

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of De Quincy Industrial Airpark.

\* \* \* \* \*

**ASW LA E5 Homer, LA [Removed]**

\* \* \* \* \*

**ASW LA E5 Minden, LA [Amended]**

Minden Airport, LA

(Lat. 32°38'46" N., long. 93°17'53" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Minden Airport.

\* \* \* \* \*

**ASW LA E5 Slidell, LA [Amended]**

Slidell Airport, LA

(Lat. 30°20'47" N., long. 89°49'15" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Slidell Airport, and within 4.0 miles each side of the 360° bearing from the airport extending from the 6.5-mile radius to 9.2 miles north of the airport, and within 4.0 miles each side of the 180° bearing from the airport extending from the 6.5-mile radius to 9.0 miles south of the airport.

Issued in Fort Worth, Texas, on June 27, 2016.

**Walter Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2016-16383 Filed 7-13-16; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 14 and 20**

[Docket No. FDA-2015-N-2103]

**Removal of Review and Reclassification Procedures for Biological Products Licensed Prior to July 1, 1972; Technical Amendment**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is amending the Agency's regulations by removing certain regulations that include obsolete references. FDA is taking this action to improve the accuracy of the regulations.

**DATES:** This rule is effective July 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301,

Silver Spring, MD 20993-0002, 240-402-7911.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of February 12, 2016 (81 FR 7445), FDA published a final rule entitled "Removal of Review and Reclassification Procedures for Biological Products Licensed Prior to July 1, 1972" (February 2016 final rule). In the February 2016 final rule, FDA, in part, removed § 601.25 (21 CFR 601.25), which prescribed procedures for FDA's review of biological products licensed before July 1, 1972.

Under § 14.1(a)(2) (21 CFR 14.1(a)(2)), specific provisions are provided for a matter that is subject to a hearing before an advisory committee. Under § 20.100(c) (21 CFR 20.100(c)), in addition to the provisions of 21 CFR part 20, rules on the availability of specific categories of FDA records are established by regulations under Chapter I of Title 21 of the Code of Federal Regulations. Sections 14.1(a)(2)(v) and 20.100(c)(22) include a reference to § 601.25. In the February 2016 final rule, FDA inadvertently did not remove these sections (§§ 14.1(a)(2)(v) and 20.100(c)(22)) that referenced § 601.25. Accordingly, FDA is removing and reserving §§ 14.1(a)(2)(v) and 20.100(c)(22).

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment is unnecessary because the amendments to the regulations are nonsubstantive.

**List of Subjects**

*21 CFR Part 14*

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

*21 CFR Part 20*

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 14 and 20 are amended as follows:

**PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE**

■ 1. The authority citation for part 14 continues to read as follows:

**Authority:** 5 U.S.C. App. 2; 15 U.S.C. 1451-1461, 21 U.S.C. 41-50, 141-149, 321-394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107-109; Pub. L. 108-155; Pub. L. 113-54.

**§ 14.1 [Amended]**

■ 2. In § 14.1, remove and reserve paragraph (a)(2)(v).

**PART 20—PUBLIC INFORMATION**

■ 3. The authority citation for part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531-2582; 21 U.S.C. 321-393, 1401-1403; 42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1.

**§ 20.100 [Amended]**

■ 4. In § 20.100, remove and reserve paragraph (c)(22).

Dated: July 8, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-16637 Filed 7-13-16; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 9778]

**RIN 1545-BM24**

**Participation of a Person Described in Section 6103(n) in a Summons Interview Under Section 7602(a)(2) of the Internal Revenue Code**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations modifying regulations under section 7602(a) of the Internal Revenue Code relating to administrative summonses. Specifically, these final regulations clarify that persons with whom the IRS or the Office of Chief Counsel (Chief Counsel) contracts for services described in section 6103(n) and its implementing regulations may be included as persons designated to receive summoned books, papers, records, or other data and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath. These regulations may affect taxpayers, a taxpayer's officers or employees, and any third party who is served with a summons, as well as any other person entitled to notice of a summons.

**DATES:** *Effective Date:* These regulations are effective on July 14, 2016.

*Applicability Date:* For date of applicability, see § 301.7602–1(d).

