

(2) Each milliliter of cyclosporine oral solution, USP (MODIFIED) contains 100 mg cyclosporine.

\* \* \* \* \*

(d) *Conditions of use*—(1) *Dogs*. Use capsules described in paragraph (a)(1) of this section as follow:

(i) *Amount*. Administer 5 mg per kilogram (mg/kg) of body weight given orally as a single daily dose for 30 days. Following this initial daily treatment period, the dosage may be tapered by decreasing the frequency of administration to every other day or two times a week, until a minimum frequency is reached which will maintain the desired therapeutic effect.

(ii) *Indications for use*. For the control of atopic dermatitis in dogs weighing at least 4 pounds.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*. Use the solution described in paragraph (a)(2) of this section as follow:

(i) *Amount*. Administer 7 mg/kg of body weight orally as a single daily dose for a minimum of 4 to 6 weeks or until resolution of clinical signs. Following this initial daily treatment period, the dosage may be tapered by decreasing the frequency of administration to every other day or twice weekly to maintain the desired therapeutic effect.

(ii) *Indications for use*. For the control of feline allergic dermatitis in cats at least 6 months of age and weighing at least 3 pounds.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 15, 2011.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2011–32526 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9570]

RIN 1545–BK16

#### Tax Return Preparer Penalties Under Section 6695

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that modify existing regulations related to the tax return

preparer penalties under section 6695 of the Internal Revenue Code (Code). The final regulations are necessary to monitor and to improve compliance with the tax return preparer due diligence requirements of section 6695(g). The final regulations affect paid tax return preparers.

**DATES:** *Effective date:* The final regulations are effective on December 20, 2011.

*Applicability date:* For date of applicability, see § 1.6695–2(e).

**FOR FURTHER INFORMATION CONTACT:**

Spence Hanemann, (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The collection of information contained in the final regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1570. The collection of information is in § 1.6695–2(b)(1) and (b)(4) of the final regulations, and is an increase in the total annual burden from the burden in the prior regulations. The collection of this information will improve the IRS' ability to enforce compliance with the due diligence requirements under section 6695(g) with respect to determining eligibility for, or the amount of, the earned income credit (EIC) under section 32.

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

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6695 of the Code.

The Treasury Department and the IRS published a notice of proposed rulemaking (REG–140280–09) in the *Federal Register*, 76 FR 62689, on October 11, 2011 (the NPRM). A public hearing was scheduled for November 7, 2011. The IRS did not receive any requests to testify at the public hearing, and the public hearing was cancelled. Written comments responding to the NPRM were received and are available for public inspection at <http://www.regulations.gov> or upon request. After consideration of all the comments,

the proposed regulations are adopted as amended by this Treasury decision. The revisions to the regulations are discussed in this preamble.

#### Summary of Comments and Explanation of Revisions

The IRS received nine written comments in response to the NPRM, and this section addresses those public comments. This section also describes the significant differences between the rules proposed in the NPRM and those adopted in the final regulations.

##### 1. 2011 Amendment to Section 6695(g)

On October 21, 2011, section 501 of the United States-Korea Free Trade Agreement Implementation Act, Public Law 112–41, 125 Stat 428, amended section 6695(g) of the Code by increasing the amount of the penalty from \$100 to \$500. To account for this change in the law, § 1.6695–2(a) of the final regulations has been conformed to the statutory language of section 6695(g), as amended.

##### 2. Necessity of These Regulations

Two commenters stated that the proposed amendments to the due diligence standards in the NPRM were unnecessary in light of recent regulatory changes requiring tax return preparers to register with the IRS and comply with the ethical standards governing practice before the IRS (Circular 230), as well as the tax return preparer penalties under section 6694. They suggested that the IRS can apply these existing provisions to address misconduct by tax return preparers, including improper determination of eligibility for, and amount of, EIC by both individual tax return preparers and firms.

As reflected in section 6695(g), Congress has determined that noncompliance with the EIC rules poses a sufficiently significant problem to merit imposing unique due diligence requirements on tax return preparers involved in determining eligibility for, or amount of, the EIC. By recently quintupling the amount of the penalty for failure to comply with these requirements, Congress reaffirmed the need for specific rules to reduce EIC noncompliance. In order to address noncompliance with the EIC rules, the final regulations modify the due diligence requirements under section 6695(g) that have been in place for over a decade. Treasury and the IRS concluded that these regulations are consistent with section 6695(g), and no modification is made in the final regulations in response to these comments.

