

§ 190.08(a)(1)(i)(G), and by adding a new paragraph (a)(1)(i)(F):

**§ 190.08 Allocation of property and allowance of claims.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(F) To the extent not otherwise included, securities held in a portfolio margining account carried as a futures account;

\* \* \* \* \*

Issued in Washington, DC, on November 19, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Statement of Chairman Gary Gensler**

*Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy*

I support the proposed rulemaking concerning protection of collateral of counterparties to uncleared swaps. The proposal includes important protections for end-users when entering into bilateral or customized swaps. The proposal follows the Congressional direction that end-users must have a choice to have any initial margin that they post with a swap dealer to be kept in a segregated account and with a third party custodian. The proposed rules would protect market participants while promoting the financial integrity of the marketplace. The proposal also includes necessary housekeeping details with regard to the Bankruptcy code.

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

[REG-100194-10]

RIN 1545-BJ52

**Specified Tax Return Preparers Required To File Individual Income Tax Returns Using Magnetic Media**

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

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

**SUMMARY:** This document contains proposed regulations relating to the requirement for “specified tax return preparers,” generally tax return preparers who reasonably expect to file more than 10 individual income tax returns in a calendar year, to file

individual income tax returns using magnetic media pursuant to section 6011(e)(3) of the Internal Revenue Code (Code). The proposed regulations reflect changes to the law made by the Worker, Homeownership, and Business Assistance Act of 2009. The proposed regulations affect specified tax return preparers who prepare and file individual income tax returns, as defined in section 6011(e)(3)(C). For calendar year 2011, the proposed regulations define a specified tax return preparer as a tax return preparer who reasonably expects to file (or if the preparer is a member of a firm, the firm’s members in the aggregate reasonably expect to file) 100 or more individual income tax returns during the year, while beginning January 1, 2012 a specified tax return preparer is a tax return preparer who reasonably expects to file (or if the preparer is a member of a firm, the firm’s members in the aggregate reasonably expect to file) 11 or more individual income tax returns in a calendar year. The proposed regulations are unrelated to and are not intended to address the requirements for obtaining a preparer tax identification number (PTIN) under section 6109. See the final regulations under section 6109 published in the **Federal Register** (75 FR 60309-01). This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by January 3, 2011. Outlines of topics to be discussed at the public hearing scheduled for January 7, 2011 must be received by January 3, 2011.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-100194-10), room 5205, 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-100194-10), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-100194-10). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Keith L. Brau, (202) 622-4940; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor of the

Publications and Regulations Branch at (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 3, 2011. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (*see below*) or of the certification contained under the heading “Special Analyses”;

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

How the burden of complying with the proposed collection of information may be minimized; and

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

The collection of information in this proposed regulation is in § 301.6011-6(a)(4)(ii). This information can be used by tax return preparers and specified tax return preparers, if necessary, to demonstrate to the IRS that the related individual income tax returns filed in paper format were not required to be filed electronically pursuant to section 6011(e)(3) and § 301.6011-6. The collection of information is voluntary to obtain a benefit. The likely respondents are the individuals and small businesses who prepare individual income tax returns in exchange for compensation. It is estimated that 5 minutes of preparation time is needed for a tax return preparer to explain the purpose of the information and obtain it from the taxpayer in the manner prescribed by the IRS and 6 minutes for recordkeeping, consisting of maintaining a copy of the information submitted for the respondent’s records.

*Estimated total annual reporting burden:* 1,222,815 hours in calendar year 2011 and 1,689,930 hours in calendar year 2012.

*Estimated average annual burden hours per respondent:* 9.06 hours (per firm) in calendar year 2011 and 5.42 hours (per firm) in calendar year 2012.

*Estimated number of respondents or recordkeepers:* 135,000 in calendar year 2011 and 312,000 in calendar year 2012.

*Estimated annual frequency of responses per respondent:* 49 in calendar year 2011 and 29.5 in calendar year 2012.

