the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 21. Section 301.6656–1 is amended by:

1. Revising paragraph (b).
2. Revising paragraph (c).

The revisions read as follows:

§ 301.6656–1 Abatement of penalty.

* * * * *

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) *Effective/applicability date.* This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§ 301.7502–2 [Removed]

Par. 22. Section 301.7502–2 is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–20737 Filed 8–19–10; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–138637–07]

RIN 1545–BH01

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document contains proposed modifications revising the regulations governing practice before the Internal Revenue Service (IRS). The proposed regulations affect individuals who practice before the IRS and providers of continuing education programs. The proposed regulations modify the general standards of practice before the IRS and the standards with respect to tax returns. This document also provides notice of a public hearing on these proposed regulations and withdraws the notice of proposed rulemaking published on September 26, 2007.

DATES: Written or electronic comments must be received by October 7, 2010. Outlines of topics to be discussed at the public hearing scheduled for Friday, October 8, 2010 at 10 am must be received by Monday, September 27, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138637–07), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–138637–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–138637–07). The public hearing will be held in IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Matthew D. Lucey or Matthew S. Cooper at (202) 622–4940; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Regina Johnson of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these proposed regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1726. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 22, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proper collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§ 10.6 and 10.9. The total annual burden of this collection of information is an increase from the burden in the current regulations.

Section 10.6 requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. Section 10.9 also requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Continuing education providers also obtain approval of each program as a qualified continuing education program. The collection of this material helps to ensure that individuals authorized to prepare tax returns are informed of the latest developments in Federal tax practice.

Currently, there are approximately 46,000 enrolled agents and 300 enrolled retirement plan agents who are required to maintain records and educational materials regarding the completion of the required continuing education credits. There are approximately 350 continuing education providers of qualifying continuing education programs required to maintain records and educational material concerning these programs and the individuals who attend them. It is expected that there will be an additional 600,000 registered tax return preparers and 1,900 continuing education providers who will be affected by the collection of information requirements in these proposed regulations. The IRS and the Treasury Department estimate that the total annual costs resulting from these requirements will be $9,880,000 for all affected practitioners and $38,632,500 for all affected continuing education providers.

This collection of information is mandatory. The likely respondents and record keepers are individuals and businesses.

Estimated total annual recordkeeping and reporting burden is 1,710,000 hours.

Estimated annual burden per practitioner varies from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 54 minutes.

Estimated annual burden per continuing education provider varies from five hours to 5,000 hours, depending on individual circumstances, with an estimated average of 500 hours.

Estimated number of affected practitioners is 650,000.

Estimated number of affected continuing education providers is 2,250.

Estimated annual frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury (the Secretary) to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend, or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals and the individuals' firms or other entities that employ them. Additionally, the Secretary may seek an injunction against these individuals under section 7408 of the Internal Revenue Code (Code).

The Secretary has published regulations governing the practice of representatives before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). These regulations authorize the Director of the Office of Professional Responsibility (OPR) to act upon applications for enrollment to practice before the IRS, to make inquiries with respect to matters under OPR's jurisdiction, to institute proceedings to impose a monetary penalty or to censure, suspend, or disbar a practitioner from practice before the IRS, to institute proceedings to disqualify appraisers, and to perform other duties necessary to carry out these functions.

Circular 230 has been amended periodically. The regulations were amended most recently on September 26, 2007 (72 FR 54540), to modify various provisions relating to the general standards of practice. For example, the 2007 regulations established an enrolled retirement plan agent designation, modified the conflict of interest rules, limited the use of contingent fees by practitioners, and required public disclosure of OPR disciplinary decisions after the decisions become final.

Those final regulations, however, did not finalize the standards with respect to tax returns under § 10.34(a) and the definitions under § 10.34(e) because of the amendments to section 6694(a) of the Code made by the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190. Rather, the IRS and the Treasury Department reserved § 10.34(a) and (e) in those final regulations and also simultaneously issued a notice of proposed rulemaking (REG–138637–07) in the **Federal Register** (72 FR 54621) proposing to conform the professional standards under § 10.34 of Circular 230 with the civil penalty standards under section 6694(a) as amended by the 2007 Act.

On October 3, 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C. of Public Law 110–343, 122 Stat. 3765, again amended the standard of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694(a). The IRS and the Treasury Department published final regulations (TD 9436) in the **Federal Register** (73 FR 78430) implementing amendments to the tax return preparer penalties on December 22, 2008. This document proposes modifications to the standards with respect to tax returns and also withdraws the proposed amendments to § 10.34 published in the **Federal Register** on September 26, 2007.

The proposed regulations also provide new rules governing the oversight of tax return preparers. Currently, an individual tax return preparer generally is not subject to the provisions in Circular 230 unless the tax return preparer is an attorney, certified public accountant, enrolled agent, or other type of practitioner identified in Circular 230. Under current law, any individual may prepare tax returns and claims for refund without meeting any qualifications or competency standards. A tax return preparer also may exercise the privilege of limited practice before the IRS pursuant to the rules in § 10.7(c)(1)(viii) of Circular 230 and Revenue Procedure 81–38 (1981–2 CB 592). *See* § 601.601(d)(2)(ii)(*b*).

In June 2009, the IRS launched a review of tax return preparers with the intent to propose a comprehensive set of recommendations to ensure uniform and high ethical standards of conduct for all tax return preparers and to increase taxpayer compliance. As part of this effort, the IRS received input from a large and diverse community through numerous channels, including public forums, solicitation of written comments, and meetings with advisory groups.

The IRS made findings and recommendations in Publication 4832, "Return Preparer Review" (the Report), which was published on January 4, 2010. The Report recommends increased oversight of the tax return preparer industry through the issuance of regulations.

This document proposes amendments to Circular 230 based upon certain of the recommendations in the Report. Specifically, the proposed regulations establish "registered tax return preparers," as a new class of practitioners. Sections 10.3 through 10.6 of the proposed regulations describe the process for becoming a registered tax return preparer and the limitations on a registered tax return preparer's practice before the IRS. In general, practice by registered tax return preparers is limited to preparing tax returns, claims for refund, and other documents for submission to the IRS. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund, and sign a tax return or claim for refund, commensurate with the registered tax return preparer's level of competence as demonstrated by written examination. The proposed regulations also revise § 10.30 regarding solicitation, § 10.36 regarding procedures to ensure compliance, and § 10.51 regarding incompetence and disreputable conduct.

Proposed regulations under section 6109 of the Code (REG–134235–08) published in the **Federal Register** (75 FR 14539) on March 26, 2010, also implement certain recommendations in the Report. The proposed regulations under section 6109 provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number (PTIN) or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The proposed regulations under section 6109 provide that the IRS is authorized to require through other guidance (as well as in forms and

instructions) that tax return preparers apply for a PTIN or other prescribed identifying number, the regular renewal of PTINs or other prescribed identifying number, and the payment of user fees.

Explanation of Provisions

The scope of these proposed regulations is limited to practice before the IRS. The Director of OPR has general oversight responsibilities for the rules in these proposed regulations, but specific duties related to the administration of certain procedural aspects of these rules (for example, test administration, issuance of enrollment or registration certificates or cards) may be delegated to employees of other IRS functions or third party vendors if the Commissioner determines that the performance of these duties by these organizations will aid tax administration. These proposed regulations do not change the existing authority of attorneys, certified public accountants, and enrolled agents to practice before the IRS under Circular 230. These proposed regulations also do not alter or supplant ethical standards that might otherwise be applicable to practitioners.

Definitions—Practice Before the Internal Revenue Service and Tax Return Preparer

"Practice before the Internal Revenue Service" under § 10.2(a)(4) comprehends all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS. Under the current definition of practice, preparing a tax return or claim for refund (even if the tax return or claim for refund is filed by another person) is practice before the IRS. Similarly, an individual who files a tax return or claim for refund prepared by someone else also is engaged in practice before the IRS. The IRS and the Treasury Department are aware that some tax professionals have suggested that they are not engaged in practice before the IRS unless they both prepare and file a tax return, claim for refund, or other document. Accordingly, § 10.2(a)(4) of the proposed regulations is revised to eliminate this misunderstanding, and specifically clarifies that either preparing a document or filing a document may constitute practice before the IRS. Section 10.2(a)(8) of the proposed regulations also clarifies that the definition of "tax return preparer" in Circular 230 is the same as the meaning in section 7701(a)(36) of the Code and 26 CFR 301.7701–15.

