee

contains an incorrect TIN, as described in paragraph (f)(1)(ii) of this section.

(iv) *Additional requirements.* Upon receipt of a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(2) *Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.* A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) and the regulations thereunder (except filers to which § 35a.3406–1(a)(3)(x) 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 § 35a.3406–1 (c) or (f) of this chapter, whichever applies. Section 35a.3406–1 (c)(2)(i) and (f)(1)(ii) of this chapter requires the filer to notify a payee that the payee's account contains an incorrect TIN within 15 business days after the date of the notice from the Internal Revenue Service or a broker.

(3) *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 issued pursuant to section 6721 and that has received no effective notice pursuant to section 3406(a)(1)(B) during the same calendar year (or is a filer to which § 35a–3406–1(a)(3)(x) of this chapter applies) 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, or by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section, or by requesting the TIN in person.

(4) *Failures to which a solicitation relates.* The initial solicitation relates to failures on returns filed for the year an account is opened and for any succeeding year that precedes the year in which the filer receives a notification of an incorrect TIN. The first and second annual solicitations relate to failures on returns filed for the year in which a notification of an incorrect TIN is received. The second solicitation also relates to failures on returns filed for succeeding calendar years.

(5) *Exceptions and limitations.*—(i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721–1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721–1 is required to be filed for the account for such year.

(iii) If a filer fails to make one (or more) of the required solicitations under paragraph (f)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by:

(A) Making two consecutive annual solicitations in subsequent years ("make-up solicitations"), and

(B) Satisfying paragraph (f)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (f)(5)(ii) of this section applies are disregarded. If a filer fails to make the initial solicitation under paragraph (f)(1)(i) of this section, the make-up solicitations described in this paragraph (f)(5)(iii) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures in years in which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make the initial solicitation) if the second make-up solicitation is made in the following year.

(iv) A financial institution is not required to make an annual solicitation by mail on accounts with "stop-mail" or "hold-mail" instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(v) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(vi) In general, except as provided in paragraph (f)(5) (i) and (iii) of this section, no more than two annual solicitations are required under this paragraph (f) in order for a filer to establish reasonable cause. However, a filer who complies with this paragraph (f) during a calendar year after receiving a notice under section 6721 and who later during the same calendar year receives a notice pursuant to section 3406 may be required to undertake additional annual mailings in such calendar year pursuant to section 3406(a)(1)(B) in order to satisfy the annual solicitation requirement in paragraph (f)(2) of this section.

(g) *Due diligence safe harbor.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section for any return defined in paragraph (g) of § 301.6721–1 if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723 and under section 6676(b) and the Temporary Employment Tax Regulations related thereto issued under the Interest and Dividend Tax Compliance Act of 1983 (with respect to a failure to provide a correct TIN) (§ 35a.9999–1 of this chapter *et seq.*) (prior to amendment or repeal of these sections by the Omnibus Budget Reconciliation Act of 1989).

(h) *Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991*—(1) *In general.* With respect to information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, a filer will be deemed to have satisfied reasonable cause if, with respect to the failure, the filer would have satisfied reasonable cause under sections 6721, 6722, or 6723 (prior to their amendment by the Omnibus Budget Reconciliation Act of 1989) and the regulations thereunder.

(2) *Special rule on TINs.* With respect to information returns required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, which contain a missing or an incorrect TIN, a filer will be deemed to have satisfied reasonable cause if, at the time the account was opened, the filer—

(i) Exercised due diligence or fulfilled the requirements of Q/A–56 of § 35a.9999–1 of this chapter, as provided under section 6676(b) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989),

(ii) Requested the TIN according to the regulations under the section requiring the filing of the information return, but if none, under section 6109, or

(iii) Would have satisfied reasonable cause under section 6676(a) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989).

(i) [*Reserved.*]

(j) *Failures to which this section relates.* For purposes of this section, a failure relating to an information reporting requirement means—

(1) A failure described under § 301.6721–1(a)(2) relating to the failure to file timely correct information returns as defined in section 6724(d)(1),

(2) A failure described under § 301.6722–1(a)(2) relating to the failure to furnish timely a correct payee statement as defined in section 6724(d)(2), and

(3) A failure described under § 301.6723–1(a)(2) relating to the failure to timely comply with and to include correct specified information as defined in section 6724(d)(3).

(k) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (i) On August 1, 1991, Individual A, an independent contractor, establishes a relationship ("an account") with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his TIN. On October 1, 1991, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (e)(1)(ii) of this section. A does not provide a TIN to L during 1991. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 1991 calendar year with respect to A's account. A penalty is imposed on L pursuant to paragraph (a)(2) of § 301.6721–1 for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, L must satisfy both paragraphs (c) (6) and (d) of this section. The criteria for obtaining a waiver under these paragraphs are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section, and

(B) L demonstrates that the failure arose from events beyond L's control, as described in paragraph (c) (6) of this section.

