Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Slaton, TX [New]

Slaton Municipal Airport, TX
(Lat. 33°29′07″ N., long. 101°39′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Slaton Municipal Airport.

Issued in Fort Worth, TX, on April 20, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–10555 Filed 5–5–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 301

[REG–127561–15]

RIN 1545–BN19

Certified Professional Employer Organizations; Notice of Proposed Rulemaking and Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that set forth the Federal employment tax liabilities and other obligations of persons certified by the IRS as certified professional employer organizations (CPEOs) in accordance with provisions enacted as part of The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. The proposed regulations also propose to adopt, by cross-reference, the text of temporary regulations in the Rules and Regulations section of this issue of the **Federal Register**, which relate to the requirements for applying for, receiving, and maintaining certification as a CPEO. These proposed regulations will affect persons who apply to be treated as CPEOs and who are certified by the IRS as meeting the applicable requirements. In certain instances, the proposed regulations will also affect the federal employment tax liabilities and other obligations of customers of the CPEO.

DATES: Comments and requests for a public hearing must be received by August 4, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–127561–15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–127561–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (REG–127561–15).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Melissa L. Duce at (202) 317–6798; concerning submissions of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 317–6901 (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 and approval 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:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 5, 2016.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions 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;

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, including through forms of information technology; and

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

The collection of information in the proposed regulations is in § 31.3511–1(g) and flows from section 3511(g) of the Internal Revenue Code (Code), which provides that the Secretary shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance by CPEOs with subtitle C of the Code. Section 31.3511–1(g)(1) clarifies that the reporting and recordkeeping requirements described in subtitle F of the Code that are currently applicable to employers apply to CPEOs that are treated as employers under § 31.3511–1(a), and § 31.3511–1(g)(3)(ii) specifically requires a CPEO to file on magnetic media Form 940, ''Employer's Annual Federal Unemployment (FUTA) Tax Return,'' and Form 941, ''Employer's QUARTERLY Federal Tax Return,''

along with all required schedules. The collection of information associated with complying with such reporting and recordkeeping requirements is reflected in the burden estimates for the relevant requirements under subtitle F. The collection of information associated with §§ 31.3511–1(g)(3)(i) and (ii), relating to information that CPEOs must report to the IRS regarding their customers, will be reflected in the burden estimates for new Form 8973, ''Certified Professional Employer Organization/Customer Reporting Agreement,'' and in the amendments made to the applicable Schedules R of Forms 940 and 941. The collection of information associated with §§ 31.3511–1(g)(3)(iii) through (vi) relates to requirements imposed by § 301.7705–2T and are reflected in the burden estimates for that section. The collections of information associated with § 31.3511–1(g)(3)(vii) and (viii), relating to any information the IRS determines is necessary to promote compliance with respect to credits described in section 3511(d) and any other information the Commissioner may prescribe in further guidance, will be reflected in the future guidance requesting such information from CPEOs.

The collection of information in § 31.3511–1(g)(4) of the proposed regulations, regarding information a CPEO must provide to its customers, relates to: (1) An annual requirement to provide customers with the information necessary to claim specified credits for which the amount of the credit is determined by reference to the amount of employment tax wages or federal employment taxes; (2) a requirement to notify a customer of any transfers by the CPEO of the customer's contract meeting the requirements of section 7705(e)(2) (CPEO contract) or of any suspension or revocation of the CPEO's certification; and (3) if any covered employees are not or cease to be work site employees because they perform services at a location where the 85 percent threshold described in the definition of ''work site employee'' in § 301.7705–1(b)(17) is not met, a requirement to notify the customer that it may also be liable for federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees. Similarly, § 31.3511–1(g)(5)(i) requires that any CPEO contract between a CPEO and a customer must: (1) Contain the name and Employer Identification Number (EIN) of the CPEO fulfilling the federal employment tax obligations covered by the contract; (2) require the CPEO to provide the notices outlined in § 31.3511–1(g)(4); (3) describe the information that the CPEO will provide that is necessary for the customer to claim specified credits; and (4) specify that the CPEO must notify the customer that it may also be liable for federal employment taxes on remuneration remitted by the CPEO to any employees who are not work site employees. Further, any service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract, must notify (or be accompanied by notification to) the client that the agreement does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the agreement. While a CPEO must provide customers with the information necessary to claim the specified credits annually and agree to provide customers and clients with the described notifications in each new CPEO contract or service agreement entered into during a particular taxable year, the remaining notification obligations outlined in §§ 31.3511–1(g)(4) and (5) relate to other events that are less predictable and may be infrequent—such as transfers of existing CPEO contracts, suspension or revocation of the CPEO's certification, or the reclassification of employees at a particular work site as non-work site employees. Moreover, the Department of the Treasury (Treasury Department) and the IRS expect that CPEOs participating in this voluntary program will be able to build upon pre-existing systems and processes through which they communicate with their clients. With regard to the collections of information required in §§ 31.3511–1(g)(4) and (5), the Treasury Department and the IRS have reached the following reporting burden estimates for the expected recordkeepers (which are CPEOs):

Estimated number of recordkeepers: 275.

Estimated average annual burden hours per recordkeeper: 6 hours.

Estimated total annual recordkeeping burden: 1650 hours.

Estimated frequency of collections of such information: Periodic.

The collection of information in the temporary regulations is in § 301.7705–2T and flows from sections 7705(b) and (c), which relate to the requirements that a person must satisfy to become and remain certified as a CPEO. The collection of information required to apply for and receive certification and to meet the requirements under § 301.7705–2T related to posting a security bond will be reflected in the burden estimates for Form 14737, ''Request for Voluntary IRS Certification of a Professional Employer Organization''; Form 14737–A, ''Responsible Individual Personal Attestation''; and Form 14751, ''Certified Professional Employer Organization Surety Bond.'' The collection of information required by §§ 301.7705–2T(j) and (k), relating to periodic verification that the CPEO continues to meet the requirements of § 301.7705–2T and a CPEO's obligation to report any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided to the IRS, will be published in a future revenue procedure that will prescribe the procedures related to these requirements.

Section 301.7705–2T(e) of the temporary regulations requires a CPEO to provide annually a copy of its annual audited financial statements and an opinion of a certified public accountant (CPA) regarding such financial statements. The collection of information required by § 301.7705–2T(f)(1)(i) relates to quarterly assertions that the CPEO has withheld and made deposits of all required federal employment taxes for the calendar quarter and examination level attestations from a CPA stating that such assertion is fairly stated in all material respects. In addition, § 301.7705–2T(f)(1)(ii) requires a quarterly statement signed by a responsible individual verifying that the CPEO has positive working capital with respect to the most recently completed fiscal quarter. While it is expected that CPEOs will generally maintain annual audited financial statements during the normal course of their business, rather than solely as a result of § 301.7705–2T(e), the Treasury Department and the IRS recognize that § 301.7705–2T(e) may impose new reporting requirements relating to underlying elements of those financial statements that will require additional time on the part of the CPEO and additional review by a CPA. In addition, § 301.7705–2T(f) requires CPEOs to submit statements regarding their working capital and assertions and exam level attestations related to their tax compliance on a quarterly basis. With respect to the collections of information required in §§ 301.7705–2T(e) and (f), the Treasury Department and the IRS have reached the following reporting burden estimates for CPEOs:

Estimated number of recordkeepers: 275.

Estimated average annual burden hours per recordkeeper: 60 hours.

Estimated total annual recordkeeping burden: 16,500 hours.

Estimated frequency of collections of such information: Quarterly.

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. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014 (Pub. L. 113–295), added new sections 3511 and 7705 to the Code relating to the federal employment tax obligations and certification requirements of a ''certified professional employer organization'' (CPEO). Additionally, the ABLE Act made conforming amendments to sections 3302, 3303(a), 6053(c), 6652, and 7528 relating to obligations, requirements, and penalties applicable to a CPEO. This notice of proposed rulemaking contains proposed regulations under sections 3511 and 7705 regarding federal employment tax obligations of a CPEO and related definitions. This document also proposes to adopt, by cross-reference, temporary regulations under section 7705 published in the Rules and Regulations portion of this issue of the **Federal Register**, which relate to the requirements for applying for, receiving, and maintaining certification as a CPEO. The preamble to the temporary regulations explains those regulations and the statutory provisions they are designed to implement.

Federal Employment Taxes

When an individual performs services for another person, an employer-employee relationship may exist. Generally, the Code provides that the existence of an employer-employee relationship is determined by applying the usual common law rules to the particular facts and circumstances of each case. *See* section 3121(d)(2). Under the common law rules, an employment relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. *See* §§ 31.3121(d)–1(c), 31.3231(b)–1(a)(2), 31.3306(i)–1(b), and 31.3401(c)–1(b).