### 3. Submission of Form 8867

Section 1.6695-2(b)(1)(i) of the proposed regulations required that the Form 8867, "Paid Preparer's Earned Income Credit Checklist," be submitted to the IRS in the manner required by forms, instructions, or other appropriate guidance. One commenter noted, in part, that tax return preparers sometimes provide a paper copy of the completed tax return or claim for refund to the taxpayer for submission by the taxpayer. A tax return preparer's ability to provide a paper copy, as opposed to filing the tax return electronically, is subject to the rules and limitations in § 301.6011-7 and related guidance. Another commenter stated that the proposed regulations were unclear in how they apply to nonsigning tax return preparers. The due diligence requirements and the penalty for failure to comply with them apply to any tax return preparer, including a nonsigning tax return preparer, who determines eligibility for, or amount of, the EIC.

After consideration of these comments, Treasury and the IRS have concluded that the rules in the regulations should be clarified to provide how tax return preparers who prepare a tax return or claim for refund but do not submit it directly to the IRS can satisfy the requirement under proposed § 1.6695-2(b)(1)(i) to submit the completed Form 8867 to the IRS. In response to these comments, § 1.6695-2(b)(1)(i) of the final regulations provides that tax return preparers who prepare a tax return or claim for refund but do not submit it directly to the IRS may satisfy this aspect of their due diligence obligation by providing the form to the taxpayer or the signing tax return preparer, as appropriate, for submission with the tax return or claim for refund.

One commenter suggested that the Form 8867 be a stand-alone form that the taxpayer signs and submits as an affidavit of EIC eligibility. After consideration of this comment, Treasury and the IRS have concluded that imposing such an obligation on taxpayers, rather than on tax return preparers, would be contrary to the purpose of section 6695(g), which is to discourage tax return preparers from preparing EIC tax returns or claims for refund without performing basic due diligence. No modification is made in the final regulations in response to this comment.

### 4. Requirement To Verify Taxpayer Information

Section 1.6695-2(b)(1)(i) of the proposed regulations required

submission of Form 8867 to the IRS, and § 1.6695-2(b)(4)(i)(C) of the proposed regulations required retention of a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 or the Earned Income Credit Worksheet. Two commenters suggested that these additional requirements increased a tax return preparer's burden under the knowledge requirement of existing § 1.6695-2(b)(3) because a tax return preparer would now be obligated to verify taxpayers' responses to the eligibility questions and also to verify nonsigning tax return preparers' (if any) completion of the Form 8867. The proposed regulations, however, do not expand tax return preparers' obligation to verify information provided by taxpayers and other tax return preparers under existing § 1.6695-2(b)(3).

Under § 1.6695-2(b)(3) of the current regulations, tax return preparers are already required to complete Form 8867, prohibited from ignoring the implications of information provided, obligated to make reasonable inquiries if the information provided appears incorrect, inconsistent, or incomplete, and required to contemporaneously document their reasonable inquiries and the taxpayer's responses. For purposes of § 1.6695-2(b)(3), tax return preparers would not be held to a higher standard under the proposed regulations than they are under the existing regulations. A tax return preparer can generally rely on the information furnished by a taxpayer (or other tax return preparer who determines eligibility for, or amount of, the EIC) as long as the tax return preparer does not know, or have reason to know, that the information is incorrect, inconsistent, or incomplete. A signing tax return preparer who satisfies the knowledge requirement in § 1.6695-2(b)(3), therefore, will ordinarily be able to rely on the information furnished to the signing tax return preparer by a taxpayer or nonsigning tax return preparer regarding the EIC. The additional requirements in proposed § 1.6695-2(b)(1)(i) and (b)(4)(i)(C) are not unduly burdensome and will improve the IRS' ability to determine whether a tax return preparer has complied with the EIC due diligence requirements that already exist. No modification is made in the final regulations in response to these comments.

### 5. Nonsigning Tax Return Preparers

Two commenters expressed concern that expanding the due diligence requirements and penalty to nonsigning tax return preparers would subject individuals to the section 6695(g)

penalty who are beyond the intended scope of these rules. The commenters provided the example of individuals hired by tax preparation software companies to answer discrete questions for taxpayers who are using tax preparation software to prepare their own tax return or claim for refund. These individuals provide general resource information for the taxpayers who are preparing their own tax return or claim for refund, and they do not know all of the specific facts relating to the taxpayer's tax return or claim for refund. The commenters reasoned that these individuals might be nonsigning tax return preparers and would arguably be subject to these due diligence requirements and related penalty.

