

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG-134923-07]

RIN 1545-BG88

User Fees Relating to Enrollment to Perform Actuarial Services

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to user fees for the initial and renewed enrollment to become an enrolled actuary. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 26, 2007.

Outlines of topics to be discussed at the public hearing scheduled for November 26, 2007, at 10 a.m., must be received by November 19, 2007.

ADDRESSES: Send comments to: CC:PA:LPD:PR (REG-134923-07), room 5203, Internal Revenue Service, PO 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-134923-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Alternatively, submissions

may be sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-134923-07).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments and/or to be placed on the building access list to attend the hearing Richard A. Hurst@irsounsel.treas.gov or at (202) 622-7180; concerning cost methodology, Eva J. Williams at (202) 435-5514; concerning the proposed regulations, Joel Rutstein at (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Employee Retirement Income Security Act of 1974 (Public Law 93-406) ordered the Secretary of Labor and the Secretary of Treasury to establish a Joint Board for the Enrollment of Actuaries. 29 U.S.C. 1241. The Joint Board shall, by regulation, establish reasonable standards and qualifications for persons performing actuarial services and the Joint Board shall enroll such individuals who, upon application, satisfy such standards and qualifications. 29 U.S.C. 1242(a). The regulations at 20 CFR Part 901, Subpart B address eligibility for enrollment and renewal of enrollment. Pursuant to the Joint Board's bylaws, the Secretary of the Treasury is to appoint an Executive Director to the Board who has the delegated authority to administer the Board's enrollment program. The Secretary of the Treasury has delegated these functions to the Internal Revenue Service and the costs of these activities are borne by the Service.

20 CFR 901.11(d)(4) provides for a reasonable non-refundable fee for applications for renewal of enrollment. Form 5434-A, "Application for Renewal of Enrollment" presently states that the renewal fee is \$25. Proposed 26 CFR 300.7 and

300.8 establish separate \$250 user fees for the enrollment and renewal of enrollment process. These fees represent the IRS's costs in administering the program, and the \$250 fee for renewal of enrollment will supplant the \$25 fee.

Authority

The IOAA of 1952 (31 U.S.C. 9701) authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA of 1952 provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, a user fee should be set at an amount in order for the agency to recover the cost of providing the special service, unless the Office of Management and Budget grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the enrolled actuaries program. The IRS has determined that the full cost of administering the enrollment and re-enrollment processes is \$250 per enrolled actuary per process.

The proposed user fees will be implemented under the authority of the IOAA of 1952 and the OMB Circular.

Proposed Effective Date

These regulations are proposed to apply thirty days after the date of publication in the **Federal Register** of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These proposed rules affect enrolled actuaries, of which there are currently 4,600 active. The economic impact of these regulations on any small entity would result from a small entity, including a sole proprietor, being required to pay a fee prescribed by these regulations in order to obtain a particular service. The appropriate NAICS codes for enrolled actuaries relate to Insurance Other (524298) and Administrative and General Management Consulting, Including Financial Consulting (541611). Entities identified under these codes are considered small under the SBA size standards (13 CFR 121.201) if their annual revenue is less than \$6.5 million. The IRS estimates that as many as 2,070 enrolled actuaries may be operating as or employed by small entities. Therefore, the IRS has determined that these proposed rules will affect a substantial number of small entities. The dollar amounts of the fees are not, however, substantial enough to have a significant economic impact on any entity subject to the fees. The amounts of the fees are commensurate with, if not less than, the amount charged by professional organizations. Persons who elect to apply for

enrollment or renewal of enrollment also receive benefits from obtaining the enrolled actuary designation. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 26, 2007 at 10:00 a.m. in room 3716. Due to building security procedures, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by November 26, 2007 and an outline of the comments to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 19, 2007. A period of ten (10) minutes will be allotted to each person for making comments. An

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

Drafting Information

The principal author of these regulations is Joel S. Rutstein of the Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 300 is proposed to be amended as follows:

PART 300--USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended as follows:

1. Paragraphs (b)(7) and (b)(8) are added.
2. Paragraph (c) is revised.

The additions and revision read as follows:

§300.0 User fees, in general.

* * * * *

(b) * * *

(7) Enrolling an enrolled actuary.

(8) Renewing the enrollment of an enrolled actuary.

(c) Effective/applicability date. This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003; the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006; the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007; the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007; and the user fee for the enrollment and renewal of enrollment for enrolled actuaries is applicable thirty days after the date of publication in the **Federal Register** of the final regulations.

Par. 3. Section 300.7 is added to read as follows:

§300.7 Enrollment of enrolled actuary fee.

(a) Applicability. This section applies to the initial enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part 901.

(b) Fee. The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$250.00.

(c) Person liable for the fee. The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Par. 5. Section 300.8 is added to read as follows:

§300.8 Renewal of enrollment of enrolled actuary fee.

(a) Applicability. This section applies to the renewal of enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part

901.

(b) Fee. The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$250.00.

(c) Person liable for the fee. The person liable for the renewal of enrollment fee is the person renewing their enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Linda E. Stiff

Deputy Commissioner for Services and Enforcement