**FOR FURTHER INFORMATION CONTACT:** William V. Spatz at (202) 317–5461 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

These final regulations amend Procedure and Administration Regulations (26 CFR part 301) under section 7602 of the Internal Revenue Code. These final regulations clarify that persons described in section 6103(n) and Treas. Reg. § 301.6103(n)–1(a) with whom the IRS or Chief Counsel contracts for services—such as outside economists, engineers, consultants, or attorneys—may receive books, papers, records, or other data summoned by the IRS and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a person who the IRS has summoned as a witness to provide testimony under oath. On June 18, 2014, temporary regulations (TD 9669) regarding participation in a summons interview of a person described in section 6103(n) were published in the **Federal Register** (79 FR 34625). A notice of proposed rulemaking (REG–121542–14) cross-referencing the temporary regulations was published in the **Federal Register** (79 FR 34668) the same day.

No public hearing was requested or held. The Internal Revenue Service received two comments to the proposed regulations. One comment recommends that the regulations be revised to remove the provision permitting a contractor to question a witness under oath or to ask a witness's representative to clarify an objection or assertion of privilege. The other comment recommends that the proposed and temporary regulations be withdrawn. After consideration of both comments, the sole amendment to the proposed regulations is to replace the word “examine” with “review” in the phrase describing what contractors may do with books, papers, records, or other data received by the IRS under a summons. This revision clarifies that the regulations do not permit contractors to direct examinations (that is, audits) of a taxpayer's return. Accordingly, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed.

**Explanation and Summary of Comments**

*1. Potential for IRS Loss of Control Over Interview*

One comment raises concerns about how the regulations would operate in practice. This comment states that turning the questioning of a witness over to a third-party contractor may cause the IRS officer or employee in charge of the interview to lose control of the interview. The comment further states that having multiple persons “on the record”—an IRS officer or employee, a contractor, a witness, and a representative of the witness—may lead to a cluttered, incomprehensible transcript of the interview. To address these concerns, the comment suggests that instead of having the contractor question the witness directly, the IRS officer or employee should announce to the court reporter that he or she needs a moment to confer with the contractor, and after consultation ask to go back on the record to resume questioning.

These concerns are unfounded. When the IRS hires a contractor to assist the IRS in reviewing books and records, analyzing data, or receiving sworn testimony from a summoned witness, the IRS determines what information will be requested via a summons and who the summons will request to testify. An IRS officer or employee is present during the interview and remains in charge of the interview. A contractor asking questions does not present any additional difficulties for the IRS officer or employee in retaining control of that interview. Rather, the IRS officer or employee in charge of the interview may be in a better position to maintain control of the overall interview if someone else is asking the questions. The IRS officer or employee always has the ability to ask the court reporter to go off the record to confer with the contractor, if necessary.

Further, since 2002, § 301.7602–1(b)(1) has provided that a summoned witness may be required to appear before “one or more” IRS officers or employees to give testimony, including Chief Counsel attorneys. During this time, the IRS experience with multiple persons asking questions of summoned persons has not resulted in cluttered interview transcripts as compared to those transcripts in which only one person from the IRS asks a witness questions. Instead, the IRS has generally found that allowing multiple IRS persons to question a summoned witness results in more thorough and complete coverage of the appropriate interview topics. This is particularly true when a person asking questions for

the IRS has the chance to focus questions on particular subject areas with which the questioner is most familiar. Furthermore, the IRS has found that significant value is also added when multiple persons have the opportunity to ask questions to address gaps in prior questioning or clarify answers by a witness.

Accordingly, for the reasons discussed above, the proposed regulations have not been amended as suggested by this comment.

*2. Statutory Authority for an Outside Contractor To Question a Summoned Witness*

Both comments state section 7602 does not authorize a contractor to question a witness during an IRS summons interview. Specifically, the comments state that the regulations improperly delegate to the contractor the Secretary's authority under section 7602(a)(3) to take testimony under oath. According to one of the comments, because section 7701(a)(11)(B) defines the term “Secretary” to include a delegate, and section 7701(a)(12)(A) defines a “delegate” of the Secretary, in part, as a duly authorized “officer, employee or agency of the Treasury Department,” the regulations improperly attempt to treat a “third party agent” (a contractor under section 6103(n)) as an “agency of the Treasury Department.” The other comment adds that this type of treatment of a contractor would be unprecedented under various IRS Delegation Orders and Internal Revenue Manual provisions and that a statutory authorization is required for “such delegation.” Both comments state that section 6306, regarding the IRS's use of private collection agencies to perform certain tax collection functions, was an example of such authorization by statute.