Employers generally are required to deduct and withhold federal income tax and Federal Insurance Contributions Act (FICA) taxes from wages paid to their employees under sections 3402(a) and 3102(a) and are separately liable for the employer's share of FICA taxes under section 3111. FICA taxes consist of the Old-Age, Survivors, and Disability Insurance (OASDI) tax and the Hospital Insurance (HI) tax (which includes the additional tax under section 3101(b)(2), known commonly as the Additional Medicare Tax (AdMT)). The amount of wages for OASDI purposes is limited to wages paid by an employer to an employee during a calendar year not exceeding the contribution and benefit base (as determined under section 230 of the Social Security Act), which is an annually adjusted amount. Thus, there is a ceiling on the wages subject to OASDI. Accordingly, once an employee's wages from an employer reach this annually adjusted amount, the OASDI portion of the FICA tax does not apply for the remainder of the calendar year.

In contrast, there is no ceiling on wages subject to the HI tax. *See* sections 3101, 3111, and 3121(a). However, under section 3102(f)(1), employers are only required to withhold AdMT from an employee's wages to the extent that those wages exceed $200,000 in a calendar year. Thus, there is a withholding threshold of $200,000 annually on wages subject to AdMT withholding.

Instead of FICA taxes, railroad employers are required to deduct and withhold Railroad Retirement Tax Act (RRTA) taxes from their employees' compensation and are separately liable for the employer's share of RRTA taxes. RRTA taxes consist of tier 1 taxes and tier 2 taxes. Tier 1 taxes parallel the OASDI and HI taxes applicable to other employers and employees. Tier 2 taxes consist of employer and employee taxes on railroad compensation up to the tier 2 contribution base for the calendar year. *See* sections 3201(a), 3211(a), and 3221(a).

Under the Federal Unemployment Tax Act (FUTA), taxes are imposed on the first $7,000 of wages paid to a covered employee by an employer during the calendar year. *See* section 3301(2). An employer may take a credit against its FUTA tax liability for its contributions to a state unemployment fund and, in certain cases, an additional credit for contributions that would have been required if the employer had been subject to a higher contribution rate under state law. *See* section 3301 *et seq.*

All taxes imposed under subtitle C of the Code, including income tax withholding, FICA, RRTA, and FUTA taxes, are collectively referred to in this preamble as ''federal employment taxes.'' The applicable contribution bases for FICA, RRTA, and FUTA taxes, collectively, are referred to in this preamble as the ''annual wage base.'' Sections 31.3102–1(d), 31.3202–1(e), and 31.3403–1 establish that the employer is the person liable for the withholding and payment of federal employment taxes, whether or not amounts are actually withheld.

An employer must file an employment tax return reporting federal employment taxes for each employment tax return period. Generally, an employer files Form 941, ''Employer's QUARTERLY Federal Tax Return,'' to report wages the employer paid during a quarter of a calendar year that are subject to federal income tax withholding and FICA taxes. Wages an employer pays that are subject to FUTA tax are reported annually on Form 940, ''Employer's Annual Federal Unemployment Tax (FUTA) Return.'' Employers that pay compensation subject to the RRTA tax file Form CT–1, ''Employer's Annual Railroad Retirement Tax Return,'' as well as Form 941, to report federal income tax withholding. All employers that pay wages or compensation subject to federal income tax withholding, FICA tax, or RRTA tax must file Forms W–2, ''Wage and Tax Statement,'' and Form W–3, ''Transmittal of Wage and Tax Statements,'' with the Social Security Administration (SSA) and furnish a Form W–2 to each employee.

Federal employment taxes generally apply to all remuneration for services performed by an employee for an employer. However, specific exceptions apply to particular types of remuneration and particular types of services, which may depend on the type of employer for whom services are performed or the nature of those services. For example, remuneration paid by an organization exempt from federal income tax under section 501(a) to an employee who is paid less than $100 in a calendar year is excluded from the definition of ''wages'' for FICA purposes, and services performed in the employ of certain tax-exempt organizations are excluded from the definition of ''employment'' for FUTA purposes. In addition, various definitions and special rules, relevant for purposes of computing the applicable annual wage base, apply to

certain types of employers, employees, and employment relationships.

Furthermore, as noted earlier in this preamble, remuneration paid by an employer to an employee within any calendar year is excepted from the OASDI portion of FICA, the equivalent portion of tier 1 RRTA, and FUTA taxes to the extent it exceeds the applicable annual wage base. However, the annual wage base applies on an employer-by-employer basis, and, thus, only remuneration received during any calendar year by an employee from the same employer is considered in applying the annual wage bases for purposes of the remuneration paid by that employer. *See* §§ 31.3121(a)(1)–1(a)(3) and 31.3306(b)(1)–1(a)(3) for FICA and FUTA taxes, respectively. Similarly, the AdMT withholding threshold applies only with regard to remuneration received during any calendar year by an employee from the same employer.

Accordingly, if during a calendar year the employee receives remuneration from more than one employer, generally, both the annual wage base and withholding threshold apply separately to the remuneration that the employee received during that calendar year from each employer.[1] Consequently, if an employee works for multiple employers during a year, a separate annual wage base and withholding threshold generally apply in determining each employer's tax liability with respect to remuneration paid to the employee. However, if during any calendar year an employer (the ''successor employer'') acquires substantially all of the property used in a trade or business of another employer (the ''predecessor employer'') then, for purposes of the annual wage base, any remuneration with respect to employment paid to such individual by the predecessor employer during such calendar year and prior to the acquisition is considered as having been paid by the successor employer. *See* sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1).

If a person (payor) pays wages or compensation to employees who are employed by one or more employers, the Secretary is authorized, in accordance with regulations prescribed by the Secretary under section 3504, to designate such payor to perform acts required of employers under the Code. Section 3504 further provides that, except as otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable with respect to an employer are applicable to the payor so designated, but each employer for whom the payor acts remains subject to the provisions of the law (including penalties) applicable to the employer. Consequently, both an employer and the payor designated in accordance with regulations under section 3504 are liable for the federal employment taxes on wages or compensation paid by the payor. Section 31.3504–2 of the regulations provides circumstances under which a payor is designated to perform the acts required of an employer and is liable for federal employment taxes with respect to wages or compensation paid by the payor to individuals performing services for the payor's client pursuant to a service agreement between the payor and the client, as defined therein. Consistent with section 3504, § 31.3504–2 provides that the client remains liable for the federal employment taxes on wages paid by the payor to employees of the client.

In addition to an employer's federal employment tax obligations, various tax credits are available to employers based on the amount of wages and federal employment taxes paid by the employer. For example, the amount of an employer's work opportunity credit is based on a portion of FUTA wages paid by the employer to employees who are members of certain specified groups. *See* section 51(c).

Certain reporting requirements relating to tips apply to large food or beverage establishments. In the case of such an establishment, an employer is generally required to report certain information relating to receipts and tips to the IRS each calendar year. Additionally, the employer must also provide employees with written statements showing certain information for each calendar year, including the amount of tips allocated to the employee for the year. *See* section 6053(c).

Professional Employer Organizations

A professional employer organization (PEO), sometimes referred to as an employee leasing company, is an entity that enters into an agreement with a client to perform some or all of the federal employment tax withholding, reporting, and payment functions related to workers performing services for the client. A PEO also may manage human resources, employee benefits, workers compensation claims, and unemployment insurance claims for the client. The terms of a PEO arrangement typically provide that the PEO is the employer or ''co-employer'' of the workers and is responsible for paying the workers and for the related federal employment tax compliance. Under this arrangement, the PEO remits the wages to the workers and typically files, under its name and EIN, Forms 940 and 941 and, where applicable, Form CT–1 to report the wages or compensation and employment taxes it paid. Additionally, the PEO files Forms W–2 and Form W–3 with the SSA and furnishes a Form W–2 to each worker.

The client typically pays the PEO a fee based on payroll costs plus an additional amount. In most cases, however, the workers working in the client's business are the employees of the client under the common law rules, and the client is legally responsible for federal employment tax compliance, even though the PEO may also be legally responsible for federal employment tax compliance under § 31.3504–2.

The ABLE Act of 2014

The ABLE Act requires the IRS to establish a voluntary certification program for PEOs. Section 7705(a) defines a CPEO as a person that applies to the Secretary of the Treasury (Secretary) to be treated as a CPEO for purposes of section 3511 and has been certified by the Secretary as meeting certain requirements. Those requirements are described in the temporary regulations under section 7705 published in the Rules and Regulations portion of this issue of the **Federal Register**.

