information, and determined that AD action is necessary for products of this type that are installed in airplanes certificated for operation in the United States. For this reason, we are proposing this AD, which would require replacing the bolt that attaches the seat belt to the seat with a new, longer bolt. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 3,101 seats installed in airplanes of U.S. registry. We also estimate that it would take about 0.10 work hour per seat to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $10 per seat. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $51,166.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

RECARO Aircraft Seats GmbH & Co.: Docket No. FAA–2005–22876; Directorate Identifier 2005–NE–39–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by April 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain RECARO Aircraft Seats GmbH & Co. (RECARO) Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats. These seats are installed on, but not limited to, Boeing 737–200 series, 747–400 series, 777–200 and 777–300 series; and Airbus Industries A319–100 series, A320–200 series, and A321–200 series airplanes.

Unsafe Condition

(d) This AD results from a report of short attachment bolts that don't allow enough thread to secure the locknuts properly. We are issuing this AD to prevent a seat belt from detaching due to a loose locknut and attachment bolt, which could result in injury to an occupant during emergency conditions.

Compliance

(e) You are responsible for having the actions required by this AD performed within 60 days after the effective date of this AD, unless the actions have already been done.

Replacing the Attachment Bolt

(f) For RECARO Model 3410 302, 303, 306, 307, 314, 316, 317, 791, 792, and 795 series seats with a serial number listed in section 1.A. Effectivity of RECARO service bulletin SB–No.: 3410–25MR477, Revision 3, dated May 17, 2004, replace the seat belt attachment bolt and nut. Use section 2. Accomplishment Instructions of RECARO service bulletin SB–No.: 3410–25MR477, Revision 3, dated May 17, 2004.

Alternative Methods of Compliance

(g) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Luftfahrt-Bundesamt airworthiness directive D–2004–151R1, dated June 6, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on February 1, 2006.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–1688 Filed 2–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–122380–02]

RIN 1545–AY05

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes modifications of the regulations governing practice before the IRS (Circular 230). These proposed regulations affect individuals who practice before the IRS. The proposed amendments modify the general standards of practice before the IRS. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronically generated comments must be received by April 10, 2006. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, June 21, 2006 at 10 a.m., in the auditorium of the Internal Revenue Service building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by April 10, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122380–02), room 5203, 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–122380–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–122380–02). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Brinton T. Warren at (202) 622–7800; concerning submissions of comments and the public hearing, Robin Jones at (202) 622–7180; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury 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. Pursuant to section 330 of title 31, the Secretary has published the regulations in Circular 230 (31 CFR part 10). These regulations authorize the Director of the Office of Professional Responsibility to act upon applications for enrollment to practice before the IRS, to make inquiries with respect to matters under the Office of Professional Responsibility'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. For example, on June 20, 1994 (59 FR 31523), the regulations were amended to provide standards for tax return preparation by practitioners, to limit the use of contingent fees by practitioners in tax return or refund claim preparation and to provide expedited rules for suspension from practice before the IRS.

On December 19, 2002 (67 FR 77724), the Treasury Department and the IRS issued an advance notice of proposed rulemaking (2002 ANPRM) requesting comments on amendments to the regulations relating to the Office of Professional Responsibility, unenrolled practice, eligibility for enrollment, sanctions and disciplinary proceedings, contingent fees and confidentiality agreements. This document proposes amendments reflecting the Treasury Department and the IRS consideration of the comments received in response to the 2002 ANPRM and reflecting amendments to section 330 of title 31 made by the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (the Jobs Act). The proposed regulations include conforming amendments to reflect the final regulations relating to best practices, covered opinions and other written advice published as TD 9165 on December 20, 2004 (69 FR 75839) and as TD 9201 on May 19, 2005 (70 FR 28824), but do not otherwise address those final regulations.

Explanation of Provisions

Over 60 written comments were received in response to the 2002 ANPRM. All comments were considered and are available for public inspection upon request. A number of these comments are summarized below. Comments relating to matters about which the Treasury Department and the IRS declined to propose changes are not generally discussed. The scope of these regulations is limited to practice before the IRS. These regulations do not alter or supplant ethical standards that might otherwise be applicable to practitioners.

Director of the Office of Professional Responsibility

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to the name of the office and appointment of the Director. In January of 2003, the Office of Professional Responsibility was established and replaced the office of the Director of Practice. This change, which was supported by many commentators, reflects the office's commitment to ensuring the integrity of the tax system and recognition of tax professionals as an integral part of effective tax administration. The proposed regulations change references to the Office of the Director of Practice to the Office of Professional Responsibility. The Director of the Office of Professional Responsibility is appointed by the Secretary, or his or her delegate. The text of the regulations also will be changed to eliminate references to the Office of the Secretary to reflect the prior transfer of the Office of Professional Responsibility to the IRS. See 47 FR 29918 (July 9, 1982).

Definitions—Practice Before the Internal Revenue Service

On October 22, 2004, the President signed the Jobs Act. Section 822(b) of the Act amends section 330 of title 31 of the United States Code by adding a provision that recognizes the Secretary's authority to impose standards for written advice rendered with respect to any entity, transaction plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion. Accordingly, § 10.2(d) of the proposed regulations is modified to clarify that the rendering of this written advice is practice before the IRS subject to Circular 230 when it is provided by a practitioner.

Who May Practice

The Advisory Committee for Tax Exempt/Governmental Entities recently suggested that individuals who provide technical services to plan sponsors to maintain the tax qualified status of their retirement plans (retirement plan administrators) should be authorized to practice provided they demonstrate the competency to do so. The Treasury Department and the IRS are considering this proposal and invite public comments even though text is not proposed in this notice of proposed rulemaking. The Advisory Committee's proposal suggests limiting the practice by this group of individuals to representation relating to filing applications for determination letters, Forms 5500, employee plan audits, and negotiating with the IRS with respect to voluntary compliance matters.

In addition, the Advisory Committee proposes procedures for enrollment similar to the current Enrolled Agent program (see §§ 10.4–10.6), including an examination to determine competency, a renewal process and continuing professional education requirements. For more information relating to practice by retirement plan administrators, see *Establishing the Enrolled Retirement Plan Agent Under Circular 230,* Advisory Committee for Tax Exempt/Governmental Entities (June 2005). The Treasury Department and the IRS also invite comments on proposals relating to limited practice by other individuals that the public believes competent to represent taxpayers before the IRS, and whether the Director of the Office of Professional Responsibility should have the authority to regulate these individuals through IRS notice procedures.

Enrollment Procedures

Section 10.5 of the regulations sets forth the applicable procedures relating to the enrollment of an enrolled agent. The proposed regulations provide that applicants for enrollment must utilize forms and comply with procedures established and published by the Office of Professional Responsibility. The proposed regulations permit the Office of Professional Responsibility to change the ''Application for Enrollment To Practice Before the IRS'' and other requirements pertaining to the procedures to apply for enrollment.