Further, both comments question whether under the regulations inherently governmental functions will continue to be performed by IRS officers or employees, and state that reference to this in the preamble to the temporary regulations was included to allay potential concerns about improper delegation. The comment also asserts that taking testimony by asking questions, reviewing books or papers, and analyzing other data, as allowed by the regulations, is inherently governmental. In support of this, the comment states that when contractors ask questions that taxpayers are compelled to answer under oath, the contractor is deciding what information must be produced by the taxpayer. The comment asserts that it is clear that

questioning a witness under oath and with compulsion, or directing counsel for a witness to clarify an objection or assertion of privilege, in an extra-judicial governmental investigation such as an IRS audit is inherently governmental. This comment states that the fact that a contractor's participation in a summons interview will only be done in the presence and under the guidance of an IRS officer or employee suggests that participation in a summons interview is inherently governmental.

These comments state further that the reference to § 301.7602-2(c)(1)(i)(B) and (c)(1)(ii) Example 2 in the preamble to the temporary regulations means that the regulations are delegating authority under section 7602(a) to the contractor.

The IRS has broad information gathering authority under section 7602(a). See *United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984). Section 7602(a) provides that, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any internal revenue tax, the Secretary (and the IRS as the Secretary's delegate) is authorized to examine books and records, issue summonses seeking documents and testimony, and take testimony from witnesses under oath. When a contractor assists the IRS in gathering facts by reviewing books and records or asking questions of a witness during a summons interview, the contractor is merely assisting in carrying out the powers granted to the Secretary. Nothing in section 7602(a) prohibits participation by a contractor in a summons interview, nor does it prescribe procedures that the IRS must follow during the summons interview.

Moreover, nothing in these regulations delegates authority under section 7602(a). The IRS's authority to engage contractors to assist with fact gathering has always existed under section 7602, and the comments acknowledge this authority. For instance, the comment addressing the impact of multiple questioners on the clarity of the transcribed record of the summons interview suggests as an alternative that the contractor provide the IRS with the questions to ask. Given that the commentators acknowledge that the IRS is authorized to have a contractor communicate the question off the record to the IRS, it seems implausible that having the contractor actually ask the question on the record, in the presence of and under the supervision of the IRS, is substantively different.

Section 6306, dealing with qualified tax collection contracts, does not support the contention in the comments that congressional action is required to engage a contractor to perform services for the IRS. Long before section 6306 was added to the Code in 2004, the IRS collection function had contracted with private persons (*for example*, locksmiths, tow truck drivers, storage facilities, property appraisers and auctioneers) for tax administration purposes to facilitate IRS seizures of property by levy and IRS sales of such property, pursuant to the statutory powers conferred on the Secretary by sections 6301, 6331, and 6335. In fiscal years 1996 and 1997, without making any modifications to the Code, Congress earmarked \$13 million for the IRS to test the use of private debt collection companies. In 2004, rather than say it was authorizing the IRS to enter into collection agreements with outside contractors to assist the IRS in collecting tax debts, Congress instead said in section 6306(a) that “[n]othing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.” Therefore, section 6306 was a congressional clarification of the IRS's existing authority to engage outside contractors to assist with collection. Accordingly, contrary to the comments' assertions, no explicit congressional authorization was needed to permit the IRS to hire outside contractors to assist in the collection of taxes, a role outside contractors had been playing for years prior to enactment of section 6306. As a result, enactment of section 6306 does not support the contention in the comments that having a contractor ask questions during a summons interview is inconsistent with authority under section 7602.