Who May Practice

Section 10.3(f) of the proposed regulations establishes a new "registered tax return preparer" designation. A registered tax return preparer is any individual so designated under § 10.4(c) who is not currently under suspension or disbarment from practice before the IRS. An individual who is a registered tax return preparer pursuant to this part is a practitioner authorized to practice before the IRS, subject to the limitations identified in these proposed regulations.

These proposed regulations generally limit practice as a registered tax return preparer to preparing tax returns, claims for refund, and other documents for submission to the IRS. Pursuant to § 10.3(f)(2) of these proposed regulations, a registered tax return preparer may only prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund that is commensurate with the level of competence that the registered tax return preparer has demonstrated by written examination. Registered tax return preparers also are permitted to sign tax returns, claims for refund, and other documents as the preparer provided the document is commensurate with the level of competence demonstrated, and may represent taxpayers before revenue agents, customer service representatives or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Consistent with the limited practice rights currently available to unenrolled return preparers under § 10.7(c)(1)(viii), registered tax return preparers are not permitted to represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the IRS or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the IRS.

The conduct of the registered tax return preparer in connection with the preparation of the return, claim for refund, or other document, as well as any representation of the client during an examination, will be subject to the standards of conduct in Circular 230. Inquiries into possible misconduct and disciplinary proceedings relating to registered tax return preparer misconduct will be conducted under the provisions in Circular 230.

Eligibility To Become a Registered Tax Return Preparer

An individual must pass a minimum competency examination and possess a current or otherwise valid PTIN or other prescribed identifying number to become a registered tax return preparer. The examination will be administered by, or administered under the oversight of, the IRS, similar to the special enrollment examinations for enrolled agents and enrolled retirement plan agents. After completing competency testing, tax return preparers will be subject to suitability checks to determine whether the tax return preparer has engaged in disreputable conduct which, at the time the application is filed with OPR, could result in suspension or disbarment under Circular 230. An individual who has engaged in disreputable conduct is not eligible to become a registered tax return preparer.

Consistent with the recommendations made in the Report, these proposed regulations do not exempt a tax return preparer from the competency testing requirements based upon the individual's past tax return preparation experience. Initially, the IRS will offer two competency examinations. One examination will cover wage and nonbusiness income Form 1040 series returns, while another examination will cover wage and small business income Form 1040 series returns. An individual must successfully complete an examination prior to becoming a registered tax return preparer and obtaining a PTIN. The IRS will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund, including the schedules and forms, that a registered tax return preparer may prepare based upon the written examination successfully completed under § 10.4(c). The registered tax return preparer who passes the wage and small business income Form 1040 series examination, however, will be able to prepare any Form 1040 series returns. The IRS and the Treasury Department request comments on whether a tax return preparer who solely prepares tax returns other than Form 1040 series returns (for example, Form 941, Employer's QUARTERLY Federal Tax Return, or Form 706, U.S. Estate Tax Return) should be permitted to prepare these other tax returns without successfully completing any examination.

It is currently anticipated that the examination to become a registered tax

return preparer will not be available until after the effective date of these regulations. The IRS and the Treasury Department will provide published guidance establishing transition rules that explain the steps individuals must take to prepare all or substantially all of a tax return or claim for refund while awaiting full implementation of the examination process.

Application and Renewal Procedures

Section 10.5 of the regulations sets forth the applicable procedures relating to the application to become a registered tax return preparer, which generally are consistent with the procedures currently utilized for enrolled agents and enrolled retirement plan agents. The proposed regulations provide that applicants must utilize forms and comply with the procedures established and published by the IRS. The proposed regulations permit the IRS to change the procedures to apply to become a registered tax return preparer.

As a condition for consideration of an application, the IRS may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns (such as employment tax returns that might have been required to be filed by the applicant) and whether the applicant has failed to pay, or make proper arrangement with the IRS for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part, including whether the applicant has engaged in disreputable conduct.

The IRS may deny an application only if the results of the tax compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under Circular 230 at the time the application is filed or the applicant does not pass the required competency examination. If the applicant does not pass the competency examination or the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate, and will be provided information regarding the denial of the application and the rules on appealing the denial. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

Once an application to become a registered tax return preparer is approved, the IRS will issue a registration card or certificate to each individual and each card or certificate will be valid for the period stated on the card or certificate. The card or certificate will be in addition to any certificate that may be issued to an attorney, certified public accountant, enrolled agent, or registered tax return preparer who obtains a PTIN. Registered tax return preparers must have both a current and valid registration card or certificate and a current and valid PTIN certificate to practice before the IRS.

Section 10.6 of the proposed regulations sets forth the procedures for renewal of application to practice before the IRS as a registered tax return preparer. A registered tax return preparer must apply for renewal as prescribed in forms, instructions, or other appropriate guidance. A condition of renewal, as recommended in the Report, is the completion of continuing education requirements by registered tax return preparers. A registered tax return preparer must complete 15 hours of continuing education during each registration year, with a minimum of three hours of Federal tax law updates, two hours of tax-related ethics and 10 hours of Federal tax law topics. The registration year is defined as each 12-month period that the registered tax return preparer is authorized to practice before the IRS. Registered tax return preparers will be required to maintain records with respect to the completion of the continuing education credit hours and to self-certify the completion of the continuing education credit at the time of renewal. The proposed regulations require that a qualifying continuing education course enhance professional knowledge in Federal taxation or Federal tax related matters and be consistent with the Code and effective tax administration.

Section 10.6(f)(2)(iii) and (f)(2)(iv) of the current regulations authorizes continuing education credit to be awarded for hours relating to work as an instructor, discussion leader, or speaker at an education program, as well as hours for authoring articles, books, or other publications on Federal taxation or Federal tax-related matters. The maximum credit for instruction and preparation currently may not exceed 50 percent of the continuing education requirement for an enrollment cycle. After further consideration, the IRS and the Treasury Department believe that the maximum credit for instruction and preparation should be reduced to encourage a more diverse educational program. These proposed regulations, therefore, reduce the maximum credit for instruction and preparation to four hours annually of the continuing education requirement. These proposed regulations also remove the ability to receive hours for authoring articles, books, or other publications.

Section 10.5(b) and § 10.6(d)(6) of the proposed regulations are revised to reflect that the IRS will charge a reasonable nonrefundable fee for each initial application and application for renewal as a registered tax return preparer filed with OPR. Separate regulation projects under 26 CFR part 300 will provide further details on the amounts of those user fees in the near future.

Continuing Education Providers

The rules regarding continuing education providers that currently are in § 10.6 of Circular 230 are moved to new § 10.9. Under § 10.9 of the proposed regulations, providers of continuing education courses are required to maintain records and educational material concerning these programs and the individuals who attend them, as well as obtain approval of each program to be qualified as a qualified continuing education program. Section 10.9(a)(6) also states that the IRS may charge a reasonable nonrefundable fee for each application for qualification as a qualified continuing education program. A separate regulation project under 26 CFR part 300 will provide further details on the amounts of the user fee in the near future.

Limited Practice Before the IRS, Return Preparation, and Application to Other Individuals

Section 10.7(c)(1)(viii) currently authorizes an individual, who is not otherwise a practitioner, to represent a taxpayer during an examination if that individual prepared the return for the taxable period under examination. The proposed regulations remove this limited practice authorization from § 10.7(c) because of the addition to § 10.3(f) regarding registered tax return preparers. Additionally, these proposed regulations remove current § 10.8 regarding customhouse brokers from Circular 230 and move the language in current § 10.7(e) to new § 10.8(a). Section 10.8(a) of the proposed regulations provides that any individual, whether or not the individual is a practitioner, may assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund). This revision is consistent with the inclusion of

registered tax return preparers as practitioners authorized to practice before the IRS and the practice rights available to these practitioners.