Section 10.6 of the regulations sets forth the procedures for renewal of enrollment to practice before the IRS. Under the current regulations, the Director of the Office of Professional Responsibility must maintain a list of enrolled agents, including those who are active, inactive and sanctioned. This requirement is combined with the roster requirements of § 10.90 in the proposed regulations to clarify that all rosters, including those related to enrolled agents, will be maintained and made available for public inspection in the time and manner prescribed by the Secretary.

The proposed regulations clarify the requirements to maintain active enrollment to practice before the IRS. An enrolled agent must apply for renewal of enrollment between November 1 and January 31 of the relevant period described in § 10.6(d). The effective date of renewal is the first day of the third month following the close of the period for renewal, *i.e.*, April 1. An enrolled agent must complete 72 hours of continuing professional education during each enrollment cycle, with a minimum of 16 hours (including two hours of ethics) during each enrollment year. The enrollment year is each calendar year, *i.e.*, January 1 to December 31, in the enrollment cycle. The enrollment cycle is the three successive enrollment years preceding the April 1 effective date of renewal. Thus, an enrolled agent whose social security number ends with 0 must renew enrollment between November 1, 2006, and January 31, 2007. The enrolled agent must have completed 72 hours of continuing professional education between January 1, 2004, and December 31, 2006, with at least 16 hours (including two hours of ethics) during each calendar year. Similarly, the proposed regulations require sponsors of continuing education courses to renew their status as qualified sponsors every three years.

The proposed regulations require that a qualifying course enhance professional knowledge in Federal taxation or Federal tax related matters and be consistent with the Internal Revenue Code and effective tax administration.

Limited Practice Before the IRS

In the 2002 ANPRM, the Treasury Department and IRS solicited comments relating to limited practice by unenrolled return preparers. Most commentators opposed expanding the authority of the Director of the Office of Professional Responsibility to include the authority to modify the scope of limited practice by unenrolled preparers without further amendment to Circular 230. Most commentators agreed that the Director of the Office of Professional Responsibility should not be given the authority to determine the eligibility for limited practice by unenrolled preparers.

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 revoke this authorization because it is inconsistent with the requirement that all individuals permitted to practice before the IRS demonstrate their qualifications to advise and assist persons in presenting their cases to the IRS.

Under the proposed regulations, an unenrolled return preparer may not represent a taxpayer unless otherwise authorized by § 10.7(c)(1)(i)–(vii). These individuals no longer may negotiate with the IRS on behalf of a taxpayer during an examination and no longer may bind a taxpayer to a position during an examination. For example, an unenrolled return preparer may not sign a Form 872, ''Consent To Extend Time To Assess Tax,'' with regard to the tax return prepared for that individual. In addition, an unenrolled return preparer may not agree to any adjustment to the taxpayer's reported tax liability.

Individuals who are not eligible to practice and who prepare an original return may assist in the exchange of information with the IRS regarding a taxpayer's return if the taxpayer has specifically authorized the preparer to receive confidential tax information from the IRS. Revocation of the authority for limited practice will not preclude a return preparer from assisting a taxpayer in responding to questions regarding the taxpayer's return. The proposed regulations do not preclude an unenrolled return preparer from accompanying a taxpayer to an examination, provided the taxpayer authorizes the IRS to disclose confidential tax information to the unenrolled return preparer.

Practice by Former Government Employees, Their Partners and Their Associates

Section 10.25 sets forth rules governing practice by former government employees, their business partners and their associates. These rules were first promulgated in 1976 to address discrepancies between the Government-wide post-employment statute, 18 U.S.C. 207, its implementing regulations and the codes of professional responsibility (*e.g.*, ABA Model Rules of Professional Conduct, AICPA Code of Professional Conduct and individual state rules of professional conduct) applicable to practitioners who appear before the IRS.

Section 10.25 of the proposed regulations has been conformed with the terminology used in 18 U.S.C. 207, and 5 CFR parts 2637 and 2641 (or superseding regulations), by eliminating the definitions of *official responsibility* in § 10.25(a)(5), *participate or participation* in § 10.25(a)(6), and *transaction* in § 10.25(a)(8) and substituting the term *particular matter involving specific parties* in § 10.25(a)(4) (formerly § 10.25(a)(8)).

The proposed regulations also eliminate the prohibition in § 10.25(b)(3) against assisting in the representation in matters in which the former employee had official responsibility during the former employee's last year of service. Existing statutes, regulations and codes of professional responsibility are adequate to protect against conflicts of interest and protect the integrity of the tax system, including the prohibition on representation in 18 U.S.C. 207.

Section 10.25(b)(2) of the proposed regulations continues to prohibit former employees who personally and substantially participated in a matter while in Government service from representing or assisting in the representation in the same matter while in private practice. In these matters, the former employee's firm may represent the taxpayer in the matter if the former employee is isolated from the matter and isolation statements are filed with the Office of Professional Responsibility in accordance with § 10.25(c).

Contingent Fees

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to contingent fees. Most commentators opposed further limitations on contingent fees under § 10.27. The Treasury Department and the IRS continue to believe that a rule

restricting contingent fees for preparing tax returns supports voluntary compliance with the Federal tax laws by discouraging return positions that exploit the audit selection process. Additionally, a broader prohibition against contingent fee arrangements is appropriate in light of concerns regarding attorney and auditor independence. The recent shift toward even greater independence, including rules adopted by the Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board, also support expanding the prohibition on contingent fees with respect to Federal tax matters.

Under section 10.27 of the proposed regulations, a practitioner generally is precluded from charging a contingent fee for services rendered in connection with any matter before the Service, including the preparation or filing of a tax return, amended tax return or claim for refund or credit. A practitioner may, however, charge a contingent fee for services rendered in connection with the IRS's examination of, or challenge to, an original tax return. Practitioners also may charge a contingent fee for services rendered in connection with the IRS's examination of, or challenge to, an amended return or claim for refund or credit filed prior to the taxpayer receiving notice of the examination of, or challenge to the original tax return. A written notice of examination would include the written notice furnished to taxpayers subject to the Coordinated Industry Case procedures requesting a statement showing additional tax due (or an adequate disclosure with respect to an item or position) to avoid the imposition of certain accuracy—related penalties if no other written notice of examination is received. Contingent fees also may be charged for services rendered in connection with a judicial proceeding arising under the Federal tax laws.

Conflicting Interests

Section 10.29 of the regulations prohibits a practitioner from representing conflicting interests before the IRS, except with the express consent of all directly interested parties after full disclosure. Section 10.29 is generally consistent with Rule 1.7 of the ABA Model Rules of Professional Conduct (Model Rules), which was amended just prior to the July 26, 2002 amendment to the regulations.

Section 10.29 of the proposed regulations clarifies that a practitioner is required to obtain consents in writing from each affected client in order to represent the conflicting interests. The written consent may vary in form. The practitioner may prepare a letter to the client outlining the conflict, as well as the possible implications of the conflict, and submit the letter to the client for the client to countersign. Unlike the Model Rules, which permit affected clients to provide informed consent orally if the consent is contemporaneously documented by the practitioner in writing, an oral consent followed by a confirmation letter authored by the practitioner will not satisfy § 10.29 unless the confirmation letter is countersigned by the client.