The comments are also incorrect that the regulations include an improper delegation to perform certain examination functions. One comment assumes that the role of questioner must be accompanied by the power to compel the witness to answer under oath. That is not accurate. While the contractor will ask questions during a summons interview, an IRS officer or employee will determine whether the questions must be answered by pursuing judicial enforcement. Only if an IRS officer or employee pursues the matter by seeking judicial enforcement can a witness be compelled to answer the question asked by the contractor. Similarly, a contractor can ask counsel for a witness to clarify an objection or assertion of privilege, but only an IRS officer or employee can pursue resolution of the claim of

privilege by seeking judicial enforcement. Accordingly, the comment incorrectly equates the act of compelling a witness to answer a question asked with the mere act of asking the question. Further, the Federal Activities Inventory Reform Act of 1998, Public Law 105-270 (31 U.S.C. 501 Note (FAIR Act)), defines “inherently governmental function” as “a function that is so intimately related to the public interest as to require performance by Federal Government employees.” FAIR Act section 5(2)(A). Inherently governmental functions include activities that require “the exercise of discretion in applying Federal Government authority,” including “the interpretation and execution of the laws of the United States so as . . . to bind the United States to take or not to take some action.” *Id.* at section 5(2)(B)(i). However, Congress further specified in FAIR Act section 5(2)(C)(i) that an inherently governmental function does *not* normally include “gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials.”

In 2009, Congress further directed the Office of Management and Budget (OMB) to refine the definition of “inherently governmental function” applicable to all agencies and provide guidance to improve internal agency management of functions that are inherently governmental. Public Law 110-417, section 321. Toward these ends, and after notice and comment, OMB's Office of Federal Procurement Policy (OFPP) issued its Policy Letter 11-01 on September 12, 2011. 76 FR 56227. The Policy Letter clarified the “discretion” that a contractor may appropriately exercise as the circumstances “where the contractor does not have the authority to decide on the overall course of action, but is tasked to develop options or implement a course of action, and the agency official has the ability to override the contractor's action.” *Id.*, at section 5-1(a)(1)(ii)(B), 76 FR at 56237. The Policy Letter further explains that “contractors routinely, and properly, exercise discretion in performing functions for the Federal Government when, providing advice, opinions, or recommended actions, emphasizing certain conclusions, and . . . deciding what techniques and procedures to employ, whether and whom to consult, [and] what research alternatives to explore given the scope of the contract.” *Id.*, 76 FR at 56237-38. The Policy Letter recognizes that in addition to functions that are inherently governmental, there are also many

functions closely associated with inherently governmental functions. The Policy Letter cautions that when a contractor function is closely associated with an inherently governmental one, the agency should “limit or guide the contractor’s exercise of discretion,” by “establishing in advance a process for subjecting the contractor’s discretionary decisions and conduct to meaningful oversight and, whenever necessary, final approval by an agency official.” *Id.*, at section 5–2(a)(4)(ii) and Appendix C, section (1)(ii), 76 FR at 56238–39 and 56241–42.

Accordingly, the preamble to the temporary regulations described the inherently governmental functions associated with section 7602(a) as including the ultimate decisions to issue a summons, whom to summon, what information must be produced or who will be required to provide testimony, as well as issuing the summons. The final decision to issue an IRS summons may “bind the United States to take or not take some action,” within the meaning of the FAIR Act section 5(2)(B)(i). For example, serving an IRS summons pursuant to sections 7609(f) and (g) requires prior court approval, and IRS summonses issued for an examination purpose to third parties generally expose the United States to a court action the taxpayer may commence to quash a summons under section 7609(b)(2) or obligate the IRS to pay certain search and reproduction costs incurred by the summoned witness under section 7610. The final decision to include or not include certain document or testimony requests in an IRS summons also limits going forward what information or documents the IRS may ask a court to require a witness to produce in any future summons enforcement proceeding regarding that summons. The final decision to seek judicial enforcement of an IRS summons pursuant to sections 7402(b) and 7604 is also an inherently governmental function. These inherently governmental actions associated with issuing or seeking to enforce an IRS summons will continue to be performed by IRS officers and employees under these regulations.