(iii) Pursuant to paragraph (d) (2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c) (6) of this section because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a) (2) of this section. Therefore, the penalty imposed under paragraph (a) (2) of § 301.6721–1 for the failure on the 1991 information return is waived. See section 3406 (a) (1) (A) which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

Example 2. (i) On August 1, 1991, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 28, 1992, M includes the TIM that B provided on the Form 1099–INT for the 1991 calendar year. In October 1992 the Internal Revenue Service, pursuant to section 3406 (a) (1) (B), notifies M that the 1991 return filed for B contains an incorrect TIN. In April 1993 a penalty is imposed on M pursuant to paragraph (a) (2) of § 301.6721–1 for M's failure to file a correct information return for the 1991 calendar year, *i.e.*, the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c) (6) and (d) of this section. Pursuant to paragraph (d) (2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f) (4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 1991 in the time and manner prescribed in paragraph (f) (1) (i) of this section and reflected the TIM received from B on the 1991 return as required by paragraph (f) (1) (iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c) (6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a) (2) of this section. Therefore, the penalty imposed under paragraph (a) (2) of § 301.6721–1 for the failure on the 1991 information return is waived. See section 3406 (a) (1) (B) which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

Example 3. (i) *Table.*

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return.	B-notice w/ respect to 1991 return.	1992 return filed.

4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 2.* Under § 35a.3406–1(c)(1) of this paragraph and paragraph (f)(2) of this section, within 15 days of the October 1992 notification of the incorrect TIN from the Internal Revenue Service, M solicits the correct TIN from B. B fails to respond. M timely files the return for 1992 with respect to the account setting forth B's incorrect TIN. In October 1993 the Internal Revenue Service notifies M pursuant to section 3406(a)(1)(B) that the 1992 return contains an incorrect TIN. In April 1994, a penalty is imposed on M pursuant to paragraph (a)(1)(2) of § 301.6721–1T for M's failure to include B's correct TIN on the return for 1992. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

(iii) M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the Internal Revenue Service notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial solicitation for the TIN in 1991 and, after being notified of the incorrect TIN in October 1992, the first annual solicitation within the time and manner prescribed by section 35a.3406–1(c)(1) of this chapter and paragraph (f) (1)(ii) and (2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721–1T for the failure on the 1992 return is waived due to reasonable cause.

Example 4. (i) *Table.*

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.

4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 3.* M timely solicits B's TIN in October 1993, which B fails to provide. M files the return for 1993 with the incorrect TIN. In April 1995 the Internal Revenue Service informs M that the 1993 return contains an incorrect TIN. M does not solicit a TIN from B in 1994 and files a return for 1994 with B's incorrect TIN. M seeks a waiver of the penalty under paragraph (a)(2) of § 301.6721–1 for reasonable cause. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 1994. See paragraph (f)(5)(iv) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

Example 5. In 1992, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H and to section 6721. As part of the transaction, C gives N a promissory note providing for repayment of principal and the payment of interest. At the time C incurs the obligation N requests C's TIN, as required under § 1.6050H–2(f) of this chapter. C fails to provide the TIN as required by § 1.6050H–2(f) of this chapter. N sends solicitations by mail in 1992 and 1993 for the missing TIN, which C fails to provide. However, for 1994 M fails to send the solicitation required by § 1.6050H–2(f) of this chapter. N files returns for the 1992, 1993, and 1994 calendar years pursuant to section 6050H without C's TIN. Although N made the initial and the first annual solicitations in 1992 and the second annual solicitation in 1993, N did not solicit the TIN in 1994 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under paragraph (a) of § 301.6721–1T for the 1994 information return is not wavied.

Example (6). (i) *Table.*

10/91	2/92	10/92	2/93
Account opened. (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.

4/93	10/93	02/94	4/94
6721 penalty notice.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) On October 1, 1991, individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 1991 calendar year. In October 1992 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 1991 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 1992, R telephones E pursuant to paragraphs (f)(3) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 1992 calendar year, *i.e.*, in February 1993.

(iii) In April 1993, the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721–1 that the information return filed for the 1991 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iv) To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (*i.e.*, 1991) and for subsequent years until the calendar year in which the filer receivers a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 1991 calendar year information return is waived due to reasonable cause.

Example (7). (i) The facts are the same as in *Example 6.* In April 1994 the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721–1 that the information return filed for the 1992 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(2) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under § 35a.3406–(c)(1) of this chapter. Section 35a.3406–1 (c)(1) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 1992 information return, and the penalty will not be waived due to reasonable cause.

(l) [*Reserved.*]

(m) *Procedure for seeking a waiver.* In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the district director or the director of the Internal Revenue Service Center where the returns, as defined in section 6724(d), are required to be filed. The statement must—

(1) State the specific provision under which the waiver is being requested, *i.e.*, paragraph (b) or under paragraph (c) (2) through (6),

(2) Set forth all the facts alleged as the basis for reasonable cause,

(3) Contain the signature of the person required to file the return, and

(4) Contain a declaration that it is made under penalties of perjury. See § 1.6061–1 of the Income Tax Regulations for the rules on the signing of returns.

(n) *Manner of payment.* The penalty due under sections 6721 through 6723 shall be paid upon notice and demand by Internal Revenue Service, and in the same manner as a tax liability is paid.

Dated: December 16, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon

Assistant Secretary of the Treasury.

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