Under sections 3511(a)(1) and (c)(1), for purposes of federal employment taxes and other obligations under the federal employment tax rules, a CPEO is generally treated as the employer of any individual performing services for a customer of the CPEO and covered by a contract described in section 7705(e)(2) between the CPEO and the customer (CPEO contract), but only with respect to remuneration remitted to the individual by the CPEO. A contract meets the requirements of section 7705(e)(2) with respect to an individual performing services for the customer and, therefore, is a CPEO contract if the contract is in writing and provides that the CPEO will assume responsibility, without regard to the receipt or adequacy of payment from the customer, for: (1) Payment of wages to

[1] In such case, remuneration received in any calendar year from each employer up to the amount of the applicable annual wage base constitutes wages and is subject to the OASDI portion of FICA tax and the equivalent portion of tier 1 RRTA tax. However, under section 6413(c), the employee may be entitled to a special credit or refund of a portion of the employee tax deducted from wages received during the calendar year. Thus, an employee is subject to OASDI or RRTA tax only with respect to remuneration up to the applicable wage base for a year, regardless of whether the employee works for only one employer or for more than one employer during the year. *See* § 31.6413(c)–1.

the individual; (2) reporting, withholding, and payment of any federal employment taxes with respect to the individual's wages; and (3) any employee benefits that the contract may require the CPEO to provide to the individual. The CPEO must also assume responsibility in a CPEO contract for recruiting, hiring, and firing the individual (in addition to the customer's responsibility in that regard) and for maintaining employee records relating to the individual. Finally, the CPEO must agree in a CPEO contract to be treated as a CPEO for federal employment tax purposes with respect to the individual.

With respect to an individual covered by a CPEO contract who performs services for a customer at a work site meeting the requirements of section 7705(e)(3) (a work site employee), section 3511(a)(1) specifies that no person other than the CPEO is treated as the employer for federal employment tax purposes with respect to remuneration remitted by the CPEO to such individual. A work site meets the requirements of section 7705(e)(3) with respect to an individual if at least 85 percent of the individuals performing services for the customer at the work site where the individual performs services are subject to one or more CPEO contracts with the CPEO. For this purpose, individuals who are excluded employees within the meaning of section 414(q)(5) (such as newly hired or part-time employees) are not taken into account.

Sections 3511(a)(2) and (c)(2) provide that the exceptions, exclusions, definitions, and other rules that are based on type of employer and that would apply if the CPEO were not treated as the employer under sections 3511(a)(1) or (c)(1) of the provision continue to apply. Thus, for example, if services performed in the employ of a customer that is a tax-exempt organization would be excluded from employment for FUTA purposes, the fact that a CPEO is treated as the employer for federal employment tax purposes does not affect the application of the exclusion.

On entering into a CPEO contract with a customer with respect to a work site employee, section 3511(b) provides that a CPEO is treated as a successor employer and the customer is treated as a predecessor employer during the term of the CPEO contract. On termination of a CPEO contract with respect to a work site employee, the customer is treated as a successor employer and the CPEO is treated as a predecessor employer.

For purposes of various tax credits enumerated in section 3511(d) under which the amount of the credit is determined by reference to the amount of federal employment taxes or the amount of wages subject to federal employment taxes, the credit with respect to a work site employee performing services for a customer applies to the customer, not to the CPEO. Consequently, in determining the amount of the credit, the customer, and not the CPEO, is to take into account federal employment taxes and wages paid by the CPEO with respect to the work site employee and for which the CPEO receives payment from the customer. The CPEO is required to furnish the customer and the Secretary with any information necessary for the customer to claim the credit.

The CPEO provisions do not apply in the case of a customer which bears a relationship to a CPEO described in section 267(b) (relating to transactions between related taxpayers) or section 707(b) (relating to transactions between a partner and partnership). In the application of such sections, rules based on more than 50 percent ownership are applied by substituting 10 percent for 50 percent. *See* section 3511(e).

A CPEO has no federal employment tax liability under section 3511(a) or (c) with respect to remuneration paid by the CPEO to an individual that constitutes net earnings from self-employment to the individual. Specifically, section 3511(f) provides that an individual with net earnings from self-employment derived from a CPEO customer's trade or business, including a partner of a customer that is a partnership, is not a work site employee for federal employment tax purposes with respect to remuneration paid by a CPEO. In addition, section 3511(c) provides that, for purposes of its federal employment tax liability, a CPEO is not treated as the employer of any individual covered by a CPEO contract and described in section 3511(f) with respect to remuneration paid by the CPEO to the individual. Together, these two provisions relieve the CPEO of any federal employment tax liability under section 3511(a) or (c) with respect to such self-employed individuals.

Under section 3511(g), the Secretary is directed to develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with the applicable federal employment tax provisions by CPEOs. Such rules are to address: (1) Notification of the Secretary in the case of the commencement or termination of a service contract with a customer and the EIN of the customer; (2) information the Secretary determines is necessary for the customer to claim specified credits and the manner in which the information is to be provided; and (3) other information the Secretary determines is essential to promote compliance with respect to specified credits and FUTA credits under section 3302. Such rules are to be designed in a manner that streamlines, to the extent possible, the application of the requirements of sections 3511 and 7705, the exchange of information between a CPEO and its customers, and the reporting and recordkeeping obligations of the CPEO. Similarly, under section 3511(h), the Secretary is directed to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 3511.

In addition to adding new sections 3511 and 7705 to the Code, the ABLE Act made conforming amendments to sections 3302, 3303(a), 6053(c), 6652, and 7528 relating to obligations, requirements, and penalties applicable to a CPEO. If a CPEO, or a customer of a CPEO, makes a contribution to a state's unemployment fund with respect to wages paid to a work site employee, the CPEO is eligible for the credits available under section 3302 with respect to such contribution. See section 3302(h). Similarly, under section 3303(a)(4), a CPEO is allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a state law if the Secretary of Labor finds that under such law the CPEO is permitted to collect and remit contributions during the taxable year to the state unemployment fund with respect to a work site employee. The Treasury Department and the IRS recognize that section 3302(h) and section 3303(a)(4) apply exclusively with respect to wages paid to work site employees and request comments on the application of the respective credits with respect to wages paid to individuals covered by a CPEO contract who are not work site employees.

For purposes of reporting requirements relating to large food or beverage establishments, section 6053(c)(8) provides that, if a CPEO is treated as the employer of a work site employee under section 3511, the customer for whom the work site employee performs services is the employer for purposes of the applicable reporting requirements. However, the CPEO is required to furnish the customer and the Secretary with any information the Secretary prescribes as necessary to complete the required reporting.

Section 6652 provides for certain penalties for failure to file certain information returns, registration statements, and similar reports. The ABLE Act provided a new penalty in section 6652(n) specifically for failures to timely make a complete report required under sections 3511, 6053(c)(8), or 7705. In the case of such a failure, section 6652(n) imposes a penalty to be paid (on notice and demand by the Secretary and in the same manner as tax) by the CPEO in an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, an amount equal to $100 for each report shall be paid.

Finally, section 7528(b)(4) provides that the fee charged in connection with the CPEO program shall be an annual fee not to exceed $1,000 per year per applicant.

Explanation of Provisions

1. Applicable Definitions

Section 7705 provides numerous statutory definitions related to the operation of section 3511. The proposed regulations incorporate these statutory definitions and clarify the following terms: Customer, covered employee, work site employee, work site, and self-employed individual.

The proposed regulations define a ''customer'' as any person who enters into a CPEO contract (that is, a contract that meets the requirements of section 7705(e)(2), as described in the Background section of this preamble) with a CPEO. A provider of employment-related services that uses its own EIN for filing federal employment tax returns on behalf of its clients (or who used its own EIN immediately prior to entering into a CPEO contract with the CPEO) is specifically excluded from being a customer of a CPEO for purposes of section 3511, even if such provider has entered into a CPEO contract with the CPEO and would, but for this exclusion, be a customer of the CPEO.[2]

With respect to a customer, a ''covered employee'' is any individual (other than a self-employed individual, as described subsequently in this section of the preamble) who is covered by a CPEO contract with that customer. Consistent with section 7705(e), the proposed regulations define the term ''work site employee'' as a covered employee who performs services for a customer of a CPEO at a ''work site'' where at least 85 percent of the individuals performing services are subject to one or more CPEO contracts between the CPEO and the customer.