These proposed regulations also establish a new § 10.8(b) regarding other individuals. Any individual who prepares for compensation all or a substantial portion of a document pertaining to a taxpayer's tax liability for submission to the IRS is subject to the duties and restrictions relating to practice before the IRS and may be sanctioned, after notice and opportunity for a conference, for any conduct that would justify a sanction under § 10.50. An individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance. For example, an individual who only furnishes typing, reproducing, or other mechanical assistance with respect to a document is not subject to the duties and restrictions relating to practice before the IRS. Only an attorney, certified public accountant, enrolled agent, or registered tax return preparer may prepare for compensation all or substantially all of a tax return or claim for refund, or sign as a preparer tax returns and claims for refund.

An individual who is not an attorney, certified public accountant, enrolled agent, or registered tax return preparer who nevertheless prepares for compensation all or a substantial portion of a document (including tax returns and claims for refund) for submission to the IRS is engaged in practice before the IRS, and subject to the rules and standards of Circular 230.

Solicitation

Section 10.30(a)(1) of these proposed regulations provides that a practitioner may not, with respect to any IRS matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, coercive, misleading, or deceptive statement or claim. In describing their professional designation, registered tax return preparers may not utilize the term "certified" or imply an employer/employee relationship with the IRS. An example of an acceptable description for registered tax return preparers under § 10.4(c), in describing their professional designation, is "designated as a registered tax return preparer with the Internal Revenue Service."

Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

After careful consideration, the IRS and the Treasury Department continue to conclude that the professional standards in § 10.34(a) generally should be consistent with the civil penalty standards in section 6694 for tax return preparers. As discussed in this preamble, the limited differences between the proposed standards in § 10.34 and section 6694 arise from the different purposes served by those provisions and the different manner in which the two standards will be administered.

The standards with respect to tax returns in § 10.34(a) are being reproposed to provide broader guidelines that are more appropriate for professional ethics standards. Under § 10.34(a)(1)(i) of these proposed regulations, a practitioner may not willfully, recklessly, or through gross incompetence, sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that: (A) Lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

Under § 10.34(a)(1)(ii) of these proposed regulations, a practitioner may not willfully, recklessly, or through gross incompetence, advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that: (A) Lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

These proposed ethical guidelines under § 10.34 closely mirror the civil penalty standards in section 6694 with only a few minor differences. First, these proposed regulations specifically provide that a position on a return or claim for refund must always meet the minimum threshold standard of reasonable basis. Because Circular 230 establishes minimum standards for practitioners, these proposed regulations provide that a practitioner acts unethically when the practitioner advises a taxpayer to take a return position that lacks a reasonable basis. The proposed regulations do not provide an exception to § 10.34(a) merely because there is a final determination that no understatement of liability for tax exists. This differs from section 6694(d), which provides that the IRS must abate (or refund) a preparer penalty any time there is a final administrative determination or a final judicial decision that there was no understatement of liability by the taxpayer. A practitioner, therefore, may still be subject to discipline under § 10.34(a) for a position on a tax return or claim for refund even if other positions on the same tax return or claim for refund eliminate the understatement of liability.

Second, these proposed regulations provide that a practitioner is subject to discipline under § 10.34(a) only after willful, reckless, or grossly incompetent conduct. Under section 6694, a single, unintentional error that is not willful, reckless, or grossly incompetent may result in a section 6694(a) penalty. Similarly, a return preparer may claim a reasonable cause defense to the imposition of penalties under section 6694, while Circular 230 does not provide such a defense but rather relies on the requirement that a practitioner must have acted willfully, recklessly, or through gross incompetence to ensure that sanctions are not imposed on a practitioner who acts reasonably and in good faith. If the IRS imposes a penalty against a practitioner under section 6694 and also refers the practitioner for possible discipline under Circular 230, OPR will make an independent determination as to whether the practitioner engaged in willful, reckless, or grossly incompetent conduct subject to discipline under § 10.34(a) before any disciplinary proceedings are instituted or any sanctions are imposed. Thus, a practitioner liable for a penalty under section 6694 is not automatically subject to discipline under § 10.34(a).

Third, multiple practitioners from the same firm may be disciplined if their conduct in connection with the same act(s) does not comply with the standard of conduct required under § 10.34. Under the provisions in the regulations under section 6694, only one person within a firm is subject to the penalty under section 6694. The provisions of section 6694 prevent unwarranted duplication of civil penalties, but in the Circular 230 context, it may be critical that each practitioner engaged in misconduct be subject to appropriate sanctions.

Finally, § 10.34(a)(2) of these proposed regulations expressly provides that a pattern of conduct is a factor that will be taken into account in

determining whether a practitioner acted willfully, recklessly, or through gross incompetence for purposes of § 10.34. This differs from section 6694, which imposes a penalty based upon a single act in violation of the applicable provisions.

With these revisions, the definitions previously proposed under § 10.34(e) are withdrawn because the well-established definitions under the section 6662 and section 6694 penalty regulations and other published guidance will control for purposes of § 10.34.

Procedures To Ensure Compliance

Section 10.36 currently provides procedures to ensure that tax practitioners with responsibility for overseeing a firm's practice before the IRS take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with § 10.35 regarding covered opinions. The procedures to ensure compliance have produced great successes in encouraging firms to self-regulate, while at the same time doing so in a flexible way that is not a rigid one-size-fits-all regulatory burden. Firm responsibility is a critical factor in ensuring high quality advice and representation for taxpayers. Accordingly, the IRS and the Treasury Department conclude that the procedures to ensure compliance should be expanded to include practice involving tax return preparation activities. Section 10.36 of the proposed regulations provides that firm management with principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds and other documents filed with the IRS must take reasonable steps to ensure that the firm has adequate procedures in effect for purposes of complying with Circular 230.

Incompetence and Disreputable Conduct

Section 10.51 of Circular 230 defines disreputable conduct for which a practitioner may be sanctioned. Section 6011(e)(3) of the Code, enacted by section 17 of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92 (123 Stat. 2984, 2996) (Nov. 6, 2009), requires certain specified tax return preparers to file individual income tax returns electronically. Because the IRS and the Treasury Department believe that the failure to comply with this requirement is disreputable conduct, these proposed regulations are amended to add a new paragraph in § 10.51 to address practitioners who fail to comply with this requirement. Under § 10.51(a)(16) of the proposed regulations, disreputable conduct includes willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws (unless the failure is due to reasonable cause and not due to willful neglect).

Under § 10.51(a)(17) of the proposed regulations, disreputable conduct also includes willfully preparing all or substantially all of, or signing as a compensated tax return preparer, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid PTIN or other prescribed identifying number. Section 10.51(a)(18) states that it is disreputable conduct for a practitioner to willfully represent a taxpayer before an officer or employee of the IRS unless the practitioner is authorized to do so pursuant to Circular 230. These changes are consistent with the other revisions in these proposed regulations and under section 6109.

Records

Under § 10.90 of the current regulations, OPR must maintain and may make available for public inspection in the time and manner prescribed by the Secretary a roster of enrolled agents, including those who are active, inactive, and sanctioned. These proposed regulations clarify that the roster requirements also pertain to registered tax return preparers and qualified continuing education programs.

Proposed Effective Date

These regulations are generally proposed to apply 60 days after the date that final regulations are published in the **Federal Register**.

Special Analyses

Executive Order 12866 requires certain regulatory assessments and procedures for a significant regulatory action, defined as adversely affecting in a material way the economy, a sector of the economy, productivity, competition, or jobs. This rule has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. The Regulatory Assessment prepared for this regulation is provided below under the heading "Regulatory Assessment under E.O. 12866."