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

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

## Background

Recognizing the benefits of electronic filing, Congress enacted section 2001(a) of the IRS Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 727), which states that a policy of Congress is to promote paperless filing. Electronic filing of tax returns benefits taxpayers and the IRS by reducing errors that are more likely to occur during the manual preparation and processing of paper returns. Electronic filing of tax returns results in faster settling of accounts and better customer service because the time required to process paper returns is eliminated. Electronic filing of tax returns improves taxpayer satisfaction and confidence in the filing process, and may be more cost effective. Electronic filing of tax returns enables the IRS to review taxpayer submissions expeditiously to reduce audit cycle time and helps the IRS identify emerging trends more efficiently.

Section 6011(e)(1) generally authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media, including electronic filing. Prior to passage of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92 (123 Stat. 2984, 2997 (2009)) (Act), section 6011(e)(1) provided that, without exception, the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary. Under section 6011(e)(2)(A), in prescribing regulations under section 6011(e)(1), the Secretary shall not require any person

(taxpayer) to file on magnetic media (including electronically) unless the person is required to file at least 250 returns during the calendar year.

With respect to the restriction that the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be filed in any format other than paper forms supplied by the Secretary, the Act amended section 6011(e)(1) to provide an exception for individual income tax returns filed by specified tax return preparers, as set forth in new section 6011(e)(3). New section 6011(e)(3) provides that the Secretary shall require the filing on magnetic media of any individual income tax returns prepared and filed by a specified tax return preparer. As more fully discussed below, filing on magnetic media includes electronic filing.

The Act's amendment to section 6011(e) requires the Secretary to issue regulations to implement the statute. These proposed regulations require that the individual income tax returns prepared and filed by specified tax return preparers be filed electronically. To enhance compliance and to promote effective and efficient administration of the congressionally-mandated requirement of section 6011(e)(3), the proposed regulations provide a transition rule for certain specified tax return preparers.

## Explanation of Provisions

### 1. Specified Tax Return Preparers Required To File Individual Income Tax Returns Using Magnetic Media

#### In General

With certain exclusions, discussed in the next section, the proposed regulations provide that any individual income tax return prepared and filed by a specified tax return preparer must be filed using magnetic media, as required under section 6011(e)(3). For purposes of these proposed regulations, *magnetic media* is defined in § 301.6011–2(a)(1), which generally includes magnetic tape, tape cartridge, and diskette, as well as other media, such as electronic filing, specifically permitted under the applicable regulations, procedures, or publications. Also, for purposes of these proposed regulations and as defined under section 6011(e)(3)(C), an *individual income tax return* is any return of income tax imposed by subtitle A on individuals, estates, and trusts. This includes any return of income tax in the Form 1040 series and Form 1041 series. It also includes Form 990–T (Exempt Organization Business Income Tax Return) when the exempt organization is a trust subject to tax on

unrelated business taxable income under section 511(b).

The electronic filing requirement in these proposed regulations applies to specified tax return preparers. A *specified tax return preparer* is defined as any person who is a tax return preparer, as defined in section 7701(a)(36) and § 301.7701–15, unless the tax return preparer reasonably expects to file 10 or fewer individual income tax returns in a calendar year, and if a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer unless the person's firm members in the aggregate reasonably expect to file 10 or fewer individual income tax returns in a calendar year. The proposed regulations do not apply to individuals described in section 7701(a)(36)(B)(i) through (iv) and § 301.7701–15(f) who are not defined as tax return preparers under that Code section and regulation, such as an individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program, a person who merely prepares a return of the employer (or of an officer or employee of the employer) by whom the person is regularly and continuously employed, or a person who prepares a return as a fiduciary for any person. Solely for the 2011 calendar year, a tax return preparer will not be considered a specified tax return preparer if the tax return preparer reasonably expects, or the preparer's firm members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year.