The term "nonsigning tax return preparer" is specifically defined in § 301.7701-15(b)(2) and is limited to those who prepare all or a substantial portion of a tax return or claim for refund within the meaning of § 301.7701-15(b)(3). Under § 301.7701-15(b)(3), a person who renders tax advice on a position that is directly relevant to the existence or amount of an entry on a tax return or claim for refund is regarded as having prepared that entry. Section 301.7701-15(b)(3) further provides that whether a schedule, entry, or other portion of a tax return or claim for refund is a substantial portion is determined based upon whether the person knows or reasonably should know that the tax attributable to the schedule, entry, or other portion of a tax return or claim for refund is a substantial portion of the tax required to be shown on the tax return or claim for refund. Also, § 301.7701-15(f)(1)(viii) provides an exception from the definition of tax return preparer for any individual providing only typing, reproduction, or other mechanical assistance in the preparation of a tax return or claim for refund.

Treasury and the IRS have concluded that, in the routine situation described by these commenters, the individuals employed at the tax preparation software companies as described in the comments are not nonsigning tax return preparers as long as they either (i) fall within the mechanical exception because they are not exercising independent judgment on the taxpayer's underlying tax positions, or (ii) do not know (and reasonably should not know) that any generic advice provided relating to the EIC is a substantial portion of the tax required to be shown. On the other hand, in rare instances when any such individual is both exercising independent judgment and knows or reasonably should know that specific advice provided to a taxpayer

relating to EIC is a substantial portion of the tax return or claim for refund within the meaning of § 301.7701-15(b)(3), the individual is a nonsigning tax return preparer subject to the due diligence rules. No modification is made to the final regulations in response to this comment.

#### 6. Penalizing Firms

By replacing “signing tax return preparer” with “tax return preparer,” § 1.6695-2(a) of the proposed regulations effectively provided that a firm that employs a person to prepare for compensation a tax return or claim for refund may be subject to the penalty for its employee’s failure to comply with the due diligence requirements. Two commenters questioned the proposed application of the due diligence requirements and penalty to firms. Section 6695(g) imposes a penalty on “[a]ny person who is a tax return preparer” that fails to comply with the due diligence requirements “with respect to determining eligibility for, or the amount of, the credit allowable by section 32.” Under section 7701(a)(36), a “tax return preparer” is “any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by title or any claim for refund of tax imposed by this title.” After consideration of these comments, Treasury and the IRS have concluded that it is appropriate to apply the due diligence requirements to firms as provided in the proposed regulations. This position is consistent with the long-standing application of the section 6694 tax return preparer penalties to firms under the rules provided in §§ 1.6694-2(a)(2) and 1.6694-3(a)(2). No modification is made to the final regulations in response to these comments.

#### 7. Conditions Required for Imposing a Penalty on a Firm

Proposed § 1.6695-2(c) provided generally that a firm cannot be subject to a penalty under section 6695(g) unless one of the following three conditions is satisfied: (1) A member of the principal management of the firm knew of the failure to comply with the due diligence requirements; (2) the firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements; or (3) the firm failed to comply with its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference. Two commenters expressed concern with the conditions required for application of the penalty

to a firm, as set forth in proposed § 1.6695-2(c).

One of these commenters noted that, if management became aware through the firm’s reasonable and appropriate compliance procedures that an employee failed to comply with the due diligence requirements, then the firm would be subject to a penalty under proposed § 1.6695-2(c)(1) because management knew of the failure. The commenter suggested that the final regulations provide that the penalty not apply to the firm if management knew and took reasonable action to resolve the problem before the penalty is assessed. After consideration of this comment, Treasury and the IRS have concluded that, if management knows of the failure to comply prior to the date the tax return or claim for refund is filed, the only acceptable remedial action would be to satisfy the due diligence requirements prior to filing, in which case there would be no penalty. If, on the other hand, management does not know of the failure to comply until after the tax return or claim for refund is filed, the appropriate analysis is whether the firm had reasonable and appropriate compliance procedures and disregarded those procedures through willfulness, recklessness, or gross indifference, as described in § 1.6695-2(c)(3), and management’s knowledge is relevant only insofar as it is a factor in that analysis. In response to this comment, the final regulations provide that a firm is only subject to a penalty under § 1.6695-2(c)(1) if the manager knew of an employee’s failure to comply with the due diligence requirements prior to the date the tax return or claim for refund was filed.