As discussed above, pursuant to these regulations, contractors may assist IRS officers and employees when the IRS has summoned a witness, by receiving and reviewing books, papers, records, or other data produced in compliance with a summons and, in the presence and under the guidance of an IRS officer or employee, ask questions in the interview of the summoned witness. The contractor’s assistance to the IRS officer or employee presiding over a

summons interview is closely associated with the inherently governmental summons functions performed by an IRS employee, within the meaning of OFPP Policy Letter 11–01, without crossing the line into the performance of inherently governmental functions. A contractor participating fully in a summons interview will not, for example, be permitted to bind or otherwise disadvantage the IRS by making any unauthorized, premature statements that the summoned party has produced all of the summoned information or has fully answered all of the questions asked by the IRS in the interview. Similarly, the contractor has no authority to commit the IRS to pursue judicial enforcement of a summons for any documents or answers to questions that a witness failed to provide.

The contractor’s “discretion” in pursuing any potentially relevant line of questioning in a summons interview is permissible under Policy Letter 11–01 standards because the contractor will not have the authority to decide on the overall course of action adopted by the IRS with respect to the summons interview. The IRS officer or employee presiding over IRS receipt of documents and evidence from the summoned witness will also be present for any questioning pursued by the contractor and will have the ability to override the contractor’s actions, if necessary and appropriate. Rather than proving that a contractor would be performing an inherently governmental function under these regulations, the additional safeguards the comment points to—that a contractor’s participation in a summons interview will only be done in the presence and under the guidance of an IRS officer or employee—show the IRS heeded the instructions of Policy Letter 11–01 to establish a process for subjecting the contractor’s discretionary decisions and conduct under these regulations to meaningful IRS oversight.

The comments incorrectly interpret the purpose of the reference in the preamble of the temporary regulations to § 301.7602–2(c)(1)(i)(B) and (c)(1)(ii) Example 2. The purpose of referencing that regulation, which implements the provisions of section 7602(c) (requiring notice of third party contacts) in the case of a section 6103(n) contractor, was instead intended to highlight the fact that the IRS had been allowing contractors, under the guidance of an IRS officer or employee, to hold discussions and ask questions of witnesses for many years and that the proposed regulations were in the nature of a clarification. The purpose was not to demonstrate that the IRS is delegating

authority to contractors as the comments incorrectly state.

Therefore, for the reasons above, Treasury and the IRS disagree with the comments’ assertion that the regulations improperly delegate authority under section 7602. The statute permits section 6103(n) contractors to receive books, papers, records, or other data summoned by the IRS and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a person who the IRS has summoned as a witness to provide testimony under oath.

### 3. Confidential Taxpayer Information Provided to a Contractor

One of the comments suggests that the proposed regulations raise issues relating to confidentiality of taxpayer information. First, the comment states that the regulations place confidential taxpayer information unnecessarily at risk of unauthorized disclosure under section 6103. According to the comment, this is because placing taxpayer information in the hands of outside contractors under section 6103(n) increases the risk of misuse and unlawful disclosure because outside contractors are not subject to the same rules of conduct as IRS employees and may have loyalties to other clients besides the IRS and the public fisc.

Next, the comment questions whether the disclosure of confidential information to outside counsel is permitted under section 6103(n). The comment explains that in 1990 the phrase “other services” was added to section 6103(n) to cover outside experts, in part, because these experts are objective and the IRS is not. The comment continues that outside counsel, as an advocate, is not objective and, therefore, is not covered by the phrase “other services” in section 6103(n).

Finally, the comment states that the IRS has failed to demonstrate that government employees cannot effectively and more appropriately perform the function contemplated by the temporary regulations.

These comments do not address the clarification made by the proposed and temporary regulations (that is, that section 6103(n) contractors may be present at summons interviews, ask questions at a summons interview, and review summoned books, papers, records, or other data). Further, the comments do not explain why the proposed regulations place confidential taxpayer information at risk of unauthorized disclosure at all. Rather, these comments address disclosure to experts under section 6103(n), which is

not the subject of these regulations. Therefore, the comments do not address issues under the regulations.

Regardless of the relevance of the comments to these regulations, the IRS takes protection of the confidentiality of taxpayer information seriously and will not disclose taxpayer information unless authorized under the law. "Return information" and "taxpayer return information" are in general broadly defined in sections 6103(b)(2) and (b)(3), as including information concerning a taxpayer's identity, the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liabilities, tax withheld, owed, or paid, whether the taxpayer is being or will be examined or investigated, to the extent such information is filed with or furnished to the IRS by or on behalf of the taxpayer to whom such information relates.