It has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth later in this preamble under the heading "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Internal Revenue Code (Code), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

A. Regulatory Assessment Under E.O. 12866

1. Description of Need for the Regulatory Action

Although the IRS has exercised its authority to regulate for attorneys, certified public accountants, and other specified tax professionals, regulations under Circular 230 currently do not apply to a critical group of tax professionals: tax return preparers. As discussed in the Report, taxpayers' reliance on tax return preparers has grown steadily in recent decades. The number of taxpayers who prepared their own tax returns without assistance fell by more than two-thirds between 1993 and 2005. In fact, today, tax return preparers assist a majority of U.S. taxpayers in meeting their Federal tax filing obligations. In 2008 and 2009, for example, tax return preparers prepared almost 60 percent of all federal tax returns filed, including approximately 87 million federal individual income tax returns. The IRS expects these numbers to increase in 2010 and the coming years.

Tax return preparers are not only responsible for assisting taxpayers in filing complete, timely, and accurate returns, but also help educate taxpayers about the tax laws, and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. The IRS and the Treasury Department recognize that the majority of tax return preparers serve the interests of their clients and the tax system by preparing complete and accurate returns.

The tax system is best served by tax return preparers who are ethical, provide good service, and are qualified. Recent government studies, including studies from the Government Accountability Office and the Treasury Inspector General for Tax Administration, *see, e.g.,* Government Accountability Office, *Paid Tax Return Preparers: In a limited Study, Chain*

Preparers Made Serious Errors, GAO–06–563T (Apr. 4, 2006); Treasury Inspector General for Tax Administration, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors,* Rept. # 2008–40–171 (Sept. 3, 2008), illustrate the losses incurred by both taxpayers and the system of Federal tax administration when tax return preparers fail to properly prepare tax returns. Additionally, many of the more than 500 public comments received by the IRS during the agency's review of the return preparer industry expressed concern for taxpayers, tax administration and the return preparer industry, all of whom are hurt when tax returns are not accurately prepared.

An overwhelming number of commentators (98 percent of the persons who offered comments on oversight and enforcement) supported increased government oversight of tax return preparers, particularly for individuals who are not attorneys, certified public accountants or others currently authorized to practice before the IRS. These commentators argued that taxpayers, the IRS and tax administration generally would benefit from the registration of tax return preparers. Eighty-eight percent of the persons who expressed an opinion on registering paid tax return preparers favor registration. Ninety percent of the persons who commented on testing and education favor minimum education or testing requirements for paid tax return preparers. And 98 percent of the persons who commented on quality and ethics favor establishment of quality and ethics standards for paid tax return preparers.

Because the IRS has not adopted a uniform set of regulations for tax return preparers, the amount of oversight of tax return professionals varies greatly depending on professional affiliations and the geographic area in which they practice. Most tax return preparers do not have to pass any government or professionally mandated competency requirement. Most tax return preparers are not required to participate in a specified program of continuing professional education. And the ethical rules found in Circular 230 currently are not applicable to all tax return preparers.

As such, the IRS recognizes the need to apply a uniform set of rules to offer taxpayers some assurance that their tax returns are prepared completely and accurately. Increasing the completeness and accuracy of returns would necessarily lead to increase compliance with tax obligations by taxpayers.

2. Potentially Affected Tax Returns

These proposed regulations generally extend current regulations that apply to attorneys, certified public accountants and other specified tax professionals to all tax return preparers, including currently unenrolled tax return preparers, who prepare all or substantially all of a tax return or claim for refund for compensation. The rules apply to all returns prepared by tax return preparers regardless of the taxpayer. The rule is not limited by the type of return or claim for refund. For example, the rule applies to self-employed tax return preparers who prepare primarily individual tax returns for persons who have only wage and interest income. The rule also applies to tax return preparers employed by large accounting firms who prepare primarily corporate and large partnership returns. It also applies to those tax returns preparers who prepare only estate or excise tax returns. These examples are nonexclusive and the application of these rules is not limited to only those tax return preparers covered by the examples.

The IRS and the Treasury Department believe that the expansion of these regulations to currently unenrolled tax return preparers may impact individual taxpayers more than large corporate taxpayers because the IRS and the Treasury Department believe that large corporate taxpayers more likely employ the services of those who are currently regulated than those who are currently unenrolled to prepare their tax returns. The IRS and the Treasury Department are seeking comments on the types of returns (for example: individual versus corporate tax returns) currently being prepared by currently unenrolled tax return preparers.

3. An Assessment of Benefits Anticipated From the Regulatory Action

The primary benefit anticipated from these regulations is that they will improve the accuracy, completeness, and timeliness of tax returns prepared by tax return preparers. As illustrated in the recent government studies, including the IRS's recent review of the tax return preparer industry, inaccurate tax returns are costly both to taxpayers and the government. Inaccurate returns may affect the finances of taxpayers, who might overpay their respective share of taxes or fail to take advantage of available tax benefits. Inaccurate tax returns may also affect the U.S. government because of underpayments and increased costs of enforcement and collection.

The regulations are expected to improve the accuracy, completeness, and timeliness of tax returns in a number of ways. First, requiring tax return preparers to demonstrate the necessary qualifications to provide a valuable service by successfully completing a government or professionally mandated competency examination and continued competence by completing the specified continuing education credits annually will result in more competent and ethical tax return preparers who are well educated in the rules and subject matter. A more competent and ethical tax return preparer community will prevent costly errors, potentially saving taxpayers from unwanted problems and relieving the IRS from expending valuable examination and collection resources. Thus, these proposed regulations are critical to assisting the IRS curtail the activities of noncompliant and unethical tax return preparers.

Second, these regulations, in association with new and separate regulations under section 6109 requiring all individuals who prepare all or substantially all of a tax return for compensation to obtain a PTIN, are expected to improve the accuracy, completeness and timeliness of tax returns because they will help the IRS identify tax return preparers and the tax returns and claims for refund that they prepare, which will aid the IRS's oversight of tax return preparers, and to administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Individuals who prepare all or substantially all of a tax return or claim for refund will be required to obtain a PTIN prescribed by the IRS and furnish the PTIN when the tax return preparer signs (as the tax return preparer) a tax return or claim for refund. These individuals who are currently not attorneys, certified public accountants, or enrolled agents will apply for status as a registered tax return preparer and regularly renew that status. Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor the tax return preparation activities of these individuals. These regulations, in conjunction with the final PTIN regulations, will enable the IRS to more accurately identify tax return preparers and improve the IRS's ability to associate filed tax returns and refund claims with the responsible tax return preparer.

Third, the proposed regulations are expected to improve the accuracy of tax

returns by providing that all registered tax return preparers are practicing before the IRS and, therefore, are practitioners subject to the ethical standards of conduct in Circular 230. This change will authorize OPR to inquire into possible misconduct and institute disciplinary proceedings relating to paid preparer misconduct under the provisions of Circular 230. A paid preparer who is shown to be incompetent or disreputable, fails to comply with the provisions in Circular 230, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client, is subject to censure, suspension, or disbarment from practice before the IRS, as well as a monetary penalty.

The availability of these sanctions will act as a deterrent to paid preparers engaging in misconduct because disreputable or incompetent paid preparers who are suspended or disbarred from practice will no longer be able to prepare tax returns, claims for refund, and other documents submitted to the IRS. Competent and ethical tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

Because these regulations apply to all tax return preparers, the IRS and the Treasury Department anticipate that they will improve the accuracy of tax returns prepared by all types of tax professionals. The IRS and the Treasury Department expect that the largest marginal improvements in accuracy will be with regard to tax returns prepared by tax return preparers who previously were unregulated through the Circular 230 requirements. Unlike certified public accountants, attorneys, and enrolled agents, unenrolled tax return preparers generally are not subject to any form of testing, continuing professional education, or uniform ethical standards. The tax returns prepared by unenrolled tax return preparers may involve tax issues that are less complicated and smaller in amount than issues in tax returns prepared by other types of tax professionals. In addition, individual taxpayers may face a variety of complex tax issues, for which the advice of a qualified tax advisor will improve the accuracy on the return. Finally, by requiring registration of all tax return preparers, these regulations will allow the IRS to better monitor the relative accuracy of tax returns prepared by various types of tax professionals.