The proposed regulations generally define ''work site'' as a physical location at which an individual regularly performs services for a customer of a CPEO. If there is no such location, the work site is the location from which the customer assigns work to the individual. Thus, for example, the ''work site'' for a technician who performs assignments at various or changing locations is the location from which the technician is dispatched on each particular assignment. The work site may not be the individual's residence or a telework site unless the customer requires the individual to work at that site. In applying the term ''work site,'' contiguous locations are treated as a single physical location and thus a single work site, and noncontiguous locations that are not reasonably proximate are treated as separate physical locations and thus separate work sites. However, the CPEO may treat noncontiguous locations that are reasonably proximate as a single physical location and thus a single work site. Any two work sites that are separated by 35 or more miles or that operate in a different industry or industries will not be treated as reasonably proximate. The Treasury Department and the IRS recognize that, under certain circumstances, the physical location at which an individual regularly performs services for a customer may be difficult to ascertain. Accordingly, comments are requested on the definition of work site as set forth in § 301.7705–1(b)(16) and any additional clarifications that would facilitate a determination of an individual's work site.

The proposed regulations also provide that a covered employee will be considered a work site employee for the entirety of a calendar quarter if he or she qualifies as a work site employee at any time during that quarter. Consequently, for any calendar quarter, a covered employee is either a work site employee or not a work site employee for the entire quarter and cannot be a work site employee for part of the quarter and a non-work site employee for the other part. On the other hand, a covered employee can be a work site employee for one or more calendar quarters of the year and a non-work site employee for other calendar quarters during the same year.

The proposed regulations provide that the determination of whether a covered employee is a work site employee is made separately with regard to each work site at which the covered employee regularly provides services and for each customer for which the covered employee is providing services. If, during the same calendar quarter, a covered employee regularly provides services at more than one work site for a single customer or more than one customer of a particular CPEO, that employee may be counted among the covered employees at each of those sites. In accordance with section 7705(e)(3), the proposed regulations provide that, in determining whether the 85 percent threshold is met, individuals who are excluded employees within the meaning of section 414(q)(5) (such as newly hired or part-time employees) are not taken into account as either covered employees or individuals performing services, although such individuals may otherwise be covered employees and work site employees under the proposed regulations.

Finally, the proposed regulations also clarify that, in determining whether at least 85 percent of the individuals performing services are subject to one or more CPEO contracts between the CPEO and the customer, a self-employed individual who would be a covered employee but for the exclusion of self-employed individuals from the definition of covered employee (as described in this section of the preamble) is taken into account. For this and other purposes, the proposed regulations define a ''self-employed individual'' as an individual with net earnings from self-employment (as defined in section 1402(a) and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether such net earnings are derived from providing services as a non-employee to a customer of a CPEO, from the individual's own trade or business as a sole proprietor customer of the CPEO, or as a partner in a partnership that is a customer of the CPEO, but only with regard to such net earnings. Accordingly, a self-employed individual, whether an independent contractor to the customer, a sole proprietor customer of the CPEO, or a partner in a partnership customer of the CPEO, is not considered to be a work site employee under section 3511(f) with regard to such earnings. However, in the limited case in which such an individual also is paid wages by a CPEO

[2] References in this preamble and the proposed regulations to ''customers'' are limited to those persons who have entered into a CPEO contract and any rules applicable to a customer apply only with respect to that contract. In contrast, the term ''client'' is used more broadly to include persons receiving services from a provider of employment-related services (that may or may not be a CPEO) in instances when those services are not covered by a CPEO contract.

under a CPEO contract with the customer, the individual may nevertheless be a work site employee with respect to such wages. In all cases, the self-employed individual covered by a CPEO contract is appropriately counted in determining whether the 85 percent threshold is met.

2. CPEO as Employer of Covered Employees

Consistent with sections 3511(a)(1) and (c)(1), the proposed regulations provide that, for purposes of federal employment taxes and other obligations under the federal employment tax rules, a CPEO is treated as the employer of any covered employee (whether or not a work site employee), but only with respect to remuneration remitted to the individual by the CPEO. Consistent with section 3511(a)(1), the proposed regulations also provide that, with respect to a covered employee who is a work site employee, no person other than the CPEO will be treated as the employer of the work site employee for federal employment tax purposes with respect to remuneration remitted by the CPEO to such work site employee. In contrast, in the case of a covered employee who is not a work site employee, the proposed regulations provide that a person other than the CPEO is also treated as an employer of the employee for purposes of federal employment taxes imposed on remuneration remitted by the CPEO to the employee if such person is determined to be an employer of the employee without regard to the application of section 3511.

3. Application of Federal Employment Tax Exemptions, Exclusions, Definitions, and Other Rules

Under sections 3511(a)(2) and (c)(2), the exceptions, exclusions, definitions, and other rules that are based on the type of employer and that would apply if the CPEO were not treated as the employer under section 3511 continue to apply with respect to remuneration remitted by the CPEO. Thus, sections 3511(a)(2) and (c)(2) necessitate a determination of whether the CPEO, the customer, or a third party is the employer of a covered employee without regard to section 3511 for purposes of applying federal employment tax exemptions, exclusions, definitions, and other rules. Under the Code, the existence of an employer-employee relationship is generally determined by applying the common law rules to the particular facts and circumstances of each case. While the terms of a PEO arrangement typically provide that the PEO is the employer (or ''co-employer'') of the employees and is responsible for paying the employees and for the related federal employment tax compliance, in most instances the customer is actually the common law employer of such employees.

To avoid the need to make a common law employment determination for purposes of sections 3511(a)(2) and (c)(2), the proposed regulations provide that, for purposes of federal employment taxes, the exemptions, exclusions, definitions, and other rules that are based on type of employer and that apply to remuneration remitted by a CPEO to a covered employee are presumed to be based on the customer for whom the covered employee provides services. Additionally, if a covered employee provides services for more than one customer of the CPEO during the calendar year, the presumption applies separately to remuneration remitted by the CPEO to the covered employee with respect to each such customer. This presumption in the proposed regulations generally eliminates the need to make a determination as to which person is the employer (in the absence of section 3511) for purposes of the exceptions, exclusions, definitions, and other rules that are based on type of employer.

The proposed regulations also provide, however, that the presumption may be rebutted if the Commissioner determines, or the CPEO demonstrates by clear and convincing evidence, that the relationship between the customer and the covered employee is not the legal relationship of employer and employee. If the presumption is rebutted, the exemptions, exclusions, definitions, and other rules that are based on type of employer and which apply to remuneration remitted by a CPEO to a covered employee will be based on the person determined to be the employer of the covered employee without regard to the application of section 3511. The presumption can be rebutted by a demonstration that either the CPEO or a third party other than the customer is actually the employer for federal employment tax purposes and, therefore, the proper party on which to base the exceptions, exclusions, definitions, and other rules. In any event, the presumption does not create any inference with respect to who is an employer or employee or whether an employment relationship exists for other federal tax purposes or any other provision of law.

4. Annual Wage Base and Withholding Threshold

Under sections 3511(a) and (c), a CPEO is treated as the employer of any covered employee with respect to remuneration remitted to the individual by the CPEO. Thus, pursuant to section 3511, a CPEO has an employment relationship with the covered employee of a customer during the term of the CPEO contract with the customer that is separate from and independent of any employment relationship the customer may have with the employee. Consequently, during the calendar year in which a CPEO enters into a CPEO contract with a customer with respect to a covered employee, the covered employee may receive remuneration from more than one employer.

The proposed regulations provide that, except as provided with respect to successor and predecessor employers described in section 5 of this preamble, remuneration received by a covered employee from a CPEO for performing services for a customer of the CPEO within any calendar year is subject to a separate annual wage base and withholding threshold that are each computed with respect to such remuneration, without regard to any remuneration received by the covered employee during the calendar year from any other employer (including, if applicable, remuneration received directly from the customer receiving services from the employee). Thus, upon entering into a CPEO contract with a customer with respect to a covered employee, the CPEO starts a new annual wage base and withholding threshold with respect to the covered employee (unless the CPEO is treated as a successor or predecessor employer, as described in section 5 of this preamble). Additionally, any remuneration paid by the customer directly to a covered employee during the term of a CPEO contract is not paid by the CPEO and, consequently, is not included in the CPEO's annual wage base and withholding threshold with respect to the covered employee.