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

Section 10.34 sets forth standards applicable to advice with respect to tax return positions and applicable to preparing or signing returns. Section 10.34 of the proposed regulations sets forth standards applicable to practitioners who advise clients with respect to documents, affidavits and other papers submitted to the IRS. The proposed regulations also provide separate standards for papers that take a position with respect to Federal tax matters and standards for advising a client to file papers involving procedural or factual matters.

Under the proposed regulations, a practitioner may not advise a client to take a position on a submission to the IRS unless the position is not frivolous. A practitioner also may not advise a client to submit a document to the IRS that is meant primarily for delay; is frivolous or groundless; or contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation. With regard to factual matters, a practitioner may rely upon information furnished by the taxpayer with respect to tax returns and documents, affidavits and other papers, unless the information appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete. These standards would supplement the existing requirement in § 10.22 that practitioners exercise due diligence in preparing, or assisting in the preparation of, tax returns and other documents relating to IRS matters.

Sanctions

In accordance with section 822(a) of the Jobs Act, proposed § 10.50 authorizes the Secretary to impose a monetary penalty against a practitioner if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in part 10, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

Under the proposed regulations, the monetary penalty may be imposed in addition to, or in lieu of, any other sanction. If a practitioner acts on behalf of the practitioner's employer, firm or other entity and the employer, firm or other entity knew or should have known of the practitioner's conduct, the Secretary may impose a monetary penalty on the employer, firm or other entity. The Treasury Department and the IRS will issue procedures relating to the imposition of the monetary penalty through separate published guidance.

The proposed regulations also contain conforming amendments to other provisions relating to sanctions.

Incompetence and Disreputable Conduct

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to whether the definition of disreputable conduct should include the willful failure of a preparer who is a practitioner to sign a return. Many commentators supported expanding the definition of disreputable conduct to specifically include the willful failure of a practitioner who is a tax return preparer to sign a return.

Section 10.51 of the regulations defines disreputable conduct for which a practitioner may be sanctioned. Section 10.51 of the proposed regulations modifies the definition of disreputable conduct to include willful failure to sign a tax return prepared by the practitioner. The definition of disreputable conduct also includes the disclosure or use of returns or return information by practitioners in a manner not authorized by the Code, a court of competent jurisdiction, or an administrative law judge in a proceeding instituted under § 10.60.

Supplemental Charges

Section 10.65 provides that the Director of the Office of Professional Responsibility may file supplemental charges against a practitioner or appraiser. Section 10.65 of the proposed regulations provides that the Director may file supplemental charges against a practitioner by amending the complaint to reflect the additional charges if the practitioner is given notice and an opportunity to prepare a defense to the supplemental charges.

Hearings and Discovery

In the 2002 ANPRM, the Treasury Department and the IRS solicited comments relating to expanding discovery and providing greater procedural protections in disciplinary

proceedings. Most commentators supported expanding the use of discovery in disciplinary proceedings. Most commentators also supported providing further procedural protections such as a guarantee of the right to cross-examine witnesses.

These proposed regulations redesignate the provisions relating to hearings, evidence and depositions and discovery. Proposed § 10.71 addresses discovery, proposed § 10.72 addresses hearings and proposed § 10.73 addresses evidence.

1. Motions and Requests

Section 10.68 of the regulations sets forth procedures for filing a motion or request with the Administrative Law Judge presiding over a disciplinary proceeding. The regulations provide that a party is not presumed to oppose a motion for decision by default for failure to file a timely answer or for failure to prosecute. The proposed regulations amend § 10.68 to expressly allow a party to file a motion for summary adjudication if there is no genuine issue as to any material fact.

2. Discovery in Disciplinary Proceedings

Section 10.71 of the proposed regulations clarifies the discovery methods available to the parties in preparation for a disciplinary hearing. The Administrative Law Judge may authorize discovery if the party seeking discovery establishes that it is necessary and relevant. Discovery methods include depositions upon oral examination and requests for admission. The Administrative Law Judge should weigh factors such as the ultimate relevancy and anticipated costs to determine the least burdensome method in ordering discovery.

Discovery is not permitted if the information is privileged or the information relates to mental impressions, conclusions or legal theories of any attorney, party, or other representative of a party prepared in anticipation of a proceeding.

To address practitioners' due process rights without creating a formal court proceeding, the proposed regulations require the Director of the Office of Professional Responsibility to turn over the documentation used in support of a complaint filed with the Administrative Law Judge. Under § 10.63(d) of the proposed regulations, this information must be served on the practitioner or appraiser, or the representative, within 10 days of serving the complaint. This requirement, however, is only an initial disclosure of the evidence of record at the time of the complaint. Supplemental evidence developed during preparation for the hearing is not prohibited from being introduced.

Under § 10.62(c) of the proposed regulations, the Director of the Office of Professional Responsibility must notify the practitioner or appraiser of the time for answering the complaint, which cannot be less than 30 days. When determining the time for answering the complaint, the Director will take into account the amount of the evidence in support of the complaint and the complexity of the charges to allow the practitioner or appraiser time to prepare an adequate answer in defense to the complaint.

3. Hearings

Section 10.72 of the regulations sets forth the procedures for an administrative hearing pursuant to Circular 230. The Administrative Law Judge should conduct the hearing within 180 days of the time for filing of the answer, absent circumstances requiring that, in the interest of justice, the hearing be held at a later date. The proposed regulations amend § 10.72 to allow each party to a disciplinary proceeding, as may be required for a full and true disclosure of the facts, to question, in the presence of the Administrative Law Judge, a person whose statement is offered by the opposing party. The proposed regulations incorporate the requirements of the Administrative Procedure Act (5 U.S.C. 556(d)). The proposed regulations do not prohibit a party from presenting evidence contained in a deposition if all parties to the proceeding were given an opportunity for full examination and cross-examination of the witness under § 10.71. The proposed regulations generally require pre-hearing memoranda. The Administrative Law Judge may determine that pre-hearing memoranda are not necessary or, by order, require other information with respect to the disciplinary proceeding.

4. Publicity of Disciplinary Proceedings

Currently, disciplinary proceedings brought pursuant to Circular 230 are closed to the public unless the Administrative Law Judge grants a practitioner's request that the proceedings be public. The proposed regulations amend § 10.72(d) to provide that all hearings, reports, evidence and decisions in a disciplinary proceeding be available for public inspection. The proposed regulations mandate procedures to protect the identities of any third party taxpayers contained in returns and return information obtained pursuant to section 6103(l)(4) for use in an action or proceeding under subpart D. The procedures to protect the identities of third party taxpayers also must be observed with respect to discovery matters.

The Administrative Law Judge must issue a protective order in the event that redactions of taxpayer identifiers render documents unintelligible or may still permit indirect identification of the taxpayer. The Administrative Law Judge may, for good cause, order proceedings closed to the public or may order nondisclosure of materials associated with the proceeding, such as in the case in which disclosure is prohibited by 18 U.S.C. 1905 or section 6103. The Administrative Law Judge also may order limited access to materials which are confidential or sensitive in some other way.

