§ 515.11 General exemptions. [Reserved]

§ 515.12 Specific exemptions.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

(1) Indian Gaming Individuals Records System.

(2) Management Contract Individuals Record System.

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in these systems is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission, with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

Dated: June 21, 2009.

Philip N. Hogen,

Chairman.

Norman DesRosiers,

Vice Chairman.

[FR Doc. E9–17745 Filed 7–27–09; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–113289–08]

RIN 1545–BH81

Contingent Fees Under Circular 230

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 Internal Revenue Service (Circular 230). These proposed regulations affect individuals who practice before the IRS. The proposed amendments modify the rules relating to contingent fees under Circular 230. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronically generated comments must be received by September 10, 2009. Outlines of topics to be discussed at the public hearing scheduled for November 20, 2009 at 10 a.m. must be received by September 10, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–113289–08), room 5203, Internal Revenue Service, P.O. 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–113289–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–113289–08). The public hearing will be held in Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amy L. Mielke at (202) 622–4940; concerning submissions of comments and the public hearing, Regina Johnson 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 practice before the Treasury Department. The Secretary has published the regulations in Circular 230 (31 CFR part 10). On September 26, 2007, the Treasury Department and the IRS published final regulations in the **Federal Register** (72 FR 54540) modifying rules governing the general standards of practice before the IRS, including the rules relating to contingent fees in § 10.27 of Circular 230. Section 10.27 of the final regulations generally precludes a practitioner from charging a contingent fee for services rendered in connection with any matter before the Internal Revenue Service, including the preparation or filing of a tax return, amended tax return or claim for refund or credit. The final regulations, however, permit a practitioner to charge a contingent fee for services rendered in connection with the IRS examination of, or challenge to: (i) An original tax return, or (ii) an amended return or claim for refund or credit when the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to, the original tax return. The final regulations also permit a practitioner to charge a contingent fee for services rendered in connection with a claim for refund or credit of interest and penalties assessed by the IRS, and for services rendered in connection with a judicial proceeding arising under the Internal Revenue Code. The final amendments to § 10.27 made by the final regulations apply to fee

arrangements entered into after March 26, 2008.

Section 406 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2958) (December 20, 2006) (the Act) amended section 7623 of the Internal Revenue Code concerning the payment of awards to certain persons who detect underpayments of tax. Prior statutory authority to pay awards at the discretion of the Secretary was re-designated as section 7623(a), and a new section 7623(b) was added to the Code. Additional off-Code provisions in section 406 of the Act established a Whistleblower Office within the IRS and addressed reward program administration issues. See Notice 2008–4, 2008–2 IRB 253, for interim guidance applicable to award claims submitted under the authority of section 7623.

After consideration of comments received following the publication of the final regulations on contingent fees and the Act, on March 26, 2008, the Treasury Department and the IRS published Notice 2008–43, 2008–15 IRB 748, providing interim guidance and information concerning contingent fees under Circular 230. The interim guidance in Notice 2008–43 clarified that § 10.27(b)(2)(ii) of Circular 230 does not require the IRS to furnish a written notice of examination to a taxpayer as a prerequisite to a practitioner charging a contingent fee for services rendered in connection with an IRS examination of, or challenge to, an amended return. The interim guidance also clarified that § 10.27 permits practitioners to charge a contingent fee with respect to whistleblower claims under section 7623. The interim rules in Notice 2008–43 are applicable to fee arrangements entered into after March 26, 2008, and will remain in effect until these proposed regulations are finalized.