The proposed regulations also provide that if, during a calendar year, a covered employee receives remuneration from a CPEO for services performed by the covered employee for more than one customer of the CPEO, the annual wage base and withholding threshold do not apply to the aggregate remuneration received by the covered employee from the CPEO for services performed for all such customers. Rather, the annual wage base and withholding threshold apply separately to the remuneration received by the covered employee from

the CPEO with respect to services performed for each customer. The maintenance of a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services during a calendar year recognizes both the CPEO's status as an employer of the covered employee under section 3511 and the CPEO's responsibilities under a CPEO contract with respect to services performed by a covered employee for each individual customer. Additionally, a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services is needed for purposes of applying some of the exemptions, exclusions, definitions, and other rules discussed in section 3 of this preamble and the treatment of some of the credits discussed in section 6 of this preamble. Thus, if a single employee receives remuneration under CPEO contracts with more than one customer, the CPEO must maintain a separate annual wage base and withholding threshold for the employee with respect to each customer.

5. Successor Employer Status

Consistent with section 3511(b), the proposed regulations also provide that, for purposes of computing the annual wage base, a CPEO and its customer are treated as: (1) A successor and predecessor employer, respectively, upon entering into a CPEO contract with respect to a work site employee who is performing services for the customer; and (2) a predecessor and successor employer, respectively, upon termination of the CPEO contract between the CPEO and the customer with respect to the work site employee. Consistent with the quarterly work site employee determination discussed in section 1 of this preamble, the determination of whether an employee is a work site employee for this purpose is made during the quarter in which the CPEO enters into (or terminates) the CPEO contract with respect to the employee. That is, an employee will be considered a work site employee for the entirety of a calendar quarter if he or she qualifies as a work site employee at any time during that quarter. Accordingly, a CPEO is a successor employer (or predecessor employer) with regard to any covered employee who is a work site employee at any point during the quarter in which the CPEO entered into (or terminated) the CPEO contract with respect to the employee. On the other hand, as also noted in section 1 of this preamble, a covered employee can be a work site employee for one or more calendar quarters of the year and a non-work site employee for other calendar quarters during the same year. Accordingly, the proposed regulations provide that a CPEO entering into a CPEO contract with a customer with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a successor employer regardless of whether, during the term of the CPEO contract, the covered employee subsequently becomes a work site employee. Similarly, a CPEO terminating a CPEO contract with a customer with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a predecessor employer regardless of whether, during the term of the CPEO contract, the covered employee had previously been a work site employee. The quarterly determination of work site employee status is utilized for purposes of the successor employer and predecessor employer determinations (as well as for other purposes under the proposed regulations) in order to have a consistent quarterly work site employee determination for all purposes and therefore assist with administrability.

6. Treatment of Credits

Section 3511(d) governs the treatment of various tax credits under which the amount of the credit is determined by reference to the amount of wages or federal employment taxes. Section 3511(d)(2) specifies these credits as the credits under section 41 (credit for increasing research activity), section 45A (Indian employment credit), section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips), section 45C (clinical testing expenses for certain drugs for rare diseases or conditions), section 45R (employee health insurance expenses of small employers), section 51 (work opportunity credit), section 1396 (empowerment zone employment credit), and any other section as provided by the Secretary. Consistent with section 3511(d), the proposed regulations provide that any specified credit with respect to a work site employee performing services for a customer applies to the customer, not to the CPEO. Consequently, in determining the amount of the credit, the customer, and not the CPEO, takes into account wages and federal employment taxes paid by the CPEO with respect to the work site employee and for which the CPEO receives payment from the customer. As noted in the discussion of the annual wage base and withholding threshold in section 4 of this preamble, a CPEO must maintain a separate annual wage base and withholding threshold with respect to each customer for which a covered employee performs services during a calendar year. Consequently, with respect to a work site employee performing services for more than one customer of a CPEO during a calendar year, each customer for which the employee performs services takes into account wages and federal employment taxes paid by the CPEO only with respect to services performed by the work site employee for that customer in determining the treatment of credits by that customer. The proposed regulations also provide that, consistent with section 3511(d)(2)(H), the Commissioner may specify other credits subject to the treatment provided for under section 3511(d).

The proposed regulations do not specify any other credits, but the Treasury Department and the IRS request comments on whether other credits should be specified in these regulations or in other guidance. Additionally, the Treasury Department and the IRS recognize that the application of the specified tax credits to the customer under section 3511(d) applies exclusively with respect to work site employees. Accordingly, comments are also requested on the treatment of tax credits with respect to covered employees who are not work site employees.

7. Special Rules Applicable to Related Customers, Self-Employed Individuals, and Other Circumstances

Consistent with section 3511(e), the proposed regulations do not apply in the case of a customer that is related to the CPEO. For these purposes, the proposed regulations provide that a customer is related to a CPEO if that customer bears a relationship to a CPEO described in section 267(b) or section 707(b), except that ''10 percent'' will be substituted for ''50 percent'' wherever the latter term appears in those sections. For administrative purposes such as verifying correct CPEO employment tax reporting and determining whether successor employer rules apply, the IRS must know when a CPEO has entered into a CPEO contract with a customer. For this reason, the proposed regulations also exclude from section 3511 any customer that has commenced a service contract with a CPEO if the commencement of such service contract has not been reported to the IRS in accordance with the requirements described in § 31.3511–1(g)(3)(i) of the proposed regulations (discussed in section 8 of this preamble).

Consistent with section 3511(f), which provides that a self-employed

individual is not a work site employee with respect to remuneration paid by a CPEO, and with section 3511(c), which provides that a CPEO is not treated as an employer of a self-employed individual, the proposed regulations provide that section 3511 does not apply to any self-employed individual. Nevertheless, as discussed in section 1 of this preamble, a self-employed individual may be counted as an employee covered by a CPEO contract for purposes of determining whether the 85 percent threshold for qualification of other covered employees as work site employees is met, as described in section 1 of this preamble.

Finally, the proposed regulations provide that section 3511 does not apply to any CPEO contract in which a CPEO enters while its certification has been suspended by the IRS or to a CPEO whose certification has been revoked or voluntarily terminated.

8. Reporting and Recordkeeping Requirements

Consistent with section 3511(g), the proposed regulations describe various recordkeeping and reporting requirements applicable to CPEOs that are designed to ensure compliance with the applicable federal employment tax provisions. Significantly, the proposed regulations provide that a CPEO that is treated as an employer of a covered employee pursuant to section 3511 must meet all reporting and recordkeeping requirements described in subtitle F of the Code that are applicable to employers in a manner consistent with such treatment. Additionally, a CPEO must file the returns required of all employers by subtitle F.

Moreover, a CPEO must file Forms 940 and 941, and all required accompanying schedules, on magnetic media unless the CPEO is provided a waiver by the Commissioner. The proposed regulations define magnetic media as electronic filing, as well as other media specifically permitted under the applicable regulations, revenue procedures, publications, forms, instructions, or other guidance.

a. Reporting to the IRS by CPEOs

Consistent with section 3511(g)(1), the proposed regulations provide that a CPEO must report information relating to the commencement or termination of any CPEO contract with a customer and the name and EIN of such customer.

The proposed regulations also provide that, with any Form 940 or Form 941 that a CPEO files, the CPEO must attach the applicable Schedule R (or any successor form) containing such information as the Commissioner may require about each of its customers under a CPEO contract and any clients under a service agreement described in § 31.3504–2(b)(2). As noted previously, a CPEO is also required to file Forms 940 and 941, including all required schedules, on magnetic media as a condition of certification.

So that the IRS can better reconcile the total amounts of wages and taxes reported on Forms 940 and 941 with the amounts of wages and taxes reported on the attached Schedule R, the proposed regulations provide that, in addition to providing information about each customer under a CPEO contract, a CPEO must also include such information as the Commissioner may require about each of its clients under a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract. To assist the IRS in verifying which entities reported on the Schedule R are customers under a CPEO contract, and which are clients under a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract, the proposed regulations require that a CPEO must also report information relating to the commencement or termination of a service agreement described in § 31.3504–2(b)(2) with a client, and the name and EIN of each such client.