The proposed regulations provide that, at the conclusion of a proceeding, the Secretary, or his or her delegate, shall ensure that all returns and return information, including the names, addresses or other identifying details of third party taxpayers, are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to such documents being made available for further public inspection.

Decision of Administrative Law Judge

Section 10.76 of the regulations sets forth the requirements for the decision of the Administrative Law Judge. The proposed regulations amend § 10.76 to provide that the Administrative Law Judge should render a decision within 180 days after the conclusion of the hearing. If a party files a motion for summary adjudication, the Administrative Law Judge should rule on the motion within 60 days after a written response to the motion for summary adjudication or, if no written response is filed, 90 days after the motion for summary adjudication is filed.

The proposed regulations provide that the decision of the Administrative Law Judge will become the final decision of the agency 45 days after the date the decision is served on the parties. The Secretary may, however, either in response to a petition for review filed by a party or on the Secretary's own initiative, intervene and order review of the Administrative Law Judge's decision before the decision becomes final. The petition for review must be filed within 30 days of the date the decision is served on the parties.

If the Secretary grants a petition or otherwise orders review, the Secretary must notify the parties within 45 days from the date the Administrative Law Judge's decision is served on the parties.

The notice must state that (1) the decision is under review, (2) no final agency decision has been made, (3) any action of the Administrative Law Judge is inoperative, and (4) a final decision of the agency made by the Secretary is required before judicial review can be obtained. The Secretary will not review an interlocutory order or ruling, *e.g.*, a discovery request ruling, of the Administrative Law Judge prior to the rendering of a decision by the Administrative Law Judge that would dispose of the proceeding.

Expedited Suspension

Section 10.82 of the regulations authorizes the Director of the Office of Professional Responsibility to suspend immediately a practitioner who has engaged in certain conduct. The proposed regulations extend the expedited process to practitioners who are in egregious noncompliance with their tax obligations or have been adjudicated as having advanced arguments, relating to the practitioner's own tax obligations or the obligations of the client, primarily for delay.

The Treasury Department and the IRS are aware of a number of practitioners who are not in compliance with their own Federal tax obligations, but continue to represent taxpayers, and of situations in which practitioners advance frivolous or obstructionist positions relating to their own tax obligations and the obligations of their clients. Under the proposed regulations, a practitioner who is not compliant with the practitioner's own Federal tax obligations may be subject to expedited disciplinary proceedings. In addition, a practitioner who has been found by a court of competent jurisdiction to have advanced frivolous arguments or advanced arguments primarily for delay, either relating to a taxpayer's tax liability or relating to the practitioner's own tax liability, will be subject to an expedited disciplinary proceeding.

Proposed Effective Date

These regulations are proposed to apply on the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The general requirements of these regulations are substantially the same as the requirements of the regulations that these regulations replace. Persons authorized to practice have long been required to comply with certain standards of conduct when practicing before the Internal Revenue Service. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations clarify those obligations in response to public comments, replace certain terminology to conform with the terminology used in 18 U.S.C. 207, and 5 CFR parts 2637 and 2641 (or superseding regulations), make modifications to reflect amendments to section 330 of title 31 made by the Jobs Act, and make other modifications to reflect concerns about greater independence, transparency and due process. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

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

The public hearing is scheduled for June 21, 2006, at 10 a.m., and will be held in the auditorium of the 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 by April 10, 2006 and an outline of the topics to be discussed and the time to be devoted to each topic by April 10, 2006. 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 authors of these regulations are Brinton T. Warren and Heather L. Dostaler of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 31 CFR Part 10

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

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

Proposed Amendments to the Regulations

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: 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330, as amended by Pub. L. 108–357, Sec. 822.

Part 10 [Nomenclature change]

Par. 2. In part 10, remove the language ''Director of Practice'' and add, in its place, the language ''Director of the Office of Professional Responsibility'' in each of the following sections and paragraphs:

§ 10.4(a), (b) introductory text, (b)(1), (b)(2);

§ 10.5(c), (d), (e);

§ 10.6(b), (g)(2)(iii), (g)(2)(iv), (g)(4), (j)(1), (j)(2), (j)(4), (k)(1), (k)(2), (n);

§ 10.7(c)(2)(iii), (d);

§ 10.20(b), (c);

§ 10.62(a), (b);

§ 10.63(c);

§ 10.64(a);

§ 10.66;

§ 10.69(a)(1), (b);

§ 10.73(a);

§ 10.81;

§ 10.82(a), (c) introductory text, (c)(3), (d), (e), (f)(1), (g).

Par. 3. Section 10.1 is revised to read as follows:

§ 10.1 Director of the Office of Professional Responsibility.

(a) *Establishment of office.* The Office of Professional Responsibility is established in the Internal Revenue Service. The Director of the Office of

Professional Responsibility is appointed by the Secretary of the Treasury, or his or her delegate.

(b) *Duties.* The Director of the Office of Professional Responsibility acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to practitioners (and employers, firms or other entities, if applicable) and appraisers; and performs other duties as are necessary or appropriate to carry out his or her functions under this part or as are otherwise prescribed by the Secretary of the Treasury, or his or her delegate.

(c) *Acting Director of the Office of Professional Responsibility.* The Secretary of the Treasury, or his or her delegate, will designate an officer or employee of the Treasury Department to act as Director of the Office of Professional Responsibility in the absence of the Director or a vacancy in that office.

(d) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 4. Section 10.2 is revised to read as follows:

§ 10.2 Definitions.

(a) As used in this part, except where the text provides otherwise—

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(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 and 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), or (d) of § 10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(b) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 5. Section 10.5 is amended by revising paragraphs (a) and (b) and adding paragraph (f) to read as follows:

§ 10.5 Application for enrollment.

(a) *Form; address.* An applicant for enrollment must apply as required by forms or procedures established and published by the Office of Professional Responsibility, 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 and is the address to which all correspondence concerning enrollment will be sent.

(b) *Fee.* The applicant must pay the fee established and published by the Office of Professional Responsibility. This fee will be reflected on applicable forms and will be retained regardless of whether the applicant is granted enrollment.

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(f) *Effective date.* This section is applicable to enrollment applications received on or after the date that final regulations are published in the **Federal Register**.

Par. 6. Section 10.6 is amended by:

1. Removing paragraph (a).

2. Redesignating paragraph (c) as paragraph (a).

3. Adding a new paragraph (c).

4. Revising paragraphs (d) introductory text, (d)(5), (d)(6), (d)(7), (e), (f)(1), (f)(2)(iv)(A), (g)(5), (k)(7) and (l).

5. Adding a new paragraph (p).

The revisions and additions read as follows:

§ 10.6 Enrollment.

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(c) *Change of address.* An enrolled agent must send notification of any change of address to the address specified by the Director of the Office of Professional Responsibility. This notification must include the enrolled agent's name, prior address, new address, social security number or tax identification number and the date.