Comments are requested on whether these proposed regulations will improve overall tax administration. In particular, comments are specifically requested regarding the extent to which the improved accuracy of tax returns will be achieved through these regulations and whether the testing and continuing education provisions of these regulations are properly focused on currently unregulated tax return preparers.

4. An Assessment of Costs Anticipated From the Regulatory Action

There are various costs anticipated from this regulatory action.

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Cost Category	Preliminary Cost Estimate
COMPETENCY EXAMINATION	
• Costs to registered tax preparers: costs associated with taking a minimum competency examination (including costs of examination, amount of time required to study for the exam, and any associated travel)	Costs to Registered Tax Preparers The costs associated with competency examinations for registered tax preparers are currently unknown. The competency examination has not been developed and an examination vendor has not been selected. The cost of the examination and amount of time required to study for it, therefore, are unknown. The costs for any associated travel will depend on what locations the test is offered in and how close the applicant lives to those locations. While there is currently no vendor for the examination, it is expected that the vendor will offer the test in many locations across the United States and several locations outside the United States.
• Costs to vendors: user fee costs IRS will charge to recover the costs to third-party vendors who administer the registered tax return preparer competency examination	Costs to Vendors The vendor for the examination has not been selected so these fees cannot yet be determined. This vendor fee will include the cost associated with fingerprinting every applicant.
• Costs to government: costs associated with creating, administrating, and reviewing competency exams	Costs to Government These costs are currently unknown. The costs to the government will depend, in part, on which functions will be performed by a vendor. Also, the vendor may recover the vendor's associated costs through a separate fee charged by the vendor. We therefore seek comment from the public on the costs related to competency examination faced by both individuals and the government.

PTIN	
• Costs to registered tax preparers: user fees for applying for a PTIN and renewing a PTIN • Costs to vendors: user fee assessed by third-party vendor to administer the PTIN application and renewal process • Costs to government: administration of PTIN registration program	Costs to Registered Tax Preparers The fees registered tax preparers will face for applying for a PTIN and renewing a PTIN is $50 annually. Given that there are an estimated 800,000 to 1,200,000 individuals who will apply for a PTIN, we estimate that the PTIN registration costs registered tax preparers face will be from $40 million to $60 million. Costs to Vendors These fees are currently unknown because the selected vendor has not yet determined the fee. Costs to Government The $50 annual fee is expected to recover the $59,427,633 annual costs the government will face in its administration of the PTIN registration program. This fee includes: (1) the costs the government faces in administering registration cards or certificates for each registered tax preparer, (2) costs associated with prescribing by forms, instructions, or other guidance which forms and schedules registered tax preparers can sign for, and (3) tax compliance and suitability checks conducted by the government. The $50 fee does not include the cost of fingerprinting which we expect will be covered in the examination fee.
RECORDKEEPING	
• Costs to continuing education providers: recordkeeping requirements on continuing education providers to maintain records and educational material concerning these	Costs to Continuing education providers $38,632,500 annual costs Costs to Registered Tax Preparers $9,880,000 annual costs

programs and the individuals who attend them. • Costs to registered tax preparers: recordkeeping requirements on registered tax preparers to maintain records and educational materials regarding the completion of the required qualifying continuing education credits.	
CONTINUING EDUCATION	
• Costs to registered tax preparers: completing continuing education coursework requirement • Costs to government: user fee for costs to government for review, approval and oversight of continuing education, and fee for IRS recovering these costs.	Costs to registered tax preparers We do not have a cost estimate available for continuing education costs borne by the tax preparers. We seek comment on the cost of continuing education. Costs to government We do not have a cost estimate available for continuing education costs borne by the government for its review, approval and oversight of continuing education requirements imposed by the rule, which will be recovered by a user fee (in a future rulemaking) assessed on continuing education providers. We therefore seek comment from the public on the cost the government will incur.

BILLING CODE 4830–01–C

Tax return preparers will incur costs associated with taking a minimum competency examination, including the cost of the examination, the amount of time required to study for the examination, and any associated travel depending on the proximity of tax return preparer to the test site location. Although it is anticipated that the vendor will offer the test at several locations in the United States and outside the United States, the vendor and the test locations have not been selected at this time. Future regulations will be proposed that address the costs to the government for creating, administering, and reviewing the examination and the user fee the IRS will charge to recover these costs. The third-party vendor who helps administer the registered tax return preparer competency examination also will charge a reasonable fee to take the registered tax return preparer examination. Comments are specifically requested on the costs associated with the examination and the impact these costs may have on tax return preparers, entities that employ them or taxpayers who use their services.

Additionally, preparers will be subject to user fees for applying for a PTIN and renewing the PTIN. Proposed regulations published in the **Federal Register** on July 23, 2010, establish a $50 fee to apply for a PTIN. A third party vendor will administer the PTIN application and renewal process and will charge a fee that is independent of the user fee charged by the government. Comments are specifically requested on the costs associated with applying for and renewing a PTIN and the impact these costs may have on tax return preparers and entities that employ them.

Tax return preparers will incur recordkeeping and other costs associated with taking continuing education classes and any associated travel. Section 10.6 of these proposed regulations requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. The IRS and the Treasury Department estimate that there are 650,000 practitioners who will be affected by these recordkeeping requirements and the estimated annual

burden per practitioner will vary from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 54 minutes. The total annual costs resulting from these recordkeeping requirements will be $9,880,000 for all affected practitioners. Comments are specifically requested on the other costs associated with taking continuing education classes.

Continuing education providers will be subject to recordkeeping costs and user fees for each application for qualification as a qualified continuing education program. Section 10.9 of these proposed regulations requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Continuing education providers also obtain approval of each program as a qualified continuing education program. Approximately 500 continuing education providers are currently approved to provide continuing education programs for the approximately 50,000 enrolled agents, enrolled actuaries and enrolled retirement plan agents who must complete continuing education currently, but the IRS and the Treasury Department estimate that there are 2,250 continuing education providers who will be affected by these recordkeeping requirements and the estimated annual burden per continuing education provider will vary from 5 hours to 5,000 hours, depending on individual circumstances, with an estimated average of 500 hours. The estimated total annual costs resulting from these requirements will be $38,632,500 for all affected continuing education providers.

The amounts of the user fee for providing continuing education programs are still to be determined and another regulation addressing user fees will be proposed. These future regulations will address the costs to the government for the review, approval, and oversight of continuing education providers to ensure their compliance with program design and maintenance for continuing education programs and the user fee to be charged by the IRS to recover these costs.

Currently, the cost to the tax return preparer of any particular continuing education course can vary greatly from free to hundreds of dollars. Many tax return preparation firms either provide continuing education courses at the firm to its employees for no charge or sponsor the cost of external courses for its employees. Other tax return preparers, however, will have to personally pay the cost of each continuing education course, which generally ranges anywhere from $20 to $300 per course depending on whether the continuing education provider offers the course in person, online, or over the phone. After the publication of this regulatory action, continuing education providers may increase the costs of the courses in response to the new user fee on continuing education providers. Tax return preparers also may incur additional costs if they travel to attend continuing education programs. These costs may include the time to travel to the program, transportation, lodging and incidentals.

Entities may be directly affected by the competency examination, PTIN and continuing education costs if they choose to pay any or all of the user fees or expenses for their employees. Some individuals and entities also may lose sales and profits while preparers are studying and sitting for the examination or taking the continuing education courses. Finally, individual tax return preparers and entities that employ individuals who prepare tax returns may need to close or change their business model if all, or a majority, of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of tax return preparers will need to close or change their business model based upon these proposed rules. Comments are specifically requested on the costs associated with continuing education and the impact these costs may have on tax return preparers, continuing education providers, entities that employ tax return preparers or taxpayers who use the services of a tax return preparer.