Section 6103(n) authorizes the IRS to disclose confidential taxpayer information to persons who provide services to the IRS, including outside experts. The legislative history of section 6103(n) indicates that Congress added the words "other services" in 1990 to ensure that persons who provide services to the IRS, such as expert witnesses, and to whom the IRS discloses returns and return information pursuant to section 6103, would clearly be subject to the same confidentiality standards and penalties for unauthorized disclosure as are IRS employees.

In sections 7431, 7213, and 7213A, Congress created parallel civil and criminal deterrents for outside contractors (to those applicable to IRS employees) to punish any misuse of taxpayer return information through unlawful inspection or unlawful disclosure of such information. Specifically, section 7431(a)(2) authorizes taxpayers to file the same type of civil action for damages against an IRS contractor for knowingly, or by reason of negligence, making any unauthorized inspection or unauthorized disclosure of taxpayer return information, as may be filed against the United States for the same type of conduct committed by any officer or employee of the United States. Similarly, in sections 7213(a)(1) and 7213A(a)(1)(B) (by references to persons described in section 6103(n)), Congress made it a crime punishable by up to five years or up to one year of imprisonment, plus a fine, for an IRS contractor to willfully make an unauthorized disclosure or an unauthorized inspection of taxpayer return information, respectively. If an IRS

officer or employee is convicted under sections 7213 or 7213A, such person will also be dismissed or discharged from Federal employment. Before any conviction, if the IRS determines that a contractor has violated its taxpayer return information disclosure obligations under its contract, the IRS may also suspend or terminate the contract, pursuant to § 301.6103(n)-1(e)(4)(iii). Moreover, § 301.6103(n)-1(e)(4) provides further safeguards against unlawful disclosures or inspections of taxpayer return information by contractors.

Finally, it is unclear what connection the comment is making between protecting confidentiality of taxpayer information and objectivity of the section 6103(n) contractor. First, there is no obligation under section 6103(n) or the regulations thereunder for a contractor under section 6103(n) to be objective. Second, whether a contractor is objective has no relation to whether the contractor has an obligation to protect confidential taxpayer information from disclosure or the contractor's ability to do so.

For these reasons, the Treasury and the IRS disagree that the regulations place confidential taxpayer information unnecessarily at risk of unauthorized disclosure.

#### *4. Potential Litigation Costs To Enforce the Regulation*

One comment states that including a provision to allow an IRS contractor in a summons interview to question a witness under oath in the final regulations would result in time-consuming and costly litigation for the IRS, taxpayers, third party witnesses, and the courts, and that these costs would outweigh the potential benefits to the IRS from a contractor directly questioning a summoned witness under oath. The comment does not indicate how it came to this conclusion, nor does it provide any support for its concern.

The IRS makes the decision of whether to issue a summons or to pursue summons enforcement actions on a case-by-case basis, analyzing each situation in the light of its particular facts and weighing the desired information against the tax liability involved, the time and expense of obtaining the records, and the adverse effect on voluntary compliance by others if the enforcement actions are not successful. A contractor's participation in a summons interview does not factor into the IRS's decision to request the Department of Justice to institute enforcement action or lead the taxpayer ultimately to file a deficiency action in the United States Tax Court or a refund

claim in a United States District Court or the Court of Federal Claims. As a practical matter, the IRS will likely hire contractors to assist in the factual development of an examination only in significant cases. These are cases in which litigation over summons enforcement is already likely to occur if the IRS examination team faces resistance from taxpayers to providing requested information. Accordingly, there should not be considerably more litigation as a result of these final regulations. Moreover, when there is summons enforcement litigation, it will be because the IRS has determined that such litigation is in the best interest of tax administration.

#### *5. Procedural Concerns With the Issuance of the Temporary Regulations*

One of the comments states that the temporary regulations were not issued in accordance with the Administrative Procedure Act (APA). The temporary regulations were promulgated in full compliance with the APA. In addition, this document finalizes proposed regulations contained in a notice of proposed rulemaking that cross-referenced the temporary regulations. The proposed regulations were also promulgated in full compliance with the APA. Because these final regulations adopt the proposed regulations, it is not necessary to address concerns regarding procedural issues relating to promulgation of the temporary regulations.