(d) *Renewal of enrollment.* To maintain active enrollment to practice before the Internal Revenue Service, each individual is required to have his or her enrollment renewed. 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.

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(5) The Director of the Office of Professional Responsibility will notify the individual of his or her renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee may be charged for each application for renewal of enrollment filed with the Director of the Office of Professional Responsibility.

(7) 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 Director of the Office of Professional Responsibility will publish in the Internal Revenue Bulletin (*see* 26 CFR 601.601(d)(2)) and on the Internal Revenue Service Web page (*http://www.irs.gov*).

(e) *Condition for renewal: continuing professional education.* In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of the Office of Professional Responsibility, that he or she has satisfied the following continuing professional 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) The *effective date of renewal* is the first day of the third month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment effective after December 31, 2006*—(i) *Requirements for enrollment cycle.* A minimum of 72 hours of continuing education credit must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year.* A minimum of 16 hours of continuing education credit, including 2 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 (2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete 2 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 2 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.

(f) *Qualifying continuing education*—(1) *General.* To qualify for continuing education credit, a course of learning must—

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

(ii) Be a qualifying program consistent with the Internal Revenue Code and effective tax administration; and

(iii) Be sponsored by a qualifying sponsor.

(2) * * *

(iv) *Credit for published articles, books, etc.* (A) Continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, tax preparation software, and taxation or ethics, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service. The publication must be consistent with the Internal Revenue Code and effective tax administration.

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(g) * * *

(5) *Sponsor renewal*—(i) *In general.* A sponsor maintains its status as a qualified sponsor during the sponsor enrollment cycle.

(ii) *Renewal period.* Each sponsor must file an application to renew its status as a qualified sponsor between May 1 and July 31, 2008. Thereafter, applications for renewal will be required between May 1 and July 31 of every subsequent third year.

(iii) *Effective date of renewal.* The effective date of renewal is the first day of the third month following the close of the renewal period.

(iv) *Sponsor enrollment cycle.* The sponsor enrollment cycle is the three successive calendar years preceding the effective date of renewal.

* * * * *

(k) * * *

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

(l) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request being 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. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject of a disciplinary matter in the Office of Professional Responsibility.

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(p) *Effective date.* This section is applicable to enrollment effective on or after the date that final regulations are published in the **Federal Register**.

Par. 7. Section 10.7 is amended by:

1. Removing paragraph (c)(1)(viii).
2. Revising paragraph (c)(2)(ii).
3. And adding paragraph (g).

The revisions and additions read as follows:

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

* * * * *

(c) * * *

(2) * * *

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under § 10.50.

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(g) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 8. Section 10.22 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 10.22 Diligence as to accuracy.

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(b) *Reliance on others.* Except as provided in §§ 10.34 and 10.35, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 9. Section 10.25 is revised to read as follows:

§ 10.25 Practice by former Government employees, their partners and their associates.

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

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly, or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a special government employee as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Particular matter involving specific parties* is defined at 5 CFR 2637.201(c), or superseding post-employment regulations issued by the U.S. Office of Government Ethics.

(5) *Practitioner* includes any individual described in § 10.2(a)(5).

(6) *Rule* includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rule making or as Treasury decisions; revenue rulings; and revenue procedures published in the Internal Revenue Bulletin (see 26 CFR § 601.601(d)(2)).

(b) *General rules.* (1) No former Government employee may, subsequent to his or her Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may,

subsequent to his or her Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after his or her Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after his or her Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his or her Government employment, the former government employee had official direct responsibility. This paragraph (b)(4) does not, however, preclude such former employee from appearing on his or her own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific parties involving the application or interpretation of such a rule with respect to that particular matter, provided that such former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation.* (1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the Director of the Office of Professional Responsibility.

(d) *Pending representation.* The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.

(e) This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 10. Section 10.27 is revised to read as follows:

§ 10.27 Fees.

(a) *In general.* A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.

(b) *Contingent fees.* (1) Except as provided in paragraphs (b)(2) and (3) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to—

(i) An original tax return; or

(ii) An amended return or claim for refund or credit filed prior to the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.

(3) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

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

(1) *Contingent fee* is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) *Matter before the Internal Revenue Service* includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and 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 and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 11. Section 10.29 is revised to read as follows:

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client in his or her practice before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if—

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if—

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by the affected client, at the time the existence of the conflict of interest is known by the practitioner.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer

or employee of the Internal Revenue Service on request.

(d) This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 12. Section 10.34 is revised to read as follows:

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

(a) *Tax returns.* A practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless—

(1) The practitioner determines that the position satisfies the realistic possibility standard; or

(2) The position is not frivolous.

(b) *Documents, affidavits and other papers.* (1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service—

(i) The purpose of which is to delay or impede the administration of the Federal tax laws;

(ii) That is frivolous or groundless; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation.

(c) *Advising clients on potential penalties.* (1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to—

(i) A position taken on a tax return if—

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

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

(1) *Realistic possibility.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.

(2) *Frivolous.* A position is frivolous if it is patently improper.

(f) *Effective date.* This section is applicable to tax returns, documents, affidavits and other papers filed on or after the date that final regulations are published in the **Federal Register**.

§ 10.35 [Amended]

Par. 13. In § 10.35(b)(1) remove the language ''§ 10.2(e)'' and add the language ''§ 10.2(a)(5)'' in its place.

Par. 14. Section 10.50 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of § 10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

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(c) *Authority to impose monetary penalty*—(1) *In general.* (i) The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or his or her delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of such conduct.

(2) *Amount of penalty.* The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) *Coordination with other sanctions.* Subject to paragraph (c)(2) of this section—

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to penalties imposed under paragraph (c)(1)(i) of this section.

(d) *Effective date.* This section is applicable to conduct occurring on or after the date that final regulations are published in the **Federal Register**.

Par. 15. Section 10.51 is revised to read as follows:

§ 10.51 Incompetence and disreputable conduct.

(a) *Incompetence and disreputable conduct.* Incompetence and disreputable conduct for which a practitioner may be sanctioned under § 10.50 includes, but is not limited to—

(1) Conviction of any criminal offense under the Federal tax laws;

(2) Conviction of any criminal offense involving dishonesty or breach of trust;

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service; and

(4) Giving false or misleading information, or participating in any way

in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term *information.*

(5) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure to properly or promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant or actuary by any duly constituted authority of any State, territory, possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false or circulating or publishing malicious or libel matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(13) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when such signature is required by the Federal tax laws.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under § 10.60.

(b) *Effective date.* This section is applicable to conduct occurring on or after the date that final regulations are published in the **Federal Register**.

Par. 16. Section 10.52 is revised to read as follows:

§ 10.52 Violations subject to sanction.

(a) A practitioner may be sanctioned under § 10.50 if the practitioner—

(1) Willfully violates any of the regulations (other than § 10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of § 10.51(a)(13)) violates § 10.34, 10.35, 10.36 or 10.37.