5. An Assessment of Costs and Benefits of Potential Alternatives

The IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of tax return preparers. In order to place the costs and benefits of the proposed rule in context, E.O. 12866 requires a comparison between the proposed rule, a baseline of what the world would look like without the proposed rule, and reasonable alternatives to the proposed rule.

i. Baseline Scenario

Under a baseline scenario, the current ethical standards in Circular 230 would continue to apply only to attorneys, certified public accountants, enrolled agents, and other practitioners who prepare tax returns and claims for refund, but not to unenrolled tax return preparers. Also, any unenrolled tax return preparer under this baseline scenario would be able to prepare and sign tax returns and claims for refund without passing an examination to establish competence or satisfying continuing education requirements.

Remaining under the current rules regarding tax return preparers would eliminate the benefits of the proposed rule described in section A2 of this preamble. For example, under the baseline, OPR would not be authorized to institute disciplinary proceedings seeking sanctions against unenrolled tax return preparers.

Continuing to authorize any individual to prepare tax returns and claims for refund for compensation without passing an examination or taking continuing education courses also would eliminate any costs associated with the proposed rule described in section A3 of this preamble. Tax return preparers, however, would still potentially be subject to user fees for obtaining a PTIN and renewing the PTIN if other Treasury Department and IRS regulations specifically prescribed those fees.

ii. Alternative One

The first alternative that was considered is to require all tax return preparers to comply with the ethical standards in Circular 230, but not to require any tax return preparer to pass an examination and complete continuing education courses. Under this alternative, the provisions of the proposed rule clarifying that tax return preparers are subject to the ethical rules in Circular 230 would remain intact, but all of the other changes would not be adopted.

The benefits resulting from this alternative would likely be less than the rules in the proposed regulations because tax return preparers would not need to meet a minimum competency level and keep educated and up-to-date on Federal tax issues. The most significant drawback to this alternative is the potential loss of these benefits and the benefits that result from monitoring the return preparation activities of tax return preparers generally. Under this alternative, however, tax return preparers would not incur the majority of costs that exist under the proposed regulations.

iii. Alternative Two

A second alternative is to require tax return preparers who are not currently authorized to practice before the IRS to apply for such authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical

standards, but not to pass a minimum competency examination. This alternative is identical to the proposed regulations other than requiring certain preparers to successfully pass an examination administered by, or under the oversight of, the IRS.

The benefits resulting from this alternative are more comparable to the benefits in the proposed regulations than under the alternative one. Nevertheless, the lack of an examination probably would not be as effective in ensuring that tax return preparers are qualified to obtain professional credentials and practice before the IRS. Tax return preparers under this alternative would incur all of the same costs that are in the proposed regulations other than the costs associated with taking the examination.

iv. Alternative Three

A third alternative is to "grandfather in" unenrolled tax return preparers who have accurately and competently prepared tax returns for a certain amount of years. This alternative is the same as the rules in the proposed regulations other than authorizing some unenrolled return preparers who have a specified amount of prior experience preparing tax returns and claims for refund to continue to prepare and sign returns without passing a minimum competency examination.

The benefits resulting from this alternative would likely be less than the rules in the proposed regulations because the IRS and the Treasury Department believe a minimum level of competency needs to be assured through examination. Additionally, this alternative is not as likely to promote the same taxpayer confidence in the tax return preparation community as the proposed regulations, which may, in turn, influence taxpayers when choosing a tax return preparer. Tax return preparers under this alternative would incur all of the same costs that are in the proposed regulations except certain unenrolled preparers would avoid the costs associated with taking the examination.

Comments are specifically requested on the benefits and costs of these alternatives compared to the approach taken in the proposed regulations.

B. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed regulations, if promulgated, will impact a substantial number of small entities and the economic impact will be significant. As a result, an initial regulatory flexibility analysis is required.

1. Description of the Reasons Why the Agency Action Is Being Considered

As discussed in more detail in section A1 of this preamble, tax return preparers are critical to ensuring compliance with the Federal tax laws and are an important component in the IRS's administration of those laws. More than eighty percent of U.S. taxpayers use a tax return preparer or consumer tax return preparation software to help prepare and file tax returns. Most tax return preparers are currently not subject to the ethical rules governing practice before the IRS and do not have to pass any competency requirement established by the government or a professional organization. After completing a comprehensive six-month review of tax return preparers, which included receiving input through public forums, solicitation of written comments, and meetings with advisory groups, the IRS concluded that there was a need for increased oversight of the tax return preparer industry. These proposed regulations implement higher standards for the tax return preparer community with the goal of significantly enhancing protections and service for taxpayers, increasing confidence in the tax system, and resulting in greater long-term compliance with the tax laws.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The principal objective of the proposed regulations is to increase oversight of all tax return preparers and to provide guidance to tax return preparers about the new requirements imposed on them under Circular 230. Specifically, the proposed regulations clarify that any registered tax return preparer is a practitioner practicing before the IRS and thereby is subject to the ethical rules in Circular 230. The proposed regulations require a tax return preparer to demonstrate the necessary qualifications and competency to advise and assist other persons in the preparation of all or substantially all of a tax return or claim for refund. The legal basis for these requirements is contained in section 330 of title 31.

3. Description and Estimate (Where Feasible) of the Number of Small Entities Subject to the Proposed Rule

The proposed regulations affect all individuals currently working as paid preparers, individuals who want to become designated as a registered tax return preparer under the new oversight rules in Circular 230, and those small entities that are owned by or employ paid preparers. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of an unenrolled individual owning a small business or on a small business that otherwise employs unenrolled paid return preparers. These regulations also will economically affect any small entity that is a provider of qualifying continuing education programs.

The appropriate NAICS codes for tax return preparers relate to tax preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under these codes are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $7 million or $8.5 million, respectively. The IRS estimates that approximately seventy to eighty percent of the individuals subject to these proposed regulations are paid preparers operating as or employed by small entities. The IRS estimates that there will be 2,250 providers of qualifying continuing education programs.

4. Description of the Projected Reporting, Recordkeeping and Related Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The IRS estimates that there are approximately 600,000 to 700,000 unenrolled tax return preparers who are currently not attorneys, certified public accountants, or enrolled agents and who will apply for status as a registered tax return preparer if these proposed rules are adopted. Under the proposed regulations, tax return preparers who become registered tax return preparers are subject to a recordkeeping requirement within the meaning of the PRA because they are required to

maintain records and educational materials regarding the satisfaction of their qualifying continuing education requirements. These recordkeeping requirements do not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that practitioners will annually spend approximately 30 minutes to one hour in maintaining the required records, depending on individual circumstances.

The estimated 2,250 providers of qualifying continuing education programs will be required to maintain records and educational material concerning these programs and the persons who attended them. These entities will need to obtain approval of the program as a qualified continuing education program from OPR. These continuing education providers will annually spend approximately 5 minutes per attendee maintaining the required records and approximately 30 minutes to one hour per program completing and filing the application for approval as a qualified continuing education program.

As previously discussed in section A3 of this preamble, the proposed rule contains a number of other compliance requirements not subject to the PRA. These include the costs tax return preparers incur to take a competency examination, costs for continuing education classes, and other incidental costs and user fees. Small entities may be directly affected by these costs if they choose to pay any or all of these fees for their employees. In some cases, small entities may lose sales and profits while their employees prepare for and take the examination or participate in continuing education courses. Finally, some small entities that employ individuals who prepare tax returns may need to alter their business model if a significant number of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to these proposed rules.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

All tax return preparers currently are subject to various civil and criminal penalties under the Code. For example, section 6694 imposes civil penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return, while section 6695 imposes civil penalties for, among other acts, failing to sign or provide an identification number on a return they prepare. Tax return preparers who demonstrate a pattern of misconduct may be enjoined from preparing further returns under section 7407. Additionally, the IRS, under its broad authority to regulate the filing of electronic returns, requires any tax return preparer who files returns electronically to comply with certain rules, including requiring the electronic return originator to pass background and credit history checks. The IRS and the Treasury Department believe that the proposed rules complement these existing rules with a resulting comprehensive enforcement strategy that ensures that all tax return preparers are assisting clients appropriately.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The IRS received a large volume of comments, through the Return Preparer Review, on the oversight and enforcement of tax return preparers from all interested parties, including tax professional groups representing large and small entities, Federal and state organizations, IRS advisory groups, software vendors, individual return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for efforts to increase the oversight of tax return preparers, particularly for those who are not attorneys, certified public accountants, or other individuals currently authorized to practice before the IRS.