Explanation of Provisions

This document proposes modifications to the standards for contingent fees consistent with the interim guidance provided in Notice 2008–43. Section 10.27 generally prohibits a practitioner from charging a contingent fee for services rendered in connection with any matter before the IRS. The primary rationales behind the prohibition on contingent fees is to preclude any fee arrangement that is related to or requires a favorable ruling by the IRS and that has the potential to exploit the audit selection process or compromise a practitioner's duty of independent judgment. Consistent with the interim guidance provided in Notice 2008–43, proposed revisions to § 10.27 provide that a practitioner may charge a contingent fee in three limited exceptions. Under proposed § 10.27(b)(2)(i) and (ii), a practitioner may charge a contingent fee for services rendered in connection with the IRS's examination of, or challenge to: (i) An original tax return; or (ii) an amended return or claim for refund or credit filed before the taxpayer received a written notice of examination of, or a written challenge to, the original tax return (or filed no later than 120 days after the receipt of such written notice or written challenge). The intent of this exception is to discourage the tactical preparation of a refund claim or amended return filed late in the examination process. The exception for contingent fee arrangements with respect to an amended return or claim for refund or credit may be used if the amended return or claim for refund or credit is filed before the taxpayer receives written notice of the examination or written challenge to the original return (or if the taxpayer never receives such notice or writing) or within 120 days of the taxpayer receiving the notice or writing. For purposes of proposed § 10.27(b)(2)(ii), the 120 days is computed from the earlier of a written notice of the examination, if any, or a written challenge to the original return. Further, under proposed § 10.27(b)(3) and (4), practitioners also may charge a contingent fee for services rendered in connection with a claim for refund or credit of interest and penalties assessed by the IRS, and for services rendered in connection with a claim under section 7623.

In response to comments received following the publication of the final regulations on contingent fees, this document also clarifies the definition of a contingent fee in § 10.27(c)(1) to provide that 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 tax result attained. The definition in § 10.27(c)(1) states that a contingent fee depends on the specific result attained without directly providing that it is the specific tax result that is relevant to the definition of a contingent fee. Contingent fees based on the closing of a transaction or other non-tax contingencies do not present the same concerns posed by tax-related contingent fees. Accordingly, this document clarifies the existing definition to provide that a contingent fee includes, but is not limited to, any fee that depends on the specific tax result obtained in any given transaction.

The scope of these regulations is limited to the rules relating to contingent fees under the general standards of practice before the IRS. These regulations do not alter or supplant other ethical standards applicable to practitioners.

Effect on Other Documents

Notice 2008–43, 2008–15 IRB 257, will be obsolete when regulations finalizing these proposed regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this proposed rule 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. Persons authorized to practice before the IRS have long been required to comply with certain standards of conduct. These regulations do not alter the basic nature of the obligations and responsibilities of these practitioners. These regulations clarify when a practitioner may charge a contingent fee under § 10.27(b)(2) in response to public comments. 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 the 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 November 20, 2009, at 10 a.m., and will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to

attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 10, 2009 and an outline of the topics to be discussed and the time to be devoted to each topic by September 10, 2009. A period of 10 minutes will be allocated to each person for making comments.

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

Drafting Information

The principal author of the regulations is Amy L. Mielke of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 31 CFR Part 10

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

Proposed Amendments to the Regulations

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

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

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

Paragraph. 2. Section 10.27 is amended by revising paragraphs (b), (c)(1), and (d), and by adding paragraph (e) to read as follows:

§ 10.27 Fees.

* * * * *

(b) *Contingent fees*—(1) Except as provided in paragraphs (b)(2), (3), (4), and (5) 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 Internal Revenue Service's examination of, or challenge to—

(i) An original tax return; or

(ii) An amended return or claim for refund or credit filed before the taxpayer received a written notice of examination of, or a written challenge to, the original tax return; or filed no later than 120 days after the receipt of such written notice or written challenge. The 120 days is computed from the earlier of a written notice of the examination, if any, or a written challenge to the original return.

(3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

(4) A practitioner may charge a contingent fee for services rendered in connection with a claim under section 7623 of the Internal Revenue Code.

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

(c) * * *

(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 tax 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) * * *

(d) *Applicability date.* This section is applicable to fee arrangements entered into after March 26, 2008.

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

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–17743 Filed 7–27–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0303(b); FRL–8936–1]

Approval and Promulgation of Implementation Plans; South Carolina; Transportation Conformity Memorandum of Agreement Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Carolina State Implementation Plan (SIP) submitted on November 28, 2008, through the South Carolina Department of Health and Environmental Control. This revision consists of transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. The intended effect is to update the transportation conformity criteria and procedures in the South Carolina SIP.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0303, by one of the following methods:

a. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

b. *E-mail: Wood.amanetta@epa.gov.*

c. *Fax:* (404) 562–9019.

d. *Mail:* EPA–R04–OAR–2009–0303, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,