The other commenter suggested that the IRS might determine under proposed § 1.6695-2(c)(3) that a single failure to submit Form 8867 with a tax return by an otherwise compliant firm qualifies as disregard of reasonable and appropriate compliance procedures through gross indifference. Section 1.6695-2(c)(3) of the proposed regulations established a heightened standard, in part, by imposing liability for the penalty against a firm that disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference. A single, accidental failure to submit Form 8867 with a tax return by an otherwise compliant firm would not constitute disregard of compliance procedures through willfulness, recklessness, or gross indifference, and the firm would not be subject to the penalty in that situation. After consideration of this comment, Treasury and the IRS have concluded

that the heightened standards in proposed § 1.6695-2(c)(3) would adequately protect firms against isolated and inadvertent instances of disregard of their compliance procedures. No modification is made to the final regulations in response to this comment.

#### 8. Retention of Records

Proposed § 1.6695-2(b)(4)(ii) required that a tax return preparer must retain the records described in § 1.6695-2(b)(4)(i) for the period ending three years after the later of the date the tax return or claim for refund was due or the date it was filed. One commenter stated that the record retention date should not be tied to the date the tax return or claim for refund was filed because, if the tax return preparer who prepares the tax return or claim for refund is not the individual who files it, that tax return preparer might not know when it is filed and when the retention period expires. In response to the comment, the final regulations require a tax return preparer to retain the records described in § 1.6695-2(b)(4)(i) for the period ending three years after the later of the date the tax return or claim for refund was due or the date it was transferred in final form by the tax return preparer to the next person in the course of the filing process. In the case of a signing tax return preparer who electronically files the tax return or claim for refund, the next step in the filing process will be to electronically file the tax return or claim for refund, so the relevant date is the date the tax return or claim for refund is filed. In the case of a signing tax return preparer who does not electronically file the tax return or claim for refund, the next person in the course of the filing process will be the taxpayer, so the relevant date is the date the tax return or claim for refund is presented to the taxpayer for signature. In the case of a nonsigning tax return preparer, the next person in the course of the filing process will be the signing tax return preparer, so the relevant date is the date the nonsigning tax return preparer submitted to the signing tax return preparer that portion of the tax return or claim for refund for which the nonsigning tax return preparer was responsible.

The record retention date under the final regulations will be the same for nonsigning tax return preparers supervised by a signing tax return preparer in the same firm and nonsigning tax return preparers who are employed by a different firm than the signing tax return preparer. In both cases, the records must be retained until three years from the later of the due date of the tax return or the date the tax

return or claim for refund is submitted in final form to the signing tax return preparer. As a practical matter, however, a supervised nonsigning tax return preparer and the supervising signing tax return preparer can satisfy both of their record retention obligations under the final regulations by retaining a single paper or electronic copy of the records described in § 1.6695–2(b)(4)(i). The supervised nonsigning tax return preparer's record retention period may, nevertheless, expire before the signing tax return preparer's record retention period. In such cases, the supervising signing tax return preparer is required to retain the records until the expiration of his or her record retention period under § 1.6695–2(b)(4)(ii), regardless of when the supervised nonsigning tax return preparer's record retention period expires.

#### 9. Comment Period and Effective Date

One commenter stated that the 30-day comment period provided under the proposed regulations was inadequate. Numerous substantive comments were, in fact, received addressing the proposed regulations. Treasury and the IRS have concluded that the duration of the comment period provided in the proposed regulations was in compliance with all of the applicable procedural rules and requirements governing regulations.

Three commenters stated that the proposed effective date of the regulations would not provide tax return preparers and computer software providers sufficient time to adjust their procedures and products to reflect the proposed amendments. The proposed regulations provided that they will apply to tax returns and claims for refund for tax years ending on or after December 31, 2011. The IRS publicly announced in Spring 2011 that the IRS was exploring the implementation of a new requirement for tax return preparers to submit the Form 8867 with a taxpayer's tax return or claim for refund. Treasury and the IRS have concluded that implementation of these rules for the upcoming filing season is consistent with the best interests of tax administration.

#### Special Analyses

It has been determined that this final rule 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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final regulations.

When an agency issues a rulemaking, the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities.