(b) This section is applicable to conduct occurring on or after the date that final regulations are published in the **Federal Register**.

Par. 17. Section 10.60 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 10.60 Institution of proceeding.

(a) Whenever the Director of the Office of Professional Responsibility determines that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of the Office of Professional Responsibility may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for a sanction described in § 10.50. A proceeding is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

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(d) This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 18. Section 10.61 is revised to read as follows:

§ 10.61 Conferences.

(a) *In general.* The Director of the Office of Professional Responsibility may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary sanction*—(1) *In general.* In lieu of a proceeding being instituted or continued under § 10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under § 10.50.

(2) *Discretion; acceptance or declination.* The Director of the Office of Professional Responsibility may, in his or her discretion, accept or decline the offer described in paragraph (b)(1) of this section. In any declination, the Director of the Office of Professional

Responsibility may state that he or she would accept the offer described in paragraph (b)(1) of this section if it contained different terms. The Director of the Office of Professional Responsibility may, in his or her discretion, accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 19. Section 10.62 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 10.62 Contents of complaint.

* * * * *

(c) *Demand for answer.* The Director of the Office of Professional Responsibility must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of the Office of Professional Responsibility to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective date.* This section is applicable to complaints brought on or after the date that final regulations are published in the **Federal Register**.

Par. 20. Section 10.63 is amended by:

1. Revising paragraph (a)(4).

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

3. Adding new paragraphs (d) and (f).

The revisions and additions read as follows:

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) * * *

(4) For purposes of this section, ''respondent'' means the practitioner, employer, firm or other entity, or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner, employer, firm or other entity, or appraiser.

* * * * *

(d) *Service of evidence in support of complaint.* Within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner described in paragraphs (a)(2) and (3) of this section.

* * * * *

(f) *Effective date.* This section is applicable to complaints brought on or after the date that final regulations are published in the **Federal Register**.

Par. 21. Section 10.65 is revised to read as follows:

§ 10.65 Supplemental charges.

(a) *In general.* The Director of the Office of Professional Responsibility may file supplemental charges, by amending the complaint, against the respondent, if, for example—

(1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or

(2) It appears that the respondent has knowingly introduced false testimony during the proceedings against the respondent.

(b) *Hearing.* The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 22. Section 10.68 is revised to read as follows:

§ 10.68 Motions and requests.

(a) *Motions*—(1) *In general.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in § 10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

(2) *Summary adjudication.* Either party may move for a summary adjudication upon all or any part of the legal issues in controversy. If the non-moving party opposes summary adjudication in the moving party's favor, the non-moving party must file a written response within 30 days unless ordered otherwise by the Administrative Law Judge.

(3) *Good Faith.* A party filing a motion for extension of time, a motion for postponement of a hearing, or any other non-dispositive or procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

(c) *Oral motions; oral argument.* (1) The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions.

(2) The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

(d) *Orders.* The Administrative Law Judge should issue written orders disposing of any motion or request and any response thereto.

(e) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 23. Section 10.70 is amended by revising paragraphs (a) and (b)(6) and adding paragraph (c) to read as follows:

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the sanction (as described in § 10.50) of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) * * *

(6) Take or authorize the taking of depositions or answers to requests for admission;

* * * * *

(c) This section is applicable on the date that final regulations are published in the **Federal Register**.

§ 10.73 [Removed]

Par. 24. Section 10.37 is removed.

§ 10.72 [Redesignated as § 10.73]

Par. 25. Section 10.72 is redesignated as § 10.73.

§ 10.71 [Redesignated as § 10.72]

Par. 26. Section 10.71 is redesignated as § 10.72.

Par. 27. New § 10.71 is added to read as follows:

§ 10.71 Discovery.

(a) *In general.* Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of § 10.72(d)(2) and (3). Within 10 days of receipt of the answer, the Administrative Law Judge will notify the parties of the right to request discovery and the timeframes for filing a request. A request for discovery, and objections, must be filed in accordance with § 10.68. In response to a request for discovery, the Administrative Law Judge may order:

(1) Depositions upon oral examination; or

(2) Answers to requests for admission.

(b) *Depositions upon oral examination.* (1) A deposition must be taken before an officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in Federal tax law matters.

(2) In ordering a deposition, the Administrative Law Judge will require reasonable notice to the opposing party as to the time and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.

(3) Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken. Travel expenses of the deponent shall be borne by the party requesting the deposition, unless otherwise authorized by Federal law or regulation.

(c) *Requests for admission.* Any party may serve on any other party a written request for admission of the truth of any matters which are not privileged and are relevant to the subject matter of this proceeding. Requests for admission shall not exceed a total of 30 (including any subparts within a specific request) without the approval from the Administrative Law Judge.

(d) *Limitations.* Discovery shall not be authorized if—

(1) The request fails to meet any requirement set forth in paragraph (a) of this section;

(2) It will unduly delay the proceeding;

(3) It will place an undue burden on the party required to produce the discovery sought;

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

(6) It is privileged or otherwise protected from disclosure by law;

(7) It relates to mental impressions, conclusions, or legal theories of any party, attorney, or other representative, of a party prepared in anticipation of a proceeding; or

(8) It is available generally to the public, equally to the parties, or to the party seeking the discovery through another source.

(e) *Failure to comply.* Where a party fails to comply with an order of the Administrative Law Judge under this section, the Administrative Law Judge may, among other things, infer that the information would be adverse to the party failing to provide it, exclude the information from evidence or issue a decision by default.

(f) *Other discovery.* No discovery other than that specifically provided for in this section is permitted.

(g) *Effective date.* This section is applicable to proceedings initiated on or after the date that final regulations are published in the **Federal Register**.

Par. 28. Newly designated § 10.72 is amended by:

1. Revising paragraph (a).

2. Redesignating paragraphs (b), (c) and (d) as paragraphs (d), (e) and (f), respectively.

3. Adding new paragraphs (b) and (c).

4. Revising newly designated paragraph (d).

5. Adding a new paragraph (g).

The additions and revisions read as follows:

§ 10.72 Hearings.

(a) *In general*—(1) *Presiding officer.* An Administrative Law Judge will preside at the hearing on a complaint filed under § 10.60 for the sanction of a practitioner, employer, firm or other entity, or appraiser.

(2) *Time for hearing.* Absent a determination by the Administrative Law Judge that, in the interest of justice, a hearing must be held at a later time, the Administrative Law Judge should, on notice sufficient to allow proper preparation, schedule the hearing to occur no later than 180 days after the time for filing the answer.

(3) *Procedural requirements.* (i) Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation.

(ii) Hearings will be conducted pursuant to 5 U.S.C. 556.

(iii) A hearing in a proceeding requested under § 10.82(g) will be conducted de novo.

(iv) An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless—

(A) The Director of the Office of Professional Responsibility withdraws the complaint;

(B) A decision is issued by default pursuant to § 10.64(d);

(C) A decision is issued under § 10.82(e);

(D) The respondent requests a decision on the written record without a hearing; or

(E) The Administrative Law Judge issues a decision under § 10.68(d) or by virtue of ruling on another motion that disposes of the case prior to the hearing.