In addition, the proposed regulations specify that a CPEO must provide periodic verification to the IRS that it continues to meet the CPEO certification requirements of the temporary regulations, as described in § 301.7705–2T(j), and report any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided by the CPEO to the IRS, as described in § 301.7705–2T(k). The time and manner of this ongoing periodic verification will be specified in further guidance. Finally, the proposed regulations require that a CPEO provide: (1) A copy of its audited financial statements and an opinion of a certified public accountant regarding such financial statements, as described in § 301.7705–2T(e)(1); (2) the quarterly statements, assertions, and attestations regarding those assertions described in § 301.7705–2T(f); (3) any information that the IRS specifies in further guidance is necessary to promote compliance with respect to the credits described in § 31.3511–1(e)(2) of the proposed regulations and section 3302; and (4) any other information the Commissioner may prescribe in further guidance.

b. Reporting to Customers by CPEOs

The proposed regulations require a CPEO to report certain information to its customers. Consistent with sections 3511(g)(2) and (3), a CPEO must provide each of its customers with the information necessary for the customer to claim the specified credits for which the amount of the credit is determined by reference to the amount of wages or federal employment taxes. The proposed regulations provide that a CPEO must also notify the customer if its CPEO contract has been transferred to another person (or if another person will report, withhold, or pay, under such other person's EIN, any applicable federal employment taxes with respect to the wages of any individuals covered by its CPEO contract), and provide the customer with the name and EIN of such other person. In addition, a CPEO must also notify each of its current customers of any suspension or revocation of the CPEO's certification. Finally, if any covered employees are not or cease to be work site employees with respect to a calendar quarter because they perform services at a location at which the 85 percent threshold described in section 1 of this preamble is no longer met, the proposed regulations provide that the CPEO must notify the customer that it may be liable for federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees.

c. Information and Agreements in Any Contract or Agreement Between a CPEO and Client

The proposed regulations provide that any CPEO contract with a customer must: (1) Contain the name and EIN of the CPEO reporting, withholding, and paying any applicable federal employment taxes with respect to any remuneration paid to individuals covered by the CPEO contract or service agreement; (2) require the CPEO to provide the customer with all of the notices and information described in section 8.b of this preamble; (3) describe the information that the CPEO will provide which is necessary for the customer to claim credits; and (4) specify that the CPEO must notify the customer that the customer may also be liable for federal employment taxes on remuneration remitted by the CPEO to covered employees if the sites at which they perform services do not (or ever cease to) meet the 85 percent threshold described in § 301.7705–1(b)(18). The proposed regulations also provide that if a service agreement described in § 31.3504–2(b)(2) is not a CPEO contract (and thus the employees covered by that

service agreement are not covered employees), or if section 3511 does not otherwise apply to a contract as described in section 7 of this preamble, the service agreement or contract should be accompanied by a notification to the client explaining that the service agreement or contract is not covered by section 3511 and does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the individuals covered by the service agreement or contract.

9. Penalties Applicable to CPEOs

Although the ABLE Act provided the new penalty under section 6652(n) for failures to timely make required reports under sections 3511, 6053(c)(8), and 7705, the Treasury Department and the IRS note that many of the reports required under sections 3511 and 7705 are also subject to existing penalties and additions to tax. For example, because CPEOs are treated as employers of covered employees, CPEOs must meet the reporting requirements applicable to employers, including the filing of quarterly Forms 941. A CPEO that fails to file a Form 941 is subject to the addition to tax under section 6651(a)(1). Accordingly, the proposed regulations provide that a CPEO that is treated as an employer of a covered employee under section 3511 and that is required to meet the reporting requirements of an employer is subject to the same penalties and additions to tax as an employer with respect to such reporting requirements, including but not limited to penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723.

The proposed regulations further clarify that the section 6652(n) penalty will apply to reports required under section 3511. The proposed regulations provide that a CPEO is subject to penalty under section 6652(n) for any failure to attach the applicable Schedule R (or any successor form) to Forms 940 or 941. The proposed regulations also provide that the CPEO is subject to penalty under section 6723 for any failure (including multiple failures within a single document) to include the EIN of each customer on Schedule R.

Finally, the proposed regulations clarify that, because the requirement to file Forms 940 and 941 on magnetic media is a condition of certification, any failure to file those forms, along with all required schedules, on magnetic media does not constitute a failure to file for the purposes of the section 6651(a)(1) addition to tax or failure to make a report for the purposes of the penalty under section 6652(n). The consequence of any failure to file these forms and associated schedules on magnetic media is the potential suspension or revocation of certification as a CPEO.

Proposed Effective/Applicability Dates

These regulations are proposed to be effective on and after the date these rules are published in the **Federal Register** as final or temporary regulations. Taxpayers may rely on these proposed regulations beginning July 1, 2016, and until final or temporary regulations are published.

Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact 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 these regulations. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. The collection of information is in §§ 31.3511–1(g) and 301.7705–2T. The certification is based on the following:

The Treasury Department and the IRS anticipate that the organizations that choose to apply for this voluntary certification program are likely to be entities that already have many of the systems and processes in place that are needed to comply with these regulations. For example, it is expected that CPEOs will generally maintain annual audited financial statements during the normal course of their business, rather than solely as a result of § 301.7705–2T(e). Moreover, the requirements in §§ 301.7705–2T(e) and (f) for demonstrating positive working capital on an annual basis and for the quarterly assertions regarding employment tax compliance build upon requirements already reflected in many state PEO certification and registration laws, thereby minimizing the economic impact on those CPEO applicants already subject to the similar state law requirements.

In addition, many of the requirements in §§ 31.3511–1(g) and 301.7705–2T that impose a collection of information on CPEOs constitute one-time notifications to the IRS, customers, or clients or notifications that relate to events in the life cycle of a CPEO that are less predictable and may be infrequent—such as transfers of existing CPEO contracts, making material changes to agreements previously provided to the IRS, suspension or revocation of the CPEO's certification, or the reclassification of employees at a particular work site as non-work site employees—and thus will have a minimal economic impact on the CPEO. Moreover, the Treasury Department and the IRS expect that CPEOs participating in this voluntary program will be able to build upon pre-existing systems and processes through which they already communicate with their clients.

For these reasons, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Melissa Duce, Andrew Holubeck, and Neil Shepherd of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement,

Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

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 31 and 301 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Paragraph 1.** The authority citation for part 31 is amended by adding an entry in numerical order to read in part as follows:

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

Section 31.3511–1 is also issued under 26 U.S.C. 3511(h).

* * * * *

■ **Par. 2.** Section 31.3511–1 is added to subpart F to read as follows:

§ 31.3511–1 Certified professional employer organization.

(a) *Treatment as employer*—(1) *In general.* For purposes of the federal employment taxes and other obligations imposed under chapters 21 through 25 of subtitle C of the Internal Revenue Code (federal employment taxes), a certified professional employer organization (CPEO) (as defined in § 301.7705–1T(b)(1) of this chapter) is treated as the employer of any covered employee (as defined in § 301.7705–1(b)(5) of this chapter), but only with respect to remuneration remitted by the CPEO to such covered employee.

(2) *Work site employee.* In the case of a covered employee who is a work site employee (as defined in § 301.7705–1(b)(17) of this chapter), no person other than the CPEO is treated as the employer of the work site employee for purposes of federal employment taxes imposed on remuneration remitted by the CPEO to the work site employee.

(3) *Non-work site employee.* In the case of a covered employee who is not a work site employee, a person other than the CPEO is also treated as an employer of the employee for purposes of federal employment taxes imposed on remuneration remitted by the CPEO to the employee if such person is determined to be an employer of the employee without regard to the application of this paragraph (a) and section 3511.

(b) *Exemptions, exclusions, definitions, and other rules*—(1) *In general.* Solely for purposes of federal employment taxes imposed on remuneration remitted by a CPEO to a covered employee, the application of exemptions, exclusions, definitions, and other rules that are based on the type of employer is presumed to be based on the type of employer of the customer of the CPEO for whom the covered employee performs services. If a covered employee performs services for more than one customer of the CPEO during the calendar year, the presumption described in the previous sentence applies separately to remuneration remitted by the CPEO to the covered employee for services performed with respect to each such customer.

(2) *Presumption rebutted.* The presumption set forth in paragraph (b)(1) of this section may be rebutted if either the Commissioner determines, or the CPEO demonstrates by clear and convincing evidence, that the relationship between the customer and the covered employee is not the legal relationship of employer and employee as set forth in § 31.3401(c)–1. If such a determination or demonstration is made, then, with respect to remuneration remitted by a CPEO to a covered employee, the application of exemptions, exclusions, definitions, and other rules that are based on the type of employer will be based on the type of employer of the person determined by the Commissioner or demonstrated by the CPEO to be the common law employer of the covered employee in accordance with § 31.3401(c)–1.

(3) *No inference from presumption.* The presumption set forth in paragraph (b)(1) of this section does not create any inference with respect to the determination of who is an employer or employee or whether the legal relationship of employer and employee exists for federal tax purposes or for purposes of any other provision of law (other than for paragraph (b)(1) of this section).