Under section 6011(e)(3), the concept of “file” or “filed” individual income tax returns affects both tax return preparers and specified tax return preparers. Tax return preparers are affected by this concept because a tax return preparer's classification as a specified tax return preparer is based upon the number of individual income tax returns the tax return preparer reasonably expects to file in a given calendar year. Specified tax return preparers are further affected by this concept because the electronic filing requirement for any particular or specific individual income tax return depends upon whether the specified tax return preparer files the return. Therefore, for purposes of section 6011(e)(3) and these regulations only, an individual income tax return is considered to be “filed” by a tax return preparer or a specified tax return preparer if the preparer or any member, employee, or agent of the preparer or the preparer's firm submits the tax return to the IRS on the taxpayer's behalf, either electronically (by e-file or other magnetic media) or in non-electronic or

non-magnetic media (paper) form. Submission of a tax return in paper form includes the direct or indirect transmission, sending, mailing, or otherwise delivering of the paper tax return to the IRS by the tax return preparer or the specified tax return preparer, or by any member, employee, or agent of the tax return preparer or the preparer's firm, and may include any act or acts of assistance that go beyond the provision of filing or delivery instructions to the taxpayer. For example, this can include the preparer or a member of the preparer's firm dropping the return in the mailbox for the taxpayer. The assistance of others is considered for purposes of determining whether a return is filed by a tax return preparer or specified tax return preparer, to prevent a preparer from avoiding these rules by merely handing the return to an employee or someone else in the firm to mail to the IRS.

A tax return preparer or specified tax return preparer, or if the preparer is a member of a firm, the preparer's firm, will be able to affirmatively demonstrate, if asked, that it was a taxpayer's choice to file an individual income tax return in paper format if the preparer who prepared the return obtains a signed statement from the taxpayer that states the taxpayer chooses to file the return in paper format and that the taxpayer, and not the preparer, will submit the paper return to the IRS. This statement must be signed by the taxpayer (by both spouses if a joint return) and dated on or before the date the taxpayer files the return. The IRS may provide guidance through forms, instructions or other appropriate guidance regarding how preparers can document taxpayer choices to file individual income tax returns in paper format. A Notice containing a proposed revenue procedure outlining the requirements and format of statements to document when a taxpayer chooses to file individual income tax returns in paper format is being published in the Internal Revenue Bulletin (IRB) concurrently with these proposed regulations.

In addition, the proposed regulations provide that the definition of file or filed does not alter or affect a taxpayer's obligation to file any type of tax return required under any other provision of law. The definition of *file* or *filed* by a tax return preparer or a specified tax return preparer contained in these proposed regulations applies only for the purposes of section 6011(e)(3) and these regulations, and does not apply for any other purpose under any other provision of law, such as the statutory

period of limitations based on the filing of a tax return.

## 2. Exclusions

The proposed regulations provide the following exclusions from the electronic filing requirement.

### A. Undue Hardship Waivers

Under the proposed regulations, the IRS may grant a waiver of the requirement of this rule in cases of undue hardship. A waiver may generally be granted to a specified tax return preparer for an undue hardship that can be identified in advance, before the specified tax return preparer would otherwise be required to file individual income tax returns electronically. Because this electronic filing requirement is statutorily imposed, the IRS will ordinarily grant undue hardship waivers only in rare cases. An undue hardship waiver may be granted to a specified tax return preparer for a series or class of individual income tax returns or for a specified period of time. A determination of undue hardship will be based upon all facts and circumstances. A specified tax return preparer shall request an undue hardship waiver in the manner prescribed by the IRS in forms, instructions, or other appropriate guidance. A Notice containing a proposed revenue procedure outlining the requirements and format for undue hardship waiver requests is being published concurrently with these proposed regulations.

### B. Administrative Exemptions

The IRS may provide administrative exemptions for certain classes of specified tax return preparers or types of individual income tax returns as the IRS determines necessary to promote effective and efficient tax administration. For example, the IRS may provide a broad administrative exemption applicable to all tax return preparers for a particular type of form if the IRS does not yet provide the capability to file the form electronically, or for individual income tax returns prepared by specified tax return preparers who meet certain conditions defined by the IRS. The IRS may also provide an administrative exemption for individual income tax returns that contain or require documentation or attachments that the IRS does not yet provide the capability to file electronically, for example, documentation for the First-Time Homebuyer Credit, section 6707A disclosures, or required appraisals to support charitable contributions. The IRS may also provide a limited

administrative exemption for specified tax return preparers who are certified members of, and follow the teachings of, a recognized religious group that is conscientiously opposed to using electronic media, which would include filing electronically. Unlike undue hardship waivers, specified tax return preparers who meet the criteria of an administrative exemption generally need not submit a request to the IRS to claim applicability of the administrative exemption. The IRS may provide the criteria and procedures, if any are necessary, for administrative exemptions through forms, instructions, or other appropriate guidance.