(b) *Cross-examination.* A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge determines that the deposition has been obtained in compliance with the rules of this subpart D.

(c) *Prehearing memorandum.* Unless otherwise ordered by the Administrative Law Judge, each party shall file, and serve on the opposing party or the opposing party's representative, prior to any hearing, a prehearing memorandum containing—

(1) A list (together with a copy) of all proposed exhibits to be used in the party's case in chief;

(2) A list of proposed witnesses, including a synopsis of their expected testimony, or a statement that no witnesses will be called;

(3) Identification of any proposed expert witnesses, including a synopsis of their expected testimony and a copy of any report prepared by the expert or at his or her direction; and

(4) A list of undisputed facts.

(d) *Publicity of proceedings*—(1) *In general.* Except as provided in paragraph (d)(3) of this section, all hearings before the Administrative Law Judge, all pleadings filed with the Administrative Law Judge, all evidence received by the Administrative Law Judge, and all reports and decisions of the Administrative Law Judge in a proceeding under subpart D will, subject to paragraph (d)(3) of this section, be public and open to inspection. Copies of these documents may, at the Secretary's discretion, be made publicly available on the Internal Revenue Service Web page (*http://www.irs.gov*) or through other means.

(2) *Returns and return information*—(i) *Disclosure to practitioner or appraiser.* Pursuant to section

6103(l)(4)(A) of the Internal Revenue Code, the Secretary, or his or her delegate, may disclose returns and return information, upon written request, to any practitioner or appraiser, or to the authorized representative of such practitioner or appraiser, whose rights are or may be affected by an administrative action or proceeding under subpart D, but solely for use in such action or proceeding and only to the extent that the Secretary, or his or her delegate, determines that such returns or return information are or may be relevant and material to the action or proceeding.

(ii) *Disclosure to officers and employees of the Department of Treasury.* Pursuant to section 6103(l)(4)(B) of the Internal Revenue Code, the Secretary may disclose returns and return information to officers and employees of the Department of the Treasury for use in any action or proceeding under subpart D, to the extent necessary to advance or protect the interests of the United States.

(iii) *Use of returns and return information.* Recipients of returns and return information under this paragraph (d)(2) may use such returns or return information solely in the action or proceeding, or in preparation for the action or proceeding, with respect to which the disclosure was made.

(iv) *Procedures for disclosure of returns and return information*—(A) *Requests for information.* The practitioner or appraiser, or his or her authorized representative, may request returns or return information for use in the action or proceeding, or preparation for such action or proceeding in accordance with the requirements of 6103(l)(4)(A) of the Internal Revenue Code. The practitioner or appraiser, or his or her authorized representative, may not obtain returns or return information from the Internal Revenue Service for use in a disciplinary proceeding under subpart D through any other process or procedure.

(B) *Responding to requests for information.* The Secretary will respond to a properly constituted written request for returns or return information made pursuant to paragraph (d)(2)(iv)(A) of this section by providing—

(*1*) To the extent authorized by section 6103(l)(4)(A) of the Internal Revenue Code, returns or return information requested by the practitioner or appraiser, coded for identifying all third party taxpayers;

(*2*) A key to the coded information;

(*3*) A letter informing the practitioner or appraiser, and his or her authorized representative, of the restrictions on the use and disclosure of the returns and return information, the applicable damages remedy under section 7431 of the Internal Revenue Code, and that unauthorized disclosure of information provided by the Internal Revenue Service under this paragraph (d)(2) is also a violation of this part.

(C) *Filing documents.* The parties must redact from all documents filed with the Administrative Law Judge (including attachments and exhibits) any names, addresses or other identifying details of third party taxpayers and replace such information with the code assigned to the corresponding taxpayer.

(D) *Oral testimony.* The parties shall provide a key to the coded third party returns and return information described in paragraph (d)(2)(iv)(B) of this section to each person giving oral testimony before the Administrative Law Judge, but only to the extent relevant to the person's testimony. The Administrative Law Judge should direct all persons giving oral testimony to use the code during such testimony, or, if impractical, issue a protective order in accordance with paragraph (d)(3) of this section.

(3) *Protective measures*—(i) *Mandatory protective order.* If redaction of names, addresses, and other identifying information of third parties would render documents unintelligible for use in the proceeding or may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that such identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not disclosed to, or open to inspection by, the public.

(ii) *Authorized orders.* (A) Upon motion by a party or any other affected person, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect any person in the event disclosure of information is prohibited by law, privileged, confidential, or sensitive in some other way, including, but not limited to, one or more of the following—

(*1*) That disclosure of information be made only on specified terms and conditions, including a designation of the time or place;

(*2*) That certain matters not be inquired into, or that the inquiry be limited to certain matters or to any other extent;

(*3*) That the hearing or deposition be conducted with no one present except persons designated by the Administrative Law Judge;

(*4*) That a deposition or any written materials be sealed, and be opened only by order of the Administrative Law Judge;

(*5*) That a trade secret or other information not be disclosed, or be disclosed only in a designated way; and

(*6*) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only as directed by the Administrative Law Judge.

(B) If a discovery request has been made, then the movant shall attach as an exhibit to a motion for a protective order under this section a copy of any discovery request in respect of which the motion is filed.

(iii) *Denials.* If a motion for a protective order is denied in whole or in part, then the Administrative Law Judge may, on such terms or conditions as he or she deems just, order any party or person to comply with, or respond in accordance with, the procedure involved.

(iv) *Conclusion of Proceedings.* At the conclusion of a proceeding the Secretary, or his or her delegate, shall ensure that all returns and return information, including the names, addresses or other identifying details of third party taxpayers, are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to such documents being made available for further public inspection.

* * * * *

(g) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 29. Newly designated § 10.73 is amended by:

1. Revising paragraph (b)

2. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively.

3. Adding new paragraphs (c) and (g).

4. Revising newly designated paragraph (d).

The revisions and additions read as follows:

§ 10.73 Evidence.

* * * * *

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.71 may be admitted into evidence in any proceeding instituted under § 10.60.

(c) *Requests for admission.* Any matter admitted in response to a request for admission under § 10.71 is conclusively established unless the Administrative Law Judge on motion permits withdrawal or modification of the admission. Any admission made by a party is for the purposes of the

pending action only and is not an admission by such party for any other purpose, nor may it be used against such party in any other proceeding.

(d) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

* * * * *

(g) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 30. Section 10.76 is revised to read as follows:

§ 10.76 Decision of Administrative Law Judge.

(a) *In general*—(1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in § 10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Director of the Office of Professional Responsibility, with a copy to the Director's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* The decision of the Administrative Law Judge will become the final decision of the agency 45 days after the date the Administrative Law Judge's decision is served on the parties unless, either in response to a petition for review to the Secretary, or his or her delegate, filed by a party, or on his or her own initiative, the Secretary, or his or her delegate, provides the written notice described in § 10.77(e) to the parties.