(c) *Annual wage limitation, contribution base, and withholding threshold*—(1) *CPEO has separate taxable wage base, contribution base, and withholding threshold.* For purposes of applying the annual wage limitations under sections 3121(a)(1) and 3306(b)(1) (relating to the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively), the contribution base under section 3231(e)(2) (relating to the Railroad Retirement Tax Act), and the withholding threshold under section 3102(f)(1) (relating to the Additional Medicare Tax), remuneration received by a covered employee from a CPEO for performing services for a customer of the CPEO within any calendar year is subject to a separate annual wage limitation, contribution base, and withholding threshold that are each computed without regard to any remuneration received by the covered employee during the calendar year from any other employer (including, if applicable, remuneration received directly from the customer receiving services from the employee). Notwithstanding the preceding sentence, a CPEO is treated as a successor or predecessor employer for purposes of the annual wage limitations and contribution base upon entering into or terminating a CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) with respect to a work site employee, as described in paragraph (d) of this section.

(2) *Performance of services for more than one customer.* If, during a calendar year, a covered employee receives remuneration from a CPEO for services performed by the covered employee for more than one customer of the CPEO, the annual wage limitation, contribution base, and withholding threshold do not apply to the aggregate remuneration received by the covered employee from the CPEO for services performed for all such customers. Rather, the annual wage limitation, contribution base, and withholding threshold apply separately to the remuneration received by the covered employee from the CPEO with respect to services performed for each customer.

(d) *Successor employer status*—(1) *In general.* For purposes of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1), a CPEO and its customer are treated as—

(i) A successor and predecessor employer, respectively, upon entering into a CPEO contract with respect to a work site employee who is performing services for the customer; and

(ii) A predecessor and successor employer, respectively, upon termination of the CPEO contract between the CPEO and the customer with respect to the work site employee who is performing services for the customer.

(2) *Non-work site employee.* A CPEO entering into a CPEO contract with a customer during a calendar quarter with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a successor employer (and the customer will not be treated as a predecessor employer) for purposes of paragraph (d)(1)(i) of this section regardless of whether, during the term of the CPEO contract, the covered employee subsequently becomes a work site employee. Similarly, a CPEO

terminating a CPEO contract with a customer during a calendar quarter with respect to a covered employee who is not a work site employee at any time during that calendar quarter will not be treated as a predecessor employer (and the customer will not be treated as a successor employer) for purposes of paragraph (d)(1)(ii) of this section regardless of whether, during the term of the CPEO contract, the covered employee had previously been a work site employee.

(e) *Treatment of credits*—(1) *In general.* For purposes of the credits specified in paragraph (e)(2) of this section—

(i) The credit with respect to a work site employee performing services for a customer applies to the customer, not to the CPEO; and

(ii) In computing the credit, the customer, and not the CPEO, is to take into account wages and federal employment taxes paid by the CPEO with respect to the work site employee and for which the CPEO receives payment from the customer.

(2) *Credits specified.* A credit is specified in this paragraph if such credit is allowed under—

(i) Section 41 (credit for increasing research activity);

(ii) Section 45A (Indian employment credit);

(iii) Section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips);

(iv) Section 45C (clinical testing expenses for certain drugs for rare diseases or conditions);

(v) Section 45R (employee health insurance expenses for small employers);

(vi) Section 51 (work opportunity credit);

(vii) Section 1396 (empowerment zone employment credit); and

(viii) Any other section specified by the Commissioner in further guidance (as defined in § 301.7705–1T(b)(8) of this chapter).

(f) *Section not applicable to related customers, self-employed individuals, and other circumstances.* This section does not apply—

(1) In the case of any customer that—

(i) Has a relationship to a CPEO described in section 267(b) (including, by cross-reference, section 267(f)) or section 707(b), except that ''10 percent'' shall be substituted for ''50 percent'' wherever it appears in such sections; or

(ii) Has commenced a CPEO contract with the CPEO but such commencement has not been reported to the IRS as described in paragraph (g)(3)(i) of this section; or

(2) To remuneration paid by a CPEO to any self-employed individual (as defined in § 301.7705–1(b)(14) of this chapter);

(3) To any CPEO contract that a CPEO enters into while its certification has been suspended by the IRS; or

(4) To any CPEO whose certification has been revoked or voluntarily terminated.

(g) *Reporting and recordkeeping*—(1) *Reporting and recordkeeping for employers.* A CPEO that is treated as an employer of a covered employee pursuant to paragraph (a) of this section must meet all reporting and recordkeeping requirements described in subtitle F of the Code that are applicable to employers in a manner consistent with such treatment.

(2) *Reporting on magnetic media*—(i) *In general.* A CPEO must file on magnetic media any Form 940, ''Employer's Annual Federal Unemployment (FUTA) Tax Return,'' and Form 941, ''Employer's QUARTERLY Federal Tax Return,'' and all required accompanying schedules, as well as such other returns, schedules, and other required forms and documents as is required by further guidance.

(ii) *Waiver.* The Commissioner may waive the requirements of this paragraph (g)(2) in case of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return, schedule, or other required form or document on magnetic media in accordance with this paragraph (g)(2) exceeds the cost of filing on or by other media. A request for a waiver must be made in accordance with applicable guidance. The waiver will specify the type of filing (that is, the name of the form or schedule) and the period to which it applies. In addition, the waiver will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(iii) *Magnetic media.* The term magnetic media means any magnetic media permitted under applicable guidance. These generally include electronic filing, as well as other media specifically permitted under the applicable guidance.

(3) *Reporting to the IRS by CPEOs.* A CPEO must report the following to the IRS in such time and manner, and including such information, as the Commissioner may prescribe in further guidance:

(i) The commencement or termination of any CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) with a customer, or any service agreement described in § 31.3504–2(b)(2) with a client, and the name and employer identification number (EIN) of such customer or client.

(ii) With any Form 940 and Form 941 that it files, all required schedules, including but not limited to the applicable Schedule R (or any successor form), containing such information as the Commissioner may require about each of its customers under a CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) and each of its clients under a service agreement described in § 31.3504–2(b)(2). A CPEO must file Form 940 and Form 941, along with all required schedules, on magnetic media, unless the CPEO is granted a waiver by the Commissioner in accordance with paragraph (g)(2)(ii) of this section.

(iii) A periodic verification that it continues to meet the requirements of § 301.7705–2T of this chapter, as described in § 301.7705–2T(j).

(iv) Any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided by the CPEO to the IRS, as described in § 301.7705–2T(k) of this chapter.

(v) A copy of its audited financial statements and an opinion of a certified public accountant regarding such financial statements, as described in § 301.7705–2T(e)(1) of this chapter.

(vi) The quarterly statements, assertions, and attestations regarding those assertions described in § 301.7705–2T(f)(1) of this chapter.

(vii) Any information the IRS determines is necessary to promote compliance with respect to the credits described in paragraph (e)(2) of this section and section 3302.

(viii) Any other information the Commissioner may prescribe in further guidance.

(4) *Reporting to customers by CPEOs.* A CPEO must meet the following reporting requirements with respect to its customers in such time and manner, and including such information, as the Commissioner may prescribe in further guidance:

(i) Provide each of its customers with the information necessary for the customer to claim the credits described in paragraph (e)(2) of this section.

(ii) Notify any customer if its CPEO contract has been transferred to another person (or if another person will report, withhold, or pay, under such other person's EIN, any applicable federal employment taxes with respect to the wages of any individuals covered by its CPEO contract) and provide the customer with the name and EIN of such other person.

(iii) If the CPEO's certification is suspended or revoked as described in § 301.7705–2T(n) of this chapter, notify each of its current customers of such suspension or revocation.

(iv) If any covered employees are not or cease to be work site employees because they perform services at a location at which the 85 percent threshold described in § 301.7705–1(b)(17) of this chapter is not met, notify the customer that it may also be liable for federal employment taxes imposed on remuneration remitted by the CPEO to such covered employees, as described in paragraph (a)(3) of this section.

(5) *Information and agreements in any contract or agreement between a CPEO and a customer or client.* Any CPEO contract (as defined in § 301.7705–1(b)(3) of this chapter) between a CPEO and a customer or service agreement described in § 31.3504–2(b)(2) between a CPEO and a client must—

(i) In the case of a contract that is a CPEO contract,—

(A) Contain the name and EIN of the CPEO reporting, withholding, and paying any applicable federal employment taxes with respect to any remuneration paid to individuals covered by the contract or agreement;

(B) Require the CPEO to provide to the customer the notices and information required by paragraph (g)(4) of this section;

(C) Describe the information that the CPEO will provide that is necessary for the customer to claim the credits specified in paragraph (e)(2) of this section; and

(D) Require the CPEO to notify the customer that the customer may also be liable for federal employment taxes on remuneration remitted by the CPEO to covered employees if the work sites at which they perform services do not (or ever cease to) meet the 85 percent threshold described in § 301.7705–1(b)(17) of this chapter; and

(ii) In the case of a service agreement described in § 31.3504–2(b)(2) that is not a CPEO contract (and thus the individuals covered by that contract are not covered employees), or if this section does not apply to the contract under paragraph (f) of this section, notify, or be accompanied by a notification to, the client that the service agreement or contract is not covered by section 3511 and does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the service agreement or contract.