## 3. Reasonably Expect To File

### A. In General

The determination of whether a tax return preparer (or if the preparer is a member of a firm, the preparer's firm members in the aggregate) reasonably expects to file 10 or fewer individual income tax returns (or, in the case of the 2011 calendar year, fewer than 100 individual income tax returns) is made by adding together all of the individual income tax returns (forms in the Form 1040 series, Form 1041 series, and Forms 990-T (when the exempt organizations are trusts subject to tax on unrelated business taxable income under section 511(b)), in the aggregate) the tax return preparer and, if the preparer is a member of a firm, the firm's members, reasonably expect to prepare and file in each calendar year. In making this determination individual income tax returns that are excluded from the electronic filing requirement due to taxpayer choice or under the administrative exemption exclusion, as provided in these proposed regulations, are not to be counted. Returns excluded under the undue hardship waiver exclusion are to be counted, however, because it is expected that such waivers will generally be sought by tax return preparers who are specified tax return preparers and who would ordinarily have to file these returns electronically but for the waivers granted by the IRS in cases of undue hardship.

### B. Time for Making Determination of Reasonable Expectations

The determination regarding reasonable expectations is made separately for each calendar year in order to ascertain whether the electronic filing requirement applies to a tax return preparer for that year. For each calendar year, the determination of whether a tax return preparer and the preparer's firm reasonably expect to file 10 or fewer individual income tax returns (or, in the

case of the 2011 calendar year, fewer than 100 individual income tax returns) is made based on all relevant, objective, and demonstrable facts and circumstances prior to the time the tax return preparer and the preparer's firm first file an individual income tax return during the calendar year.

#### 4. Additional Guidance

The proposed regulations authorize the IRS to implement the requirements of section 6011(e)(3) and the regulations through additional guidance, including by revenue procedures, notices, publications, forms, and instructions, including those issued electronically.

#### 5. Proposed Effective and Applicability Dates

The proposed regulations are effective and applicable on January 1, 2011. To promote the effective and efficient administration of the electronic filing requirement in section 6011(e)(3), the proposed regulations provide a transition rule for 2011, based upon the number of individual income tax returns a tax return preparer files, to permit the IRS and affected tax return preparers sufficient time to prepare for and implement the requirements of section 6011(e)(3) and these proposed regulations. Beginning January 1, 2011, tax return preparers who reasonably expect to file (if a member of a firm whose firm members in the aggregate reasonably expect to file) 100 or more individual income tax returns in calendar year 2011 are specified tax return preparers who are subject to these regulations in 2011. Beginning January 1, 2012, tax return preparers who reasonably expect to file (if a member of a firm whose firm members in the aggregate reasonably expect to file) 11 or more individual income tax returns in a calendar year are specified tax return preparers who are subject to these regulations for that calendar year.

#### 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 the collection of information contained in these proposed regulations would not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based on a determination that these proposed regulations would impose, at most, a minimal additional reporting or

recordkeeping requirement. As discussed in the Paperwork Reduction Act section of this preamble, the economic impact on affected small entities is not significant.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. The Treasury Department and the IRS also request comments on the procedures and criteria to be established to document taxpayer choices to file in paper format and to request the undue hardship waiver, as well as circumstances that may warrant the granting of an administrative exemption for the 2011 calendar year. Finally, the Treasury Department and the IRS request comments on the accuracy of the certification that the regulations in this document will not have a significant economic impact on a substantial number of small entities as well as comments on the Paperwork Reduction Act burden estimates contained in the Special Analysis section of this preamble. All comments that are submitted by the public will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, January 7, 2011 at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, all visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by January 3, 2011.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these proposed regulations is Keith L. Brau, Office of the Associate Chief Counsel (Procedure and Administration).