(e) *Effective date.* This section is applicable to proceedings initiated on or after the date that final regulations are published in the **Federal Register**.

Par. 31. Section 10.77 is revised to read as follows:

§ 10.77 Petition for review of decision of Administrative Law Judge.

(a) *Petition for review.* Any party to the proceeding under subpart D may file a petition for review of the decision of the Administrative Law Judge with the Secretary, or his or her delegate.

(1) *Briefs.* The petition must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions.

(2) *Publicity of review*—(i) *In general.* All petitions and briefs, any responses thereto, filed with the Secretary, or his or her delegate, and all decisions of the Secretary, or his or her delegate, will be public and open to inspection. Copies of these documents may, at the Secretary's discretion, be made publicly available on the Internal Revenue Service Web page (*http://www.irs.gov*) or through other means.

(ii) *Returns and return information.* The parties must delete from all documents filed with the Secretary, or his or her delegate, (including attachments and exhibits) and the Secretary, or his or her delegate, will delete from the decision any names, addresses or other identifying details of third party taxpayers and replace the information with the code assigned to third party taxpayers in accordance with § 10.72(d).

(b) *Time and place for filing of petition for review.* The petition for review, and brief, must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the petition to the Secretary or his or her delegate who decides appeals. A copy of the petition for review must be sent to any non-petitioning party. If the Director of the Office of Professional Responsibility files a petition for review, he or she shall certify to the respondent that the petition has been filed along with a copy of the petition.

(c) *Discretionary review.* In determining whether to grant review of the decision of the Administrative Law Judge, the Secretary, or his or her delegate, may consider whether the petition for review shows that—

(1) A prejudicial error was likely committed in the conduct of the proceeding; or

(2) The decision—

(i) Likely contains a finding or conclusion of material fact or conclusion of law that is clearly erroneous; or

(ii) The Secretary, or his or her delegate, determines that such error should be reviewed.

(d) *Secretary review other than pursuant to a petition for review.* The Secretary, or his or her delegate, may, on his or her own initiative, order review of any Administrative Law Judge decision within 45 days of the date of the decision.

(e) *Notice of review.* If the Secretary, or his or her delegate, grants a petition for review or orders review on his or her own initiative, the Secretary, or his or her delegate, will notify the parties, within 45 days from the date the decision of the Administrative Law Judge is served on the parties, that—

(1) The decision of the Administrative Law Judge has been taken under review by the Secretary, or his or her delegate;

(2) No final agency decision has been made;

(3) The action of the Administrative Law Judge, including the decision and order, is inoperative pending review by the Secretary, or his or her delegate; and

(4) A final decision of the agency to be made by the Secretary is required before judicial review can be obtained.

(f) *Deemed denial.* A petition for review will be deemed to be denied where the Secretary, or his or her delegate, issues no notice of review.

(g) *Interlocutory review.* The Secretary will not review an Administrative Law Judge's ruling prior to the Administrative Law Judge rendering a decision that would dispose of the entire proceeding.

(h) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 32. Section 10.78 is revised to read as follows:

§ 10.78 Decision on review.

(a) *Scope of review.* If the Secretary, or his or her delegate, provides written notice to the parties pursuant to § 10.77 that a decision of the Administrative Law Judge is under review, the Secretary, or his or her delegate, may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the decision by the Administrative Law Judge and may make any findings and conclusions that in his or her judgment are proper and on the basis of the record. The decision of the Administrative Law Judge will not be reversed unless it is established that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision will be provided by the Secretary, or his or her delegate, contemporaneously to the Director of the Office of Professional Responsibility and the respondent or their authorized representatives.

(b) *Record on review.* The Director of the Office of Professional Responsibility must provide the entire record, including copies of any petition for review, brief, and any reply brief, to the Secretary, or his or her delegate, within 30 days of the date the Secretary, or his or her delegate, provides written notice to the parties pursuant to § 10.77 that a decision of the Administrative Law Judge is under review. The Director of the Office of Professional Responsibility shall certify to the respondent that such documents have been so provided.

(c) *Reply and supplemental briefs.* The Secretary, or his or her delegate, may order the filing of a reply brief that responds to the petition for review, either before the period for notice of review expires or after a notice of review is issued. The Secretary, or his or her delegate, may order the parties to file supplemental briefs on any or all issues.

(d) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 33. Section 10.82 is amended by revising paragraph (b) and adding paragraph (h) to read as follows:

§ 10.82 Expedited suspension.

* * * * *

(b) *To whom applicable.* This section applies to any practitioner who, within five years of the date a complaint instituting a proceeding under this section is served:

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in § 10.51(a)(11).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions imposed on the practitioner pursuant to § 10.79(d).

(4) Has demonstrated a pattern of egregious conduct by—

(i) Failing to file a return or pay a tax, required annually by the Internal Revenue Code, during three of the five immediately proceeding taxable years; or

(ii) Failing to file a return or pay a tax, required more frequently than annually by the Internal Revenue Code, during four of the seven immediately proceeding tax periods; and

(iii) Is not in compliance with his or her Federal tax obligations at the time the notice of suspension is issued under paragraph (f) of this section.

(5) Has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to a taxpayer's tax liability or relating the practitioner's own tax liability, for—

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

* * * * *

(h) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 34. Section 10.90 is revised to 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 his or her delegate, rosters of—

(1) 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;

(2) 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; and

(3) Disqualified appraisers.

(b) *Other records.* Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable disclosure rules of the Internal Revenue Service and the Treasury Department.

(c) *Effective date.* This section is applicable on the date that final regulations are published in the **Federal Register**.

Par. 35. Section 10.91 is revised to read as follows:

§ 10.91 Saving provision.

Any proceeding instituted under this part prior to July 26, 2002, for which a final decision has not been reached or for which judicial review is still available will not be affected by these revisions. Any proceeding under this part based on conduct engaged in prior to the effective dates of these revisions, which is instituted after that date, shall apply subpart D and E or this part as revised, but the conduct engaged in prior to the effective date of these revisions shall be judged by the

regulations in effect at the time the conduct occurred.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 2, 2006.

Arnold I. Havens,

General Counsel, Office of the Secretary.

[FR Doc. 06–1106 Filed 2–3–06; 11:01 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0014; FRL–8028–1]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent degreasers. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 10, 2006.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0014, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: SCAQMD 1122. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 20, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 06–1172 Filed 2–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2005–AZ–0006; FRL–8029–3]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Finding of Attainment for Ajo Particulate Matter of 10 Microns or Less (PM_{10}) Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Ajo moderate PM–10 nonattainment area in Arizona has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2002–2004. EPA also finds that the Ajo area has continued to attain the PM_{10} NAAQS since 2004. Based on this determination, EPA is also proposing to determine that certain Clean Air Act requirements are not applicable for so long as the Ajo area continues to attain the PM_{10} NAAQS.

DATES: Any comments on this proposal must arrive by March 10, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2005–AZ–0006 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *tax.wienke@epa.gov.*
- Fax: (415) 947–3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.
- Hand Delivery: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.