The final rules affect tax return preparers who determine the eligibility for, or the amount of, EIC. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to the final regulations. Entities identified as tax preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than \$7 million. The IRS estimates that approximately 75 to 85 percent of the 550,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has determined that the final rules will have an impact on a substantial number of small entities.

The IRS has determined, however, that the economic impact on entities affected by the final rules will not be significant. The prior regulations under section 6695(g) required tax return preparers to complete the Form 8867 or otherwise record in their files the information necessary to complete the form. Tax return preparers were also required to maintain records of the checklists and EIC computations, as well as a record of how and when the information used to compute the EIC was obtained by the tax return preparer. The amount of time necessary to submit, record, and retain the additional information required in the final regulations, therefore, should be minimal for these tax return preparers.

Based on these facts, the IRS hereby certifies that the collection of information contained in the final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

#### Drafting Information

The principal author of the final regulations is Spence Hanemann, Office of the Associate Chief Counsel (Procedure and Administration).

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

**Authority:** 26 U.S.C. 7805 \* \* \*.  
Section 1.6695–2 also issued under 26 U.S.C. 6695(g). \* \* \*

■ **Par. 2.** In § 1.6695–2, paragraphs (a), (b)(1), (b)(2), (b)(4), (c), and (d) are revised and new paragraph (e) is added to read as follows:

#### § 1.6695–2 Tax return preparer due diligence requirements for determining earned income credit eligibility.

(a) *Penalty for failure to meet due diligence requirements.* A person who is a tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$500 for each such failure.

(b) \* \* \*  
(1) *Completion and submission of Form 8867*—(i) The tax return preparer must complete Form 8867, “Paid Preparer’s Earned Income Credit Checklist,” or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS), and—

(A) In the case of a signing tax return preparer electronically filing the tax return or claim for refund, must electronically file the completed Form 8867 (or successor form) with the tax return or claim for refund;

(B) In the case of a signing tax return preparer not electronically filing the tax return or claim for refund, must provide the taxpayer with the completed Form 8867 (or successor form) for inclusion with the filed tax return or claim for refund; or

(C) In the case of a nonsigning tax return preparer, must provide the signing tax return preparer with the completed Form 8867 (or successor form), in either electronic or non-

electronic format, for inclusion with the filed tax return or claim for refund.

(ii) The tax return preparer's completion of Form 8867 (or successor form) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

(2) *Computation of credit*—(i) The tax return preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's EIC computation, including the method and information used to make the computation.

(ii) The tax return preparer's completion of the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

\* \* \* \* \*

(4) *Retention of records*—(i) The tax return preparer must retain—

(A) A copy of the completed Form 8867 (or successor form);

(B) A copy of the completed Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 (or successor form) and the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 (or successor form) or the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years from the latest of the following dates, as applicable:

(A) The due date of the tax return (determined without regard to any extension of time for filing);

(B) In the case of a signing tax return preparer electronically filing the tax

return or claim for refund, the date the tax return or claim for refund was filed;

(C) In the case of a signing tax return preparer not electronically filing the tax return or claim for refund, the date the tax return or claim for refund was presented to the taxpayer for signature; or

(D) In the case of a nonsigning tax return preparer, the date the nonsigning tax return preparer submitted to the signing tax return preparer that portion of the tax return or claim for refund for which the nonsigning tax return preparer was responsible.

(iii) The items in paragraph (b)(4)(i) of this section may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Special rule for firms*. A firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to penalty if, and only if—

(1) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or, prior to the time the return was filed, knew of the failure to comply with the due diligence requirements of this section;

(2) The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements of this section; or

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) *Exception to penalty*. The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular tax return or claim for refund was isolated and inadvertent. The preceding sentence does not apply to a firm that is subject to the penalty as a result of paragraph (c) of this section.

(e) *Effective/applicability date*. This section applies to tax returns and claims for refund for tax years ending on or after December 31, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 14, 2011.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 2011-32487 Filed 12-19-11; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-1112]

RIN 1625-AA00

#### **Safety Zone; City of Beaufort's Tricentennial New Year's Eve Fireworks Display, Beaufort River, Beaufort, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Beaufort River, in Beaufort, South Carolina, during the City of Beaufort's Tricentennial New Year's Eve Fireworks Display. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective from 5:30 p.m. until 6:50 p.m. on December 31, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1112 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1112 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Ensign John