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

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

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 1.6011–6 also issued under 26 U.S.C. 6011. \* \* \*

**Par. 2.** Section 1.6011–6 is added to read as follows:

##### **§ 1.6011–6 Specified tax return preparers required to file individual income tax returns using magnetic media.**

Individual income tax returns that are required to be filed on magnetic media by tax return preparers under § 301.6011–6 of this chapter must be filed in accordance with Internal Revenue Service regulations, revenue procedures, revenue rulings, publications, forms or instructions, including those posted electronically.

#### PART 301—PROCEDURE AND ADMINISTRATION

**Par. 3.** The authority citation for part 301 is amended by adding an entry in

numerical order to read, in part, as follows:

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

Section 301.6011-6 also issued under 26 U.S.C. 6011. \* \* \*

**Par. 4.** Section 301.6011-6 is added to read as follows:

**§ 301.6011-6 Specified tax return preparers required to file individual income tax returns using magnetic media.**

(a) *Definitions.*

(1) *Magnetic media.* For purposes of this section, the term *magnetic media* has the same meaning as in § 301.6011-2(a)(1).

(2) *Individual income tax return.* The term *individual income tax return* means any return of tax imposed by subtitle A on individuals, estates, and trusts.

(3) *Specified tax return preparer.* The term *specified tax return preparer* means any person who is a tax return preparer, as defined in section 7701(a)(36) and § 301.7701-15, unless that person reasonably expects to file 10 or fewer individual income tax returns in a calendar year. If a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer unless the person's firm members in the aggregate reasonably expect to file 10 or fewer individual income tax returns in a calendar year. Solely for the 2011 calendar year, a person will not be considered a specified tax return preparer if that person reasonably expects, or if the person is a member of a firm, the firm's members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year. Solely for purposes of this section, an individual is considered a member of a firm if the individual is an employee, agent, member, partner, shareholder, or other equity holder of the firm.

(4) *File or Filed.* (i) For purposes of section 6011(e)(3) and these regulations only, an individual income tax return is considered to be "filed" by a tax return preparer or a specified tax return preparer if the preparer submits the tax return to the IRS on the taxpayer's behalf, either electronically (by e-file or other magnetic media) or in non-electronic (paper) form. Submission of an individual income tax return by a tax return preparer or a specified tax return preparer in non-electronic form includes the direct or indirect transmission, sending, mailing or otherwise delivering of the paper tax return to the IRS by the preparer, any member, employee, or agent of the preparer, or any member, employee, or agent of the preparer's firm, and

includes any act or acts of assistance beyond providing filing or delivery instructions to the taxpayer.

(ii) An individual income tax return will not be considered to be filed, as defined in paragraph (a)(4)(i) of this section, by a tax return preparer or specified tax return preparer if the tax return preparer or specified tax return preparer who prepared the return obtains, on or prior to the date the return is filed, a signed (by both spouses if a joint return) and dated written statement from the taxpayer that states the taxpayer chooses to file the return in paper format, and that the taxpayer, and not the preparer, will submit the paper return to the IRS. The IRS may provide guidance through forms, instructions or other appropriate guidance regarding how preparers can document taxpayer choices to file individual income tax returns in paper format.

(iii) The rules contained in this section do not alter or affect a taxpayer's obligation to file returns under any other provision of law. The definition of *file* or *filed* by a tax return preparer or specified tax return preparer contained in paragraph (a)(4)(i) of this section applies only for the purposes of section 6011(e)(3) and these regulations and does not apply for any other purpose under any other provision of law.

(b) *Magnetic media filing requirement.* Except as provided in paragraphs (a)(4)(ii) and (c) of this section, any individual income tax return prepared by a specified tax return preparer in a calendar year must be filed on magnetic media if the return is filed by the specified tax return preparer.