In concert with this tremendous public support for increased IRS oversight of tax return preparers, the IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of paid preparers. As discussed in more detail in section A4 of this preamble, these alternatives included:

(1) Requiring all tax return preparers to comply with the ethical standards in Circular 230 or a code of ethics similar to Circular 230, but not requiring any tax return preparers to demonstrate their qualifications and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to apply for authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination; and

(3) Requiring all tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain number of years.

After consideration of these and other alternatives and all of the input provided through the public comment process, the IRS and the Treasury Department concluded that the provisions of the proposed regulations are necessary for sound tax administration and are the best way to increase oversight of all paid preparers. The testing requirements in the proposed rules will ensure that tax return preparers pass a minimum competency examination to obtain their professional credentials, while the continuing education requirements will help ensure that tax return preparers remain current on Federal tax law and continue to expand their tax knowledge. The extension of the rules in Circular 230 to registered tax return preparers will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of the qualification and competency standards in these proposed rules is expected to increase taxpayer compliance and ensure uniform and high ethical standards of conduct for tax return preparers. The public comments submitted during the Return Preparer Review overwhelmingly supported the provisions in these proposed rules.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments that are submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for Friday, October 8, 2010, beginning at 10 a.m. in Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building

security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by Monday, September 27, 2010. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 31 U.S.C. 330, the notice of proposed rulemaking (REG–138637–07) that was published in the **Federal Register** on September 26, 2007 (72 FR 54621) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 31 CFR part 10 is proposed to be amended to read as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for 31 CFR part 10 is revised to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

Par. 2. Section 10.0 is revised to read as follows:

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; Subpart B of this part prescribes the duties and restrictions relating to such practice; Subpart C of this part prescribes the sanctions for violating the regulations; Subpart D of this part contains the rules applicable to disciplinary proceedings; and Subpart E of this part contains general provisions relating to the availability of official records.

Par. 3. Section 10.2 is amended by revising paragraphs (a)(4), (a)(5), and (b) and adding paragraph (a)(8) to read as follows:

§ 10.2 Definitions.

(a) * * *

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of § 10.3.

* * * * *

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701–15.

(b) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 4. Section 10.3 is amended by:

1. Redesignating paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j), respectively.

2. Adding new paragraph (f).

3. Revising paragraphs (d)(3) and (e)(3), and newly designated paragraph (j).

The revisions and additions read as follows:

§ 10.3 Who may practice.

* * * * *

(d) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

(e) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and registered tax return preparers.

(f) *Registered tax return preparers.* (1) Any individual who is designated as a registered tax return preparer pursuant to § 10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing tax returns, claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for which the registered tax return preparer has passed the requisite written examination. A registered tax return preparer also may sign tax returns, claims for refund, or other documents for which the registered tax return preparer has passed the requisite written examination. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund, including the schedules and forms, that a registered tax return preparer may prepare or sign based on the written examination that the registered tax return preparer has successfully completed. A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees

of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.

* * * * *

(j) *Effective/applicability date.* This section is generally applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 5. Section 10.4 is revised to read as follows:

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination.* The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted.

(b) *Enrollment as a retirement plan agent upon examination.* The Director of the Office of Professional Responsibility may grant enrollment as an enrolled retirement plan agent to an applicant who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer.* The Director of the Office of Professional Responsibility may designate an individual as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, possesses a current or otherwise valid PTIN or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted.

(d) *Enrollment of former Internal Revenue Service employees.* The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances—

(1) The former employee applies for enrollment to the Director of the Office of Professional Responsibility on a form supplied by the Director of the Office of Professional Responsibility and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of the Office of Professional Responsibility, will provide the Director of the Office of Professional Responsibility with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within three years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (d)(5) and (d)(6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least three of which occurred within the five years preceding the date of application, is the equivalent of five years continuous employment.

(e) *Natural persons.* Enrollment or authorization to practice may be granted only to natural persons.

(f) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register.**

Par. 6. Section 10.5 is revised to read as follows:

§ 10.5 Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Form; address.* An applicant to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled or registered and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee.* A reasonable nonrefundable fee will be charged for each application filed with the Director of the Office of

Professional Responsibility. *See* 26 CFR part 300.

(c) *Additional information; examination.* The Director of the Office of Professional Responsibility, as a condition to consideration of an application, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Director of the Office of Professional Responsibility will, on written request filed by the applicant, afford such applicant the opportunity to be heard with respect to his or her application for enrollment.

(d) *Compliance and suitability checks.* (1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangement with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in § 10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under § 10.51 and § 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to § 10.6(b) of this part, and will be provided information regarding the denial of the application and the rules on appealing the denial. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Director of the Office of Professional Responsibility may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or if there is any information before the Director of the Office of Professional Responsibility indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, and the temporary recognition may be withdrawn at any time by the Director of the Office of Professional Responsibility.

(f) *Appeal from denial of application.* The Director of the Office of Professional Responsibility must inform the applicant in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written appeal of the denial with the Secretary of the Treasury or delegate. A decision on the appeal will be rendered by the Secretary, or delegate, as soon as practicable.

(g) *Effective/applicability date.* This section is applicable to applications received 60 days after the date that final regulations are published in the **Federal Register**.

Par. 7. Section 10.6 is revised to read as follows:

§ 10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate.* The Director of the Office of Professional Responsibility will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent or registered tax return preparer may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise valid. The card or certificate is in addition to any certificate that may be issued to each attorney, certified public accountant, enrolled agent, or registered tax return preparer who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent, enrolled retirement plan agent, or registered tax return preparer must send notification of any change of address to the address specified by the Director of the Office of Professional Responsibility within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, or registered tax return preparer's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address became effective. Unless this notification is sent, the address for purposes of any correspondence from the Director of the Office of Professional Responsibility shall be the address as reflected on the practitioner's most recent application for enrollment or registration, or application for renewal of enrollment or registration.

(d) *Renewal*—(1) *In general.* Designation as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must be renewed periodically to maintain active status to practice before the Internal Revenue Service. Failure to receive notification from the Director of the Office of Professional Responsibility of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents.* (i) All individuals enrolled to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(ii) All individuals enrolled to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(iii) All individuals enrolled to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after

November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(iv) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents.* Applications for renewal as an enrolled retirement plan agent will be required of all enrolled retirement plan agents between April 1 and June 30 of every third year period subsequent to their initial enrollment.

(4) *Renewal period for registered tax return preparers.* Applications for renewal as a registered tax return preparer will be required of all registered tax return preparers as prescribed in forms, instructions, or other appropriate guidance.

(5) *Notification of renewal.* After review and approval, the Director of the Office of Professional Responsibility will notify the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(6) *Fee.* A reasonable nonrefundable fee will be charged for each application for renewal filed with the Director of the Office of Professional Responsibility. *See* 26 CFR part 300.

(7) *Forms.* Forms required for renewal may be obtained by sending a written request to the Director of the Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (*see* 26 CFR 601.601(d)(2)(ii)(*b*)) and on the Internal Revenue Service Web page (*www.irs.gov*).

(e) *Condition for renewal: continuing education.* In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the required continuing education requirements.

(1) *Definitions.* For purposes of this section—

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.

(iv) The *effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent*—(i) *Requirements for enrollment cycle.* A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year.* A minimum of 16 hours of continuing education credit, including two hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle*—(A) *In general.* Subject to paragraph (e)(2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics.* An individual who receives initial enrollment during an enrollment cycle must complete two hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(3) *Requirements for renewal as a registered tax return preparer.* A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.