(h) *Penalties*—(1) *In general.* A CPEO that is treated as an employer of a covered employee under this section and that is required to meet the reporting requirements of an employer is subject to the same penalties and additions to tax as an employer with respect to such reporting requirements, including but not limited to penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723.

(2) *Failures to timely make reports required under section 3511.* CPEOs are subject to penalty under section 6652(n) with respect to reports required to be made to the IRS in paragraphs (g)(1) and (g)(3) of this section and reports required to be made to customers in paragraph (g)(4) of this section.

(3) *Failures to attach Schedule R.* A CPEO is subject to penalty under section 6652(n) for failure to attach Schedule R (or successor form) to Forms 941 or 940 as required by paragraph (g)(3)(ii) of this section. A CPEO is also subject to penalty under section 6723 for failure to include the EIN of each customer on Schedule R of Form 941 or 940. See § 301.6723–1 of this chapter for the application of the section 6723 penalty in the case of multiple failures on a single document.

(4) *Failures to file on magnetic media.* With respect to the requirement in paragraph (g)(3)(ii) of this section that a CPEO must file Forms 940 and 941, along with all required schedules, on magnetic media, a failure to file on magnetic media does not constitute a failure to file for purposes of section 6651(a)(1) nor does it constitute a failure to make a report for purposes of section 6652(n). Rather, the requirement to file Forms 940 and 941 on magnetic media is a condition of maintaining certification as a CPEO.

(i) *Effective/applicability date.* These rules are effective on and after the date of publication of the Treasury decision adopting these rules as final or temporary regulations. Taxpayers may rely on these rules beginning July 1, 2016, and until final or temporary regulations are published.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.7705–1 also issued under 26 U.S.C. 7705(h).

Section 301.7705–2 also issued under 26 U.S.C. 7705(h).

* * * * *

■ **Par. 4.** Sections 301.7705–1 and 301.7705–2 are added to read as follows:

§ 301.7705–1 Certified professional employer organization.

(a) The definitions set forth in this section apply for purposes of this section, §§ 31.3511–1 and 301.7705–2, and sections 3302(h), 3303(a)(4), 6053(c)(8), and 7528(b)(4).

(b) [The text of proposed § 301.7705–1(b)(1) through (2) is the same as the text of § 301.7705–1T(b)(1) through (2) published elsewhere in this issue of the **Federal Register**].

(3) *CPEO contract* means a service contract between a CPEO and a customer that is in writing and provides that, with respect to an individual providing services to the customer, the CPEO will—

(i) Assume responsibility for payment of wages to the individual, without regard to the receipt or adequacy of payment from the customer for the services;

(ii) Assume responsibility for reporting, withholding, and paying any applicable federal employment taxes with respect to the individual's wages, without regard to the receipt or adequacy of payment from the customer for the services;

(iii) Assume responsibility for any employee benefits that the service contract may require the CPEO to provide to the individual, without regard to the receipt or adequacy of payment from the customer for such benefits;

(iv) Assume responsibility for recruiting, hiring, and firing the individual in addition to the customer's responsibility for recruiting, hiring, and firing the individual;

(v) Maintain employee records relating to the individual; and

(vi) Agree to be treated as a CPEO for purposes of section 3511 with respect to the individual.

(4) [The text of proposed § 301.7705–1(b)(4) is the same as the text of § 301.7705–1T(b)(4) published elsewhere in this issue of the **Federal Register**].

(5) *Covered employee* means, with respect to a customer, any individual (other than a self-employed individual, as defined in paragraph (b)(14) of this section) who performs services for the customer and who is covered by a CPEO contract between the CPEO and the customer.

(6) *Customer*—(i) *In general.* Except as provided in paragraph (b)(6)(ii) of this section, a customer is any person who enters into a CPEO contract with a CPEO.

(ii) *Persons who are not customers.* A provider of employment-related services that uses its own EIN for filing federal employment tax returns on behalf of its

clients (or who used its own EIN immediately prior to entering into a CPEO contract with the CPEO) is not a customer, even if it has entered into a CPEO contract with the CPEO.

(7) [The text of proposed § 301.7705–1(b)(7) through (13) is the same as the text of § 301.7705–1T(b)(7) through (13) published elsewhere in this issue of the **Federal Register**].

(14) *Self-employed individual* means an individual with net earnings from self-employment (as defined in section 1402(a) and without regard to the exceptions thereunder) derived from providing services covered by a CPEO contract, whether such net earnings from self-employment are derived from providing services as a non-employee to a customer of the CPEO, from the individual's own trade or business as a sole proprietor customer of the CPEO, or as an individual who is a partner in a partnership that is a customer of the CPEO, but only with regard to such net earnings.

(15) [The text of proposed § 301.7705–1(b)(15) is the same as the text of § 301.7705–1T(b)(15) published elsewhere in this issue of the **Federal Register**].

(16) *Work site* means a physical location at which an individual regularly performs services for a customer of a CPEO or, if there is no such location, the location from which the customer assigns work to the individual. A work site may not be the individual's residence or a telework site unless the customer requires the individual to work at that site. For purposes of this paragraph (b)(16), work sites that are contiguous locations will be treated as a single physical location and thus a single work site, and noncontiguous locations that are not reasonably proximate will be treated as separate physical locations and thus separate work sites. A CPEO may treat noncontiguous locations that are reasonably proximate as a single physical location and thus a single work site. Any two work sites that are separated by 35 or more miles or that operate in a different industry or industries will not be treated as reasonably proximate for purposes of this paragraph (b)(16).

(17) *Work site employee*—(i) *In general.* A work site employee means, with respect to a customer, a covered employee who performs services for such customer at a work site where at least 85 percent of the individuals performing services for the customer are covered employees of the customer.

(ii) *Self-employed individuals.* Solely for purposes of determining whether the 85 percent threshold described in paragraph (b)(17)(i) of this section is met, a self-employed individual described in paragraph (b)(14) of this section is treated as a covered employee if such individual would be a covered employee but for the exclusion of self-employed individuals from the definition of covered employee in paragraph (b)(5) of this section.

(iii) *Excluded employees.* In determining whether the 85 percent threshold described in paragraph (b)(17)(i) of this section is met, an individual that is an excluded employee described in section 414(q)(5) is not treated either as an individual providing services or a covered employee.

(iv) *Treatment for calendar quarter.* A covered employee will be considered a work site employee for the entirety of a calendar quarter if the employee qualifies as a work site employee at any time during that quarter.

(v) *Separate determination for each work site.* The determination of whether a covered employee is a work site employee is made separately with regard to each work site at which the covered employee regularly provides services and for each customer for which the covered employee is providing services. A covered employee may be determined to be a work site employee of more than one work site during a calendar quarter.

(c) [The text of proposed § 301.7705–1(c)(1) is the same as the text of § 301.7705–1T(c)(1) published elsewhere in this issue of the **Federal Register**].

(2) *Definitions related to section 3511.* Paragraphs (b)(3), (5), (6), (14), (16), and (17) of this section are applicable on the date of publication of the Treasury decision adopting these rules as final or temporary regulations.

§ 301.7705–2 CPEO certification process.

[The text of proposed § 301.7705–2 is the same as the text of § 301.7705–2T published elsewhere in this issue of the **Federal Register**].

Kirsten B. Wielobob,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–10702 Filed 5–4–16; 4:15 pm]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0256]

RIN 1625–AA09

Drawbridge Operation Regulation; Fox River, DePere to Oshkosh, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule for all drawbridges over the Fox River between DePere, WI and Oshkosh, WI. A review of the current regulation was requested by the Wisconsin Department of Transportation and the Fox River Navigational System Authority.

DATES: Comments and related material must reach the Coast Guard on or before: June 20, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0256 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NEPA National Environmental Policy Act of 1969
NPRM Notice of proposed rulemaking
RFA Regulatory Flexibility Act of 1980
SNPRM Supplemental notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
WIS–DOT Wisconsin Department of Transportation
FRNSA Fox River Navigational System Authority
CN–RR Canadian National Railroad

II. Background, Purpose and Legal Basis

This proposed rule was requested by WIS–DOT and FRNSA to align drawbridge operating schedules with lock schedules, and make the yearly