(c) *Exclusions.* The following exclusions apply to the magnetic media filing requirement in this section:

(1) *Undue hardship waiver.* The IRS may grant a waiver of the requirement of this section in cases of undue hardship. An undue hardship waiver may be granted upon application by a specified tax return preparer consistent with instructions provided in published guidance and as prescribed in relevant forms and instructions. A determination of undue hardship will be based upon all facts and circumstances. The undue hardship waiver provided to a specified tax return preparer may apply to a series or class of individual income tax returns or for a specified period of time, subject to the terms and conditions regarding the method of filing prescribed in such waiver.

(2) *Administrative exemptions.* The IRS may provide administrative exemptions from the requirement of this section for certain classes of specified tax return preparers, or regarding certain types of individual income tax returns,

as the IRS determines necessary to promote effective and efficient tax administration. The IRS may provide administrative exemptions and any criteria or procedures necessary to claim an administrative exemption through forms, instructions, or other appropriate guidance.

(d) *Reasonably expect to file—(1) In general.* The determination of whether a tax return preparer reasonably expects, or if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect, to file 10 or fewer individual income tax returns (or, in the case of the 2011 calendar year, fewer than 100 individual income tax returns) is made by adding together all of the individual income tax returns the tax return preparer and, if the preparer is a member of a firm, the firm's members reasonably expect to prepare and file in the calendar year. In making this determination, individual income tax returns that the tax return preparer reasonably expects will not be subject to the magnetic media filing requirement under paragraph (a)(4)(ii) of this section or are excluded from the requirement under (c)(2) of this section are not to be counted. Returns excluded from the magnetic media filing requirement under paragraph (c)(1) of this section are to be counted for purposes of making this determination.

(2) *Time for making determination of reasonable expectations.* The determination regarding reasonable expectations is made separately for each calendar year in order to ascertain whether the magnetic media filing requirement applies to a tax return preparer for that year. For each calendar year, the determination of whether a tax return preparer and the preparer's firm reasonably expect to file 10 or fewer individual income tax returns (or, in the case of the 2011 calendar year, fewer than 100 individual income tax returns) is made based on all relevant, objective, and demonstrable facts and circumstances prior to the time the tax return preparer and the preparer's firm first file an individual income tax return during the calendar year.

(e) *Examples.* The examples read as follows:

*Example 1.* Tax Return Preparer A is an accountant who recently graduated from college with an accounting degree and has opened his own practice. A has not prepared individual income tax returns for compensation in the past and does not plan to focus his practice on individual income tax return preparation. A intends instead to focus his practice on providing specialized accounting services to certain health care service providers. A has no plans to, and does not, employ or engage any other tax return preparers. A estimates that he may be

asked by some clients to prepare and file their individual income tax returns for compensation, but A expects that the number of people who do ask him to provide this service will be no more than seven in 2012. In fact, A actually prepares and files six paper Form 1040 (U.S. Individual Income Tax Return) returns in 2012. Due to a growing client base, and based upon his experience in 2012, A expects that the number of individual income tax returns he will prepare and file in 2013 will at least double, estimating he will prepare and file 12 Form 1040 returns in 2013. A does not qualify as a specified tax return preparer for 2012 because A reasonably expects to file 10 or fewer (seven) in 2012. Consequently, A is not required to electronically file the individual income tax returns he prepares and files in 2012. He does not qualify as a specified tax return preparer for that year because A reasonably expects to file 10 or fewer returns (seven) in 2012. A's expectation is reasonable based on his business projections, individual income tax return filing history, and staffing decisions. A is a specified tax return preparer in 2013, however, because based on those same factors A reasonably expects to file more than 10 individual income tax returns (12) during that calendar year. A, therefore, must electronically file all individual income tax returns that A prepares and files in 2013 that are not otherwise excluded from the electronic filing requirement.