(f) *Qualifying continuing education*—(1) *General*—(i) *Enrolled agents.* To qualify for continuing education credit for an enrolled agent, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(ii) *Enrolled retirement plan agents.* To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(iii) *Registered tax return preparers.* To qualify for continuing education credit for a registered tax return preparer, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(2) *Qualifying programs*—(i) *Formal programs.* A formal program qualifies as a continuing education program if it—

(A) Requires attendance and provides each attendee with a certificate of attendance;

(B) Requires that the program be conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and

(D) Is approved as a qualified continuing education program by the Director of the Office of Professional Responsibility pursuant to § 10.9.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by the enrolled individual. The allowable

credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they—

(A) Require registration of the participants by the continuing education provider;

(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;

(C) Provide a written outline, textbook, or suitable electronic educational materials; and

(D) Are approved as a qualified continuing education program by the Director of the Office of Professional Responsibility pursuant to § 10.9.

(iii) *Serving as an instructor, discussion leader or speaker.* (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed four hours annually of the continuing education requirement.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year, will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination.* (i) Enrolled individuals may establish eligibility for renewal of enrollment for any enrollment cycle by—

(A) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(ii) Courses designed to help an applicant prepare for the examination specified in § 10.4 are considered basic in nature and are not qualifying continuing education.

(g) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(3) Individual segments at continous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(h) *Recordkeeping requirements.* (1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(i) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Director of the Office of Professional Responsibility for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary by the Director of the Office of Professional Responsibility. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status, so notified by the Director of the Office of Professional Responsibility, and placed on a roster of inactive enrolled agents, enrolled retirement plan agents, or registered tax return preparers.

(5) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(j) *Failure to comply.* (1) Compliance by an individual with the requirements of this part is determined by the Director of the Office of Professional Responsibility. An individual who fails to meet the continuing education and fee requirements of eligibility for renewal will be notified by the Director of the Office of Professional Responsibility. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of the Office of Professional Responsibility in making a final determination as to eligibility for renewal. The Director of the Office of Professional Responsibility must inform the individual as to the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written appeal of the denial with the Secretary or delegate. A

decision on the appeal will be rendered by the Secretary, or delegate, as soon as practicable.

(2) The Director of the Office of Professional Responsibility may require any individual to provide copies of any records required to be maintained under this part. The Director of the Office of Professional Responsibility may disallow any continuing education hours claimed if the individual fails to comply with this requirement.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (k)(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Office of Professional Responsibility.

(k) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or who is the subject of a disciplinary matter in the Office of Professional Responsibility.

(l) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action by the Director of the Office of Professional Responsibility is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(m) *Verification.* The Director of the Office of Professional Responsibility may review the continuing education records of an enrolled agent, enrolled retirement plan agent, or registered tax return preparer in any manner deemed appropriate to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section.

(n) *Enrolled actuaries.* The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of § 10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(o) *Effective/applicability date.* This section is applicable to enrollment or registration effective 60 days after the date that final regulations are published in the **Federal Register**.

Par. 8. Section 10.7 is amended by:

1. Revising the section heading.
2. Removing paragraphs (c)(1)(viii) and (e).
3. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f).
4. Revising newly designated paragraphs (e) and (f).

The revisions read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

* * * * *

(e) *Fiduciaries.* For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 9. Section 10.8 is revised to read as follows: *§ 10.8 Return preparation and application of rules to other individuals.*

(a) *Preparing tax returns and furnishing information.* Any individual may prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(b) *Application of rules to other individuals.* Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 10. Section 10.9 is added to subpart A to read as follows: *§ 10.9 Continuing education programs.*

(a) *Continuing education providers*—(1) *In general.* Continuing education providers are those responsible for presenting continuing education programs. A continuing education provider must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia; or

(iii) Be recognized by the Director of the Office of Professional Responsibility

as one who offers a qualified continuing education program.

(2) *Qualification of continuing education program.* A continuing education provider must obtain the approval of the Director of the Office of Professional Responsibility for each program to be qualified as a qualified continuing education program in the time and manner required by forms or procedures established and published by the Internal Revenue Service.

(3) *Requirements for qualified continuing education program.* A continuing education provider must ensure the qualified continuing education program complies with all the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation by the Director of the Office of Professional Responsibility of technical content and presentation;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Director of the Office of Professional Responsibility must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) *Fees.* Reasonable nonrefundable fees may be charged for each qualification of a qualified continuing education program. *See* 26 CFR part 300.

(b) *Failure to comply.* Compliance by a continuing education provider with the requirements of this part is determined by the Director of the Office of Professional Responsibility. A continuing education provider who fails to meet the requirements of this part will be notified by the Director of the Office of Professional Responsibility. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of the Office of Professional Responsibility in making a determination as to the qualification of a program as a qualified continuing education program. The Director of the Office of Professional Responsibility must inform the continuing education provider as to the reason(s) for any denial of a program as a qualified continuing education program. The continuing education provider may, within 30 days after receipt of the notice of denial, file a written appeal with the Secretary or delegate. A decision on the appeal will be rendered by the Secretary or delegate, as soon as practicable.

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 11. Section 10.30 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form or public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, or registered tax return preparers, in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer with the Internal Revenue Service."

* * * * *

(e) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 12. Section 10.34 is amended by:

1. Adding paragraph (a).

2. Redesignating paragraph (f) as paragraph (e).

3. Revising newly designated paragraph (e).

The revisions read as follows:

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns.* (1) A practitioner may not willfully, recklessly, or through gross incompetence—

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

* * * * *

(e) *Effective/applicability date.* Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, 60 days after the date that final regulations are published in the **Federal Register**. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

Par. 13. Section 10.36 is amended by:

1. Redesignating paragraph (b) as paragraph (c).

2. Adding new paragraph (b).

3. Revising newly designated paragraph (c).

The addition and revisions read as follows:

§ 10.36 Procedures to ensure compliance.

* * * * *

(b) *Requirements for tax returns and other documents.* Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with Circular 230. Any practitioner who has (or practitioners who have or share) this principal authority will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with Circular 230; or

(2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, who does not comply with Circular 230, and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 14. Section 10.51 is amended by adding paragraphs (a)(16), (a)(17), and (a)(18) and revising paragraph (b) to read as follows:

§ 10.51 Incompetence and disreputable conduct.

(a) * * *

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 15. Section 10.90 is amended by:

1. Revising paragraph (a).
2. Redesignating the second paragraph (b) as paragraph (c).
3. Revising newly designated paragraph (c).

The revisions read as follows:

§ 10.90 Records.

(a) *Roster.* The Director of the Office of Professional Responsibility will maintain, and may make available for public inspection in the time and manner prescribed by the Secretary, or delegate, rosters of —

(1) Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.

(2) Enrolled agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under § 10.61.

(3) Enrolled retirement plan agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under § 10.61.

(4) Registered tax return preparers, including individuals—

(i) Authorized to prepare all or substantially all of a tax return or claim for refund;

(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;

(iii) Who have been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the Director of the Office of Professional Responsibility under § 10.61.

(5) Disqualified appraisers.

(6) Programs granted status as a qualified continuing education program.

* * * * *

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Christopher Wagner,

Acting Deputy Commissioner for Services and Enforcement.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2009–0112; FRL–8835–4]

RIN 2070–AD16

Testing of Certain High Production Volume Chemical Substances; Third Group of Chemical Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; announcement of meeting.

SUMMARY: EPA will hold a public meeting to give members of the public an opportunity to comment on a proposed rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) entitled "Testing of Certain High Production Volume Chemicals; Third Group of Chemicals." The proposed rule, when finalized, would require manufacturers, importers, and processors of certain high production volume (HPV) chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. Opportunity to present oral comment was provided in the proposed rule and in response to that opportunity, a request to present oral comments was received.

DATES: The meeting will be held on September 9, 2010, from 1 p.m. to 4 p.m.

Requests to participate in the meeting must be received on or before September 8, 2010.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as