#### **Special Analyses**

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. The IRS has determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business, and no comments were received.

#### **Drafting Information**

The principal author of these final regulations is William V. Spatz of the Office of Associate Chief Counsel

(Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

#### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

#### § 301.7602–1T [Removed]

■ **Par. 2.** Section 301.7602–1T is removed.

■ **Par. 3.** Section 301.7602–1 is amended by adding paragraph (b)(3) and revising paragraph (d) to read as follows:

#### § 301.7602–1 Examination of books and witnesses.

\* \* \* \* \*

(b)(3) *Participation of a person described in section 6103(n).* For purposes of this paragraph (b), a person authorized to receive returns or return information under section 6103(n) and § 301.6103(n)–1(a) of the regulations may receive and review books, papers, records, or other data produced in compliance with a summons and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a witness summoned by the IRS to provide testimony under oath. Fully participating in an interview includes, but is not limited to, receipt, review, and use of summoned books, papers, records, or other data; being present during summons interviews; questioning the person providing testimony under oath; and asking a summoned person's representative to clarify an objection or assertion of privilege.

\* \* \* \* \*

(d) *Applicability date.* This section is applicable after September 3, 1982, except for paragraphs (b)(1) and (2) of this section which are applicable on and after April 1, 2005 and paragraph (b)(3) of this section which applies to summons interviews conducted on or after July 14, 2016. For rules under paragraphs (b)(1) and (2) that are

applicable to summonses issued on or after September 10, 2002 or under paragraph (b)(3) that are applicable to summons interviews conducted on or after June 18, 2014, see 26 CFR 301.7602–1T (revised as of April 1, 2016).

#### John Dalrymple,

*Deputy Commissioner for Services and Enforcement.*

Approved: May 27, 2016.

#### Mark J. Mazur,

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2016–16606 Filed 7–12–16; 4:15 pm]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2016–0267]

RIN 1625–AA00

#### Safety Zone; Tall Ships Challenge Great Lakes 2016, Fairport Harbor, OH, Bay City, MI, Chicago, IL, Green Bay, WI, Duluth, MN, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is creating temporary safety zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2016 race series. These safety zones will provide for the regulation of vessel traffic in the vicinity of each tall ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these tall ships and to ensure public safety during tall ships events.

**DATES:** This rule is effective without actual notice from July 14, 2016 through 12:01 a.m. on September 12, 2016. For the purposes of enforcement, actual notice will be used from 12:01 a.m. July 6, 2016 through July 14, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2016–0267 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mark Bobal, Ninth District Inspections and Investigations Branch,

Passenger Vessel Safety Specialist, U.S. Coast Guard; telephone 216–902–6052, email [Mark.D.Bobal@uscg.mil](mailto:Mark.D.Bobal@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

During the Tall Ships Challenge Great Lakes 2016, tall ships will be participating in parades and then mooring in the harbors of Fairport Harbor, OH, Bay City, MI, Chicago, IL, Green Bay, WI, Duluth, MN, Erie, PA. This is a tri-annual event that teaches character building and leadership through sail training. The Tall Ships event seeks to educate the public about both the historical aspects of sailing ships as well as their current use as training vessels for students. Tall ships are large, traditionally-rigged sailing vessels. The event will consist of festivals at each port of call, sail training cruises, tall ship parades, and races between the ports. More information regarding the Tall Ships Challenge 2016 and the participating vessels can be found at <http://www.sailtraining.org/tallships/2016greatlakes/TSC2016index.php>

The Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Tall Ships Challenge Great Lakes 2016, Fairport Harbor, OH, Bay City, MI, Chicago, IL, Green Bay, WI, Duluth, MN, Erie, PA (USCG–2016–0267, 81 FR 26767, May 4, 2016). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related. During the comment period that ended June 3, 2016, we received one comment.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Ninth District Commander has determined that potential hazards associated with tall ships operating in crowded harbors in close proximity to spectator craft necessitate a safety zone. The purpose of this rule is to ensure the safety of all vessels during the Tall Ship events.

##### IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comments on our NPRM published May 4, 2016. The comment was directed at a rule pertaining to a fireworks show