*Example 2.* Same facts as in *Example 1*, except three of Tax Return Preparer A's clients specifically chose to have A prepare their individual income tax returns in paper format in 2012 with the clients mailing their respective returns to the IRS. A expects that these three clients will similarly choose to have him prepare their returns in paper format in 2013, with the clients being responsible for mailing their returns to the IRS. A is not required to electronically file these three returns in 2013 because the taxpayers chose to file their returns in paper format, and A obtained a dated written statement from each of those taxpayers, indicating that they chose to file their returns in paper format. These three individual income tax returns are not counted in determining how many individual income tax returns A reasonably expects to file in 2013. Because the total number of individual income tax returns A reasonably expects to file in 2013 (nine) does not exceed 10, A is not a specified tax return preparer for calendar year 2013, and A is not required to electronically file any individual income tax return that he prepares and files in 2013.

*Example 3.* Tax Return Preparer B is a solo general practice attorney in a small county. Her practice includes the preparation of wills and assisting executors in administering estates. As part of her practice, B infrequently prepares and files Forms 1041 (U.S. Income Tax Return for Estates and Trusts) for executors. In the past three years, she prepared and filed an average of five Forms 1041 each year and never exceeded more than seven Forms 1041 in any year. Based on B's prior experience and her estimate for 2012, made prior to the time she first files an individual income tax return in 2012, she

reasonably expects to prepare and file no more than five Forms 1041 in 2012. Due to the unforeseen deaths of several of her clients in late 2011, B actually prepares and files 12 Forms 1041 in 2012. B does not find out about these deaths until after she has already filed the first Form 1041 in 2012 for another client. B is not required to electronically file these returns in 2012. She does not qualify as a specified tax return preparer for calendar year 2012 because prior to the time she filed the first Form 1041 in 2012, she reasonably expected to file 10 or fewer individual income tax returns in 2012.

*Example 4.* Same facts as *Example 3*, except, in addition to the five Forms 1041 that she expects to prepare and file in 2012, Tax Return Preparer B also expects to prepare and file 10 paper Forms 1040 (U.S. Individual Income Tax Return) in 2012, based upon the requests that she has received from some of her clients. Because the total number of individual income tax returns B reasonably expects to file in 2012 (fifteen) exceeds 10, B is a specified tax return preparer for calendar year 2012, and B must electronically file all individual income tax returns that B prepares and files in 2012 that are not otherwise excluded from the electronic filing requirement.

*Example 5.* Firm X consists of two tax return preparers, Tax Return Preparer C who owns Firm X, and Tax Return Preparer D who is employed by C in Firm X. Based upon the firm's experience over the past three years, C and D reasonably expect to file nine and ten individual income tax returns for compensation, respectively, in 2012. Both C and D must electronically file the individual income tax returns that they prepare in 2012, unless the returns are otherwise excluded from the electronic filing requirement, because they are members of the same firm and the aggregated total of individual income tax returns that they reasonably expect to file in 2012 (nineteen), exceeds 10 individual income tax returns.

(f) *Additional guidance.* The IRS may implement the requirements of this section through additional guidance, including by revenue procedures, notices, publications, forms and instructions, including those issued electronically.

(g) *Proposed effective/applicability dates.* This section is proposed to be effective and applicable on January 1, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010-30500 Filed 12-1-10; 4:15 pm]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 201, 245, and 252

RIN Number 0750-AG38

### Defense Federal Acquisition Regulation Supplement; Government Property (DFARS Case 2009-D008)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise DFARS part 245, Government Property, to reflect the recent revisions to FAR part 45, Government Property.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before February 1, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2009-D008, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Internet. Follow the instructions provided at the "Submit a Comment" screen. Please include "DFARS Case 2009-D008".

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D008 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Please cite DFARS Case 2009-D008.

Comments received generally will be posted without change, including any personal information provided. Please check <http://www.regulations.gov> approximately two to three days after electronic submission to verify posting—allow 30 days for posting of comments submitted by mail.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Overstreet, 703-602-0311.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This rule proposes to update and reorganize DFARS subparts 245.6 and 245.7 for consistency with FAR changes published at 72 FR 27364 on May 15, 2007, that address management of Government property in the possession of contractors, as well as the related