

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

**PART 524—OPHTHALMIC AND
TOPICAL DOSAGE FORM NEW
ANIMAL DRUGS**

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

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

■ 2. Section 524.1044g is amended by revising paragraphs (b) and (c) to read as follows:

**§ 524.1044g Gentamicin sulfate,
betamethasone valerate, clotrimazole
ointment.**

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (c) of this section.

(1) No. 000061 for use of 7.5- or 15-gram (g) tubes, 12.5-, 30-, or 215-g bottles.

(2) No. 051259 for use of 7.5- or 15-g tubes, 10-, or 25-g bottles.

(3) No. 059130 for use of 10- or 215-g bottles.

(c) *Conditions of use in dogs—(1) Amount.* Instill ointment twice daily into the ear canal. Therapy should continue for 7 consecutive days.

(i) From 7.5- or 15-g tubes, 10-, 12.5-, 25-, or 30-g bottles: 4 drops for dogs weighing less than 30 pounds (lb) or 8 drops for dogs weighing 30 lb or more.

(ii) From 215-g bottles: 2 drops for dogs weighing less than 30 lb or 4 drops for dogs weighing 30 lb or more.

(2) *Indications for use.* For the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 3, 2003.

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Associate Director, Center for Veterinary Medicine.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9081]

RIN 1545-BC33

**Prohibited Allocations of Securities in
an S Corporation**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning requirements for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations. The temporary regulations provide guidance on identifying disqualified persons and determining whether a plan year is a nonallocation year under Section 409(p) and on the definition of synthetic equity under section 409(p)(5). These temporary regulations would generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective July 21, 2003.

Applicability Date: These temporary regulations are applicable with respect to plan years ending after October 20, 2003.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4975(e)(7) provides that an ESOP is a defined contribution plan that is designed to invest primarily in qualifying employer securities and that is either a stock bonus plan which is qualified, or a stock bonus plan and money purchase pension plan both of which are qualified, under section 401(a). Section 4975(e)(7) authorizes the Secretary to issue regulations imposing additional requirements for ESOPs (see § 54.4975-11 of the Excise Tax Regulations). A plan is not treated as an ESOP under the Code unless it meets the following requirements, to the extent applicable: Section 409(h) (relating to participants' right to receive employer securities; put options); section 409(o) (relating to participants'

distribution rights and payment requirements); section 409(n) (relating to securities received in transactions to which section 1042 applies); section 409(p) (relating to prohibited allocations of securities in an S corporation); section 664(g) (relating to qualified gratuitous transfers of qualified employer securities); and section 409(e) (relating to participants' voting rights if the employer has a registration-type class of securities). As authorized by section 4975(e)(7), additional requirements are imposed under § 54.4975-11.

Section 1361(b)(1)(D) provides that a Subchapter S corporation (S corporation) may not have more than one class of stock. Section 1361(b)(1)(B) provides that an S corporation may not have as a shareholder a person that is not an estate, a trust described in section 1361(c)(2), an organization described in section 1361(c)(6), or an individual. In 1996, section 1361(c)(6) was amended to permit a qualified plan under section 401(a) to be a shareholder in an S corporation. Section 1316(a) of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1755) (1996).

Section 511(a)(1) imposes a tax on the unrelated business taxable income (as defined in section 512(a)) of organizations described in section 511(a)(2), which include plans that qualify under section 401(a). Section 512(e)(1) provides that if an organization described in section 1361(c)(6) holds stock in an S corporation, the interest is treated as an interest in an unrelated trade or business and, notwithstanding the organization's general tax-exempt status, all items of income, loss, or deduction taken into account under section 1366(a) and any gain or loss on the disposition of the stock in the S corporation are taken into account in computing the unrelated business taxable income of the organization. In 1997, section 512(e) was amended to provide that section 512(e) does not apply to employer securities (within the meaning of section 409(l)) held by an ESOP described in section 4975(e)(7). Section 1523 of the Taxpayer Relief Act of 1997 (TRA '97) (111 Stat. 788) (1997). Accordingly, S corporation income allocable to stock held by an ESOP is not subject to regular income or unrelated business income tax, but S corporation income allocable to stock held by any other qualified plan or tax-exempt entity under section 501(c)(3) is subject to the unrelated business income tax under section 511.

Congress became aware that the tax exemption for earnings on S corporation stock held by an ESOP may lead to